



January 26, 2018

[REDACTED]

[REDACTED]

Dear [REDACTED] and [REDACTED]:

This Statement of Reasons is in response to your March 1, 2017 complaint filed with the United States Department of Labor (Department) alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with the August 28, 2015 election of officers of the United Food and Commercial Workers (UFCW) Local 400.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to the specific allegations, that no violation occurred which may have affected the outcome of the election.

First, you alleged that [REDACTED] was illegally and unfairly excluded from the ballot when she was ruled ineligible to run for president due to a lapse in dues payments. Section 401(e) of the LMRDA provides that every member in good standing shall be eligible to be a candidate and to hold office, subject to Section 504 and reasonable qualifications uniformly imposed. The Department of Labor investigation revealed that Ms. Wiszynski was ruled ineligible to run because she did not meet the continuous active membership requirement in the union's constitution, Article IV section 4(B)(1), due to a period where she was not employed within the bargaining unit.

The UFCW has long interpreted "employed" as used in Article IV, Section 4(B)(1) to mean actively on-the-job and working for a covered employer (i.e., employment dates from the date of actually starting work on the job, rather than the date of hire). The Department's regulations at 29 C.F.R. § 452.3 provide that a union's interpretation consistently placed on its constitution will be accepted unless the interpretation is clearly unreasonable. The union's interpretation of employed to mean on-the-job is not

clearly unreasonable. Accordingly, ██████████ did not satisfy the continuous active membership requirement in Article 35(A) of the UFCW International Constitution due to her gap in covered employment from November 11, 2014 through February 9, 2015. Further, she did not qualify for any of the exceptions to the “actively employed” rule, in that her gap in employment was not covered by the circumstances outlined in Article 4(B)(2)¹ since her job was part of the Local 400 management team and was not covered by the collective bargaining agreement. There was no violation.

Second, you alleged that the election was not held in a fair manner because it was not conducted by mail ballot, and the in-person polling places were set up in a manner that suppressed the vote count and did not provide all members with a reasonable opportunity to vote. Section 401(e) of the LMRDA provides that every member in good standing shall have the right to vote for the candidate(s) of his or her choice, thus obligating the union to afford all its members a reasonable opportunity to cast ballots. 29 C.F.R. § 452.94. Distance to the polls and hours of work are among the factors relevant to a union’s determination of how to meet this obligation. The Local’s bylaws and the UFCW International Constitution allow the general chairperson to determine whether to conduct the election by mail ballot in lieu of, or in addition to, conducting the election by in-person voting at polling sites. Pursuant to the constitution, the general chairperson has the authority to establish the applicable dates, times, places, manner, and procedures for the election.

The Department’s investigation revealed that, in planning the subject election, the Local decided it would be more prudent to reduce the cost of the election by conducting a polling site election rather than a mail ballot election. The Local hired Map Synergy, a consulting company that provides custom maps and location analysis, to determine polling sites that would be less than sixty miles apart and no more than a 90-minute drive between sites. Further, the Local selected polling hours that would allow all members an opportunity to vote either before or after their work shifts. The polling site addresses and polling hours were communicated to members in the combined nomination and election notice that was mailed on July 28, 2015.

The LMRDA does not require that elections be conducted by mail ballot. It does require unions to conduct officer elections in accordance with the union’s constitution and bylaws. The Local’s governing documents do not require that elections be conducted by

¹ Article IV, Section 4(B)(2) of the UFCW International Constitution states, “An active member who is not actively working due to layoff, illness, disability, or a contractually provided leave of absence, and has applicable recall or reemployment rights which have not expired under the collective bargaining agreement, or who has been discharged and has a grievance pending under the collective bargaining agreement, may elect (1) to continue to pay dues and maintain active membership for the temporary period for which said recall or reemployment rights are valid or said grievance is pending, but in neither event for longer than two years, (2) to apply for another classification of membership provided for in this Article, if eligible, or (3) to apply for a withdrawal status pursuant to the provisions of Article 6.”

mail ballot; rather, the constitution provides that the election chairperson has the authority to determine the time, place, and manner of the election. That is what happened here. In planning the election, the Local was careful to ensure that members had a reasonable opportunity to vote by engaging the services of Map Synergy. Additionally, the investigation did not find and you could not identify any members who were negatively impacted by the time, place, or manner of the election. There was no violation.

You alleged that the Local violated the LMRDA because it placed unopposed candidates from the Federici slate on the ballot instead of indicating their election by acclamation. While Article XII, Section L of the Local 400 bylaws states that unopposed candidates are elected by acclamation, there is no provision, either in the bylaws or the UFCW International Constitution, regarding ballot format for local union elections. The form of the ballot is not prescribed by the LMRDA. 29 C.F.R. § 452.112. There was no violation.

You alleged that the Local violated the LMRDA because the ballot did not inform members that they need not vote for the entire slate. The Department's regulations at 29 C.F.R. § 452.112 explain in this regard that slate voting is permissible as long as the voter can alternatively choose among individual candidates and the voting instructions specify that the voter need not vote for an entire slate. The investigation found that the ballot instructions clearly stated that a member could vote one of two ways: (1) for a full slate by marking the box located in front of the slate name; or (2) for an individual candidate by marking the box in front of the candidate name. You could not identify and the investigation did not reveal any members who were confused as to how to vote for a slate as opposed to individual candidates. There was no violation.

For the reasons set forth above, it is concluded that no violation of the LMRDA occurred. Accordingly, the office has closed the file on this matter.

Sincerely,

Sharon Hanley
Chief, Division of Enforcement

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