



July 23, 2009

[REDACTED]

Dear [REDACTED]:

This Statement of Reasons is in response to your complaint filed on June 9, 2008, with the Department of Labor ("Department") alleging that a violation of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 481-484, occurred in connection with the election of officers conducted by United Food and Commercial Workers International Union (UFCW), Local 101, (local or union), on August 2, 2007.

The Department conducted an investigation of your complaint. As a result of our investigation, the Department has concluded, with respect to each of your allegations, that there was no violation that may have affected the outcome of the election.

1. You alleged that nominee [REDACTED] was improperly denied his right to run for office. Section 401(e) of the LMRDA, 29 U.S.C. § 481 (e), provides that in any election required by his section, every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed). The notice of nominations and election of officers provided that any member who is nominated and wishes his/her name to appear on the ballot must accept his/her nomination by returning an accept/decline form to [REDACTED], Election General Chairperson, at the union's office by hand, mail or facsimile by 4:30 p.m. on July 11, 2007. The local stated that [REDACTED] was the only nominee who did not return his nomination acceptance form. The Department's investigation included a review of all acceptance forms submitted by all candidates. A nomination acceptance form for [REDACTED] was not found. The investigation revealed a nomination acceptance form for every candidate listed on the ballot. [REDACTED] was not on the ballot because he failed to properly accept his nomination. There was no violation.

2. You alleged that you were unable to run for local president because you were not provided a nomination petition in a timely manner. The notice of nominations and election of officers was mailed on May 29, 2007, and indicated that petitions were available and had to be received at the union's office no later than 4:30 p.m. on July 3, 2007. The investigation revealed that you received the nomination notice in a timely manner, but you did not request petition forms until June 25, 2007. The requested forms were mailed to you by overnight mail on June 28, 2007, and you received notice that the petitions were waiting for you at the post office. The union's administrative officer confirmed that she called you to alert you that your nomination petitions were waiting for you at the post office due to two unsuccessful delivery attempts. The investigation did not confirm that the union failed to make petitions available or to provide petitions in a timely manner. There was no violation.

3. You alleged that the [REDACTED] slate of candidates ([REDACTED]) used union office staff to prepare a campaign mailing. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides that no moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. The investigation established that all campaign mailings, including [REDACTED]'s two mailings, were conducted through a mailing house, Business Solutions Network, in San Francisco, California. Receipts from Business Solutions Network document that [REDACTED] paid for two campaign mailings. The union's administrative officer confirmed that the office staff did not assist any candidate with campaign mailings. There was no violation.

4. You alleged that union business agents were coerced to pay \$3,000 each for a campaign mailing for [REDACTED]. You further alleged that if a business agent could not afford that amount, the agent was given a vacation advance of \$3,000 to be used for the contribution to [REDACTED] and allowed to reimburse the union over a period of time. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides that no moneys received by any labor organization by way of dues, assessment, or similar levy . . . shall be contributed or applied to promote the candidacy of any person. The investigation established that the union's vacation policy allows for a cash-out of any accrued vacation anytime during the calendar year. Vacation is accrued on January 1 of each year and the full year's vacation is available for usage or cash-out on January 1 of each year. The investigation revealed that it is against union policy to cash-out vacation that a member has not accrued. The union followed its policy. The investigation established that [REDACTED] did, in fact, call the business agents and solicited donations for his campaign, but there was no evidence that business agents were coerced to contribute to the [REDACTED] campaign. Further, there was no evidence that the union advanced vacation pay to fund the business agents' contributions. While the investigation

revealed that several business agents cashed-out accrued vacation during the months of May to August 2007, these individuals did not receive any advance of vacation. There was no violation.

5. You alleged that [REDACTED] members campaigned at the United States Post Office and two separate Safeway stores while on union time to members who were on employer time. Section 401(g) of the LMRDA, 29 U.S.C. § 481(g), provides that no moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of the LMRDA. The investigation established that in a memo dated June 13, 2007, union officers and employees were informed that they could not campaign on time paid for by the union. They were further informed that "union officers and employees who wish to campaign for a candidate must do so on their own time-which means off duty, on vacation, or time off without pay." [REDACTED] denied campaigning at the post office, and the investigation did not reveal any evidence of him visiting the post office. While the investigation established that both business agents Dustin Tyssen and Virginia Ingelfinger campaigned at the Safeway store where each is assigned representational duties, each was on vacation time and not on union time, and the members to whom they spoke were on break time and not on employer time. There was no violation.

6. You alleged that some members received campaign flyers with their ballot packages in violation of section 401(g)'s prohibition against union funds being used to promote the candidacy of any person in an election subject to the provisions of the LMRDA. The investigation established that one of your election protest co-signers admitted that she exaggerated this allegation. In an initial interview, your witness stated that she received a campaign flier in her ballot package, but in a second interview, the witness clarified her initial statement and stated that she is less sure that she received any campaign materials in her ballot package. Your witness now believes that she may have mixed up the [REDACTED] campaign material she received in the mail with the contents of the ballot package she received on the same day. The investigation revealed no evidence to support the allegation. There was no violation.

7. You alleged that the union failed to provide proper notice of election because the placement of the election notice in the union's "Summer 2007" newsletter was not in a conspicuous place. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that in an election required to be held by secret ballot, an election notice shall be mailed to each member at his last known home address not less than 15 days prior to the election. A labor organization may comply with the election notice requirement by publishing the notice in the organization's newspaper. Where this procedure is used, the notice should be conspicuously placed on the front page of the newspaper, or the front page should

have a conspicuous reference to the inside page where the notice appears, so that the inclusion of the election notice in a particular issue is readily apparent to each member. See 29 C.F.R. § 452.100. The investigation established that the nomination and election notice appears on page eight of the "Summer 2007" newsletter, and that the front page did not have a conspicuous reference to the inside page where the notice appears. While the newspaper notice should have been conspicuously placed on the front page of the newsletter, it was not the only notice of the election. The union included an additional notice of election in the ballot packages mailed to all members at least 15 days prior to the election. There was no violation.

You further alleged that the two page photo spread in the "Summer 2007" issue constituted campaigning for ██████████. The photo spread showed ██████████ picketing at Falletti's Market in San Francisco, an organizing event contemporaneous with the publishing of the newsletter. The "Summer 2007" newsletter was compared to other earlier editions of the newsletter to determine if there were any differences in the number of ██████████-related news items and photos (excluding the usual front page photo and column). The review revealed that the format, number of ██████████ photos, and number of ██████████ news articles appear to be consistent with the newsletters preceding the "Summer 2007" issue. The photo spread in the "Summer 2007" newsletter does not constitute campaigning. There was no violation.

8. You alleged that the union failed to provide adequate safeguards to insure a fair election in that the election committee chairperson treated your slate in a disparate manner. You alleged that ██████████ had easier access to information than did your slate, the Save Local 101 Alliance (SL101A) slate. Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that adequate safeguards to insure a fair election shall be provided. The investigation did not establish that any candidate received information in advance of the other candidates. All information regarding the election was mailed to the candidates at the same time. The evidence revealed that ██████████ made one inquiry regarding campaign mailings and the election committee chairperson responded by certified mail. There was no violation.

9. You alleged that the union treated ██████████ (██████████), a member of your slate, in a disparate manner because questions he submitted to the election committee chairperson had to be re-written. ██████████, when interviewed by Department investigators, acknowledged that the election committee chairperson never asked him to resubmit or rewrite his questions. ██████████ stated that his dyslexia was the reason why it took him additional time to write his questions to the election committee chairperson. ██████████ also admitted that he could have telephoned the election committee chairperson to ask questions, but he chose to write and fax his questions to him. The evidence revealed that all of ██████████'s written inquiries were answered.

Also, the investigation revealed that there was a dedicated phone used only for the election that [REDACTED] could have used to get his questions answered. There was no violation.

10. You alleged that the union failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the election committee chairperson treated your slate in a disparate manner by giving [REDACTED] advanced notice of the change in the ballot mailing date. You contend that this advance notice allowed [REDACTED] to send campaign literature simultaneously with the mailing of the ballots. The investigation established that the union mailed a letter to all candidates on July 2, 2007, informing them that the ballot mailing had been changed from July 16, 2007, to July 13, 2007, to allow more time for the ballot returns. There was no violation.

11. You alleged that the union failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the ballot design was confusing. Specifically, you alleged that folding the ballot to fit into the secret ballot envelope was “unnatural and confusing.” The investigation revealed that the voting instructions asked each voter to fill out the ballot and place the ballot in the “Secret Ballot” envelope and seal the envelope. The instructions were clear and the design of the 2007 ballot was the same as the one used in the previous election. There was no evidence that any member was confused by the design of the ballot. There was no violation.

12. You alleged that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the ballot instructions were not translated in Chinese. The investigation established that the local did not provide a translation of the ballot instructions in Chinese for the 2007 election because the local’s Chinese membership had significantly decreased since the prior election. The investigation did not reveal any evidence that these members did not have a working knowledge of the English language. In fact, you acknowledged that Chinese members must be able to communicate in English to perform their jobs. The investigation did not reveal any evidence that any Chinese member requested a translation of the ballot or the election materials. Also, on election day, the local did not receive any reports that Chinese members were not able to read the election ballot. Moreover, the investigation did not reveal any evidence that any Chinese member did not vote because the ballot instructions were not translated into Chinese. There was no violation.

13. You alleged, in several related allegations, that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29

U.S.C. § 481(c). Specifically, you alleged that the local did not disclose the rules surrounding the printing and custody of the ballots prior to the tally, that the lack of pre-paid "bulk mail" postage on the return ballot envelopes led to low voter turn out, that the post office box for the returned voted ballots was opened prior to the tally and that the election committee chairperson had keys to all post office boxes. With regard to your allegation concerning the preparation of the ballot packages, the LMRDA does not require the union to disclose rules surrounding the printing and custody of the ballots. However, in a mail ballot election, candidates, upon request, must be allowed to have observers at the various phases of the balloting process. You had a right to observe this process and thereby be provided the information such as date, time, and location, necessary to facilitate your observation. However, the investigation established that you admitted to the Department's investigator that you were aware of the date when the local prepared the ballot packages for mailing and chose not to attend. In any event, a review of election records gave no indication that a violation of the LMRDA occurred in connection with the production, distribution or custody of the ballots. There was no violation.

With regard to your allegation concerning the lack of postage on the returned ballot envelopes, a review of the bylaws did not reveal any evidence that the local was required to include return postage. Furthermore, the investigation did not reveal any evidence that members did not return their ballots because of a lack of pre-paid postage on the return envelopes. There was no violation.

With regard to your allegations concerning access to the post office boxes and that the boxes were opened prior to the tally, the investigation established that the local rented two post office boxes, one for the returned ballots and the other for the undeliverable ballots. The investigation confirmed that the election committee chairperson maintained sole custody of the keys to each of the two post office boxes used throughout the election process. The investigation did not reveal any evidence that either box was opened at any time other than those announced by the election committee or by anyone other than the election committee chairperson. The investigation revealed that candidates were advised by letter when the post office boxes would be accessible and observers, including you, were present during each instance. There was no violation.

14. You alleged that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because "hundreds of eligible members" did not receive ballots. The investigation revealed that you admitted that you exaggerated the number of members supposedly affected and that you only provided the names of eight members to the Department. Of these eight members, only five were eligible to vote, and those five were mailed ballots. A review

of the election records indicates that the local mailed ballots to all eligible members. There was no violation.

15. You alleged that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the local did not disclose the number of undeliverable election notices and what steps were taken to correct bad addresses. Neither the union constitution nor the LMRDA requires the union to provide this information. Moreover, the investigation revealed that the local took an active role in correcting bad addresses and re-mailing ballots returned as undeliverable. During the Department's review of the election records, undeliverable ballots and a log of subsequently re-mailed ballots were found among the election records. The investigation also revealed that although you acted as an observer when the undeliverable ballots were picked up from the post office, neither you nor any other member of your slate chose to attend any subsequent ballot re-mailings. There was no violation.

16. You alleged that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because the employer list provided by the local that you intended to use to distribute campaign literature was inaccurate. Under the LMRDA, the union and its officers must comply with all reasonable requests of any candidate to distribute campaign literature to the membership at his expense and must treat candidates equally with respect to distribution of campaign literature. See 29 C.F.R. § 452.67. The investigation revealed that the employer list contained several hundred employer locations, with at least the names of two employers that had closed and another with an incorrect street address. The address of one employer was also not updated after having relocated. You acknowledged that the inaccuracies did not limit your ability to campaign because you knew all of the employer locations. Inasmuch as the election committee chairperson provided all candidates with an identical list, and there is no evidence that the local intentionally released an inaccurate list, you and all other candidates were treated in an equal manner. There was no violation.

17. You alleged that Article XII, Section L (2)(c) of the local's Bylaws was violated when the local's administrative officer, a non-election committee member, was allowed to handle the ballots during the tally. Article XII, Section L (2)(c) states that only election committee members shall open and count the ballots. Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that the election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of Title IV of the LMRDA. The investigation established that the administrative officer operated the letter opening machine and assisted at least one election judge in locating a member on the eligibility list. While operating the letter

opening machine during the tally constitutes a violation of the local's bylaws and section 401(e) of the LMRDA, there is no evidence that this violation may have affected the outcome of the election because the administrative officer neither counted any ballots nor made any decisions with respect to voter intent.

18. You alleged, in several related allegations, that the election committee chairperson and other committee members showed favoritism toward [REDACTED]. You acknowledged that you had no evidence of such favoritism, that you based your concern on "speculation." The investigation did not reveal any evidence to support this allegation. There was no violation.

19. You alleged that the local failed to provide adequate safeguards to insure a fair election, in violation of section 401(c) of the LMRDA, 29 U.S.C. § 481(c), because of ballot irregularities during the tally. Specifically, you alleged that you could not observe the recorded votes on the ballots during the ballot tally because you were kept at a distance too far from the ballot counting area, that the tellers failed to properly count the ballots, that the tally sheets were not double checked for accuracy that all ballots were not accounted for until after the tally, that ballot security was not maintained and that voter names were not called out.

Section 401(c) of the LMRDA, 29 U.S.C. § 481(c), provides that adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department's interpretative regulations make it clear that allowing observers to be present is not sufficient; the observers must be able to effectively observe the entire election process. The right to observe encompasses every phase and level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of tally sheets. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the election. See 29 C.F.R. § 452.107.

With regard to your allegation that you could not observe the recorded vote, the investigation established that the tellers were working at tables arranged in a "U" shape, with one row of folding metal chairs between the observers and the counting tables. The observers were instructed to remain behind the "barriers." A diagram of the voting area and a re-creation of the tally setup revealed that the chairs were placed at least five feet from the tables, a distance too far to see how the ballots were tabulated. The placement of the observers behind a five foot barrier and facing the tellers prevented effective observation and constituted an inadequate safeguard in violation of section 401(c) of the LMRDA. As part of its investigation, the Department conducted a ballot recount of various races by reviewing all tally sheets used by the election

committee during the original tally. The Department's comparison of the individual tally sheets to the master tally sheet confirmed the union's results with an insignificant variance in the vote tally that did not change the outcome of any race. There was no violation.

With regard to your allegation that ballot security was not maintained during the tally, the investigation confirmed that voted ballots were removed from the tally area on two occasions during the tally. On each occasion that the ballots were removed from the tally area, the ballots were carried by security guards and accompanied by observers and members of the election committee. The ballots were taken to a nearby room where a letter opening machine was used to first open the return ballot envelopes and then open the secret ballot envelopes. There was no violation.

With regard to your allegation that voter names were not called out during the tally, the investigation established that the tellers failed to call out the names of the voters. As discussed previously, observers were improperly denied the right to be standing close enough to view the names of those found eligible to vote. Consequently, the failure of the tellers to call out the names of the voters further contributed to the union's failure to provide for effective observation. However, the investigation revealed that only eligible members voted, and there was no evidence of any member voting twice. There was no effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there was no violation of Title IV of the LMRDA that may have affected the outcome of the election, and I have closed the file regarding these allegations.

Sincerely,

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Chief, Division of Enforcement

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