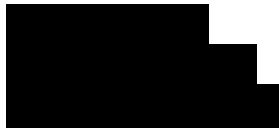




September 24, 2019



Dear [REDACTED]:

This Statement of Reasons is in response to the complaint you filed with the United States Department of Labor (Department) on March 11, 2019. The complaint alleged that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), occurred in connection with the election of officers of the Bakery, Confectionery, Tobacco Workers and Grain Millers (BCTGM) Local 125, which was completed on November 13, 2018.

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

You allege that no one on the election committee viewed or participated in the ballot preparations and that you were never provided information on the number of ballots printed. You claim that this may have led to cheating. Section 401(c) of the LMRDA includes a general mandate that adequate safeguards to ensure a fair election shall be provided. During the Department's investigation, representatives from the election vendor, California Elections Company (CEC), indicated that observers would have been able to view the printing, stuffing, and mailing of the ballots at CEC's office in the San Diego area. You admitted that you never asked to observe this process. You also admitted that, even if you knew about this opportunity to observe the preparation of the ballots, you would not have been able to go to San Diego unless the union paid for your transportation and lodging. Additionally, the Department's investigation confirmed that CEC provided the Election Judges with a Ballot Card Account and Official Ballot Statement, which indicated the number of ballots printed. Furthermore, while you claim that this may have resulted in cheating, you provided no evidence that any cheating in fact occurred, and the Department's investigation did not uncover any evidence of cheating. Accordingly, there was no violation.

Similarly, you allege that candidate [REDACTED] was not afforded the opportunity to have an observer at all of the ballot preparation procedures, and that candidates were not provided with information about observer rights. Section 401(c)'s requirement that adequate safeguards be provided includes the right of any candidate to have an observer at the polls and at the counting of the ballots. The Department's investigation disclosed that [REDACTED] was present for the ballot tally. There is no prohibition on a candidate serving as his own observer. 29 C.F.R. § 452.107. Furthermore, you and [REDACTED] admit that [REDACTED] never requested to observe the preparation of the ballots. There was no violation.

You also allege that [REDACTED] a judge on the election committee, used her fingers to remove the chads that were attached to the ballots, as opposed to blowing on the chads. While you initially thought that [REDACTED] may have been removing chads on unpunched ballots, you stated that you no longer believe that to be the case. You admitted that a representative from CEC instructed that if a ballot had a hanging chad, the election committee was told to blow on the chad to see if it would fall off. If this was not successful, the election committee could use their fingers to pull the chad off the ballot. [REDACTED] actions therefore did not violate the rule. The CEC representative and numerous members and candidates stood near [REDACTED] as she was removing the hanging chads and could see what she was doing. The CEC representative stated that [REDACTED] did not punch any races on the ballots. The Department's investigation found no evidence of ballot fraud or tampering. There was no violation.

Next, you allege that no election committee meetings were held, in violation of the BCTGM Local 125 Constitution and Bylaws. Section 401(e) of the LMRDA requires a union to conduct its election of officers in accordance with the constitution and bylaws of the organization insofar as they are not inconsistent with the provisions of Title IV of the Act. Election committee duties are outlined in Article V of the BCTGM Local 125 Bylaws. The bylaws do not include a requirement about holding election committee meetings. As a member of the election committee, you could have requested to hold a meeting at any time. There was no violation.

You also allege that then-Recording Secretary [REDACTED] did not record minutes of the nominations meeting, as required by the BCTGM Constitution. Article XVI, Section 17 of the BCTGM Constitution provides that "the recording secretary shall keep correct minutes of all local meetings..." According to then-President (now Secretary-Treasurer/Business Agent) [REDACTED] did produce minutes for the nominations meeting, which he compared to the abbreviated notes that [REDACTED] took during the meeting to prepare the final meeting minutes. The Department confirmed

during its investigation that meeting minutes were prepared by Cheong. There was no violation.

You allege that the union intentionally placed candidate [REDACTED] name before [REDACTED] name on the ballot. Section 401(c) of the LMRDA prohibits disparate treatment of candidates for union office. The Department's investigation disclosed that Local 125's past practice has been to list candidates on the ballot in the order in which they were nominated. The Department's review of the nominations meeting minutes and notes confirmed that [REDACTED] was nominated before [REDACTED]. The Department's investigation found no evidence of disparate candidate treatment with respect to the placement of names on the ballot. There was no violation.

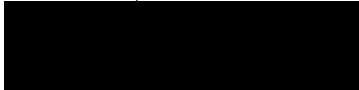
You also allege that the nomination notice was defective in that it did not list the specific positions opened for nominations. Section 401(e) of the LMRDA provides that a reasonable opportunity shall be given for the nomination of candidates. Additionally, a nominations notice must inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. 29 C.F.R. § 452.56. However, the specification of the offices to be filled would not be necessary if it is a regular, periodic election of all officers and the notice so indicates. 29 C.F.R. § 452.99. The nomination notice indicated that the nomination and election would be for Officers and the Executive Board, in accordance with Article V of the BCTGM Local 125 Bylaws, which deals with regular, periodic nominations and elections. You admit, and the Department's investigation confirmed, that all officer and executive board positions are open for nomination and election during every election cycle, and that the union does not stagger the election of any positions. You also acknowledge that you could have contacted the union regarding your concern about the nomination notice, but did not do so. Furthermore, you could not identify anyone who wanted to be nominated but was not nominated as a result of the nomination notice. Accordingly, to the extent that there was any violation, it would not have affected the outcome of the election.

Relatedly, you claim that members may have been confused at the nominations meeting because one position may have only been announced as "secretary-treasurer" rather than the full title of "secretary treasurer-business agent," and that [REDACTED] would have sought to be nominated for this position had the full position title been announced. You admit that each position was announced three times before the position was closed for nominations and that [REDACTED] asked if there were any questions during each open nomination but that there were no questions. You stated that the open period for nominations was adequate and was not rushed-through. You also admit that the secretary treasurer-business agent position was one of the combined positions that has never changed, and that it was listed as the full position in the Bylaws. There was no violation.

Your additional allegations were determined to be either not within the scope of the investigation or not covered by the LMRDA.

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 in this matter.

Sincerely,



Brian A. Pifer
Chief, Division of Enforcement

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