



February 27, 2020

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint received by the Department of Labor (Department) on October 29, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of officers of the New England Local Screen Actors Guild-American Federation of Television and Radio Artists (NE SAG-AFTRA or local), conducted on August 23, 2019.

The Department conducted an investigation of your allegations. As a result of the investigation, the Department concluded that there were no violations that may have affected the outcome of the election.

You alleged that the local permitted managers to run for office when it allowed producers to be candidates. Section 401(e) provides that every member in good standing shall be eligible to be a candidate and to hold office, with exceptions not applicable here. See 29 U.S.C. § 481(e). Section 401(e) further requires unions to conduct their elections in conformity with their constitution and bylaws. The SAG-AFTRA National Constitution prohibits managers from running for office. Article VIII, Section G, provides in relevant part,

... no member of the Union who is primarily employed as management or primarily performs the functions of management in the Union's jurisdiction shall be eligible to serve as . . . a member of the . . . Local Board . . . or as a delegate to the Convention. The term 'management' shall be defined as anyone who acts primarily and continually in the interests of an employer or employers rather than in the interests of the members of the Union . . .

The investigation disclosed that, of the three members you identified as producers who were successful candidates in the election, none was a manager as defined under the National Constitution. [REDACTED], who teaches filmmaking at a public school, has never served as a producer on any project in any capacity that involved supervising local members. [REDACTED] serves primarily as a theater usher, with a brief prospect to produce a student film in 2016, but that project was cancelled before it began. Finally, [REDACTED] worked as a production assistant for part of 2019. Although [REDACTED] referred

to himself as a “producer,” he did not act in the interests of his employer in any capacity. None of these candidates had any of the indicia of management necessary to serve the interests of the employer, namely the authority to hire, fire, or supervise union members. There was no violation.

You alleged that the local failed to prevent election committee member [REDACTED] from bringing a box of counterfeit ballots to the post office on the morning of ballot pick-up where he allegedly commingled those ballots with legitimate ballots. In support of your allegation, you stated you saw [REDACTED] carry a brown box into the post office. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). The investigation disclosed that [REDACTED] served as an observer during the collection of ballots at the post office. He brought with him a package with a FedEx paid label with the intent to mail it at the post office. Upon learning that the post office does not service FedEx packages, [REDACTED] left the post office premises at approximately 8:20 a.m. with his unopened package in hand. [REDACTED] provided a receipt confirming he shipped a package at a FedEx store shortly thereafter on August 23, 2019 (election day). There was no evidence of ballot tampering or ballot fraud. There was no violation.

You alleged that the election committee should not have included in its tally any ballots collected after the 8:30 a.m. deadline on August 23, 2019. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. The investigation disclosed that Integrity Voting Systems (IVS), the election company hired by the local to conduct its election, rented a post office box to hold voted ballots, but that box was too small to contain all voted ballots. As a result, bins were used to collect overflow mail and placed beneath the corresponding post office box. Mail is delivered once a day to the Back Bay Post Office. At 8:30 a.m. on August 23, 2019, three IVS representatives and election committee members [REDACTED] arrived at the Back Bay Post Office to collect all voted ballots. You were present to observe ballot pick-up. No new mail was delivered to the facility that morning. The Back Bay Post Office stated it provided to one of the IVS representatives all voted ballots in the post office box, along with the overflow contained in two bins. Upon one of the IVS representatives’ inquiry for any additional mail, the post office clerk retrieved from the sorting room additional mail that had been received the previous day but which had not yet been sorted and placed into the bins allocated to the designated post office box. The investigation disclosed that the post office box rented by IVS was closed at 8:39 a.m. The investigation found that only ballots that were delivered by 8:30 a.m. August 23, 2019 were collected and included in the tally. There was no violation.

You alleged that the local failed to prevent counterfeit ballots from being cast and included in the tally. Specifically, you alleged that some ballots appeared to differ from legitimate ballots as evidenced by ballots folded five instead of four times and the misalignment of ovals that did not correspond to a candidate’s name. You further alleged that some ballot envelopes contained stamps that were not canceled, which you believed to indicate that those envelopes had not been processed by the post office but were instead fraudulent ballots that had been photocopied, voted, and placed in those envelopes.

The investigation did not confirm your allegations. The Department's investigation included the examination of all ballots and ballot envelopes, which resulted in a finding that candidates' names perfectly aligned with ovals. In addition, the post office stated it is common for some stamped envelopes passing through the system to have uncanceled stamps. Further, a review of the ballots showed all were folded identically. Finally, you were at the tally as an observer but never raised any of these issues at that time. In fact, no observer or IVS representative noted any irregularities with the ballots or ballot envelopes. The Department's investigation disclosed nothing on any ballot or ballot envelope showing any evidence of counterfeit ballots or fraud. There was no violation.

You alleged that the election committee treated you differently from other candidates by siding with [REDACTED] who video-recorded you against your objections on the morning of the election. You alleged that you felt so threatened by the video recording that you promptly called the police. Section 401(c) requires unions to provide adequate safeguards to ensure a fair election. Such safeguards necessarily encompass the equal treatment of candidates. The Department's review of the video recording showed the footage focused solely on the ballot transport from the post office to the tally site. You were briefly in the footage by happenstance. The election committee undertook the filming to ensure a fair election. There was no violation.

You alleged that the local failed to establish a candidate outreach committee as required by the local constitution. Section 401(e) requires unions to conduct their elections in conformity with their constitution and bylaws. Section 5.2 of the NE SAG-AFTRA Constitution states in relevant part, that the "Local Board shall appoint a Candidate Outreach Committee consisting of New England Local members in good standing." The local explained that the purpose of that provision was to ensure that sufficient numbers of candidates were available to run for every office. However, since the local had no shortage of candidates for any office, it did not establish such an outreach committee for this election. To the extent that the local's failure to establish such an outreach committee for this election was a violation of the local constitution, it was at most a technical violation and there is no evidence that this technical violation affected the outcome of the election.

For the reasons set forth above, the Department has concluded that no violation of the LMRDA occurred, and I have closed the file in this matter.

Sincerely,

[REDACTED]
Brian A. Pifer
Chief, Division of Enforcement

cc: Andrea Lyman, President
SAG-AFTRA New England Local

20 Park Plaza, Room 822
Boston, MA 02116

Michelle Bennett, Executive Director of Governance
SAG-AFTRA
5757 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90036

Susan Davis, Esq.
Cohen, Weiss, and Simon
900 Third Avenue
New York, NY 10022

Beverly Dankowitz, Associate Solicitor
Civil Rights and Labor-Management Division