



March 20, 2020

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to the complaint you filed with the Department of Labor (the Department) on September 11, 2019, alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) occurred in connection with the election of union officers conducted by International Cinematographers Guild (the Guild), International Alliance of Theatrical Stage Workers (IATSE) Local 600 on May 4, 2019.

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 there was no violation of the LMRDA that may have affected the outcome of the election.

You alleged that Local 600 censored your candidate statements, in violation of the Local 600 Constitution and Bylaws and the Policies of the Local 600 National Executive Board (NEB Policies), as well as section 401(c) of the LMRDA, when the website address (URL) you submitted was included but not hyperlinked in each of your candidate statements. Section 401(c) of the LMRDA requires unions to “comply . . . with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization.” 29 U.S.C. § 481(c). When the union does authorize such distribution, it must make similar distribution, under the same conditions, for any other candidate upon request. 29 C.F.R. § 452.67. Furthermore, unions may not regulate the contents of the campaign literature they distribute. 29 C.F.R. § 452.70. The Local 600 Constitution and Bylaws similarly prohibit censorship and state that candidates are “solely responsible for the contents of [their] campaign literature.” Article Seven, Section 5.c. The NEB Policies further state that the Guild website must offer hyperlinks to the candidate’s website of choice. *See* NEB Policy: Candidates at 22.

The investigation disclosed that all candidates were given the opportunity to submit contact information and candidate statements to be published on the Guild's Election Information website. The Local 600 election committee and a third-party digital marketing company (Social Spice Media or SSM) were responsible for ensuring that the statements had a uniform look and layout. As required by the NEB Policies, candidates were offered the ability to hyperlink to any websites they chose, by submitting the URL via the "Website" field of their "Candidate Information and Statement Form." URLs included in the text of their candidate statement were not hyperlinked for any candidate. The submission form clearly stated that font and text size would be made consistent for all submitted candidate statements, and "[a]dditional flourishes such as underlining, bolding, italics, etc. [would] not be applied."

The investigation revealed that on the eve of the statement submission deadline, March 13, 2019, the election committee received a significant number of last-minute statement submissions and subsequent complaints from candidates regarding difficulties they were experiencing uploading submissions. According to the election committee, the Local 600 server and interface could not process the high volume of submissions, so the election committee extended the deadline to March 19, 2019 and notified candidates accordingly. Candidates were able to edit their statements as many times as they wished prior to the deadline. You report that you submitted three candidate statements via the "Candidate Information and Statement Form" on March 19, 2019 which included the URL address of a video on sleep deprivation in the body of each statement. The investigation confirmed that when you submitted your statements, you left the "Website" field blank in the contact information section of your submissions and did not select "Website" as a type of candidate information you wished to post on the Guild's website.

According to Local 600 and SSM, the data processing issues persisted, due in part to multiple submissions from candidates, and SSM was unable to publish the candidate statements on the live website after the March 19, 2019 deadline as scheduled. Consequently, Local 600's Director of Communications (Director) and another third-party digital company took over these efforts. The election committee sent an email to candidates on March 28, 2019 - after the statement submission deadline - giving them another opportunity to review their statements on the candidate website portal and alert the committee to any errors or omissions from their final submitted statements by 5:00 pm the following day. The email explained that the committee could no longer make any changes, including typos, to statements. Consistent with the election committee's instructions, the Director corrected a minor formatting error in your candidate statement that evening upon your request. When you then notified the Director that there were no "live links" in your candidate statements, you were correctly informed that none of the links in any candidate statements were hyperlinked. You finally submitted a request to move the URL address to the "Website" field. The

Director communicated that the election committee reiterated its decision that statements could not be edited at this point, past the March 19, 2019 submission deadline.

Ultimately, the investigation determined that although it was not hyperlinked, the URL you submitted was published in your candidate statement and disseminated to the full Local 600 membership with no alteration. Any individual viewing your candidate statement would be able to input the address into a web browser and view the video as intended. Furthermore, all candidate statements were distributed under the same conditions, as no URL was hyperlinked in any statement. In light of the volume of logistical issues Local 600 faced in publishing these candidate statements, the clarity and fairness of the submission process, and the timing of your final request to edit your statement after the deadline, the union's decision not to grant it was not unreasonable. There was no violation of the LMRDA.

You also alleged that voter eligibility requirements were not uniformly applied, and thus ineligible members were permitted to vote in the election. Section 401(e) of the LMRDA provides that each member in good standing is entitled to a vote. 29 U.S.C. § 481(e). This right may be qualified by reasonable rules and regulations in the union's constitution and bylaws and conditioned on the payment of dues, provided such conditions are not applied discriminatorily. *See* 29 C.F.R. §§ 452.84-.86. More specifically, you alleged that individuals in the publicist, incumbent officer, and term and contractual employee classifications had certain "good standing" requirements waived while individuals in the camera classifications did not; and so the former groups should not have been permitted to vote.

The investigation revealed that the "good standing" requirements were uniformly applied for each membership classification in accordance with the Local 600 Constitution and Bylaws as well as the NEB policies and/or the employment agreements for the classifications in question. Based on those governing documents, the members in the publicist classification were required to pay quarterly dues with no quarterly work assessment fees, pursuant to a premerger agreement; incumbent officers were required to pay a quarterly work assessment of one percent and no quarterly dues because of a dues credit; and the term and contractual employees had their dues covered by the Guild and were not required to pay quarterly work assessment fees. By contrast, camera classification members were required to pay the one-percent quarterly work assessment and the quarterly dues. In each classification, members who met the "good standing" requisites were eligible to vote. The LMRDA does not require unions to adopt a universal dues structure for all members, and there is no indication that any of these standards were applied differently to individuals within the same classification. Accordingly, there was no LMRDA violation.

You additionally alleged that Local 600 failed to apply their candidate qualification standards in a uniform manner and they were thus unreasonable under the LMRDA. Section 401(e) of the LMRDA requires that “every member in good standing shall be eligible to be a candidate and to hold office . . . subject to . . . reasonable qualifications uniformly imposed.” 29 U.S.C. § 481(e); *see also* 29 C.F.R. § 452.53 (requiring candidacy qualifications to be “specific and objective” and provided with “advance notice”). Namely, in addition to the disparate “good standing” requirements addressed above, you alleged that incumbent officers were not subject to a Working-in-Trade candidacy requirement.

The investigation disclosed that the IATSE and Local 600 Constitution and Bylaws required candidates for elected office to comply with a Working-in-Trade standard of 120 days of work covered by a Local 600 collective bargaining agreement during the 36 months preceding the date of nomination. Members could also satisfy this requirement through alternative means. For instance, Article 19, Section 4 of the IATSE Constitution and Bylaws credits time served as an officer or employee of a local or international union toward the 120-day requirement, and the NEB policies credit members who receive a disability dues credit with five days of covered work toward the Working-in-Trade requirement for each applicable week. The investigation revealed that the Working-in-Trade eligibility qualification – including the different methods of achieving it – was sufficiently specific that any member could determine in advance whether or not they are qualified to be a candidate. Regardless of the particular method used, there is no evidence that any member was excused from satisfying the Working-in-Trade standard for their classification. There was no violation of the LMRDA.

In addition, you alleged that Local 600 failed to hold elections for the National Executive Director, Associate National Executive Director, Regional Directors, and Business Representatives, in violation of the LMRDA. As explained in a 2017 Statement of Reasons that the Department issued you on this specific allegation, Section 401(b) of the LMRDA requires local labor organizations to “elect its officers not less often than once every three years.” 29 U.S.C. § 481(b). Section 3(n) of the LMRDA defines “officer” to include any person designated as such in the union’s constitution as well as any person “authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.” 29 U.S.C. § 402(n). Professional and other staff members of a union who do not determine the organization’s policies or carry on its executive functions and who are employed merely to implement policy decisions and managerial directives established by the governing officials of the union are not officers and are not required to be elected. 29 C.F.R. § 452.20(b).

Article Five, Section 1 of the IATSE Constitution and Bylaws identify five officer positions. It does not list any of the positions challenged here, and thus these positions

are not “constitutional officers” under the LMRDA. The investigation also revealed that the National Executive Director, Associate National Executive Director, Regional Directors, and Business Representatives are not members of the National Executive Board. Rather, they are professional or staff members of the union who do not perform the union’s executive functions, including those of the president, vice president, secretary, or treasurer. These employees are responsible for implementing policy decisions and managerial directives issued by the National Executive Board and elected officers – including those related to collective bargaining agreements, negotiations, organizing, and grievance processing – but they do not themselves determine union policy or negotiate collective bargaining agreements. Similarly, the right of the National Executive Director, Regional Director, and Business Representatives to vote in officer elections and on the ratification of the Local 600 Basic Agreement – an existing practice approved by the National Executive Board in January of 2019 and codified in the NEB Policies – is not representative of executive function or responsibility. Accordingly, there was no violation of the LMRDA.

You further alleged that administrative salaried employees of Local 600 unlawfully campaigned in the election, constituting an impermissible use of union funds under the LMRDA. Section 401(g) of the LMRDA prohibits the use of union funds to “promote the candidacy of any person in an election.” 29 U.S.C. § 481(g). However, this prohibition does not extend to “factual statements of issues not involving candidates.” 29 C.F.R. § 452.73. More specifically, you alleged that the employees’ statements about contract renewal prospects, desiring “continuity in leadership,” and interest in voting rights during an executive board meeting amounted to support of the incumbent candidates, as did one employee’s email to the membership regarding the stability of Local 600’s pension and health plan.

The investigation disclosed that the employees did not promote, endorse, or even mention any candidates in their statements at the closed-door executive board meeting. Furthermore, the pension plan email served as a factual update to the membership on their plan’s funding levels and contained no reference to the election, let alone specific candidates. There was no violation.

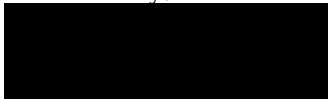
Finally, you alleged that the National Executive Director (NED) of Local 600 unlawfully interfered in the election by permitting an Office and Professional Employees International Union (OPIEU) Local 174 grievance against the incumbent secretary-treasurer to proceed to investigation during the election period, even though it was not timely filed. As noted above, union funds may not be used to exhibit a preference for the candidacy of any person in an election. *See* 29 C.F.R. § 452.73.

The investigation revealed that the NED acted consistent with its authority when resolving the OPIEU Local 174 grievance. Importantly, the LMRDA does not prohibit

union members or employees from participating in a union's grievance process during an election, including by giving the allegations due consideration. The NED received formal notice of the allegations from the other union on April 29, 2019, and two days later, informed the Local 600 board that she would hire outside counsel to conduct the investigation. To the extent that the NED may have allowed the claim to proceed after the filing window had closed, there is no evidence that this action could have affected the secretary-treasurer's candidacy. As you admit, the grievance and its investigation were kept confidential during the election period. Most ballots had already been submitted on May 1, 2019 when the Local 600 board was first notified of the grievance, and the Local 600 membership remained unaware of it when the ballots were due on May 3, 2019. There was no violation of the LMRDA that could have affected 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. Accordingly, the office has closed the file in this matter.

Sincerely,



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