U.S. Department of Labor

Office of Labor-Management Standards
Suite N-5119
200 Constitution Ave., NW
Washington, D.C. 20210
(202) 693-0143

October 10, 2024

[redacted]

Dear [redacted]:

This Statement of Reasons is in response to your October 29, 2023 complaint filed with the Department of Labor alleging that violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) occurred in connection with both the Screen Actors Guild, American Federation of Television and Radio Artists (SAG-AFTRA) National (National Union) and Los Angeles Local (SAG-AFTRA Los Angeles or Los Angeles Local Union) elections of officers, which were both completed on September 8, 2023.

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

You alleged that the National Union provided Unity Party slate candidates, and not independent candidates, with opportunities to appear publicly to support the National Union's ongoing strike. You also alleged that the National Union funded those strike-related appearances, and that Unity Party candidates used those events to promote their candidacy. Section 401(c) of the Act provides a general mandate that a union provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). Thus, a union's wide range of discretion regarding the conduct of its elections must be circumscribed by a general rule of fairness. 29 C.F.R. § 452.110. Further, section 401(c) prohibits disparate treatment of candidates for office. 29 U.S.C. § 481(c). Section 401(g) prohibits the use of union or employer funds to promote a candidate for office. 29 U.S.C. § 481(g). The term "union or employer funds" is broadly construed and can include the use of union or employer resources and facilities as well as union- or employer-paid time. 29 C.F.R. §§ 452.76, 452.78.

Specifically, you alleged that the National Executive Director Duncan Crabtree Ireland and National President Fran Drescher showed bias when they allowed only Unity Party candidates, including Joely Fisher and Sean Astin, to receive publicity for their candidacy through appearances and opportunities to speak at strike events. You alleged

that Unity Party candidates used those strike appearances to promote their candidacy. In support of your allegation, you provided hyperlinks to various news articles and videos of National Union officials appearing at strike-related events. You acknowledged that you did not know if candidates mentioned the election or their candidacy during their strike-related appearances. You explained that the media sources you provided demonstrated that the Unity Party had the opportunity to speak at events and independent candidates did not.

The investigation confirmed that Drescher, Fisher, Astin, and other National Union officers and/or contract negotiating committee members who were also candidates for office made appearances at strike-related events. The strike occurred close in time to SAG-AFTRA's National and various local elections, and the media covered the SAG-AFTRA strike extensively. The National Union chose speakers who were National Union officers, negotiating committee members, and/or high-profile actors who are members of SAG-AFTRA. The Department reviewed the articles and videos that you provided, as well as additional coverage, and did not find any evidence of National or Local Union speakers mentioning the election or their candidacy during their strike appearances. The Department found that the individuals you identified had a legitimate, official union business purpose for their appearances and the associated time and travel costs, supporting the strike. Furthermore, there was no evidence that they campaigned during strike events. The Department reviewed several news articles, including each that you cited. Some articles reported on both strike activity and the general information related to the National Union election. For example, one article described union officers' roles on the negotiating committee and the composition and goals of their election slate. Several sources also published articles describing your and Maya Gilbert-Dunbar's candidacies and both of your criticism of Fran Drescher's leadership in the strike. Both the strike and the officer election were timely and newsworthy events. This was not a violation of the Act.

Relatedly, you alleged that Joely Fisher promoted her candidacy when she spoke at an August 22, 2023 strike event in New York. You stated that the union paid for marketing materials featuring Fisher, her travel, and her accommodations in New York. You provided a YouTube link of her appearance and a screenshot of an Instagram post made by an account named "Stuntfreckles," which Fisher reposted in her Instagram story. The post consisted of a photograph of Fisher posing with two unidentified individuals and wearing a SAG-AFTRA shirt with picket signs visible in the background. The post included the original poster's text, "This woman has my vote," above the photograph.

The investigation confirmed that Fisher was in attendance as a union official, and that it was a public event. The Department reviewed the video you linked and found that there was no mention of the election or Fisher's candidacy. The investigation found that

the "Stuntfreckles" account belonged to SAG-AFTRA Los Angeles Local member Marie Fink. There is no evidence that Fink used union or employer equipment to take or post the photograph. The union's logo is protected by trademark and the union's Nominations and Election Policy Article IV.A.1(d) prohibits use of the logo "in a manner which would reasonably be construed as an endorsement by the Union." In the photograph, Fisher wore a shirt with the union logo, but it was clear that the post was from an individual account, which Fisher then reposted, and that it was not an endorsement by the union of her candidacy. Further, the references to the officer election were added after the union event. There was no violation.

While you did not single out other specific strike-related events, the Department also investigated a July event in Atlanta, during which candidate Maya Gilbert-Dunbar claims that Duncan Crabtree Ireland promised that members would not have to pay dues or healthcare costs if they voted the "right way." New England President Eric Goins stated that he was present at this event and denied that any campaigning occurred. Multiple other witnesses to various strike events stated that they did not see any candidates make campaign-related statements during those events. The Department found that while Unity Party slate candidates may have received exposure through their strike-related appearances, such exposure did not constitute disparate candidate treatment or campaigning using union funds and resources. These findings do not constitute a violation of sections 401(c) or 401(g) of the Act.

As a related matter, you alleged that the National Union's decision to permit several individuals who were incumbent officers and Unity Party candidates, or Unity Party supporters, to speak at strike events during the election period violated the SAG-AFTRA Constitution, which designates the National President as spokesperson. Section 401(e) provides that unions conduct their elections in accordance with their constitutions and bylaws, insofar as they are not inconsistent with the LMRDA. 29 U.S.C. § 481(e).

You stated that although the National Union Constitution specifies that the National President is the National Union spokesperson, other individuals, including the Executive Vice President, Secretary-Treasurer, and members of the negotiating committee spoke on behalf of the union at high-profile events. According to the National Union, Drescher could not appear at every event. The investigation confirmed that while Article VI, Section B, Item 3 of the National Union Constitution designates the National President "chief spokesperson for the Union," Article VI, Section B, Item 4 provides the National President with authority to delegate duties and responsibilities. The investigation found no constitutional provision or bylaw prohibiting other union members or officers from speaking at strikes or strike-related events. There was no violation.

You also alleged that the National Union failed to provide adequate safeguards to ensure a fair election because the National Election Committee was made up of Unity Party members. 29 U.S.C. § 481(c). The SAG-AFTRA Constitution at Article VI, Sections 2(g)(i)-(ii) and the Nomination and Election Procedures at Article V, Section B state that the National Board shall appoint to the National Officer Election Committee at least three members in good standing who are not candidates for office or delegate. The investigation revealed that Carl Bradley Anderson was chair, and Charlie Bodin, Marcy Goldman, Steve Bayorgeon, and Kim Murtaugh were Election Committee members, none of whom were candidates for office. The investigation established that the Election Committee was properly appointed. Further, the investigation did not reveal any evidence to support a finding that the Election Committee promoted Unity Party candidates. There was no violation.

Next, you alleged that the union threatened legal action against independent candidates but not against Unity Party members, and that this also violated section 401(c)'s prohibition of disparate candidate treatment. 29 U.S.C. § 481(c). Specifically, you alleged that the union sent Chuck Slavin a cease-and-desist letter regarding use of the union logo and trademark for his website, and Facebook group. You stated that there are numerous Facebook groups and web pages that use the union's trademark and related graphics (several of which you listed for the Department), and that they did not receive the same warnings. The union stated that its response to Slavin was consistent with its trademark enforcement practices, which include referring to outside counsel any domain registration that is likely to confuse.

The investigation revealed that the union's intellectual property counsel sent Slavin a letter dated June 23, 2023, stating that he registered the domain names sagaftramembers.com and sagaftramember.com without consent, and that his Facebook group, @SAGGroup included unauthorized use of the SAG-AFTRA mark. It further requested that he remove and transfer the domain names to the union and rename the Facebook group. During the investigation, the union stated that its standard practice is that when it learns of a trademark infringement of its name and/or logo that is likely to cause confusion, it works with outside counsel to seek resolution. The union stated that for Facebook groups, it determines on a case-by-case basis whether a group is clearly unofficial, including whether it displays a disclaimer, or whether it is likely to confuse and warrants trademark enforcement action. The union stated that it files complaints to remove pages from Facebook on occasion, but that Facebook is generally unhelpful.

In the case of Slavin's pages, the union explained that the website was its priority, as the web address uses the union's name and could create confusion, in addition to its content, which made it appear that the union officially endorsed you and Maya Gilbert-Dunbar. Regarding Slavin's Facebook group, the union's counsel determined that the use of the union logo at the top of the page was similarly confusing in that members

could mistakenly believe that the union authorized the page. You provided the Department with Facebook groups which you alleged used the union's name and/or logo, against which you believed it failed to enforce its trademark rights. There was no evidence that you alerted the union to the existence of these groups, or that the union otherwise knew of each of the groups. The Department reviewed each group you provided and determined that all but one either had a disclaimer or it was apparent that the account was not operated or endorsed by the union. The remaining Facebook group, called "SAG-AFTRA," prominently displayed the union's logo, had 2,000 members, and had no disclaimer. However, there was no evidence that it was operated by a candidate for office, or that it had been brought to the union's attention. The investigation further revealed that you, Chuck Slavin, and other independent candidates frequently posted election campaign materials on this page. To the extent the page's use of the logo may have caused confusion that the union endorsed such campaign statements, you and other independent candidates benefited. Further, the Department's investigation revealed that Slavin was also an administrator of a group called "SAG-AFTRA Actors Atlanta," which did not have a disclaimer, but looked less like an official page. Scott Rogers—former National Board member and Hawaii Local Board member, and current Portland Vice President—stated in an interview with the Department that the union told him several years ago not to use the union name or logo on the Facebook page he ran at the time. In response, Rogers changed the name of the group from "SAG Actors Hawaii" to "Union Performers- Hawaii." Thus, the investigation did not corroborate your allegation that the union treated Slavin differently from other candidates it found to improperly use the union's name or logo. There was no violation.

You alleged that the union failed to honor a 2020 or 2021 resolution to post a 5-minute campaign video to its website. You stated that you asked to publish a video and the union denied your request. You stated that the resolution was intended to provide all national candidates equal time to campaign, and that the union again violated section 401(c), 29 U.S.C. § 481(c). The union stated that it has no record of such a resolution being passed. The investigation revealed that the union did not permit any candidate to post such a video. As such, there was no disparate candidate treatment or failure to follow the union's constitution and bylaws. There was no violation.

You further stated that the union charged an excessive amount of money to independent candidates for campaign emails sent by the union's third-party vendor. You stated that you had to use the union's vendor because the union does not release its email list to anyone else; you allege that it could provide the list to candidates free of charge. Section 401(c) of the Act provides that unions must comply with all reasonable candidate requests to distribute campaign literature, and that the union must refrain from discrimination in favor of or against any candidate regarding the distribution of such literature. 29 U.S.C. § 481(c). Further, Section 401(c) provides that the union must

treat the candidates equally regarding the cost of distribution. *Id.* The candidate making the request to distribute campaign material is required to pay any fees associated with the distribution. 29 C.F.R. §452.67. Section 401(c) also provides candidates with the right, once within thirty days of the election cycle, to inspect a list of members' names and addresses. That right, however, does not include the right to copy or to have a copy of that list. 29 C.F.R. § 452.71(c). You stated that it costs $5,400 to send an election email to the entire membership, and that you received a quote of $1,400 from the union's vendor for an election email to 100,000 email addresses. You allege that this price structure creates an unfair advantage to slates with actors with name recognition.

The union stated that the campaign mailing rates, laid out in the Nomination & Election Procedures, are the same for everyone and have been in place for several election cycles. The union explained that it does not provide the email list to candidates because it strongly protects its secrecy given that there are many high-profile members. A records review confirmed that the union shared a pricing sheet with members, and that the union's vendor charged the same rates to all candidates. The investigation revealed that the union did not provide its email list to any candidate. You sent multiple campaign emails through the union's vendor, to members in the Los Angeles area and outside of California. Thus, the investigation disclosed that the union treated candidates equally by using a vendor who emailed literature to the membership using the same cost structure. There was no violation.

You alleged that the Los Angeles Local Union failed to notify observer Veronica Bruce of where the returned ballots would be retrieved. Section 401(c) provides that candidates have the right to have an observer at the polls and the counting of ballots. 29 U.S.C. § 481(c). The Department's interpretive regulations at 29 C.F.R. § 452.107 state that the right to have an observer "encompasses every phase and level of the counting and tallying process" including the receipt of mailed ballots. Specifically, you alleged that the Los Angeles Local Union told Bruce only that ballots would be picked up from the Post Office at 6:30 a.m. on September 8, 2023, but did not specify that observers would need to go to the loading dock at the back of the Post Office, rather than entering through the front door. In support of this allegation, you raised separate facts related to ballot retrievals from Post Offices in New York and Miami in their respective elections, which were the subjects of other members' election protests. You explained that those separate incidents provided context for your concern for what might have occurred while Bruce was unable to observe the ballot retrieval in the Los Angeles Local Union election.

The investigation revealed that Bruce arrived at the Bicentennial Post Office in Los Angeles at the correct time but did not see any Election Committee members. Bruce went into the P.O. Box area of the Post Office, but the Post Office was not open yet. She saw postal employees behind a locked door and attempted to get their attention to ask

where the ballot pickup was to occur. The Los Angeles Local Union acknowledged that it failed to provide candidates and their observers with the specific location of the Post Office loading dock where ballots were retrieved for the tally. However, Bruce and other observers were able to observe the ballot tally and did not raise concerns during the tally. Further, as part of its investigation, the Department conducted a thorough review of the election records and found no evidence of ballot tampering or ballot fraud. Thus, to the extent there may have been a violation, there was no evidence that a violation may have affected the outcome of the election. As discussed below, the Department found no violations of the LMRDA.

Finally, you alleged that the "Membership First" and "United for Strength" parties merged to retain board seats, which gave the newly formed Unity slate an unfair advantage over independent candidates. This implicates section 401(c)'s requirement that unions provide adequate safeguards and refrain from disparate candidate treatment. 29 U.S.C. § 481(c). The LMRDA does not prohibit candidates from forming slates. *See* 29 C.F.R. § 452.112. The National Union's 2023 Nominations and Election Policy Section C.6 provided in part that: "Each candidate nominated for office may campaign as a member of a slate of candidates, regardless of whether the slate is complete. No candidate shall be compelled to run as a member of a slate."

The investigation revealed that all candidates were free to form or join slates. According to the National Union, the Membership First and Unite for Strength parties stated publicly that they created the Unity slate to focus on contract negotiations and the expected strike. The National Union further stated that while it does not maintain a list of candidate slate affiliation, candidates could self-identify such affiliation in the voter guides. The Unity Party distributed promotional campaign materials on behalf of multiple slate members. At least two independent candidates—you and Maya Gilbert-Dunbar—also jointly promoted their candidacy, including through a shared website. You did not provide any evidence that the merger of two slates constituted disparate candidate treatment. To the extent that this allegation overlaps with your other claims that the Unity Party had innate advantages over independent candidates, those are analyzed separately. There was no violation.

For the reasons set forth above, the Department concluded that there was no violation of the LMRDA that may have affected the outcome of the election. Accordingly, I have closed the file regarding this matter.

Sincerely,

[redacted]

Molly Wagoner
Acting Chief, Division of Enforcement

cc: Michelle Bennett, Chief Governance and Equity & Inclusion Officer
SAG-AFTRA
5757 Wilshire Blvd, Floor 7
Los Angeles, CA 90036

Serena Kung, Executive Director
SAG-AFTRA Los Angeles Local
5757 Wilshire Blvd.
Los Angeles, CA 90036

Susan Davis, Esq.
Cohen, Weiss, and Simon LLP
900 Third Avenue, Suite 2100
New York, NY 10022-4869

[redacted], Associate Solicitor
Civil Rights and Labor-Management Division