



May 15, 2020

[REDACTED]

Dear [REDACTED]

This Statement of Reasons is in response to your complaint, received by the U.S. Department of Labor on October 23, 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 August 28, 2019, election of officers conducted by the Screen Actors Guild – American Federation of Television and Radio Announcers (SAG-AFTRA).

The Department conducted an investigation of your allegations. As a result of the investigation, the Department has concluded, with respect to each of your allegations, that there were no violations of the LMRDA that affected the outcome of the election.

Section 401(g) of the LMRDA prohibits the use of union and employer funds or resources to promote the candidacy of any person in an election. 29 U.S.C. § 481(g). You alleged that SAG-AFTRA violated this provision when: (1) the SAG-AFTRA website, magazine, and podcast were used to promote National President [REDACTED]; (2) the video loop in the SAG-AFTRA headquarters lobby promoted [REDACTED]; (3) [REDACTED] used a union-produced, union-owned photograph in her campaign announcement video; and (4) [REDACTED] portrayed herself in the reboot of the “Beverly Hills 90210” television show.

With respect to your first allegation, you allege that [REDACTED] and other Unite For Strength slate candidates received extensive coverage and exposure in the SAG-AFTRA website, magazine, and podcast, which unfairly promoted [REDACTED]’ candidacy for national president. In assessing whether a union communication constitutes material that is promotional of a candidate in a union officer election, the Department evaluates the timing, tone, and content of the material. As to the SAG-AFTRA website, the Department’s investigation revealed that [REDACTED] campaign was not promoted on the website. To the extent that the website featured [REDACTED], this coverage was limited to non-electoral content such as an interview with member [REDACTED]. This interview was timely and newsworthy because [REDACTED] was the recent recipient of the SAG-AFTRA

Lifetime Achievement Award. Moreover, while the website contained general election information, it did not contain any material that was promotional or derogatory towards any candidate in the election. Regarding the magazine, the Department's investigation found that the coverage of ██████ in the spring 2019 edition was consistent with the amount of coverage ██████ received in other spring editions of the magazine. Additionally, articles from ██████ and other SAG-AFTRA officers are regularly included in every edition of the magazine, and nothing in ██████ article from the spring 2019 edition mentioned the election or constituted electioneering. Lastly, with respect to the podcast, the Department's investigation found that SAG-AFTRA started a podcast in January 2019, well before the election, as an initiative to engage younger members. Although you allege that SAG-AFTRA sent a promotional email to members on May 30, 2019, advertising ██████ as a co-host of the podcast, the Department found that the purpose of this email was to notify members that audio segments of ██████' interview with Alda were available on the podcast. Neither the podcasts nor the May 30, 2019, email promoted anyone's candidacy or mentioned the election. Ultimately, the Department found that while ██████ may have received exposure through the SAG-AFTRA website, magazine, and podcast, such exposure did not constitute campaigning using SAG-AFTRA funds and resources. As such, these findings do not constitute a violation of section 401(g) of the Act.

You next alleged that a video that played on a continuous loop in the lobby area of SAG-AFTRA headquarters contained overwhelming coverage of ██████ and other candidates on the Unite For Strength slate, indicating that SAG-AFTRA supported ██████ and Unite For Strength candidates, as opposed to candidates on the Membership First slate. The Department's investigation found that the video loop showed photos and video clips of ██████ and other members engaged in various SAG-AFTRA initiatives (e.g., the Telemundo contract, the BBH strike, the SAG Awards) unrelated to the election or ██████ candidacy. Although ██████ was featured in the video loop, the videos and images did not address the upcoming election and did not constitute campaigning. There is no violation.

You then alleged that in her campaign announcement video, ██████ unlawfully used a union-produced and union-owned photograph that showed her seated in the Cagney Boardroom of the SAG-AFTRA headquarters. This photograph also included the SAG-AFTRA logo. The Department found that no SAG-AFTRA staff were involved in the production of the video; additionally, while no photography is allowed during board meetings, the Cagney Boardroom is open to members when not in use. Although the use of the SAG-AFTRA logo in the photograph may constitute a violation of SAG-AFTRA's election rules, this did not violate section 401(g) of the Act because there was no indication of SAG-AFTRA endorsement. In any event, ██████ removed the video within 24 hours of its posting and developed a new campaign announcement video that did not include the photograph of her in the Cagney Boardroom or the SAG-AFTRA logo. As such, to the extent that there was any violation, immediate efforts were undertaken to mitigate any potential effect this could have had on the election.

You further alleged that SAG-AFTRA violated section 401(g) of the Act when ██████ the union's national president, portrayed herself in the reboot of the "Beverly Hills 90210" television show. The Department's investigation revealed that although the reboot premiered in August 2019, close in time to the election, ██████ herself had no control over when the FOX television network aired the episodes. Additionally, the Department found that ██████, an actress, played the role assigned to her. Although two of the three episodes that aired prior to the election very briefly highlighted ██████ character's position as president of an actors' union, the FOX television network's broadcast of these episodes did not promote ██████ performance or accomplishments as the actual president of SAG-AFTRA, or her candidacy in the officer election. And finally, no episode contained any discussion of the SAG-AFTRA election or any candidates in that election. For these reasons, the Department does not find this to be a violation of section 401(g) of the LMRDA.

Section 401(c) of the LMRDA requires that a union provide adequate safeguards to ensure a fair election and prohibits disparate candidate treatment. 29 U.S.C. § 481(c). You alleged that SAG-AFTRA violated this provision, as well as section 401(g)'s prohibition on the use of union resources to promote the candidacy of any person in the election, when: (1) ██████ unlawfully included information about contract negotiations with Netflix in her candidate statement that was included in ballot packages mailed to members; and (2) National Board member Ilyssa Fradin, through her company Eye-Dentify, sent text messages supporting ██████ candidacy.

With respect to your allegation concerning the Netflix negotiations, you alleged that because candidate statements were due before the Netflix contract was signed, either ██████ falsely claimed to have negotiated a contract with Netflix, SAG-AFTRA staff breached confidentiality rules to brief ██████ on the ongoing negotiations, or SAG-AFTRA staff assisted ██████ by amending her candidate statement after the submission deadline. As an initial matter, it is not within the Department's jurisdiction to police behavior related to SAG-AFTRA's policies on confidentiality. As it relates to the LMRDA, a union resource is generally something of proprietary or monetary value to the union (*e.g.*, a list of members' contact information compiled during the course of union business). In this case, ██████ brief reference to the contract negotiations, without more, does not constitute the use of "union resources" for purposes of section 401(g) of the Act. Moreover, the Department's investigation found that ██████ submitted her candidate statement just prior to the deadline, and there is no evidence the election committee permitted ██████ to amend her statement at any point after the deadline. As such, this allegation does not constitute a violation of section 401(c) or 401(g) of the LMRDA.

Regarding your allegation that Fradin used employer resources to campaign for ██████ via text message, the Department's investigation revealed that Fradin's company, Eye-Dentify, is not an employer, but rather a "loan-out" tax vehicle. As such, the promotional text message did not constitute a use of employer resources to campaign. Additionally, ██████ sent the promotional text message to only one member,

██████████, whose cellular telephone number she found listed on his resume, which was publicly available online. Fradin did not send this text message to any other members. The Department found no evidence that ██████████ used any union membership list to send out campaign material on behalf of ██████████. Therefore, this allegation does not constitute a violation of the LMRDA.

Section 401(c) of the LMRDA further requires unions to provide adequate safeguards to ensure a fair election. 29 U.S.C. § 481(c). You alleged SAG-AFTRA violated this requirement when ██████████ harassed member ██████████ outside of SAG-AFTRA headquarters and prevented her from distributing campaign literature supporting the Membership First slate. The Department found that while ██████████ interaction with ██████████ distracted ██████████ from handing out campaign literature, there was no evidence that ██████████ was intentionally prevented from handing out campaign literature. Moreover, the Membership First slate candidates and their supporters were able to campaign and distribute campaign literature throughout the election period. As such, this does not constitute a violation of the LMRDA.

The section 401(c) adequate safeguards requirement also includes the right of any candidate to have an observer at the ballot tally. 29 U.S.C. § 481(c). You allege that SAG-AFTRA violated section 401(c) of the Act when candidate observers were excluded from a meeting of the election committee during the August 28, 2019 ballot tally. The Department's investigation revealed that during the tally, there were 146 fewer outer ballot return envelopes than tallied ballots; the election committee determined either that a batch of ballots had been counted twice or that one batch of outer envelopes had not been scanned. It was during the meeting in question that the election committee decided to recount the number of ballots and the number of ballot return envelopes to determine the discrepancy. Observers were able to see the ballot and envelope recounts, but the election committee did not explain to the observers the reason why the ballots and envelopes were being recounted. While candidates have the right to observe the counting of the ballots, section 401(c) of the Act does not require that observers be made privy to all election committee discussions and sidebar conversations. While not advisable, the fact that the election committee did not explain its actions to observers is not a violation of the LMRDA.

Section 401(c) of the LMRDA also requires that all candidates have the opportunity to campaign. 29 U.S.C. § 481(c). You alleged that SAG-AFTRA violated this requirement, as well as section 401(c)'s adequate safeguards requirement, when, in an attempt to chill campaign activity, ██████████ and other Unite For Strength candidates sent a cease and desist letter to candidate ██████████ and other supporters of the Membership First slate threatening litigation if they continued to assert claims that ██████████ had committed election violations and breached her fiduciary duties. The Department's investigation found that this letter was sent to Modine and others in response to a letter from Membership First supporters to SAG-AFTRA threatening litigation unless the union removed nominee ██████████ from the ballot. Additionally, the cease and desist letter complained of was drafted by a private attorney and paid for with Unite For



Strength (not SAG-AFTRA) funds and ultimately had no demonstrable impact on any candidate's campaign activity. As such, this does not constitute a violation of the LMRDA.

Lastly, section 401(e) of the LMRDA prohibits retaliation of *any kind* against members for supporting candidates in the election. 29 U.S.C. § 481(e) (emphasis added). You alleged that SAG-AFTRA violated this provision when member ██████████ acting class at SAG-AFTRA was canceled in retaliation for his "liking" a Facebook post supportive of ██████████ and when SAG-AFTRA refused to partner with member ██████████ ██████████ Voices in Action organization because she endorsed Modine. The Department's investigation concluded that the timing of the cancelation of ██████████ classes (approximately 10 days after his Facebook activity), as well as the explanation that his classes were canceled due to "the contentious election" is evidence of retaliation. The Department's investigation also found that ██████████ was retaliated against when SAG-AFTRA refused to partner with Voices in Action "due to the caution exercised during an election." Although these actions constitute violations of section 401(e) of the LMRDA, the violations only affected ██████████; the Department's investigation did not disclose any evidence that other members' participation in the election was influenced by SAG-AFTRA's actions against ██████████, nor did it disclose any evidence of retaliation against any other members. Given that the smallest margin of victory in the election was 2,855 votes, these violations had no effect on the outcome of the election.

For the reasons set forth above, the Department has concluded that there were no violations of the LMRDA that may have affected the outcome of the election. Accordingly, the office has closed the file on this matter.

Sincerely,

██████████  
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Chief, Division of Enforcement

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