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May 24, 2019

[via email to: tsedmonds@yahoo.ca]

The NewsGuild TNG-CWA
Sector Election and Referendum Committee
501 Third St., NW, 6th floor
Washington, DC 20001-2797
Attn: Scott Edmonds

Re: Jon Schleuss – Election Challenge

Dear Mr. Edmonds,

In accordance with the Sector Election and Referendum Committee (hereinafter “SERC”) Appeals Procedure, distributed on May 16, 2019 and attached hereto as Exhibit A, I respectfully submit the following challenge to the conduct of the election.

I. The NewsGuild failed to ensure members were given a reasonable opportunity to participate in the nomination and election of officers.

Section 401(e) of the Labor Management Reporting and Disclosure Act (“LMRDA”) mandates that each union “take all reasonable steps to ensure that its members are given a fair opportunity to vote.” *Dole v. Graphic Commc'ns Int'l Union, AFL- CIO, CLC*, 722 F. Supp. 782, 786 (D.D.C. 1989) (citing *Marshall v. Am. Postal Workers Union*, 486 F.Supp. 79, 83 (D.D.C. 1980) and *Wirtz v. Local Union No. 1622, United Bhd. of Carpenters and Joiners of Am.*, 285 F. Supp. 455, 464 (N.D. Cal. 1968)). The LMRDA requires that notice of the opportunity to nominate candidates and notice of the election must be sent to all members. “Although voting may be limited to ‘members in good standing’ (those whose dues are current), notice is required to all members, including those not in good standing, 29 C.F.R. § 452.99, to afford them a reasonable opportunity to bring their dues current and participate in the election.” *Brock v. Dist. 6, United Mine Workers of Am.*, 772 F.2d 905 (6th Cir. 1985); See 29 C.F.R. § 452.86.

In addition to notice of the opportunity to nominate and notice of the election itself, the LMRDA requires unions to give adequate prior notice to members of the eligibility criteria for voting in a union election. Courts have held that “it is well-established that unions have a statutory duty under the LMRDA to provide adequate notice of rules that are enforceable on penalty of voter or candidate disqualification, and that neglect of this duty voids a union election.” *Herman v. New York Metro Area Postal Union*, 30 F. Supp. 2d 636, 646 (S.D.N.Y. 1998) (citing *Dole v. Graphic Commun. Int'l Union*, 722 F.Supp. 782 (D.D.C.1989); *Dole v. Local Union 317*, 711 F.Supp. 577 (M.D.Ala.1989); *Donovan v. Int'l Ass'n of Machinists, Local Lodge 851*, 622 F.Supp. 394 (N.D.Ill.1985)).

With respect to the 2019 Election, the NewsGuild failed to give adequate (i) notice of the opportunity to nominate candidates at the Sector Conference; (ii) notice of the election; and (iii) notice of the requirements to be eligible to vote in the election.

A. Failure to Send Notice Concerning the Sector Conference and Nominations

The NewsGuild failed to give notice of the opportunity to nominate candidates at the Sector Conference in a manner calculated to inform all members of the offices to be filled in the election as well as the time, place, and form for submitting nominations. Specifically, the NewsGuild did not mail or e-mail any notice to the membership concerning the Sector Conference. Nor did the NewsGuild publish such a notice in the Guild Reporter, as required by the NewsGuild's Constitution.

In a January 18, 2019 e-mail response to questions I raised concerning the NewsGuild's compliance with its Constitution, Vice President Marian Needham confirmed that the notice of the Sector Conference and opportunity to nominate candidates (“The Official Call”) “was emailed to the presidents, treasurers and administrative officers of all locals with good standing members on October 15 [2018].” That correspondence is attached hereto as Exhibit B. Needham's e-mail confirms that the NewsGuild only sent the notice to its locals, instead of its members. Further, the e-mail confirms that the NewsGuild restricted its already deficient notice to those locals with “good standing members” in violation of the above-referenced requirement to send notice of the opportunity to nominate candidates to all members, including those who are not in good standing.

The NewsGuild’s website posts concerning the Sector Conference were similarly inadequate and not reasonably calculated to provide notice to the membership. On December 13, 2018, the NewsGuild created a post on the newsguild.org website announcing the Sector Conference and providing a brief statement concerning the nomination of candidates. The post contained no information on the eligibility criteria or the requirements for seeking elected office or for voting. The post made no mention of the December 15, 2018 deadline for members of newly-organized shops to have paid dues for September, October or November 2018 in order to participate in the Sector Conference or vote in the 2019 Election.¹ The post also made no mention of the opportunity to nominate members to serve on the SERC. On January 25, 2019, while having concealed this process from the membership, incumbent Executive Vice President Marian Needham (using her CWA e-mail) communicated to NewsGuild staffer Tina Harrison that she had already secured the agreement of seven members to serve on the SERC along with four alternates. That email is attached hereto as Exhibit C. Upon information and belief, Harrison was directed to instruct Kat Anderson to nominate the list of members and alternates that had been hand-selected by Needham. One SERC member selected by Needham, Stevie Blanchard, publicly endorsed the incumbent candidate after having been elected to serve on the committee.

B. Failure to Send a Notice of Election

The NewsGuild did not mail a notice of election to thousands of NewsGuild members in violation of the LMRDA’s requirement that such a notice “shall be mailed to each member at his last known home address.” LMRDA § 481(e). In failing to do so, the NewsGuild also violated Section II of the Amended Election Rules for Sector Elections and Referenda Issued by the Sector Election and Referendum Committee (hereinafter “Election Rules”). The NewsGuild chose to send the notice of election *with* the materials for mail balloting. Because the NewsGuild did not send ballots to the thousands of members in newly-organized shops and others that they deemed ineligible to vote, those members were never mailed a notice of election as required by law. Because the notice of election was mailed with the ballots, members in good standing who did not receive ballots for any number of reasons were not mailed a notice of election as required by law. They were also not provided any information on how to obtain a

¹ That deadline also would have applied to members working in shops under contracts without union security and/or dues checkoff provisions and who were not in good standing (i.e. Bloomberg BNA, Washington Post).

ballot, because that information was only provided with the ballots. To the extent any information concerning the procedure to obtain a replacement ballot was available on the NewsGuild's website, it was buried and inaccessible to the membership – in particular those members who never received a notice of election and were therefore unaware of the need to do so.

Throughout the campaign period, I raised concerns with the SERC regarding the NewsGuild's failure to take steps to advise the membership of the election. On April 14, 2019, Scott Edmonds, on behalf of the SERC, wrote to me advising that "we acknowledge problems with TNG's website in maintaining posts that have been put there dealing with election issues. We are working to address those." (Exhibit M). That email demonstrates that the SERC could not reasonably have believed that posts on the NewsGuild's website were reasonably calculated to inform all members about the upcoming election, as required by the LMRDA. This failure by the NewsGuild is compounded by the fact that these posts were the near exclusive means of communication relied upon by the NewsGuild to inform its membership concerning the 2019 Election until Edmonds April 14, 2019 email.

On February 5, 2019, more than one week after the Sector Conference, I contacted Freddy Kunkle, former unit chair for the Washington Post, to seek his support for my candidacy. During our telephone conversation, Kunkle advised that my call to him was the first time he had heard anything about the election, and that he never received any notice of the opportunity to nominate candidates at the Sector Conference. Kunkle expressed surprise since he had served as unit chair for nine years and remains active in the NewsGuild. Additionally, throughout the campaign, members who did not receive any notice of the opportunity to nominate candidates or notice of election reached out to me through my campaign website after having heard about the election through social media. Several members of Local 39000 expressed concern about not having received any information from the NewsGuild about the election. The following are excerpts from their messages to me, which have been redacted and are attached hereto as Exhibit D:

"We as members of the 39000 local, would love to receive Ballots, we were not conveniently informed of this election."

"Hello, I belong to Local 39000, the certified interpreters group. We didn't get any info until today. There are bunch of is who want to vote for you. How do I get the ballot?"

"I am happy to see a challenger and you'll have my vote however, I have not received any information from the Union as to candidate statements, timeline, etc. The ballots are sent today, hopefully I'll get mine!"

"I'm a member of CFI, a part of the News Guild and CWA, I haven't received any info on this election. Didn't even know there was such a thing. My dues are paid on every paycheck. I'd like to vote for you"

Failure to provide a notice of election to thousands of members would, on its own, be grounds to void the election results and order a rerun election. *Chao v. Local 54, Hotel Employees & Rest. Employees Int'l Union*, 166 F. Supp. 2d 109 (D.N.J. 2001) (union violated election notice requirement by sending notice of impending election of officers to 13,118 out of 15,093 members, despite claim that 1,975 members to whom notice was not set were listed at invalid addresses).

C. Failure to Provide an Opportunity to Establish Good Standing

With respect to the approximately two thousand members in newly-organized shops, and those who were not in good standing for any number of reasons, the NewsGuild failed to provide any notice regarding the eligibility requirements for seeking elected office and for voting. Specifically, the NewsGuild never notified members of newly-organized shops of the requirement or opportunity to pay dues prior to obtaining a first contract with their employers so that they could be eligible to participate in the Sector Conference, nominate candidates, and vote in the 2019 Election.

The only communication from the NewsGuild concerning these requirements was sent by Vice President Marian Needham to the leadership of the NewsGuild's locals on January 22, 2019 (attached hereto as Exhibit E). Because this notice was sent approximately one month *after* the deadline for establishing good standing for the 2019 Election, it failed to provide adequate notice of the eligibility criteria.

By failing to provide any notice of the eligibility criteria for nominations and voting, the NewsGuild denied these members a reasonable opportunity to pay dues prior to the cutoff date. As a result of the NewsGuild's failure to provide any notice of the eligibility requirements, approximately two thousand members were denied the opportunity to participate in the Sector Conference, nominate candidates, and vote in the 2019 Election.

By way of example, while I was a candidate for office, the NewsGuild did not mail me a notice concerning the opportunity to nominate candidate or a notice of election. I was only made aware of the requirement to have paid dues by December 15, 2018 for September, October or November 2018 in a January 14, 2019 email response to my inquiry concerning same. This notice was given to me well after the applicable deadline. Having signed a membership card I, like many of the thousands of At Large members from newly organized shops, was under the impression I had the same rights and obligations as any other member of the NewsGuild. Had I been given adequate notice and an opportunity to pay dues to the International prior to the cutoff date for eligibility to participate in the nominating process and 2019 Election, I would have done so. I know this to be true of hundreds of members of the L.A. Times unit who were similarly denied notice and a reasonable opportunity to establish good standing prior to the cutoff date for eligibility. As Courts have noted, “the sort of notice the LMRDA requires is more than “inquiry notice” and more than “constructive notice” based on custom and practice. Such limited notice is inadequate where...it is not “reasonably calculated to inform all members,”” *Herman v. New York Metro Area Postal Union*, 30 F. Supp. 2d 636, 650 (S.D.N.Y. 1998) (“[i]t is the union's affirmative duty to provide its members the information necessary for enjoyment of their LMRDA § 481(e) right to nominate, vote, and run in union elections.”).

I requested a ballot on April 22, 2019. On May 13, 2019, during the initial steps in the procedure for the counting of the ballots, my ballot was rejected on the basis that I was not a member in good standing by December 15, 2018.

II. The NewsGuild failed to take reasonable steps to update its mailing list and undertake efforts to correct addresses for members whose ballots were returned to the NewsGuild as undeliverable.

Section 401(c) of the LMRDA requires that a union “take all reasonable steps to ensure that its members are given a fair opportunity to vote.” *Marshall v. Am. Postal Workers Union*, 486 F. Supp. 79, 83 (D.D.C. 1980). When voting is conducted by mail ballot, unions are required to undertake reasonable efforts to update their mailing lists and take reasonable steps to “ascertain a correct address for a member whose mail was returned as undeliverable.” *Chao v. Local 290, Plumbers, Steamfitters, Pipefitters & Marine Fitters of the United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. of U.S. & Canada*, 2008 WL

920337, at *4 (D. Or. 2008); *Perez v. Amalgamated Transit Union Local 1700*, 174 F. Supp. 3d 395 (D.D.C. 2016); *District Lodge 720*, 11 F.3d at 1502 (9th Cir.1993) (“A union must affirmatively show that it has made reasonable efforts to maintain an accurate mailing list.”); *Chao v. Local 54, Hotel Employees & Rest. Employees Int’l Union*, 166 F. Supp. 2d 109, 116 (D.N.J. 2001) (holding that a violation of Section 401(e) had occurred where the union did not “make sufficient reasonable efforts” to keep its mailing list current and to insure that all members eligible to vote were sent election ballots).

On April 22, 2019 I wrote to the SERC (Scott Edmonds) asking, *inter alia*, “[h]ow many ballots mailed by the SERC were returned to TNG-CWA headquarters due to an incorrect or out-of-date address?” On April 24, 2018, Edmonds responded via email by stating the “...the SERC has neither the obligation, time nor resources to provide such information to you.” (E-mail correspondence attached hereto as Exhibit F).

On May 13, 2019, I observed Mark Pattison, Scott Edmonds & Tim Schick remove ballots and other election materials that were stored in a locker at the NewsGuild Headquarters. There were several stacks and boxes of ballots being stored there. Pattison and Edmonds transferred ballots from the locker to boxes. They filled at least one box with envelopes that had been returned to the NewsGuild as undeliverable. Photographs of the boxes are attached hereto as Exhibit G and have been redacted for the privacy of the members.² On the morning of May 14, I asked Scott Edmonds if there was a sense of the number of returned ballots. Edmonds deferred to Tim Schick who responded by stating that there were approximately 1,000 ballots returned with no forwarding address.

Before vote counting began on the morning of On May 16, 2019, I asked that the SERC inventory the ballots that were returned and extend the voting period so that reasonable steps could be undertaken to ascertain the correct address for members whose balloting materials were returned to the NewsGuild as undeliverable. On the afternoon of May 16, 2019, Scott Edmonds stated that my request had been considered and was being denied. Immediately thereafter the election results were certified by the SERC.

² I am prepared to share unredacted hard copies with the SERC upon request.

On May 20, 2019 the SERC sent an email to local presidents, secretaries, treasurers and administrative officers acknowledging that the NewsGuild was aware that it did not have updated addresses for nearly one-fifth of its membership *prior to the mailing of ballots*. (Exhibit H). In a May 21, 2019 letter published on Twitter, the President of the Canadian Media Guild (“CMG”) acknowledged her belief that “a high number of out-of-date addresses were inadvertently provided by CMG due to a confluence of factors, effectively disenfranchising a significant number of eligible voters from our local.” (Exhibit I). It is apparent that the NewsGuild had both actual knowledge that it lacked up-to-date addresses for approximately 18% of its membership, and imputed knowledge of the widespread inaccuracies that were known to the CMG, and for which the NewsGuild was responsible as a matter of law. *See Perez v. Amalgamated Transit Union Local 1700*, 174 F. Supp. 3d 395 (D.D.C. 2016). Upon information and belief, despite having this knowledge, the NewsGuild did not have the notice of election posted in a single shop represented by the locals from whom it had not received updated mailing lists. Nor did the NewsGuild take any other steps reasonably calculated to ensure that all members received the notice.

The NewsGuild’s failure to take reasonable steps to update its mailing list and correct addresses for members whose ballots were returned to the NewsGuild as undeliverable is a sufficient basis to void the election result and order a rerun election. This is particularly so in view of the numerical significance of the thousands of undelivered ballots in an election decided by a mere 261 votes.

III. The NewsGuild Failed to Provide Adequate Safeguards to Insure a Fair Election

Section 401(c) of the Act requires that “adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.” See *Hodgson v. District No. 5, United Mine Workers of America*, 353 F.Supp. 108, (W.D. Pa. 1973) (finding that a union failed to provide adequate safeguards to insure a fair election where union officers who were candidates for union office conducted their own election and retained custody of the ballots in that election); *Wirtz v. Local Union 262, Glass Bottle Blowers Association*, 290 F.Supp. 965, (N.D. Cal. 1968), (finding a violation of the adequate safeguards provision where the incumbent president, who was a candidate for re-

election, and there was no accounting for the number of blank ballots in his possession and no record of the unused ballots returned to the local).

Section II(3) of the Election Rules requires that “[a]ll ballots, whether distributed and/or voted in person be returnable by mail to a Post Office box selected by the SERC.” Section V(1) of the Election Rules further requires that “[o]nly ballots in the voter's official return envelope, and in the SERC post office boxes by the date(s) designated by the SERC for ballot collection shall be counted.” However, approximately 140 ballots from five locals that conducted in-person voting were improperly mailed to NewsGuild headquarters instead of the SERC’s Post Office box, in violation of the Election Rules.

The SERC’s initial plan was to collect all ballots on May 13, 2019. (Exhibit J). On April 4, 2019 Schick notified me that the SERC would instead start making periodic trips to empty the Post Office box beginning April 8, 2019. (Exhibit K). From that time until the counting of the ballots, the NewsGuild allowed the voted ballots collected from the Post Office box to be stored in a cabinet at the NewsGuild headquarters just a few feet away from the incumbent’s office. Those ballots were stored in the same location as the thousands of unused ballots, as well as the ballots that were returned to NewsGuild as undeliverable.

Patricia Doxsey, president of one of the locals that improperly mailed their ballots back to the NewsGuild headquarters, was a member of the SERC and did not recuse herself from the vote to count her local’s ballots. The SERC ultimately voted to count the approximately 140 improperly mailed ballots. The decision to count those ballots was a direct violation of the SERC’s clearly-stated election rules. Upon information and belief, the SERC voted to violate their own rules because they believed that the locals that improperly mailed their ballots to the headquarters favored the incumbent.

The NewsGuild also allowed a staff member hired by the incumbent (Tim Schick) to collect ballots from the SERC Post Office box and transport them to the NewsGuild headquarters. Without first notifying me, the SERC authorized a staffer and a SERC member to transfer ballots on April 15, 2019, thereby denying me the opportunity to have an observer present to observe the transfer of ballots. (Exhibit L).

IV. The NewsGuild permitted the unlawful use of union resources in support of the incumbent candidate.

Section 401(g) of the LMRDA prohibits the use of union resources to promote any candidate for union office. 29 U.S.C. § 481(g); 29 CFR § 452.73. The same prohibition is part of the NewsGuild's election rules. Use of a union logo for campaign purposes may similarly violate section 401(g) where the manner of its use implies that the union has endorsed a candidate. In addition to prohibiting the use of union resources, Section 401(c) of the LMRDA instructs incumbents "to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members." 29 U.S.C. § 481(c). To the extent a union permits the use of any member lists in connection with an election, they are required to "inform all candidates of the availability of the list for that purpose and accord the same privilege to all candidates who request it." 29 C.F.R. § 452.71(b).

On or about March 7, 2019, the NewsGuild Twitter account "liked" one of the incumbent's campaign tweets. Screenshots of this transaction are attached hereto as Exhibit M. In response to my complaint concerning same, SERC member Edmonds advised in a March 14, 2019 email that "[t]he immediate action being taken is that "like" is being taken down as it is a clear violation of a [NewsGuild election] policy we thought was clearly understood." That email correspondence is attached hereto as Exhibit N. Later, the incumbent revealed he had actually been in control of the NewsGuild Twitter account (attached hereto as Exhibit O), contradicting the March 20, 2019 statement from the SERC stating a NewsGuild staffer (Sally Davidow) controlled the account. The list of followers on the NewsGuild's Twitter account constitutes a list of members within the meaning of 29 U.S.C. § 481(c). The NewsGuild not only failed to inform me of the availability of the Twitter account list in violation of the LMRDA but took steps to mislead me as to the incumbent's access to and use of that list for campaign purposes. The foregoing constitutes a violation of the NewsGuild's own Election Rules, as well as the LMRDA.

Throughout his campaign, the incumbent candidate used the NewsGuild's logo on his website and social media accounts in connection with his campaign communications in a manner that implied that the union had endorsed his candidacy. The incumbent's use of the NewsGuild logo violated both the LMRDA and the NewsGuild's Election Rules and was not addressed by

the SERC notwithstanding my repeated requests. On April 11, 2019, Edmonds emailed me advising that while the SERC had advised the incumbent of my concern, the Election Rules merely “discourage” use of the logo as opposed to prohibit it. (Exhibit P).

CONCLUSION

The foregoing constitutes a series of violations of the LMRDA, as well as the NewsGuild’s Constitution and Election Rules. When I fought alongside my coworkers to organize the Los Angeles Times, we did so under the banner of democracy at work. This is difficult to reconcile with the knowledge that the NewsGuild’s acts and omissions in this election caused the disenfranchisement of thousands of its members, including nearly every member of my newsroom. With this appeal, the SERC has yet another opportunity to put into practice the ideals that continue to form the foundation of our organizing campaigns nationwide.

As the Supreme Court has held, Congress “unequivocally declared that once the Secretary [of Labor] establishes in court that a violation of [the LMRDA] may have affected the outcome of the challenged election, ‘the court shall declare the election to be void and direct the conduct of a new election under the supervision of the Secretary.’” *Wirtz v. Local 153*, 389 U.S. at 473–474 (1967) (internal citations omitted). But it should not take the threat of litigation for the NewsGuild to take this opportunity to recommit itself to the principles of union democracy by ordering a rerun election to be conducted in accordance with the law.

While it is my sincere hope that this matter can be resolved internally, I am prepared to fully avail myself of all available remedies to ensure that every member of the NewsGuild is afforded the opportunity to vote.

Respectfully submitted,

/s/ Jon Schleuss

Jon Schleuss

cc: Barbara Camens [bcamens@barrcamens.com]
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