

NEWSPAPER GUILD OF NEW YORK, CWA LOCAL 31003

2013 ELECTION OF OFFICERS

LOCAL ELECTIONS COMMITTEE'S RULING ON ELECTION  
CHALLENGES AND FINAL CERTIFICATION

LOCAL ELECTIONS COMMITTEE

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## INTRODUCTION

The Local Elections Committee (the “Committee”) of the Newspaper Guild of New York, Local 31003, the Newspaper Guild–CWA AFL-CIO, CLC (the “Guild”) respectfully submits this ruling on the challenges to the Guild’s 2013 Election of Officers, and hereby issues its final certification of the Guild’s 2013 Election of Officers. Two slates ran in the Guild’s 2013 Election of Officers. One slate, called the “Proven Guild Leaders Slate” was headed by incumbent Guild President Bill O’Meara, who ran for re-election, and incumbent Guild Secretary-Treasurer Peters Szekely, who also ran for re-election. The other slate, called the Members First Slate, was headed by current Guild Second Vice President Grant Glickson, who ran for President, and Anthony Barone, who ran for Secretary-Treasurer. The slates were nominated at an October 15, 2013 meeting of the Guild’s Representative Assembly (the “RA”). Ballots were mailed out on October 29, 2013, and collected from the post office on November 13, 2013. Ballots were then counted on November 13, 2013, and the count was finished at approximately 4:30 a.m. in the morning on November 14, 2013. On November 15, 2013, the Committee issued its tentative certification.

On, November 15, 2013, acting pursuant to Article XV Section 4(b) of the CWA Constitution, the Local Elections Committee (the “Committee”) issued a tentative certification of the results of the Guild’s 2013 Election of Officers. A copy of the CWA Constitution is attached as Exhibit 1, and a copy of the tentative certification is attached as Exhibit 2. On November 19, 2013, Guild member Jeff Blyskal filed a challenge to the election. Mr. Blyskal’s challenge is attached as Exhibit 3. On November 22, 2013, Grant Glickson filed an appeal to the Guild’s election, and Mr. Glickson filed an updated

version of his appeal on November 25, 2013. On December 1, 2013, Mr. Glickson submitted an “amendment” to his appeal. Copies of Mr. Glickson’s November 22, 25, and December 1, 2013 documents are attached as Exhibit 4. On November 27, 2013, Andrew Hoffman, counsel for the Proven Guild Leaders slate, submitted a “statement” regarding the challenges filed by Mr. Glickson and Mr. Blyskal. A copy of Mr. Hoffman’s November 27, 2013 statement is attached as Exhibit 5.

Article XV Section 4(b) of the CWA Constitution provides that “the Election Committee shall rule on any such challenges” “to the conduct of an election.” Pursuant to Article XV Section 4(b) of the CWA Constitution, the Committee here rules on the challenge filed by Mr. Blyskal and the appeal filed by Mr. Glickson. Article XV Section 4(b) of the CWA Constitution also provides that the Committee “shall within 20 days of the tentative certification of results make a final determination or certification.” Pursuant to Article XV Section 4(b) of the CWA Constitution, the Committee issues a final certification of the 2013 Guild election of officers. That final certification is found at pages 66 through 67 of this document.

#### WHO RULES ON THE OBJECTIONS?

Mr. Glickson argues that “the Guild Constitution requires that appeals be directed to the Representative Assembly, not the Election Committee. I am writing to you with the expectation that you forward the appeal to the Representative Assembly in time for its next meeting.” Mr. Glickson appears to be referring to Article VI Section 5 of the Guild bylaws, which provides that “any election dispute shall be decided by the Representative Assembly, whose decision may be appealed to the next general membership meeting.” A copy of the Guild bylaws is attached as Exhibit 6.

There is thus an apparent conflict between the CWA Constitution, which provide that “the Election Committee shall rule” on any election challenges, and the Guild’s bylaw, which provide that “any election dispute shall be decided by the Representative Assembly.”

The Committee resolves this apparent conflict by determining that, pursuant to Article XV Section 4(b) of the CWA Constitution, it is to rule on Mr. Blyskal’s and Mr. Glickson’s election challenges. The Committee makes this decision because (a) the clear language of the CWA Constitution compels it, and (b) Article XIII Section 9(c) of the CWA Constitution requires CWA locals “to abide by the Constitution.” Under these circumstances, the Committee believes that the CWA Constitution takes precedence over inconsistent provisions in the Guild’s Bylaws.

#### ELECTION CHALLENGE FILED BY JEFF BLYSKAL

On November 19, 2013, Guild member Jeff Blyskal submitted a challenge to the election. The Committee addresses that challenge here.

#### MR. BLYSKAL’S STANDING

In an e-mail dated November 20, 2013, attached as Exhibit 7, counsel for the Proven Guild Leaders Slate asserted that “Mr. Blyskal, . . . does not have standing to challenge the recent election.” In an e-mail dated November 20, 2013, attached as Exhibit 8, Mr. Blyskal responded, citing §402(a) of the LMRDA,<sup>1</sup> 29 U.S.C. §482(a).

The Committee rejects this challenge to Mr. Blyskal’s standing. It does so for two reasons. First, the LMRDA states that “a member of a labor organization” who has exhausted his internal union remedies has the right to file a complaint with the Secretary

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<sup>1</sup> We refer to the Labor Management Reporting and Disclosure Act as the “LMRDA.”

of Labor. 29 U.S.C. §§482(a)(1) and (2). Second, Article XV §4(b) of the CWA Constitution provides that the Election Committee “shall rule on any such challenges” to an election. The use of the word “shall” suggests to the Committee it must rule on challenges, including those filed by Mr. Blyskal.

### BLYSKAL CHALLENGE NUMBER 1

In his first Challenge, Mr. Blyskal asserts that:

The TNG bylaws governing the election conflict with the CWA and TNG Constitutions. The Local Election Committee . . . rules for the election . . . direct that the election shall be conducted in accordance with the TNG bylaws . . . . But the bylaws nowhere require a “secret ballot,” which is contrary to the CWA Constitution . . . and TNG Constitution . . . . Nor do the bylaws recognize, incorporate or refer back in any way to the authority of the CWA or TNG Constitution in matters pertaining to elections.

Blyskal Challenge, at 1. The committee rejects this challenge and explains why here.

Article XV Section 4(e) of the CWA Constitution provides that “[t]he election by Local officers . . . shall be by secret ballot.” Article XIII Section 9(c) of the CWA Constitution requires CWA Locals – including the Guild – to “abide by the [CWA Constitution].” As a local within the CWA, the Guild thus must comply with the entire CWA Constitution, including the secret ballot requirement found in Article XV Section 4(e).

For these reasons, the Committee concludes that the Guild was required to conduct its election via secret ballot, and that there was no conflict between the Guild’s bylaws and the CWA Constitution. The Committee thus rejects Mr. Blyskal’s first challenge.

## BLYSKAL CHALLENGE NUMBER 2

In his second challenge, Mr. Blyskal asserts:

The ballot was not secret. 29 U.S.C. 481 §401 also requires that union local officers shall be elected “by secret ballot.” Having adopted rules for an election using non-secret ballots, the LEC failed to guarantee Guild members’ rights, and, to the contrary, adopted rules that explicitly compromised the secret ballot: (A) The first compromise was the LEC rule requiring that each ballot be marked with a unique identifying number. . . . (B) The LEC further compromised the secret ballot by instructing voters to, “Place the smaller envelope containing the ballot in the addressed return envelope,” then “sign and print your name . . . on the return envelope.” Voters who followed that procedure, unwittingly transferred an imprint of their pen and ink signature from the outside envelope to the no longer unmarked envelope inside, as demonstrated in Exhibit 3, PDF p95.

Blyskal Challenge, at 1-2.

The LMRDA requires the Guild and every other local labor organization to elect its officers “by secret ballot among the members in good standing.” 29 U.S.C. §401(b). The LMRDA defines “secret ballot” as “the expression by ballot . . . of a choice with respect to any election . . . which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.” 29 U.S.C. §402(k).

The Guild did not violate the LMRDA by numbering each ballot. This is because neither the Guild nor anyone else kept track of which ballot was sent to which voter. That is, the Guild kept no record which would enable anyone to know that ballot number “X” was sent to member “Y.” Thus, votes were cast “in such a manner such that the person [casting the vote] . . . cannot be identified with the charge expressed.”

Observers were permitted to watch the preparation of ballots and stuffing of envelopes. The Members First slate had observers present at this process. See,

Exhibit 9. These observers made no complaint to the Committee about the fact that ballots had numbers on them, and did not claim that anyone was keeping a list of which member was being sent which ballot. Both slates had observers and counsel present during the count of the ballots. These observers made no complaint that the Guild or anyone else had a list which would enable them to know which members cast which ballot.

In Wirtz v. Local 11 International Hod Carriers, 211 F. Supp. 408 (W.D. Pa. 1962), the Secretary of Labor alleged that the union violated the LMRDA by, *inter alia*, failing to elect its officers by a secret ballot. 211 F. Supp. at 411. There:

The ballots used in the election were imprinted with numbers serially from “1” to “1000” and ballots numbered from 1 through 478 were actually cast. The ballots were issued to voters in numerical order, and all of the cast ballots tallied after the election bore serial numbers, except for 21 from which the numbers had been removed.

211 F. Supp. at 412. The Court explained that when each voter received his numbered ballot, “his identity, by name or dues book number, was recorded in the same numerical order on a written list kept by a ‘watcher’ for the candidates opposing the incumbent officers.” 211 F. Supp. at 412. The Secretary of Labor argued that the union thus impermissibly violated the LMRDA’s secret ballot requirement.

The Court disagreed. It explained:

While . . . the use of numbered ballots and the marking of the dues ledger to indicate the members to whom they were distributed was a practice that could lend itself to possible abuses which might lead to the identification of a voter with a choice expressed by him, there is nothing in the record to indicate that any of the officials responsible for the conduct of the election availed themselves of such opportunity, or that they identified any numbered ballot with any particular voter.

211 F. Supp. at 412. The Court stated that while “the secrecy of the ballots might have been invaded by coordinating this list with the ballots cast,” there was no LMRDA violation because “the ballots have at all times remained in the custody and possession of the Local’s financial secretary. . . . The list of voters . . . never came into possession of the Local or any of its officers and has since July 9, 1960 been in the possession of the General Counsel for the International. So far as the conduct of the election was concerned the votes of the members were, in fact, secret.” 211 F. Supp. at 412-413.

Here, neither the Guild nor anyone else kept a list of which members received which ballots. Thus, there was simply no way for anyone to determine the identity of the voter who cast ballot number “X.” Observers from both slates were present at the entire ballot count. At no point during this process did any observer claim that the secrecy of the ballots was compromised by the numbers on the ballots. Observers for the Members First slate were present during the preparation and stuffing of the envelopes for mailing; they raised no claim at that time that the secrecy of the ballots was compromised by the numbering of the ballots. Here, like in Local 11, “the votes of the members were, in fact, secret.” 211 F. Supp. at 413. Under these circumstances, the Committee rejects Mr. Blyskal’s claim that, by numbering the ballots, the Guild violated the secret ballot requirements of the LMRDA.<sup>2</sup>

Mr. Blyskal’s objection 2(B) states:

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<sup>2</sup> In his Challenge Number 11, Mr. Glickson also complains that the numbering of the ballots unlawfully compromised the identity of the voter. For the reasons laid out here, the Committee rejects that Challenge. In this regard, the Committee notes that Mr. Glickson had three opportunities to object to the numbering the ballots, but never did. At the ballot count, neither Mr. Glickson nor his observers or counsel complained that secrecy was compromised by the numbering. Similarly, Mr. Glickson’s observers did not raise this when the ballots were being prepared for mailing. Finally, Mr. Glickson was a Member of the Representative Assembly (the “RA”) which approved the election rules in June, 2013 – including the numbering requirement – and he offered no evidence that he objected to the numbering of ballots then. In short, Mr. Glickson had three prior opportunities to raise this, and apparently failed to do so on each of those three occasions.



The [Committee] further compromised the secret ballot by instructing voters to, “Place the smaller envelope containing the ballot in the addressed return envelope,” then “sign and print your name on the . . . return envelope.” Voters who followed that procedure, unwittingly transmit an imprint of their pen and ink signature from the outside envelope to the no longer unmarked envelope inside as demonstrated in Exhibit 3, PDF p. 95.

Blyskal Challenge 2(B), at 2. The Committee rejects Mr. Blyskal’s claims that its two envelope system compromised the secrecy of the ballot. We explain why here.

The Committee rejects Mr. Blyskal’s claim that the identity of a voter could be discerned from the inner ballot because on November 13 and 14, 2013, during the ballot count, four committee members were present throughout. They observed the opening of the outer envelopes, the opening of inner envelopes, and the ballots. During this process, the Committee members saw no imprint or markings on the inner envelopes that would have identified the voters or otherwise compromised the secrecy of the ballots.<sup>3</sup>

During the ballot count, both slates had observers and counsel present. Slate observers and counsel had full opportunity to inspect the outer envelopes, the inner envelopes, and the ballots, and actively and diligently scrutinized the entire process, observing the ballots and the envelopes. At no point during the ballot count did any observer or slate counsel assert that the inner envelopes had markings on them that identified the voter, or that otherwise compromised the secrecy of the ballot. In contrast, Mr. Blyskal was not present, and did not see the ballots and their inner envelopes. Under these circumstances, the Committee rejects Mr. Blyskal’s claim that the secrecy of the ballots was compromised.

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<sup>3</sup> There was a single inner envelope that was signed by the voter: the Committee did not count that vote.

The Committee notes further that Mr. Blyskal raised this issue in a November 14, 2013 e-mail. Mr. Blyskal's November 4, 2013 e-mail is attached as Exhibit 10. That e-mail was cc'd to Mr. O'Meara and Mr. Glickson. Thus, both slates were on notice of Mr. Blyskal's ballot secrecy claim, and the argument upon which he based that claim. Despite this, no one who was physically present and actually saw the inner envelopes or the ballots asserted that the secrecy of the ballots were compromised in any way, or that there were any markings on the inner envelopes that would have compromised the secrecy of the ballots.

Mr. Blyskal was not present during the count. He did not observe the inner envelopes. He did not observe the ballots. He did not observe the care which the Committee took to preserve the secrecy of the ballot. His claim flies in the face of the fact that none of the many observers present during the ballot count claimed then that the secrecy of the ballot was compromised. In short, as the evidence simply does not support Mr. Blyskal's assertion on this point, the Committee rejects Blyskal Challenge 2(B).

### BLYSKAL CHALLENGE NUMBER 3

Mr. Blyskal's third challenge states:

The required minimum notice of election was grossly defective. The [LMRDA] requires that "not less than 15 days prior to the election notice thereof shall be mailed to each member at his last home known address." In fact, the [Committee] gave voters significantly less time than required by law in the TNG Constitution . . . . The . . . ballot defines the election as starting on October 29 and ending on November 13, 2013 which means the ballots should have been mailed on October 14, 15 days before the start of the election, to comply with the LMRDA. Instead, the LEC mailed notice of the election on the same day the election started, on October 29.

Blyskal Challenge, at 2-3. Thus, Mr. Blyskal argues that the Guild violated the LMRDA by mailing the ballots on October 29, instead of October 14, 2013.

The relevant facts on this issue are undisputed. Ballots were mailed on October 29, 2013. They were collected at the post office at 5:00 p.m. on November 13. Slates had observers present during both the mailing and the collection of the ballots.

The LMRDA requires that “not less than 15 days prior to the election notice thereof shall be mailed to each member at his last known home address.” 29 U.S.C. §401(e). The voting instruction and ballots, which were mailed together on October 29, 2013, constituted the notice of election. The relevant Department of Labor regulation states that “for purposes of computing the 15 day period, the day on which the notices are mailed is not counted whereas the day of the election is counted.” 29 CFR §452.99. Thus, not counting the day of the mailing, October 29, but counting November 13, the collection date, the ballots were mailed 15 days before the election.

Under the Department of Labor regulations, “in a mail ballot election the [notice] requirement is satisfied by mailing the ballots to members at least 15 days before the deadline for their return.” Malin, Individual Rights Within the Union, at 243. See also, 29 CFR §452.102. Under this standard, both the notice and the ballot were mailed in a timely fashion. The Guild had no legal duty to mail the ballots or the notice on October 14.

To support his claim that the election should be overturned, Mr. Blyskal asserts that “according to the US Department of Labor Guide for Election Officials, in a vote by mail election, ‘as a general rule, allow three to four weeks for members to mark and return their ballots.’” Blyskal Challenge, at 3. While the cited Department of Labor

publication does suggest allowing three or four weeks for members to mark and return their ballots, this Department of Labor publication is not binding on the Committee. The “three to four week” period mentioned in this publication is not found in the LMRDA. It is not found in the Department of Labor Regulations. The cited publication does not state that “three to four weeks” is a statutory requirement. Mr. Blyskal cites no judicial decision which set aside a mail ballot election because members were provided with less than “three to four weeks” to mark and return their ballots. Thus, the fact that members did not have “three or four weeks” to mark and return their ballots is not a basis to overturn the election.

Mr. Blyskal argues that the Committee “cheated Guild members out of their promised 16 day voter period” by misleading “voters into believing they had more time to vote than they actually did; voting was possible for only nine days for the officially described 16 day voter period, shortchanging Guild members by 44%.” Blyskal Challenge, at 3.

This argument is directly rebutted by the instructions which accompanied each ballot, and which are attached as Exhibit 11. Those instructions state: “only ballots in the official return envelopes in the post-office box on Nov 13, 2013 will be counted.” Thus, every voter got instructions which stated that the ballots had to be in the post-office box by November 13. In light of these instructions, Mr. Blyskal’s claim that voters were misled “into believing that they had more to vote than they actually did” is wrong.

The election rules which the Guild adopted provided that ballots would be mailed on October 29 and collected on November 13. In fact, ballots were mailed on October

29 and collected then on November 13. There was never a “promised 16 day voting period,” so members were not “cheated . . . out of their promised 16 day voting period.”

Accepting Mr. Blyskal’s assertion that “roughly that 98% [of first class mail] is delivered within the two-day standard plus one day,” Blyskal Challenge at 3, that means that 98% of the Guild members received ballots on November 1. Mr. Blyskal also asserts that “ballots . . . had to be return mailed by Saturday, November 9 to reach the post office in time for the November 13 deadline.” Blyskal challenge, at 3. Accepting this assertion, that means that members had nine days within which to mark and mail their ballots – November 1, 2, 3, 4, 5, 6, 7, 8, and 9. Thus, not only were the members not “cheated” out of anything, and not only did the Guild give members the requisite statutory notice, but members in fact had more than one week within which to mark and mail their ballots. For all of these reasons, the Guild rejects Mr. Blyskal’s challenge number three.

#### BLYSKAL CHALLENGE NUMBER 4

In his fourth challenge, Mr. Blyskal states:

Both candidates appear to have accepted “things of value” from at least one employer to promote their campaigns.

Blyskal challenge, at 3. In this challenge, Mr. Blyskal complains that (a) he received a Guild newsletter announcing the election at an e-mail address provided by his employer, (b) candidate Glickson campaigned on the premises of his employer and (c) candidate O’Meara campaigned on the premises of his employer. Blyskal Challenge, at 4.

The complaint that he received an e-mail “at my employer e-mail address from the Local . . . to promote” candidates refers to a newsletter e-mailed by the Local. A

copy of that newsletter is attached hereto as Exhibit 12. The document which Mr. Blyskal complains about was, in fact, a general notice advising the membership of the following facts:

- Two opposing slates of candidates were nominated, one headed by Mr. O'Meara and one headed by Mr. Glickson;
- The names and bargaining units of the nominated candidates;
- Members who wish to run may submit petitions as per the nomination and election rules;
- Ballots will be mailed on October 29 and must be returned by November 13;

Mr. Blyskal thus argues that this election should be overturned and re-run because the Guild sent a newsletter to his employer-provided e-mail address announcing that candidates had been nominated, what their names were, how to submit petitions, and the timeframe of the election.

The Committee rejects Mr. Blyskal's contention that the Guild violates the LMRDA, and thus that its election should be overturned, by sending that newsletter to an employee at an employer provided e-mail address. The newsletter is not a campaign document. It is evenhanded and reportorial. It advises the members who the candidates are, when they were nominated, when ballots will be mailed out, and when they are due back. It does not urge voters to do anything. Thus, the Committee believes that this newsletter is explicitly permitted under the relevant Department of Labor regulation, which states that "the act does not prohibit impartial publication of election information." 29 CFR §452.74. This newsletter is precisely that: it is "impartial," and contains only "election information."

The LMRDA bars the use of employer or union monies “to promote the candidacy of any person.” LMRDA §401(g), 29 U.S.C. §481(g). Black’s Law Dictionary, 6th Edition, defines “promote” as follows: “[t]o contribute to growth, enlargement, or prosperity of; to forward; to further; to encourage; to advance.” Black’s Law Dictionary, 6<sup>th</sup> Edition, at 1214, attached as Exhibit 13. The Oxford Online Dictionary defines “promote” as to “further the progress of (something, especially a cause, venture, or aim); support or actively encourage.” Oxford Online Dictionary, Definition of promote, attached as Exhibit 14. This newsletter – an “impartial publication of election information” – does not “promote the candidacy of any person.” It does not urge voters to support any particular candidates. It does not urge voters to oppose any particular candidates. It does not address any issues in the elections. It does not encourage members to vote for any candidates. In short, under the meaning of the word “promote,” the newsletter at issue does not promote any candidates, so e-mailing the newsletter to employer-provided e-mail addresses is not an unlawful use of employer resources.

Mr. Blyskal also argues that the election should be overturned because candidate Glickson campaigned on the property of Consumers Union (“CU” or “CR”), his employer. Blyskal Challenge, at 4. The Committee rejects this challenge for the simple reason that it is unaware of any instance where an election was overturned based on a losing candidate’s conduct, and Mr. Blyskal cites to no such cases. Therefore, the Committee declines Mr. Blyskal’s request to overturn this election based on alleged improper conduct by an unsuccessful candidate.

Mr. Blyskal also argues that the election should be overturned because “candidate Bill O’Meara also ‘campaigned incidental to union work’ in the CR cafeteria and ‘lingered to answer campaign related questions’ for five minutes.” Blyskal challenge, at 4. The Committee explains here why it rejects this challenge.

Mr. Blyskal does not claim that he saw Mr. O’Meara’s campaign at the CR cafeteria. Instead, he cites to an e-mail sent by counsel for the Members First slate. In that e-mail, counsel does not claim that he saw Mr. O’Meara campaign. Thus, not only did Mr. Blyskal not see Mr. O’Meara engage in campaigning at the CR cafeteria, but the person whose e-mail he relies on for this claim did not claim to see Mr. O’Meara campaigning at the CR cafeteria. Instead, some unnamed third person apparently observed this. We note further that attached to the very e-mail which Mr. Blyskal relies on is an October 31, 2013 e-mail from Mr. O’Meara stating “I did not use CR’s cafeteria to promote my candidacy, and I do not intend to.” Mr. O’Meara’s October 31, 2013 e-mail is attached as Exhibit 15. Also, in his slate’s response to the election appeals, Mr. O’Meara asserts that he “did not campaign in the [CR] cafeteria at any time during the campaign, although he did attend a Unit Council meeting there on September 23, 2010 . . . [where he] may have answered a question or two about the campaign.” Under these circumstances, the third hand “evidence” which Mr. Blyskal presents is simply too unreliable: It is too thin of a reed to overturn the Guild’s election. The Committee thus concludes that Mr. Blyskal failed to prove that Mr. O’Meara campaigned while in the CR cafeteria.

Assuming arguendo the truth of Mr. Blyskal’s assertion – that Mr. O’Meara spent five minutes answering campaign related questions,” and engaged in campaigning



“incidental to Union work” in the CR cafeteria – the Committee rejects Mr. Blyskal’s assertion that this conduct warrants overturning the election. “Campaigning incidental to regular union business” is not a violation” of the LMRDA. See 29 CFR §452.76. Thus, that Mr. O’Meara may have engaged in incidental campaigning – as alleged by Mr. Blyskal – is not by itself a basis to overturn the election.

In addition, the Committee believes that to the extent this allegation relates to the claim that Mr. O’Meara engaged in incidental campaigning on CR property, it is governed by Hodgson v. Liquor Salesman Union, Local No. 2, 334 F. Supp. 1369 (S.D.N.Y. 1971), aff’d 444 F.2d 1344 (2d Cir. 1971). There, on the morning of the election, one of the employers held a meeting that was attended by approximately 250 members of the Local, a significant fraction of the total membership, given that 1152 ballot votes were cast in the election. 334 F. Supp. at 1373, 1375. This meeting started at 10:00 a.m., only hours before the 2:00 p.m. start of voting, and lasted about ninety minutes. 334 F. Supp. at 1373. During the meeting, after spending an hour discussing products, the employer stated the following:

I’m not going to hold you here very long . . . You have a very important function to take care of today . . . You have an election and you have to vote . . . I’ve been doing business with your Union for 20 years . . . You know you might be better off with what you had than with what you’re going to get.

334 F. Supp. at 1373-1374.

The Court rejected the Secretary of Labor’s claim that the employer’s election day statement to two hundred and fifty union members was an employer contribution to promote candidates in violation of 29 U.S.C. §481(g). 334 F. Supp. at 1378. In reaching this conclusion, the Court noted that (a) the meeting was not called specifically

to promote any candidate; (b) the meeting was held “on the usual business premises of the owner,”; and (c) the meeting’s agenda was customary and related to current business, and thus concluded that “it was a regular . . . meeting of which the statements challenged here compromised a very small part.” 334 F. Supp. at 1379.

The Court concluded that, under the circumstances there, “it was not established . . . that any employer money was directly contributed to promote the candidacy of any person.” 334 F. Supp. at 1379. While the Secretary of Labor argued that “employer money was expended because if the employees had been free at the time the meeting was held, they might have done more business, taken orders, and increased the employer’s revenues,” the Court found that “this is too speculative a basis for finding that an employer contributed money to promote candidacies in violation of §481(g). . . . Here the employer’s contribution was merely incidental to proper employer expenditures.” 334 F. Supp. at 1379.

Here, Mr. Blyskal does not claim that CU made any “expenditures.” Instead, he merely argues that, after conducting regular union business on the CU premises, Mr. O’Meara spent five minutes answering campaign related questions. Thus, like the situation in Liquor Salesman’s Union, Mr. O’Meara was at CU on regular union business: CU did not summon him to its offices for the purposes of engaging in campaigning. Mr. O’Meara’s presence at CU was “merely incidental” to CU business – his handling of normal union related matters. In sum, even if Mr. O’Meara engaged in incidental campaigning at the CU premises for five minutes, under Liquor Salesman’s Union, that is not an unlawful expenditure of union resources or of CU resources, and thus not a violation of 29 U.S.C. §481(g).

## BLYSKAL CHALLENGE NUMBER FIVE

In his fifth challenge, Mr. Blyskal asserts:

The incumbent slate liberally took a “thing of value” from the Union, free legal advocacy by the TNG’s counsel, who aggressively quashed Guild members’ First Amendment rights.

Blyskal Challenge, at 4. Mr. Blyskal’s complaint here is that Committee counsel Hanan Kolko argued that CU should not permit its e-mail system to be used for a debate, that CU agreed with this argument, and that CU thus did not permit its e-mail system to be used for a debate. The Committee explains here why it rejects Mr. Blyskal’s fifth challenge.

In an October 25, 2013 e-mail, attached as Exhibit 16, Mr. Blyskal invited presidential candidates Glickson and O’Meara “to an independent presidential digital debate via e-mail in in the CR Guild mailing list, contingent on our ability to use the CR e-mail Guild list for this purpose.” Mr. Blyskal appointed himself to moderate and control the debate: he advised the candidates that he would initiate the debate by e-mailing the candidates “five questions that are on my mind, which will be independently developed by me.”

In an October 27, 2013 e-mail, Committee counsel contacted Shona Pinnock, an HR Representative at CR, in connection with Mr. Blyskal’s proposal to hold a debate using the CR e-mail system. A copy of Mr. Kolko’s October 27, 2013 e-mail is attached as Exhibit 17. In that e-mail, Mr. Kolko asked Ms. Pinnock “to delay any decision on Mr. Blyskal’s inquiry until after the Committee has had a chance to consider this matter,” and advised Ms. Pinnock that the Committee anticipated being able to provide a ruling to her “by midday on Tuesday, October 29, 2013.”

Mr. Kolko's October 27, 2013 e-mail made the following points:

- Under §401(g) of the LMRDA “no monies of any employer shall be contributed or applied to promote the candidacy of any person in an election subject to this title;”
- The relevant Department of Labor Regulations interprets §401(g) to include “indirect as well as direct expenditures”;
- While the DOL Regulations state that “it would not be improper for a union to sponsor a debate,” 29 CFR §452.74, that section did not state that “such even handed use of employer resources is lawful”;
- “One main goal of the Guild’s Election Committee is to ensure that the election is conducted in a manner so that (a) the DOL does not sue to overturn the election and (b) no court issues an order compelling the Guild to re-run the election. Re-run elections are costly and disruptive to the Union, and the Committee will do all it can to avoid one here”;
- Courts have overturned Union elections based on improper use of employer resources, and, in 2011, a court ordered a re-run election where a candidate sent campaign related e-mails to 14 members using the employer e-mail system, and issued this ruling despite the fact that opposing candidates had also used the employer’s e-mail system. Solis v. Local 9744, 798 F. Supp. 701, 705 (D. Md. 2011).

In response, Mr. Blyskal sent an October 27, 2013 e-mail to Ms. Pinnock. A copy of Mr. Blyskal’s October 27, 2013 e-mail is attached as Exhibit 18. In his e-mail, Mr. Blyskal argued that using the CR e-mail system for a debate (a) would not constitute promotion of a candidate, and (b) was lawful under 29 CFR §452.78. He also acknowledged that “Consumer Reports will decide this matter when and how it sees fit.” In response, Ms. Pinnock advised Mr. Blyskal that “I forwarded your communication to our counsel for consideration.” A copy of Ms. Pinnock’s October 27, 2013 e-mail is attached as Exhibit 19. In an October 28, 2013 e-mail, without citing to any cases, regulations, or statutory provisions, counsel for the Members First slate argued that

Committee counsel was “creating a basis for the DOL to reverse the election results.” A copy of counsel’s October 28, 2013 e-mail is attached as Exhibit 20.

In an October 29, 2013 e-mail to Ms. Pinnock, Committee counsel advised that her that:

For the reasons laid out in [counsel’s October 27, 2013] e-mail, the Committee’s view is that because of the substantial risk that the use of the CU e-mail system in connection with the candidate debate would be deemed by the US Department of Labor and a Court as a use of employer resources to promote candidates in violation of LMRDA §401(g), because of the risks of such a finding would result in a court order requiring the Guild to conduct a re-run election, and because of the cost and disruption associated with both the attendant litigation and re-run election, the Committee requests that CU not allow its e-mail system to be used for a candidate debate.

A copy of that October 29, 2013 e-mail is attached as Exhibit 21.

In the October 29 e-mail, Mr. Kolko advised Ms. Pinnock that the DOL publication which Mr. Blyskal relied upon “was published in 2010, before the issuance of the Court’s decision in Solis v. Local 9744,” and that “Mr. Blyskal’s argument that use of employer resources is lawful under §401(g) as long as it is done on an evenhanded basis has been rejected by courts.” Mr. Kolko’s October 29 e-mail also noted that:

A regulation which Mr. Blyskal cites – 29 CFR §452.78 – which permits the use of employer resources to the same extent that such resources are “made available in the same terms to other customers” does not apply here . . . [because there are] no instances where the CU e-mail system has been opened up for use to CU subscribers to hold debates about political candidates or any other issue.

In an e-mail dated October 29, 2013, Ms. Pinnock advised all that “based on the potential risks outlined in Hanan’s e-mail and the advice of our legal counsel, we have decided to deny your request to access CR’s e-mail system to hold a digital debate

between the candidates for President of the Newspaper Guild.” Ms. Pinnock’s October 29, 2013 e-mail is attached as Exhibit 22.

Mr. Blyskal’s claim that Committee counsel “aggressively quashed Guild members’ First Amendment rights” is based on a fundamental misunderstanding of the First Amendment – that the First Amendment gives people rights *vis a vis* private actors, including the Guild. However, Mr. Blyskal is simply wrong: the First Amendment provide rights only *vis a vis* the government, and not *vis a vis* private entities.

The First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech.” “The constitutional guarantee of free speech is a guarantee only against abridgment by government, federal or state.” Hudgens v. NLRB, 424 U.S. 507, 513 (1976). Thus, Mr. Blyskal’s claim – that the Committee and its counsel “aggressively quashed Guild members First Amendment rights” – is based on a fundamental misunderstanding of the law. Mr. Blyskal has no First Amendment rights *vis a vis* the Guild or Committee, so they could not have “quashed” his First Amendment rights.

In connection with this challenge, Mr. Blyskal argues that “the incumbent officers of the Newspaper Guild apparently directed their employee, TNG counsel Hanan Kolko, to lobby my employer on October 29 to ‘not use its e-mail system to be used for a candidate debate.’” This claim is inaccurate in two respects. First, the October 29, 2013 e-mail sent by Mr. Kolko was sent at the direction of the Committee, it was not sent as a result of any directive issued by local officers.<sup>4</sup> Second, Mr. Kolko is not an employee of the Guild. He is its outside counsel, and is a shareholder at a law firm.

The thrust of Mr. Blyskal’s argument concerning the debate is:

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<sup>4</sup> Mr. Blyskal’s use of the word “apparently” is evidence that, in fact, he is merely guessing.

- The First Amendment protects his right to conduct a debate using the CR e-mail;
- The LMRDA is a “lesser federal law” which is subordinate to Guild members’ rights to hold a debate using the CR e-mail system; and
- The Committee’s e-mails to CR urging it not to allow its e-mail system to be used for a debate benefit the Proven Guild Leader Slate and are thus an unlawful union contribution to that slate.

We explain why each of these contentions are wrong.

First, as discussed, the First Amendment does not apply here. People have First Amendment rights only *vis a vis* the government. The First Amendment applies only to government action, and not to action by private entities such as the Guild or CU. Thus, nothing that the Committee or CU did here is subject to the First Amendment.

Mr. Blyskal’s claim that the LMRDA is “a lesser federal law” which cannot be subordinated to the First Amendment is also wrong. This election is governed by the LMRDA. It is not governed by the First Amendment.

Mr. Blyskal’s claim that the Committee’s decision (a) was in the interest of the Proven Guild Leader’s slate and (b) thus an unlawful contribution of union resources to that slate is also flawed. This argument hinges on the notion that Mr. O’Meara opposed holding a debate. However, it is undisputed that in an October 27, 2013 e-mail, Mr. O’Meara told Mr. Blyskal that he would agree to a debate with Mr. Glickson using CU’s facilities as long as the debate would be live, and as long as Mr. Glickson would sign a document “waiving their ability to use any legal claim that might arise in connection with the debate and CU’s involvement in it as a basis for challenging the election.” A copy of Mr. O’Meara’s October 27, 2013 e-mail is attached as Exhibit 23. Thus, contrary to Mr. Blyskal’s claim that Mr. O’Meara was opposed to the debate, Mr. O’Meara’s October 27, 2013 e-mail shows that he was willing to participate in a debate.

Despite Mr. O'Meara's willingness to participate in a debate, the Committee, on its own, advised CR management of its concerns about using CR resources for such a debate. As previously discussed, the Committee was concerned that the use of CR resources for a debate would violate §401(g), and thus subject the Local to a risk that the election would be ordered re-run. Thus, in arguing to CR that its facilities should not be used for a debate, the Committee was not motivated by what would – or would not – benefit the Proven Guild Leader Slate. Instead, as laid out in Mr. Kolko's October 27 and October 29 e-mails, the Committee was motivated by a desire to avoid a §401(g) violation which would generate litigation and a potential court order requiring the election to be re-run. The fact that the Committee's acts might have incidentally benefitted one slate or the other does not transform these acts into a §401(g) violation.

Mr. Blyskal's argument on this point contains one other flaw which the Committee wishes to point out. Mr. Blyskal asserts that CR's decision to not allow the use of its e-mail system for a candidate debate was "contrary to the Company's usual and customary policy." Blyskal Challenge, at 5. Mr. Blyskal provided no details regarding this claim, and offers no evidence to support his claim that it is CR's "usual and customary policy" to allow any organization to use its e-mail system to conduct a debate. Mr. Blyskal was not asking CU to allow its e-mail system to be used in a typical way: instead, he was asking for a unique use of its e-mail system, a use which, in the view of the Committee, ran the risk of being deemed a violation of §401(g) of the LMRDA.



## GLICKSON OBJECTIONS

On November 22, 2013, candidate Grant Glickson submitted objections to the election, which he amended on November 25 and supplemented on December 1.<sup>5</sup> The Committee addresses these objections here.

### GLICKSON OBJECTION NUMBER 1

In objection number 1, Mr. Glickson asserts:

I and other candidates on my slate were not furnished with an opportunity to send e-mail to members at the addresses which the Guild uses to communicate with members. Some of these addresses are work addresses, but they are addresses which the Guild uses on a regular basis. The reason given was that such addresses were “employer resources.” However, under the [LMRDA] the use of these kind of resources is allowed if they are made available to candidates on a non-discriminatory basis.

Glickson Challenge, 1. The basis of Mr. Glickson’s objection is that he was not allowed to send campaign related e-mails to employees at their employer provided e-mail addresses.<sup>6</sup> We explain here why the Committee rejects this objection.

As a result of negotiated agreements with some employers, the Guild uses employer provided e-mail addresses to send Guild newsletters to employees of those employers. Mr. Glickson’s first objection asserts that he has a right under the LMRDA to send campaign e-mails to members at those employer-provided e-mail addresses. In an October 26, 2013 e-mail attached as Exhibit 24, Mr. Glickson’s counsel cited Dimondstein v. APWU, 213 WL 4578306 (D. DC 2013) to support this claim. In the Committee’s view, Dimondstein is fundamentally distinguishable and not applicable.

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<sup>5</sup> The Proven Guild Leaders slate objected to the Members First slate’s December 1 supplement, arguing that it was untimely. The Committee rejects this objection.

<sup>6</sup> The Guild does not maintain a list of members’ personal e-mails.

In Dimondstein, the issue was whether the Union “violated §401(c) of [LMRDA] . . . by refusing plaintiff’s request to distribute campaign literature, at plaintiff’s expense, via e-mail to APWU members.” 2013 WL 4578306 at \*3. While the Court there found that the union violated §401(c) by denying the candidate’s request, the Dimondstein court did not discuss §401(g), and did not address the issue of whether it would be a §401(g) violation to send campaign e-mails to union members at employer-provided e-mail addresses. A conversation with counsel for the Dimondstein defendant confirmed that the e-mail addresses at issue were personal, and not employer-provided. Thus, while Dimondstein addressed a union’s obligation under §401(c) to allow candidates access to union-maintained lists of personal e-mail addresses, it says nothing about the §401(g) issue present here – whether the LMRDA requires candidates to have access to employer provided e-mail addresses.

Here, in ruling that candidates could not use employer provided e-mail addresses to send campaign material, the Committee relied on §401(g), not §401(c). Given that Dimondstein applied §401(c) and not §401(g), and given that it did not involve employer provided e-mail addresses, Dimondstein does not support Mr. Glickson’s argument that he had a right to access to employer provided e-mail systems to distribute campaign literature.

In connection with Mr. Glickson’s request for access to the employer provided e-mails, the Committee first and foremost was concerned with avoiding a §401(g) violation. This is because the DOL and federal courts at times adopt a “strict” policy towards §401(g) violations. The Committee was particularly concerned about Solis v. Local 9744, 798 F. Supp. 2d 701 (D. Md. 2001), which, in its view, was a troublesome

precedent. There, the Court ordered a re-run election in part based on its finding that sending campaign related e-mails to fourteen employees at their employer provided e-mail addresses violated §401(g). While the union there argued that “use of an employer’s e-mail system has not been held to constitute a violation of the LMRDA,” 798 F. Supp. 2d at 705, the Court rejected this claim, holding that “use of an employer’s e-mail system to promote a candidate in a union election constitutes a violation of the LMRDA.” Id.

The union there also argued that any §401(g) violation by the candidate who sent the fourteen e-mails at issue was offset by the fact that opposing candidates also sent e-mails using the employer’s e-mail system. The Court rejected that argument. 798 F. Supp. 2d at 705. In light of that, and the ruling in Schultz v. Local Union 6799, 426 F. 2d 969, 972 (9th Cir. 1970), where a court found “unconvincing” the argument that there was no §401(g) violation unless financial aid is provided to one candidate but not another, the Committee rejects the notion advanced by Mr. Glickson and his Members First slate that allowing equal access to employer provided e-mail would cure any §401(g) violation.

For all of these reasons, the Committee rejects Glickson objection number 1.

#### GLICKSON OBJECTION NUMBER 2

In objection number 2, Mr. Glickson asserts:

The Election Committee blocked Jeff Blyskal, a Guild member, from arranging an on-line debate which would have occurred using the Consumer Reports e-mail system by incorrectly advising Consumer Reports that they would be the subject of litigation if they allowed their e-mail system to be used, and might be violating the Taft-Hartley Law prohibition of employer’s giving union officials something of value. Similar pressure was brought to bear on

management at El Diario, which resulted in me being me barred from meeting with people on the premises. President O'Meara was allowed to enter the facility, meet with members, and campaign. I had similar problems with Foreign Policy.

We explain here why the Committee rejects this objection.

First, for the reasons discussed in connection with Mr. Blyskal's challenge number 5, the Committee rejects Mr. Glickson's claim that it violated the LMRDA by taking the position with CU that use of the CU e-mail system for an on-line debate would violate §401(g). In addition, in the view of the Committee, both Mr. Blyskal and Mr. Glickson's challenges on this point rely on a fundamentally inaccurate premise: that the LMRDA commands unions to allow the holdings of debates using employer e-mail systems. There is simply nothing in the LMRDA, the regulations, or the relevant case law which suggests that any such requirement exists. While the Department of Labor Regulations permit a union to sponsor a debate, 29 CFR §452.74, the regulations do not mandate the holding of a debate.

Mr. Blyskal wanted to conduct and moderate an on-line debate. Mr. Glickson wanted to participate in a debate. Mr. O'Meara was willing to participate in a debate. However, none of those facts create an obligation on the part of the Guild to hold a debate. Nor do they compel the conclusion that, by convincing CU that holding a debate would run the risk of the DOL finding a 401(g) violation, the Guild or the Committee violated the LMRDA. In short, the Committee and the Guild did not violate the LMRDA by convincing CU to not allow its e-mail system to be used for an on-line debate.

In connection with Mr. Glickson's objection, the Committee makes a number of additional points. First, the Committee did not advise CU that it would "be the subject of litigation if they allowed their e-mail system to be used." Instead, the Committee advised CU that:

The Committee's view is that because of a substantial risk of the use of the CU e-mail system in connection with a candidate debate would be deemed by the US Department of Labor and a court as a use of employer resources to promote candidates in violation of LMRDA's §401(g), because of the risks that such a finding would result and a court order requiring the Guild to conduct a re-run election, and because of the cost and disruption associated with both the attendant litigation and a re-run election, the Committee requests that CU not allow its e-mail system to be used for a candidate debate.

October 29, 2013 Kolko to Pinnock e-mail, attached as Exhibit 21. Second, Mr. Glickson asserts that the Committee advised CU that "if they allowed their e-mail system to be used [for a debate], [it] might be violating the Taft-Hartley Law prohibition of employers giving union officials something of value." Mr. Glickson appears to be referencing Taft-Hartley §302, 29 U.S.C. §186, which prohibits employers from giving union officials something of value. However, the Committee did not cite this section of the law and did not rely on it.

In this challenge, Mr. Glickson also alleges that "similar pressure was brought to bear on management at El Diario, which resulted in me being barred from meeting with people on the premises." In this regard the Committee notes the assertion by counsel for the Proven Guild Leaders slate that in "early September 2013, Mr. Glickson conducted a tour of the facility with union member Sonia Guerra, who introduced him to the members employed there. During this visit, Mr. Glickson overtly campaigned."

Proven Guild Leaders Response, 2. Mr. Glickson's claim that the Committee pressured El Diario management to prohibit him to from campaigning on its premises is wrong: the Committee had no communication with El Diario management. To the extent Mr. Glickson argues that others put pressure on El Diario management, he provides no specifics.

As to the claim that "President O'Meara was allowed to enter the facility, [and] meet with members of the campaign," the Proven Guild Leaders states that while Mr. O'Meara attended a unit council meeting at El Diario in September, 2013, "his purpose for attending the meeting was to participate in the nominations for unit officers . . . . All of President O'Meara's time at the meeting was spent on legitimate union business, and any extremely limited campaigning he may have engaged in (such as answering a few member questions) was merely incidental to his participation in the nomination meeting."

In light of this, the Committee believes (a) that, in fact, Mr. Glickson campaigned at El Diario, and (b) Mr. O'Meara did not engage in campaigning while at El Diario. At most Mr. O'Meara engaged in campaigning "incidental to regular union business," which is lawful, see 29 CFR §452.76. Finally, to the extent that Mr. Glickson complains that Mr. O'Meara campaigned on El Diario premises, the Committee believes that his was not unlawful under the rationale of Liquor Salesman Union. See, infra, at 16-17. For these reasons, the Committee rejects Mr. Glickson's second objection.

### GLICKSON OBJECTION NUMBER 3

In objection number 3, Mr. Glickson asserts:

The Guild did not give the members a proper Notice of Nomination. The CWA election manual and the LMRDA

required that notice “be mailed, published in the Locals newspaper, or by some other effective means distributed to the members allowing a reasonable time for the members to receive such notice,” the notice was given with less than 15 days and in an entirely haphazard manner. Members of the Hudson News were particularly disadvantaged.

The Committee explains here why it rejects this objection.

Under the LMRDA, “a reasonable opportunity shall be given for the nomination of candidates.” 29 U.S.C. §481(e). The Department of Labor regulations state:

The labor organization must give timely notice reasonably 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. Notice of Nominations need not necessarily be given at least 15 days before nominations are held, nor is it required to be given by mail. . . . Notice of Nominations may be given in any manner reasonably calculated to reach all members in good standing and sufficient time to permit such members to nominate the candidates of their choice . . . . Posting of a nomination notice may satisfy the requirement of a reasonable opportunity for making nominations if such posting is reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.

29 CFR §452.56.

The Guild posted its nomination rules on its website on July 1, 2013. Between July 1, 2013 and September 30, 2013, the three full months prior to the October 15, 2013 nominations, the Guild had 7,995 unique visits to its website, a number approximately three times greater than the number of Guild members eligible to vote. In light of this, the Guild clearly satisfied its obligations under the DOL regulation: its posting of the nomination rules on its website was “reasonably calculated to inform all members in good standing in sufficient time to permit such members to nominate the candidates of their choice.” As the nomination was posted on the Guild’s website on

July 1, 2013, Mr. Glickson's assertion that there was not fifteen days' notice of the nominations is simply wrong. In addition, on June 27, 2013, the nomination rules were distributed to all Guild bargaining units to be posted and distributed among the membership. A copy of the nomination rules are attached as Exhibit 25.

Even assuming arguendo that there was some flaw in the method used by the Guild to notify members of the nomination process, that would not be a basis to order a re-run election. Under the LMRDA, a re-run may be ordered where a violation "may have affected" the outcome of the election. The LMRDA's "may have affected" language was meant to "free unions from the disruptive effect of a voided election unless there is a meaningful relation between a violation of the act and results of a particular election." Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492, 507 (1968). Here, Mr. Glickson does not argue that this alleged defect in the nomination notice may have affected the election outcome. Mr. Glickson's Members First slate nominated a complete slate. See, October 18, 2013 Local 3 bulletin listing all slate members, attached as Exhibit 12. Given that Mr. Glickson's slate initially included nominees for all positions, it is clear that he and his slate had adequate notice of the nomination, and thus cannot successfully argue that any flaw in the nomination notice affected the outcome of the election.

#### GLICKSON OBJECTION 4

In objection number 4, Mr. Glickson asserts:

The Guild did not publish and mail a Notice of Election 15 days in advance of the election, stating the date and time of the election, even presuming that the date and time was the date the ballots were counted.



Glickson objection, number 4. To a large degree, Mr. Glickson's fourth objection overlays with Mr. Blyskal's third objection, and for the reasons which the Committee rejected Mr. Blyskal's third objection, it rejects Mr. Glickson's fourth objection.

The Committee makes a number of additional points with regard to Mr. Glickson's fourth objection. Mr. Glickson asserts that "members had no notice that a ballot mailed on November 13 would not count or that ballots had to be received by November 13." This is wrong. Each ballot was accompanied by instructions. A copy of those instructions is attached as Exhibit 11. Those instructions state: "[o]nly ballots in the official return envelopes in the post-office box on Nov 13, 2013 will be counted." Thus contrary to Mr. Glickson's claim, voters gave explicit instructions that, to be counted, their ballots needed to be in the post-office box by November 13, 2013.

In objection number 4, Mr. Glickson also states:

We believe that about 50 ballots were in the box the morning after the count began, and that around 150 [are] presently in the box. This is particularly vexing since the margin of victory for the Proven Leaders slate over the Members First slate was only 34 votes.

Glickson objection, number 4. This assertion is flawed in a number of respects.

Whenever there is a deadline for ballots to be returned, there are ballots which arrive late, and thus cannot be counted. Mr. Glickson cites no authority for the proposition that the existence of these late arriving ballots is a basis to overturn election. Mr. Glickson cites no basis for his "belief" that there are a specific number of ballots in the box. If he has a specific basis for that claim, he should have made it known to the Committee. Art Mulford, a Glickson slate observer, was present at the post office at 5:00 p.m. on November 13, and observed Committee Chair Dan Grebler ask for all of

the ballots in the box at that time. Mr. Mulford saw that the postal service employee advised the Committee that there were no more ballots in the box at that time, and that she had provided the Committee with all of the ballots in the box at approximately 4:40 p.m. on November 13. Thus, Mr. Glickson's slate was on notice that the Committee collected all ballots in the box as of 5:00 p.m. on November 13, consistent with the election rules. That an unknown number of ballots arrived late is of no moment: when there are deadlines, some will be late, and that is not a basis to overturn an election.

#### GLICKSON OBJECTION NUMBER 5

In objection number 5, Mr. Glickson states:

Three months before an election, the Guild was supposed to make effort to correct mailing addresses. That didn't happen at all, and, since there was no mailing of a Notice of Nominations, the Committee had no pre-election mechanism to see how many addresses were bad. My mailing shows, to date, 96 bad addresses.

Glickson objection, number 5. In his December 1, 2013 amendment, Mr. Glickson states that the "96 returned letters in our mailing to membership referenced in point number 5 of my protest is now actually 180 returned letters. The post office delivered 84 additional returns since I submitted my protest letter on November 22." We explain here why the Committee rejects this objection.

Mr. Glickson's claim that the Guild took no steps to update its mailing list is not accurate. In fact, the Guild takes steps to update and maintain its mailing lists, so that it has accurate addresses.

One way that the Guild maintains its mailing list is through information obtained from employers. A number of collective bargaining agreements to which the Guild is a

party require employers to provide the Guild with updated home addresses of their Guild-represented employees.

For instance, Article VI §1 of the Guild – Reuters collective bargaining agreement requires Reuters to provide the Guild “at least once quarterly . . . a list containing the following information for all Guild employees on the payroll and covered by this agreement: (a) name, address, sex, date of birth and age.” Article VI §3 of that contract require Reuters to provide name and address information “within one week after hiring of a new employee.” Article VI of the Guild – Reuters collective bargaining agreement is attached as Exhibit 26. Article II of the Guild – Standard & Poor’s (“S&P”) collective bargaining agreement requires S&P to provide the Guild with new employee addresses, and any change of addresses for existing employees. A copy of Article II of the S&P’s – Guild collective bargaining agreement is attached as Exhibit 27. Article VI of the Guild – El Diario collective bargaining agreement requires El Diario to notify the Guild, monthly, of any change in employee addresses. A copy of Article VI of the Guild – El Diario collective bargaining agreement is attached as Exhibit 28. In addition, anytime the Guild receives notice from the USPS that a mailing it sent was to a non-working address, the representative assigned to service that bargaining unit attempts to ascertain the correct address for the individual. Thus, the Guild takes reasonable efforts to maintain a current list of members’ home mailing addresses.

Courts do not require unions to have perfect lists of employee addresses. Instead, a union “must make reasonable efforts to keep its membership lists current.” Reich v. District Lodge 720, 11 F.3d 1496, 1501 (9th Cir. 1993). The Reich Court explained: “[w]e cannot agree that a violation of the Act occurs every time a union fails

to send a notice to a member who is known to be no longer residing at the address the union possesses and who does not receive mail sent to that location.” 11 F.3d at 1501.

Discussing a union’s obligation to keep its membership list current, the Reich Court explained that:

- A union must “make a reasonable effort to maintain a current list of home addresses for its members,”;
- The union “must initially take reasonable steps to obtain correct home addresses for all of its members and must endeavor to keep the addresses that it has up to date”;
- “A current mailing list should not include home addresses that have proven to be of no practical utility.”

11 F.3d at 1501-1502. The Court added that “union membership may be mobile and . . . members who have moved may not always provide a new address or leave a forwarding address with the post office, and may not, despite the union’s best efforts, respond to its attempts to obtain the necessary information.” 11 F.3d at 1502.

Article XIII §15 of the TNG Sector Constitution, provides that: “each member shall advise his or her local . . . of his or her home address any change in home addresses.” A copy of Article XIII §15 is attached as Exhibit 29. Thus, members themselves had an obligation to keep the Guild apprised of their current mailing addresses. Finally, it is undisputed that when members who had not receive ballots called the Local, they were mailed ballots that day. E-mails reflecting those supplemental mailings are attached as Exhibit 30.

In Chao v. Local 538, 307 F. Supp. 2d 1027, 1034 (W.D. Wisc. 2004), the court explained that “one permissive construction of §481(e) would be to require the mailing of individual notices of election to each member’s last known address.” That is precisely what the Guild did here. Although approximately 6% of those addresses

turned out to not be good, the Guild clearly complied with §481(e) by mailing notices to each members last known home address. Under all these circumstances, the Committee finds that the Guild took reasonable steps to maintain an accurate mailing list, that the Guild sent notice to all members at the last known addresses it had for them, and thus finds that Mr. Glickson's objection number 5 is not a basis to overturn the election.

#### GLICKSON OBJECTION NUMBER 6

In objection number 6, Mr. Glickson asserted:

Eligible members that have retired/taken buyouts and are paying dues did not receive ballots and were not on the list of members to receive ballots when they were mailed on October 29, 2013. Those members who took buyouts and were still paying dues should have been on the eligible voting list.

Glickson objection, number 6. In connection with this objection, the Committee notes that Mr. Glickson failed to identify the number of such members at issue, and did not state whether or not these members were paying full dues. The Committee notes also that under Article XIII §13(b) of the TNG Sector Constitution, "when a member ceases his or her employment or work . . . and remains unemployed or without such work, he or she may continue inactive membership for a period not to exceed three months in his or her unit and for a period not to exceed nine additional months in his or her local." A copy of the TNG Sector Constitution is attached as Exhibit 29. In fact, the Guild mailed ballots to members on buyout who were paying full dues and requested ballots.

The Committee finds that, under the circumstances, the Guild's failure to send ballots to individuals on buyout does not warrant setting aside the election. First, Mr. Glickson did not identify how many such individuals there are. Second, it is unclear

whether these individuals paid the sufficient dues to be eligible to vote. Third, is unclear whether, under the TNG Constitution, these individuals were within the 12 month eligibility period subsequent to their termination. Finally, it is undisputed that in a number of instances, individuals in this category who asked for ballots were sent ballots. Under these circumstances, the Committee rejects Mr. Glickson's objection number six.

#### GLICKSON OBJECTION NUMBER 7

In objection number 7, Mr. Glickson states:

The Election Committee also effectively barred my slate from utilizing conference rooms and break rooms to campaign at various employers by threatening sanctions to me and members who engaged in such activities, even if the facilities were open to all candidates on a non-discriminatory basis. By doing this, the Committee effectively barred me and my slate from talking in person with members since the only alternative left was to stand on the street in front of office building housing many companies.

Glickson objection, number 7. The Committee explains here why it rejects this objection.

In an October 23, 2013 e-mail to Mr. Glickson, Committee counsel wrote:

I write on behalf of the local Elections Committee. The Committee has learned that you plan to campaign among Foreign Policy employees tomorrow at the Foreign Policy offices. The LMRDA bars the use [of] employer resources to promote any candidate or slate, and the Foreign Policy offices are an employer resource. Thus, as it is the Committee's view that such campaign event is forbidden, the Committee hereby directs you to not campaign tomorrow at the Foreign Policy offices. As the rationale laid out here applies to all slates and candidates, I am cc'g the leadership of the Proven Guild Leaders slate on this e-mail.

A copy of the October 23, 2013 e-mail to Mr. Glickson is attached as Exhibit 31. The Committee sent Mr. Glickson and the Proven Guild Leaders slate a similar e-mail on October 30, 2013, a copy of which is attached as Exhibit 32.

In an e-mail dated October 30, 2013, Mr. Schwartz, counsel for Mr. Glickson's slate advised the Committee that "your ruling is incorrect and . . . he is free to ignore it." A copy of Mr. Schwartz's October 30, 2013 e-mail is attached as Exhibit 33. In an October 30, 2013 e-mail, Mr. Glickson advised Committee counsel:

No official plans have been arranged for me to campaign at El Diario tomorrow nor has the venue been set. Notwithstanding that information, under legal advice, I will in fact attend such a meeting if our members would like for me to be there.

A copy of Mr. Glickson's October 30, 2013 e-mail is attached as Exhibit 34.

In an October 31, 2013 e-mail, after being advised that Mr. O'Meara and Mr. Szekely would be visiting the Times' Washington bureau, the Committee advised both slates that "campaign events in employer offices are forbidden, . . . this applies equally to both the Members First slate and the Proven Guild Leaders slate" and that Committee counsel was "directing the Proven Guild Leaders slate to not hold campaign events at the Times' Washington bureau, or, for that matter, any other employer office." A copy of Committee counsel's October 31, 2013 e-mail is attached as Exhibit 35.

In sum, the Committee set a neutral, evenhanded rule – campaign events on employer premises were forbidden. It applied that rule to both slates. Based on e-mails from Mr. Glickson and his counsel, it appears that at least in some instances, Mr. Glickson, upon advice of counsel, ignored this rule, and, in fact, campaigned on employer premises.

In rejecting Mr. Glickson's challenge on this issue, the Committee makes a number of points. First, nothing in the LMRDA or the relevant Department of Labor regulations compels a union to allow candidates to have access to employer premises. Despite the fact that Mr. Glickson's slate has been represented by counsel for many weeks, and despite the fact this has been a contentious issue, counsel for Mr. Glickson's slate failed to cite any case law which suggest that a union is compelled to allow candidates to have access to employer premises. In short, there is no legal basis to conclude that the Committee's directive to slates and candidates to not use employer facilities for campaign events violates the LMRDA. Also, it appears based on e-mails from Mr. Glickson and his counsel that Mr. Glickson in fact campaigned on employer premises, so that it appears that he was not substantially affected by the Committee's rule on this point.

The Committee issued this rule because it was concerned that candidate use of employer premises would run afoul of LMRDA §401(g). To the extent that candidates argued that allowing equal access to employer facilities was lawful, the Committee was unconvinced. It took this position in light of the Court's holding in Schultz v. Local Union 6799, 426 F.2d 969 (9th Cir. 1970) aff'd on other grounds sub nom Hodgson v. Local 6799, 403 U.S. 333 (1971). There, the Court described as "unconvincing" the argument that §401(g) is not violated as long as there is equal access to employer resources. 426 F.2d at 972. See also, Marshall v. Local Union 20, 611 F.2d 645, 652 (6th Cir. 1979) ("Title IV reflect[s] the intent of Congress to bar all employer contributions"); Brock v. Connecticut Telephone Workers, 703 F. Supp. 202, 209 (D. Conn. 1988) ("Courts have construed the language of §401(g) according to its plain meaning.") Under these



circumstances, in the Committee's view, rather than run the risk that campaign events on employer premises would be deemed to be violations of §401(g), the Committee sought to forbid such campaigning, and reduce the risk that the election would be re-run.

In light of these circumstances, the Committee rejects Mr. Glickson's objection number 7.<sup>7</sup>

### GLICKSON OBJECTION NUMBER 8

In objection number 8, Mr. Glickson asserted:

O'Meara and Sec Treasurer Szekely, in an unprecedented move, used the excuse to talk about "dental insurance coverage" to visit the Washington, DC offices of the New York Times during the voting period, at Union expense. While there, they also visited the D.C. bureau of Thomson Reuters. When at both locations, they talked about their campaign platform.

Glickson objection number 8. The Committee explains here why it rejects this objection.

In an October 30, 2013 e-mail, Mr. Glickson stated: "I am aware of a meeting scheduled tomorrow at lunchtime in the New York Times Washington bureau with Bill O'Meara and Peter Szekeley. I trust they will receive the same warning that my team was given." In an October 30, 2013 e-mail, Mr. O'Meara stated:

Peter and I are planning to visit the Times Washington bureau tomorrow, as we have in the past. We are on official Guild business. We plan to discuss and answer questions about the soon to be available new dental plan that is of particular interest to our Times members there, as well as

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<sup>7</sup> In his December 1, 2013 supplement, Mr. Glickson states: "Please add to complaint number seven that Bill O'Meara used a lawyer from a law firm on retainer with the Guild for free legal counsel and to gain advantage in rulings with the Election Committee." Mr. Glickson provides no other details or supporting facts in connection with this assertion. For the reasons laid out in connection with the Committee's response to Mr. Blyskal's fifth objection, and for the reasons laid out in connection with its response to Mr. Glickson's seventh objection, the Committee rejects this assertion.

several other benefits the Guild has negotiated and address any other questions members may have.

A copy of Mr. O'Meara's October 30, 2013 e-mail is attached as Exhibit 36. In an e-mail dated October 30, 2013, counsel for the Members First Slate stated: "Doing that on the day after the ballots went out is campaigning. It is ok as long as the Times allow Grant to do the same. You don't always go there after the day the ballots go out." A copy of Schwartz's October 30, 2013 e-mail is attached as Exhibit 37. In an October 31, 2013 e-mail, Mr. Kolko stated:

As laid out in my 10/30/13 e-mail, it is the Committee's view that holding campaign events at employer offices are forbidden, and this applies equally to both the Members First Slate and the Proven Guild Leaders Slate. As per Grant's request, I am directing the Proven Guild Leaders Slate to not hold campaign events at the Times Washington bureau, or, for that matter, any other employer office.

A copy of Mr. Kolko's October 31, 2013 e-mail is attached as Exhibit 38.

In an October 31, 2013 e-mail, Mr. O'Meara stated:

I do not intend to do any campaigning during my shirt [sic] visit to the Times Washington bureau today. I happen to be in Washington today for meetings and a Guild award ceremony honoring a Times reporter who won an award from our Union. As I have many times in the past, I plan to use the opportunity to visit the bureau to answer questions from members about Guild matters. Our Local does not have staff in Washington, so we have traditionally used such opportunities for the exact purpose I described. It is particularly important on this occasion because our Union has negotiated new benefits in the last few weeks that have particular in the Washington bureau. I have no plans to campaign and will not distribute any campaign literature. I am mindful of the Local Election Committee rulings regarding this matter and will abide by them. However, I am still President of the Local and must fulfill my responsibilities to my members.

A copy of Mr. O'Meara's October 31, 2013 e-mail is attached as Exhibit 39.

In connection with Mr. O'Meara and Mr. Szekely's October 31, 2013 trip to the Times Washington bureau, it appears that the following facts are not in dispute:

- Mr. O'Meara and Mr. Szekely visited the Times Washington bureau on October 31, 2013;
- A number of Guild members work at the Times Washington bureau;
- Those members' terms and conditions of employment are governed by the Guild – Times collective bargaining agreement;
- Section VI of the November 5, 2012 Memorandum of Agreement ("MOA") between the Times and the Guild provides that "during the term of this agreement, the Times shall instruct its Trustees of the Benefit Fund that up to \$300,000 of the Benefit Fund reserve may be used to improve dental coverage.";
- As a result of that part of the MOA, in mid-September, 2013, the trustees of the benefit fund reached final agreement on the terms of the improved dental coverage;
- Among the improvements agreed to in September, 2013 was the adoption of a national dental panel, which would allow Guild-represented employees living outside of the New York City area to have access to in-plan dentists for the first time;
- The improvements in the dental plan for Guild-represented Times employees will take effect on January 1, 2014;
- Employees of the Times working at its Washington bureau were eligible for those improved dental benefits;
- As a result of the adoption of the national panel, Times employees at the Washington bureau for the first will be able to use the in-network dental benefits;
- Mr. O'Meara and Mr. Szekely were already in Washington on other Guild business on October 30, 2013 and thus would not incur additional travel expenses to visit the Times bureau on October 31, 2013; and
- O'Meara and Szekely are the two top officers of the Guild.

Mr. Glickson asserts that while at the Times Washington bureau, O'Meara and Szekely "talked about their campaign platform." Mr. Glickson's objection provides no

specifics on this point: he does not say who observed O'Meara and Szekely engage in this activity, he does not say what they did, and he does not say how long Mr. O'Meara and Mr. Szkeley engaged in campaigning. In addition, Mr. Glickson does not assert that he was present to observe this activity. In response, Mr. O'Meara, through counsel, states: "any limited campaigning that occurred during this meeting was purely incidental to official union business." In short, to support his claim that Mr. O'Meara and Mr. Szekely engaged in unlawful campaigning at the Times Washington bureau, Mr. Glickson presents the Committee with no details, and no firsthand knowledge. Instead, he offers the Committee only hearsay, and hearsay with no details.

Under these circumstances, the Committee rejects Mr. Glickson's claim that Mr. O'Meara and Mr. Szekely engages in unlawful campaigning while at the Times Washington bureau on October 31, 2013. At most, Mr. O'Meara and Mr. Szekely engaged in campaigning "incidental to regular union business" while at the Times' Washington bureau, and thus did not violate the LMRDA. The Committee reaches this decision for the following reasons:

- Mr. Glickson presented no specific, non-hearsay evidence to support this assertion;
- It is undisputed that Mr. O'Meara and Mr. Szekely were in Washington on Guild business already on October 30, and thus would not incur additional travel expenses by going to the Times bureau on the October 31;
- Mr. O'Meara and Mr. Szekely engaged in union business while at the Times Washington bureau on October 31;
- New dental benefits as a result of the 2012 Times – Guild collective bargaining agreement had been finalized in late September, 2013, were going into effect on January 1, 2014, and, as a result of the adoption of the national dental panel, employees at the Times Washington would, for the first time, be able to take advantage of in-network benefits.

That O’Meara and Szekely visited the Times’ Washington bureau on October 31 – two days after the ballots went out – is not, by itself, a basis to conclude that while on their visit, they engaged in unlawful campaigning. Union officers must still conduct union business during the period when members can mark and return their ballots – they must negotiate contracts, handle grievances, attend arbitrations, and explain new benefits to members during this period. In this instance, O’Meara and Szekely were doing union business – they were telling employees at the Times’ Washington bureau about the dental benefit, a benefit they had not previously been able to access.

Nothing in the LMRDA or the relevant DOL regulations bars union officers from conducting normal union business during election seasons. Indeed, the relevant Department of Labor regulation recognizes this, stating that “campaigning incidental to regular union business would not be a violation” of §401(g). 29 CFR §452.76. This provision applies equally to Mr. Glickson, who was, throughout the election season, the Chair of the Guild’s unit at the New York Times. Mr. Glickson had a right to continue to perform official union business during this period, and he had a right to engage in campaigning incidental to that business.

Mr. Glickson also alleges that on October 31, Mr. O’Meara and Mr. Szekely “visited the D.C. bureau of Thomson Reuters, and unlawfully campaigned.” With regard to this assertion, the following facts appeared to be undisputed:

- The Guild represents approximately 425 Reuters employees;
- Scores of those employees work at the Reuters Washington bureau;
- In October, 2013, the Guild and Reuters had negotiated a buyout that approximately ninety Guild-represented employees were eligible to take;
- Approximately forty Reuters employees eligible for the buyout worked at the Reuters Washington bureau;

- Employees had to decide whether to take the buyouts by December 2, 2013;
- Certain functions being performed at the Reuters Washington bureau are being transferred to New York City, and Guild-represented employees were faced with the prospect of being required to transfer to New York City with that work;
- As of October 31, the date that O’Meara and Szekely visited the Reuters Washington bureau, many of the Guild-represented employees at that bureau had not resolved what they would do as a result of this transfer of work, and were considering whether to take a buyout that had only recently been negotiated by the Guild and Reuters.

The Committee rejects Mr. Glickson’s claim that Mr. O’Meara and Mr. Szekely engaged in unlawful campaigning while at the Reuters Washington bureau. The Committee does so for the following reasons. First, Mr. Glickson provides no firsthand evidence of such a violation. Instead, Mr. Glickson presents the Committee with hearsay from an unnamed source with no details. In addition, Mr. Szekely and Mr. O’Meara had a legitimate, union business reason for being at the Reuters office that day – they were assisting many members in dealing with the buyout and the shutdown of a portion of those offices. Under these circumstances, the Committee rejects Mr. Glickson’s claim that Mr. O’Meara and Mr. Szekely engaged in unlawful campaigning during their October 31, 2013 visit to the Reuters Washington D.C. office. At most, Mr. O’Meara and Mr. Szekely engaged in lawful campaigning incidental to union business.

#### GLICKSON OBJECTION NUMBER 9

In objection number 9, Mr. Glickson asserts:

O’Meara and Szekely, in an open letter to the Guild membership, detailed very personal information about me (grievance filed on my behalf) that goes against the Guild’s confidentiality bylaws. In other words they used confidential union resources (union records available only to them to campaign).

Glickson objection, number 9. Mr. Glickson's complaint appears to relate to a document called "What's Driving Grant?" which was posted on the Proven Guild Leaders website. A copy of that document is attached as Exhibit 40.

Mr. Glickson asserts that this campaign document "goes against the Guild's confidentiality bylaws," but does not specify the applicable bylaw provisions. The Committee has reviewed the Guild's bylaws, and finds nothing in them addressing "confidentiality." Similarly, there is nothing in either the CWA Constitution or the TNG Sector Constitution addressing confidentiality. Thus, to the extent that Mr. Glickson ninth objection relies on "confidentiality bylaws," the Committee rejects this challenge because no "confidentiality bylaws" exist.

Mr. Glickson's ninth challenge also asserts that O'Meara and Szekely "used confidential union resources (union records) available only to them to campaign." While Mr. Glickson does not specify which sections of the documents he is referring to, the Committee has identified the sections of the document which it believes are the basis of Mr. Glickson's complaint. The document states that Mr. Glickson tried out "as a Guild rep about 13 or 14 years ago (he didn't pass his trial period)." Referencing the Guild – Times contract which was entered into in November, 2012, the document states:

So, why is Grant now implicitly disavowing a contract he voted for? For one thing, he is trying to get elected. But there may be more to it than that. You see, Grant wanted a promotion. Right before members voted on the contract, he asked Guild President Bill O'Meara to negotiate a pay raise for him, not across the table, but in the kind of non-transparent meeting he's now ranting about. Instead, Bill promptly put the contract to a vote.

Exhibit 40.

As to the claim that O'Meara and Szekely "used confidential union resources (union records) available only to them" to advise the Guild membership that Mr. Glickson "didn't pass his trial period" when he worked as a Guild representative "about 13 or 14 years ago," Mr. Glickson identifies no legal basis for asserting that this information is "confidential." To the contrary, in view of the Committee, there is nothing "confidential" about a person failing his trial period. Indeed, the Committee does not understand the legal basis for Mr. Glickson's claim that he has a right to keep confidential – especially from the Guild membership – that he did not pass a trial period.

The Committee rejects Mr. Glickson's claim that knowledge which candidates acquire during the course of their involvement with the Guild cannot be used in a campaign. Mr. Glickson points out no case law which supports his theory, and the Committee is aware of none. To the contrary, the Committee believes that what union members learn in the course of their work for the union can lawfully be used in campaign literature – the Committee rejects the notion that a union officer is forbidden from using information he learned during his tenure as union officer in connection with an election campaign.

Mr. Glickson's complaint about Mr. O'Meara's alleged use of the "grievance filed on my behalf" does not, in the Committee's view, constitute a basis to overturn the election. First, Mr. Glickson cites no basis in the Guild bylaws or elsewhere to support the notion that, as a matter of law, that such a grievance is "confidential." Second, as previously discussed, the Committee sees no basis for concluding that knowledge which Mr. O'Meara – or any other union officer – obtained during the course of his



duties is somehow “off limits” for use in the campaign. For these reasons, the Committee rejects Glickson objection number 9.

#### GLICKSON OBJECTION NUMBER 10

In objection number 10, Mr. Glickson states:

The O’Meara slate was “endorsed” by the Guild’s Representative Assembly and was identified as the RA slate in communications to the Guild membership. The body also voted to give the incumbent slate preferential ballot positioning. Endorsement of a slate by the union violates the LMRDA.

Glickson objection, number 10. This objection appears to have two components: (a) that the Guild’s RA unlawfully “endorsed” the O’Meara and (b) that the O’Meara slate unlawfully received “preferential ballot positioning.”

The Committee rejects Mr. Glickson’s claim that the Proven Guild Leader slate obtained unlawful “preferential ballot positioning.” A copy of the ballot is attached as Exhibit 42. Mr. O’Meara’s slate is listed on the left and Mr. Glickson’s slate is listed on the right. The Department of Labor regulations state that “the form of the ballot is not prescribed by the Act . . . . A determination as to the position of a candidate’s name on the ballot may be made by the union in any reasonable manner permitted by its Constitution and bylaws, consistent with the requirements of fairness and other provisions of the Act.” 29 CFR §452.112. Here, each slate received equally prominent billing on the ballot. Each slate was treated the same on the ballot. The ballot was laid out in a logical manner. Nothing in the format of the ballot provides a basis for overturning the election.

Mr. Glickson’s claim that the Guild’s Representative Assembly unlawfully endorsed the O’Meara slate appears to be based on Section 4 of the Guild’s nomination

rules. Section 4 provides that “in the event there is more than one nomination for any office [at the Representative Assembly meeting where nominations take place], those [Representative Assembly members] entitled to vote will cast their vote by ballot. Winning nominees shall be designated the candidates of the Representative Assembly and may be so labeled on the official election ballot.” A copy of the nomination rules is attached as Exhibit 25. The ballot and ballot instructions make no mention of which candidates are those of the Representative Assembly. Thus, nothing in the ballot or ballot instructions provides a factual basis for Mr. Glickson’s objection on this point. It appears that the only basis for this claim is the October 17, 2013 Guild newsletter, attached as Exhibit 12. That newsletter stated, in relevant part:

RA delegates and alternates from units throughout the local voted to give the slate headed by O’Meara and Szekely, known as the Proven Guild Leaders slate, the right to call itself the RA slate and to list it on the left side of the ballot. The slate headed by Glickson and Barone is known as the Members First slate.

The Committee is aware of no other instance in which the Guild or any candidate referenced O’Meara’s slate as the “RA slate,” and Mr. Glickson identifies no other such instance.

In short, the entire basis of Mr. Glickson’s tenth objection is that in a single Guild newsletter, in one sentence, O’Meara’s slate was identified as the RA slate. That sentence did not urge voters to vote one way or the other; it did not criticize any candidate; it merely identified O’Meara’s slate as being the “RA slate.” In the Committee’s view, this single identification of the O’Meara slate as the “RA slate” does not warrant setting aside the election, especially when that designation was not included

on the official ballot. For these reasons, the Committee rejects the Glickson objection number 10.

### GLICKSON OBJECTION NUMBER 11

In objection number 11, Mr. Glickson states:

Those members whom are overseas were not sent ballots. Our members on the foreign bureaus were sent ballots to their United States home addresses rather than to their overseas addresses to which they were stationed. No attempt to contact them was made by the Guild.

Glickson objection, number 11. Mr. Glickson did not identify the number of members working overseas who were not sent ballots, nor did he state how many members were in this status.

On this issue, counsel for the Proven Guild Leaders slate states the following:

- There are approximately fifteen members employed by the Times who are stationed overseas;
- The Guild sent ballots to each such member at the home address it had for these members;
- One of these members provided the Guild with a London address, and the Guild sent a ballot to that member at the London address.

Under Article XIII Section 15 of the TNG Sector Constitution, members have an obligation to notify the Guild when their home addresses changes. Where a member working overseas advised the Guild of his overseas address, the Guild sent that member a ballot. Members who moved overseas and did not advise the Guild of their new address are responsible for the Guild not being able to send them a ballot: there is no basis for concluding that, somehow, the election should be overturned because members working overseas did not provide the Guild with their overseas addresses.

Under these circumstances, the Guild rejects Glickson objection number 11.

### GLICKSON OBJECTION NUMBER 12

In objection number 12, Mr. Glickson states:

The ballots were numbered. Numbering of the ballots violates the rule which requires all ballots to be “secret ballots” and not identifiable by any mark or number.

Glickson objection, number 12. For the reasons laid out in response to Blyskal objection number 2, the Committee rejects Glickson objection number 12.

### GLICKSON OBJECTION NUMBER 13

In objection number 13, Mr. Glickson states:

President O’Meara and Secretary-Treasurer Szekely campaigned through their positions, via shop papers which were created differently in format and substance immediately preceding the election to enhance their standing amongst members and curry favor amongst the membership for their benefit. President O’Meara was “pleased to announce Shop Steward Workshops”, “improvements in dental care” at NYT. These shop papers would normally come from the Guild, not a named union official. I can provide tons of archive to shop papers, if needed. Below are links to the ones in question. [links omitted] Szekely wrote column, with the unusual addition of his picture on the shop paper, which normally would be without byline and picture [web link omitted].

Glickson objection, number 13.

The first shop paper about which Mr. Glickson complains is dated October 4, 2013 and titled “Guild to Offer a Union Training Workshop Series.” A copy of this shop paper is attached as Exhibit 43. This document states, in relevant part:

President Bill O’Meara is pleased to announce the Guild, in collaboration with Cornell University School of Industrial and Labor Relations, will be spearheading an education and training series that will assist in developing skills, strategies, and techniques. The workshop will take place over the four weeks starting Wednesday, October 16, 2013.

Exhibit 43. The document describes the topics to be covered at these workshops, the time and place of the workshops, the way to register for a workshop, and the biography of the instructor. See, Exhibit 43.

A union violates LMRDA §§401(c) and (g) when union officials use union publications as campaign literature on their behalf. See, e.g., Camarata v. International Brotherhood of Teamsters, 428 F. Supp. 321, 330 (D. D.C. 1979); Dole v. Federation of Postal Police Officers, Inc., 744 F. Supp. 413, 417-418 (E.D.N.Y. 1990).

Union publications run afoul of LMRDA §§401(c) and (g) when “the tone, content and timing of the . . . publications . . . effectively encourage and endorse the re-election of [the incumbent].” Donovan v. National Alliance of Postal and Federal Employees, 566 F. Supp. 529, 532 (D. DC 1983), appeal dismissed, 740 F. 2d 58 (D.C. Cir. 1984). “So long as such coverage [in union publications] is addressed to the regular functions, policies and activities of such incumbents as officers involved in matters of interest to the membership, and not as candidates for the re-election, there is no violation of §401(c).” Camarata, 478 F. Supp. at 330. In evaluating claims that union publications are unlawful campaign materials, courts recognize that a union incumbent “will in the nature of things be an important participant in many matters of interest to the membership and be more likely to have his participation in these matters the subject of inclusion in any report to the membership through the [union publication].” Yablonski v. UMW, 305 F. Supp. 868, 871 (D. DC 1969).

Thus, to evaluate whether the October 4, 2013 shop paper violates the LMRDA, the Committee must evaluate its “tone, content and timing,” and determine whether it is “addressed to the regular functions, policies and activities of such incumbents as

officers involved in matters of interest to the membership, and not as candidates for re-election.” Under these standards, the October 4, 2013 shop paper does not violate the LMRDA. It says nothing about the election. It mentions Mr. O’Meara only once, mentions no other candidates on his slate, and mentions no candidates on Mr. Glickson’s slate. Neither the tone nor content of the document encourage people to vote for Mr. O’Meara or endorse the re-election of Mr. O’Meara or any other people on his slate. Nothing in this shop paper criticizes Mr. Glickson.

Instead, the shop paper describes in detail the training workshops which the Guild was sponsoring. Conducting training for Guild members is an appropriate function for Guild officers. The training relates to bargaining, grievance handling, organizing, and conflict resolution – all normal union activities. The October 4, 2013 shop paper relates to regular union business, not the election. For all these reasons, the Committee finds that the October 4, 2013 shop paper does not violate LMRDA §§401(c) or (g).

The September 27 shop paper which Mr. Glickson complains of is called “Times Guild Members to Get Improved Dental Plans Soon.” A copy is attached as Exhibit 44.

This shop paper states:

- Mr. O’Meara “is pleased to announce that a new and vastly improved dental plan soon will be rolled out for Guild-represented staffers at the Times”;
- It quotes O’Meara as saying that “the Guild negotiated extra company payments into the jointly trusteeed Guild Times medical plan . . . specifically for the purpose of improving dental benefits, which had lagged well behind inflation for many years,”;
- The shop paper states that the new dental program “will be administered by Blue Cross/Blue Shield, and will allow members access to a nationwide panel of dentists [which] means that the large number of Guild members in the Times’ Washington bureau and elsewhere will, for the first time, will be able to go to a participating dentist”;

- Reimbursement rates for dental procedures will increase significantly even if the dentist does not participate in the network;
- The new dental plan will become effective in January, 2014;
- This new benefit will not cost any additional money to Times Guild members;
- It quotes Mr. O'Meara as stating that "this is an improvement that is long overdue" and that "we are pleased to be able to put it into place as a result of the contract settlement. I want to thank our members at the Times for standing with the Guild during negotiations. It was that support that helped us win this new and improved benefit."

Exhibit 44.

The Committee does not believe that the September 27, 2013 shop paper violates the LMRDA. The article came out on September 27, a month before the ballots were mailed. Courts will consider the timing of union newspaper articles in evaluating whether they violate the LMRDA, New Watchdog Committee v. New York City Taxi Drivers Union, 438 F. Supp. 1242, 1252 (S.D.N.Y. 1977). However, here, the September 27, 2013 publication date corresponded with the fact that, shortly before then, the benefit plan trustees had agreed to details regarding a new dental plan. Thus, the timing of the article appears to have been the function of the occurrence of a newsworthy event.

The shop paper does not contain any "overt or express electioneering material." New Watchdog Committee, 438 F. Supp. at 1250. It does not attack Mr. Glickson or any members of his slate. It does not make any campaign promises on behalf of Mr. O'Meara or his slate, and contains no ad hominem attacks on any opposition candidates. These factors cut against a finding that it is an unlawful use of union resources. See Liquor Salesman, 334 F. Supp. at 1371-1373; Sheldon v. O'Callaghan, 335 F. Supp. 325, 327, n.2 (S.D.N.Y. 1971).

In New Watchdog Committee, plaintiff asserted that incumbent union officials had been featured in seven newspaper articles, and alleged that this was “discriminatory use of the union paper because it highlights the incumbents’ activities while ignoring other candidates entirely.” 438 F. Supp. at 1251. The Court rejected this claim because:

The newspaper coverage of the defendant officers is addressed to their regular activities and duties and officers and not as candidates for re-election. Although this Court recognizes that to an extent incumbent officers in a pre-election period must be potentially regarded as de facto though unannounced candidates for re-election, it cannot conclude that as a consequence all reporting concerning an incumbent official is to be treated as impermissible campaigning for the incumbent candidate.

438 F. Supp. at 1251. The Court continued, stating that while the articles at issue were not “a paragon of objective journalism” because they are “uncritical of the defendant officers and plainly imply that they are diligently discharging their union responsibilities,” “this without more cannot be construed as discriminatory electioneering or promotional literature so as to constitute a violation of the [the LMRDA].” Id. See also, Camarata, 478 F. Supp. at 325 (“these references, if originally overdone and somewhat tasteless, are the typical coverage of the activities of the principal officers of an organization in its ‘house organ.’ The dosage of ‘pabulum and puffery’ is not too dissimilar to that contained in corporate reports to stockholders because the executive officers activities reflect the position of their organization, they and the nature of things will be participants in matters of importance to the membership and will get more publicity than anyone else as a matter of course.”) These rationales apply fully here. The Committee thus



concludes that the September 27, 2013 dental plan shop paper does not violate the LMRDA.

Mr. Glickson also complains about an October 22, 2013 web article authored by Proven Guild Leader Secretary-Treasurer candidate and incumbent Secretary-Treasurer Peter Szekely. A copy of that article is attached as Exhibit 45.

The October 22, 2013 Szekely article addresses a voluntary buyout which, according to the article, had just been sent to ninety six Guild-represented Reuters employees. The article makes the following points:

- “If all 96 [eligible employees] raised their hands [and accept the buyout], get ready for a giant sucking sound as 2400 collective years of Reuters experience head for the door”;
- “The 96 eligibles make up nearly one quarter of the Guild bargaining unit at Reuters . . . work in text, pictures and video across the country, . . . nearly half of them work in Washington and more than one third are at 3 Times Square”;
- The buyout eligible employees “are the ones with the institutional knowledge, not only about their work but about the company . . . how things used to be . . . They’re part of a natural mix of young and old, rookie and veteran”;
- When they are gone, it will be “unnatural” because “a buyout takes years of normal attrition and compresses it into a single day”;
- The article describes Mr. Szekely’s experience when he was a Reuters employee during a 1997 buyout;
- Mr. Szekely explains that “as disruptive and unnatural as buyouts are to a workplace, they might just be the things some people have been waiting for . . . Each eligible employee has personal circumstances and needs to consider. And that’s what should drive each decision”;

The article concludes by describing the “challenge” to the Guild – “to rebuild and preserve a sense of community and welcome newcomers into a workplace culture that’s worth sticking around for.” Exhibit 45.

The Committee finds that the October 22, 2013 article does not violate the LMRDA. It reaches this finding for the following reasons:

- Although the article came out only seven days before ballots were mailed, it was prompted by a buyout offer which was sent to a quarter of the Guild's bargaining unit at Reuters only days earlier;
- The article made no reference to the upcoming elections;
- The article addressed a matter of concern to Guild members – the effect of a buyout on people who remain in the bargaining unit;
- The article did not attack any candidates on Mr. Glickson's slate;
- The article did not praise any candidates on Mr. Szekely's slate;
- The article addressed a matter of genuine concern to Guild members;
- While the article described certain experiences which Mr. Szekely had, they were experiences in connection with the buyout, which was directly relevant to the current buyout.

For all of these reasons, the Committee finds that the October 22, 2013 article did not violate the LMRDA.

#### GLICKSON OBJECTION NUMBER 14

In objection number 14, Mr. Glickson states:

The Standard & Poor's ratification vote took place within the balloting period, while we leafleted outside of S&P and were not allowed in. O'Meara rushed to settle contract. There was no contractual deadline to do so other than self-imposed that was probably initiated by Guild. The Election Committee then denied me access to ratification meeting even though I hold second vice president status with local, which violates the bylaw that states that Local officials can go to any unit.

Glickson objection, number 14. The Committee explains here why it rejects this objection.

This objection has two aspects: (1) the claim that Mr. O'Meara and the Guild timed the S&P ratification vote to take place during the balloting period, and (2) the claim that the Committee unlawfully denied Mr. Glickson the opportunity to campaign at ratification vote. The S&P ratification vote took place on November 11, 2013.

This issue first came to the attention of the Committee on November 7, 2013, when Mr. Glickson sent the Committee counsel an e-mail stating: "the Members First Slate considers the ratification vote of the Standard & Poor's contract settlement scheduled two days prior to the counting of ballots to our election constitutes improper electioneering." Mr. Glickson's November 7, 2013 e-mail is attached as Exhibit 46. Later that night, Mr. Schwartz, counsel for Mr. Glickson's slate, added that "there was no reason that the ratification vote had to be scheduled within the balloting period. Even a two day move, to the 13<sup>th</sup>, would avoid the potential of impropriety. If it does happen on the 11<sup>th</sup>, the event must be free of electioneering, and there must be no effort to collect ballots or issue replacement ballots to attending members." Mr. Schwartz's November 7, 2013 e-mail is attached as Exhibit 47.

In a November 8, 2013 e-mail, Committee counsel responded to Mr. Glickson's concerns about the S&P ratification vote. In that e-mail, Committee counsel explained the following:

- "The MOA entered into by the Guild and S&P requires the Guild to notify S&P by 8:00 a.m. on 11/12/13 whether or not the agreement was ratified; . . . Certain aspects of that agreement which are beneficial to the Guild's membership are contingent on S&P receiving that notice by 8:00 a.m. on 11/12/13 . . . . There are specific non-election related reasons for holding the ratification vote on 11/11/13. Under these circumstances, the Committee declines to direct a delay in the S&P ratification vote";

- The Committee agreed that with Mr. Schwartz “there must be no effort to collect ballots or issue replacement ballots to attending members” and directed those who attend to refrain from doing so;
- As to counsel’s assertion that the S&P ratification vote meeting “must be free from electioneering,” Committee counsel stated that “this issue is governed by . . . 29 CFR §452.76 [and] the Committee directs all who attend the S&P meeting to comply with 29 CFR §452.76.”

A copy of Committee counsel’s November 8, 2013 e-mail is attached as Exhibit 48. In a November 9, 2013 e-mail responding to Committee counsel’s November 8, 2013 e-mail, counsel for the Members First Slate stated:

I take this as meaning that the officers cannot campaign during the meeting unless it is incidental. That means they cannot talk about the election during any pitch, but if a member approaches the balloting to discuss the election that is ok. On the other hand, any candidate attending the meeting on her/his own time is free to campaign. Correct?

A copy of the November 9, 2013 e-mail from Mr. Schwartz is attached as Exhibit 49. Later on November 9, Mr. Hoffman, counsel for the Proven Guild Leaders Slate sent an e-mail which stated:

In response to Mr. Schwartz’s recent e-mail, the Union has a long standing practice of limiting attendance at ratification meetings to members in good standing from the bargaining unit in question and the Union’s officers and business agent. Thus, individuals other than the aforementioned, including candidates, have no basis to attend the ratification meeting at S&P and we would object to them doing so. To clarify Mr. Schwartz’s concern, my clients have no intention of campaigning during the S&P ratification meetings, and would consent to having a member of the Election Committee as an observer to verify that no campaigning takes place.

A copy of Mr. Hoffman’s November 9, 2013 e-mail is attached as Exhibit 50. In response, counsel for the Members First slate sent an e-mail to Committee counsel asserting that because “the Election Committee consists of Proven Guild Leaders

Supporters, Grant's team should be allowed to have someone present to be as an observer." A copy of Mr. Schwartz's November 10, 2013 e-mail is attached as Exhibit 51.

On November 11, 2013, Committee counsel sent an e-mail addressing the Members First slate request to have an observer present at the ratification meeting and to permit Members First supporters to engage in campaigning at that meeting. There, Committee counsel stated:

It appears undisputed that the Guild has a long standing practice of allowing union members in good standing, Guild officers and local reps and invited attorneys/consultants to attend contract ratification meetings. The Committee notes that in your 11/7/13 e-mail, you asserted the position of the Members First Slate that if the ratification meeting happens on 11/11/13, "the event must be free from electioneering." Under these circumstances, the Committee rejects the position advanced by the Members First Slate that its supporters who are not members in good standing of the S&P unit may attend in the S&P ratification meeting and engage in campaigning at that meeting.

In addition, as to the Members First request to have an observer at the S&P ratification meeting, Committee counsel's November 11, 2013 e-mail stated:

The LMRDA and applicable regulations allow the slates and candidates to have observers present "at the polls," "at the counting of ballots," at "every phase and level of the counting and tallying of the ballots . . . ," and "at the preparation and mailing of ballots . . . ." . . . Thus, the relevant regulations do not provide for the right of the slate to have an observer present at a ratification meeting. In addition, as discussed above, the Guild has long standing practice of allowing only unit members in good standing, Guild officers and local reps, and invited attorneys/consultants to attend contract ratification meetings. Under these circumstances, the Committee denies the request by the Members First Slate to have an observer present at the S&P ratification meeting.

A copy of Committee counsel's November 11, 2013 e-mail is attached as Exhibit 52.

In response, Mr. Schwartz, counsel for the Member's First slate sent an e-mail: "my clients weren't looking to campaign, they were looking to send an observer to make sure that the incumbents didn't campaign. They can campaign outside the meeting all they wanted. Grant is an important officer of the Guild and denying him the opportunity, even if he couldn't speak, insults the entire Times unit." A copy of Mr. Schwartz's November 11, 2013 e-mail is attached as Exhibit 53.

Although Mr. Glickson's objection asserts that the Guild bylaws "state that local officials can go to any unit," he cites no bylaw provision which so states. Article VII of the Guild's Bylaws addresses duties of officers. With regard to vice presidents – the position Mr. Glickson holds – it states the following: "the vice presidents, in their numerical order, shall act in the place of the local chairperson when both the local chairperson and the president are absent. One of the vice presidents shall be designated by the Executive Committee to act as Chairperson of the Committee on Finance, and shall submit a quarterly budget to the Executive Committee." The bylaws say nothing else about the duties of the second vice president. The bylaws say nothing about the second vice president having the right to "go to any unit." Thus, to the extent that Mr. Glickson's objection number 14 relies on an alleged violation of the Guild's bylaws, the Committee rejects that claim because it is not supported by the text of the bylaws.

It appears to be undisputed that the Guild has a long standing practice under which only members of the unit, officers associated with the negotiations, and staff associated with the negotiations are permitted to attend ratification vote meetings. Mr. Glickson was not a member of the S&P unit, and although he was a second vice

president, he had no role in the S&P negotiations. Consistent with this practice, Mr. Glickson was not permitted to campaign at the S&P ratification vote.

The Committee notes further that Mr. Glickson had no reasonable expectations of having a right campaign at the S&P ratification vote meeting. The purpose of that meeting was to allow the Guild's S&P members to vote the tentative collective bargaining agreement. Campaigning for union office at such a meeting would be disruptive to the meeting, and hinder the members' ability to conduct the basic business of the meeting. Under these circumstances, the Committee rejects Mr. Glickson's claim that he was unlawfully denied the opportunity to campaign during the ratification meeting.

The Committee also rejects Mr. Glickson's claim that Mr. O'Meara unlawfully "rushed to settle [the S&P contract]" and unlawfully held the ratification vote during the balloting period. In reaching this conclusion, the Committee notes that Mr. Glickson does not dispute that under the Guild – S&P MOA, unless S&P received notice on or before 8:00 a.m. on November 12 that the contract had been ratified, benefits which that MOA provided to the Guild membership would disappear. Thus, the Guild had an undisputed, non-campaign related reason to hold the ratification vote on November 11.

The Committee rejects Mr. Glickson's claim that "O'Meara rushed to settle contract." The Committee rejects this claim first because Mr. Glickson provided no evidence to support this claim: it is sheer speculation. Second, this claim ignores the fact that one party cannot settle a contract on its own: it takes both parties to settle a contract, and Mr. Glickson offers no evidence that S&P management colluded with the Guild to affect the timing of the settlement. Mr. Glickson's claim "that there was no

contractual deadline” for the ratification is simply untrue: the MOA had a deadline – the Guild had to notify S&P of the ratification vote results by 8:00 a.m. on November 12, 2013. Mr. Glickson’s claim that this deadline was “self-imposed [and] probably initiated by the Guild” lacks any supporting facts. Again, Mr. Glickson ignores the fact that a contract is between two parties, and offers no evidence to support the notion that the Guild and S&P colluded to set the November 12, 2013 deadline in order to enhance Mr. O’Meara’s election prospects.

For all of these reasons, the Committee rejects Mr. Glickson’s challenge number 14.

#### GLICKSON OBJECTION NUMBER 15

In objection number 15, Mr. Glickson states:

With regard to the representative assembly nomination meeting on October 15, the 19 units were credited with 2851 eligible members. The Jersey Journal was given 14 nominating votes based upon their dues paying members. Michael Conte, the Unit Chairperson of the Jersey Journal, secured all 14 votes for Proven Leader Slate. However, when ballots were mailed out, there were only 2837 eligible members, missing from that number was Jersey Journal members. No members voted from the Jersey Journal.

Glickson objection, number 15.

Mr. Glickson first raised the issue of the eligibility of Jersey Journal members to vote in an October 24, 2013 e-mail to Committee counsel where he asked “are those at Jersey Journal entitled to vote as they don’t seem to be on the list of eligible voters you provided. Perhaps this is an oversight since I seem to remember they had voting rights at the RA nomination.” In response, Committee counsel stated that “Guild members at the Jersey Journal on check-off are eligible to vote. Those not on check-off (if there



any) are eligible if they have paid dues in the manner which render them eligible to vote.” A copy of this October 24, 2013 e-mail exchange is attached as Exhibit 54. In an exchange of e-mails on October 28, 2013, Guild Secretary-Treasurer Peter Szekely told Committee counsel that the ballot mailing list included members at the Jersey Journal, and counsel advised him that “Jersey Journal people on check-off are eligible to vote. Thus, your inclusion of the Jersey Journal people on the voter/ mailing list is correct.” A copy of that October 28, 2013 e-mail exchange is attached as Exhibit 55. Mr. Szekely confirms that fourteen Jersey Journal members were sent ballots – all who were eligible. For this reason, the Committee rejects Glickson objection number 15.

#### GLICKSON OBJECTION NUMBER 16

In objection number 16, Mr. Glickson states:

The Guild bylaws require that ballots be mailed after December 15. That rule was ignored. Article VI (4) of the Guild bylaws states that “in the event of a contest, the Local Elections Committee shall conduct the election beginning the third Thursday of December. Ballots shall be issued to all members in good standing as of December 1.”

It is true that the timing of the election was not consistent with that laid out in Article VI (4) of the Guild bylaws.

The Committee rejects this objection, and we explain why here. Although the Guild has not had a contested election since the 1980s, every three years, the Guild’s Representative Assembly (“RA”) – its governing body – issues nomination and election rules. A copy of those rules for 1998, 2001, 2004, and 2007 are attached as Exhibit 56. In each instance, those rules laid out a voting timeframe at odds with the timeframe contained in the bylaws, and consistent with the timeframe used in the 2013 election. Mr. Glickson has been a member of the Guild’s RA for much of the time since since

2000. To the Committee's knowledge, Mr. Glickson never objected to this schedule while on the RA, and did not, while an RA member, object to the schedule which, he acknowledges, the RA adopted in June of 2013. The Committee notes too that under Article XIII (1) of the bylaws, "these bylaws shall be interpreted by the Representative Assemblies subject to appeal to the membership."<sup>8</sup>

Under these circumstances, the Committee believes that, in light of the fact that, for the 2013 election, the RA adopted a schedule consistent with the schedule adopted by the Guild in a number of prior election cycles, a schedule slightly at odds with the schedule laid out in Article VI of the bylaws, the RA essentially interpreted the bylaws to slightly modify the election schedule. In light of this, and given the fact that Mr. Glickson was a member of the Representative Assembly for a number of these election cycles and offers no evidence that he ever objected to this schedule, and given that Mr. Glickson provides no basis for one to conclude that this slight change in schedule affected the outcome of the election, the Committee rejects Glickson objection number 16.<sup>9</sup>

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<sup>8</sup> In his December 1, 2013 supplement, Mr. Glickson also asserts that ballots should not have been mailed to members who "achieved good standing status between October 2 and November 1." The Committee rejects Mr. Glickson's attempt to disenfranchise these voters. Section IV of the Election Rules state that "all members of the New York Local in good standing as of Nov 1, 2013 may vote." In light of this clear rule, the Committee believes that there is no basis for accepting Mr. Glickson's argument that members who brought themselves into good standing between October 1, 2013 and November 1, 2013 should be disenfranchised.

<sup>9</sup> In his December 1 supplement, Mr. Glickson asserts that "a Local Election Committee of seven members was not formed in our Representative Assembly meeting on September 25, which is a violation of Article VI, Section 1 of our bylaws. Following this rule may have avoided the creation of a bias Committee." Mr. Glickson provides no other details or specifics for his assertion that the Committee was "biased." The Committee rejects Mr. Glickson's assertion that it was "biased." The Committee was not biased. Throughout the election, its goal was to run the election in compliance with the LMRDA, the Guild bylaws, and the CWA Constitution, and each ruling it made reflected those goals. It did not rule in order to assist or hinder any candidate or slate. With regard to Mr. Glickson's accusation that the Committee was "biased" the Committee notes further that no Committee members ran as candidates, and that Mr. Glickson fails to allege that any Committee member actively campaigned or engaged in any other activity which would suggest that they were "biased." We note further that Mr. Glickson was present at the October 15, 2013 meeting where the Committee members were approved of by the Guild's RA. At that

## FINAL CERTIFICATION

Pursuant to Article XV Section 4(b) of the CWA Constitution, the Committee hereby issues its final certification of results of the 2013 Guild election.

The following candidates were elected:

President – Bill O'Meara

Secretary Treasurer – Peter Szekely

Local Chairperson – Karen Rohan

1st Vice President – Randy Gilliam

2d Vice President – Pedro Da Costa

3d Vice President – Kathy Wilmore

R.A. Chair – Anna Pierdiluca

R.A. Vice Chair – Oscar Hernandez

Executive Board members (16)

Steve Berman

Jim Pearson

Michael Dempsey

Emilio Gonzalez

Eileen Houlihan

Lamar Jones

Sonia Guerra

Emily Flitter

Elaine Lindsay

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meeting, he did not object to their timing of their selection, the fact that only five were selected, or their identity. Under these circumstances, the Committee rejects this claim.

Eric Russ

Michael Conte

Joe Punday

John Shostrom

Lan Lecour

Mindy Matthews

Mabel Rodriguez