NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES A. OSBURN, its duly elected Business Representative/ Executive Director; ELIZABETH S. ALVAREZ, Plaintiffs-Appellants, v. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES; MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL, CIO, CLC; MATTHEW LOEB, its International President; MICHAEL F. MILLER, Defendants-Appellees.	No. 17-55022 D.C. No. 2:14-cv-01310-MWF-CW MEMORANDUM* (Filed Sep. 4, 2018)

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted August 8, 2018
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: CLIFTON and CALLAHAN, Circuit Judges, and HOYT,** District Judge.

James Osburn and Elizabeth Alvarez appeal the district court's grant of summary judgment in favor of Matthew Loeb, Michael Miller, and the International Alliance of Theatrical Stage Employees (IATSE). We review a district court's grant of summary judgment de novo. *Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court did not err in granting summary judgment on the free speech and assembly claims brought under § 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). There are three actions at issue here: 1) Osburn and Alvarez were removed by IATSE from their positions as elected officers of Local 695; 2) Osburn was suspended from membership with the union for one year; and 3) Alvarez was terminated from her appointed position as an employee with Local 695.

We first address the removal of Osburn and Alvarez from their positions as elected officers. IATSE argues that its constitution required the removal of all 16 elected officers upon the imposition of the trusteeship. If all 16 officers were indeed removed because of the imposition of the trusteeship, then Osburn and

** The Honorable Kenneth M. Hoyt, United States District Judge for the Southern District of Texas, sitting by designation.

Alvarez cannot establish that they were targeted for removal for exercising their speech or assembly rights.[1]

A union's interpretation of its own constitution is entitled to deference. *Local 1052 of United Bhd. of Carpenters & Joiners of Am. v. Los Angeles Cty. Dist. Council of Carpenters*, 944 F.2d 610, 613 (9th Cir. 1991). "Absent bad faith or special circumstances, an interpretation of a union constitution by union officials, as well as interpretations of the union's rules and regulations, should not be disturbed by the court." *Id.* (internal quotation marks and alterations omitted). IATSE's interpretation of its constitution is reasonable, and Appellants have not cited any persuasive evidence of bad faith or special circumstances in the record. Appellants argue that all 16 officers were not, in fact, removed, but they cite no clear evidence to contradict the records of removal cited by IATSE. Accordingly, the district court did not err in granting summary judgment as to the removal.

We next turn to the suspension of Osburn's membership. IATSE cited evidence in the record that Osburn advised members not to pay work assessments in other jurisdictions. Osburn has not provided any express evidence to the contrary. At oral argument, he contended that he wanted members to obtain invoices before paying assessments, but he cited no evidence

[1] The LMRDA provides a different avenue for challenging an improper imposition of a trusteeship. *See* 29 U.S.C. § 464. Osburn and Alvarez do not challenge the imposition of the trusteeship on appeal.

contradicting the evidence submitted by IATSE that he told members not to pay. Accordingly, IATSE had a non-discriminatory reason for suspending Osburn.

Finally, we turn to the termination of Alvarez from her position as an employee. The leader of a local union has the power to appoint his own supporters to his staff, and such appointments do not violate the speech or assembly rights guaranteed by the LMRDA. *See Finnegan v. Leu*, 456 U.S. 431, 441 (1982). The trustee became the leader of Local 695 upon the imposition of the trusteeship, and did not violate the LMRDA by terminating Alvarez and replacing her with a staff member of his choice.

We pause to note that at oral argument, IATSE suggested that we must defer to the factual findings of the union's disciplinary tribunal. We disagree. If IATSE's position were correct, then IATSE could always defeat summary judgment by resolving factual findings in its own favor before a case ever reaches federal court. In support of its position, IATSE cited our opinion in *Local 1052* and the Supreme Court's opinion in *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, AFL-CIO v. Hardeman*, 401 U.S. 233 (1971). Neither case supports IATSE's position. In *Local 1052*, we noted that we defer to a union's interpretation of its own constitution, as well as its rules and regulations, absent bad faith or special circumstances. *Local 1052*, 944 F.2d at 613. The case had nothing to do with fact-finding in a disciplinary action, and we never

suggested that we must accept a disciplinary tribunal's fact-finding as true.

In *Hardeman*, the Supreme Court dealt with the procedural requirements for disciplinary proceedings guaranteed by § 101(a)(5). The Court held that we must affirm the imposition of discipline if the charging party provides "some evidence at the disciplinary hearing to support the charges made." *Hardeman*, 401 U.S. at 246. The Court also held that federal courts cannot determine the scope of offenses warranting discipline. *Id.* at 244–46. But the Court never said that we must accept the union's fact-finding as true. Accordingly, we engage in an independent review of the record and determine whether disputed facts exist that bar summary judgment. We find no such disputed facts.

2. The district court did not err in granting summary judgment on the claims brought under LMRDA § 609. A § 609 claim can only be brought to redress retaliatory actions affecting a union member's membership rights, not a member's rights as an employee or officer. *See Finnegan*, 456 U.S. at 437; *United Steel Workers Local 12-369 v. United Steel Workers Int'l*, 728 F.3d 1107, 1117 (9th Cir. 2013). Accordingly, the only relevant action here is Osburn's suspension from the membership. But as explained above, IATSE had a non-discriminatory reason for suspending Osburn.

3. The district court did not err in granting summary judgment on the due process claim brought under LMRDA § 101(a)(5). Section 101(a)(5) requires certain procedural safeguards when a union member

is to be fined, suspended, or expelled. Osburn received written notice of his hearing, and he was given ample time to prepare. The notice specified the basis of the charges against him. He was present at his hearing, and he presented witnesses and evidence. There was sufficient evidence to support the imposition of discipline. *See Hardeman*, 401 U.S. at 246 (The charging party must provide "some evidence at the disciplinary hearing to support the charges made.").

4. The district court did not err in granting summary judgment on the claim for breach of the IATSE constitution. Appellants argue that IATSE violated the procedural provisions of its constitution in three separate actions: 1) The hearing placing Local 695 into a trusteeship and suspending the Local's officers; 2) The hearing suspending Osburn from membership for one year; and 3) The hearing issuing a $12,500 fine against a member named Josh Levy. As noted above, a union's interpretation of its own constitution is entitled to deference, and Appellants have not cited any persuasive evidence of bad faith or special circumstances. *See Local 1052*, 944 F.2d at 613.

We first turn to the hearing placing Local 695 into a trusteeship and suspending the Local's officers. In Article 7, Section 5, the IATSE constitution expressly grants the IATSE president original jurisdiction when charges are brought against a local union. IATSE did not violate any express provision of Article 7, Section 5.

We next turn to the hearing on Osburn's membership suspension. Per Article 16 of the IATSE constitution, charges against members and officers are generally heard by local unions under the IATSE constitution. Osburn argues that IATSE failed to abide by Article 16. But Osburn's hearing was not held pursuant to Article 16. In Article 7, Section 5, the constitution confers jurisdiction upon the IATSE president to try charges against individual members, provided that certain conditions are met. Here, the IATSE president had original jurisdiction pursuant to Section 5(b), which confers jurisdiction when charges are filed a [sic] against a member of a suspended union, and Sections [sic] 5(e), which confers jurisdiction when charges are filed against an officer for failure to comply with a lawful order of the president. IATSE did not violate any express provision of Section 5.

Finally, we turn to the hearing issuing a $12,500 fine against a member named Josh Levy. Mr. Levy is not a party to this case, and the district court did not decide a claim as to Levy. Accordingly, any violation as to Levy is not before us.

5. The district court did not err in determining that Loeb is not personally liable to the plaintiffs. The claims at issue here are against both Loeb and IATSE, but all the alleged conduct is the same. Given that summary judgment is appropriate in IATSE's favor, judgment is also appropriate in Loeb's favor.

6. We need not address Appellants' argument regarding the standard of proof required for a retaliatory

removal claim under the LMRDA. Before the district court, IATSE argued for a clear and convincing standard, but the district court rejected the argument. On appeal, IATSE has expressly waived that argument. Accordingly, the issue is not before us.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES A. OSBURN, its duly elected Business Representative/ Executive Director; ELIZABETH S. ALVAREZ, Plaintiffs-Appellants, v. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES; MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL, CIO, CLC; MATTHEW LOEB, its International President; MICHAEL F. MILLER, Defendants-Appellees.	No. 17-55022 D.C. No. 2:14-cv-01310-MWF-CW Central District of California, Los Angeles ORDER (Filed Sep. 4, 2018)

Before: CLIFTON and CALLAHAN, Circuit Judges, and HOYT,* District Judge.

Respondents' Motion to Supplement Record on Appeal (Docket Entry No. 40) and Appellants' Request to Further Augment Record (Docket Entry No. 49) are DENIED.

* The Honorable Kenneth M. Hoyt, United States District Judge for the Southern District of Texas, sitting by designation.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES GENERAL

Case No. CV-14-1310-MWF (CWx) Date: July 27, 2016

Title: James Osburn et al. *-v-* International Alliance of Theatrical Stage Employees et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
None Present	None Present

Proceedings (In Chambers):
ORDER RE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [63]

Before the Court is Defendants International Alliance of Theatrical Stage Employees ("IATSE") et al.'s Motion for Summary Judgment (the "Motion"). (Docket No. 63). Plaintiffs James A. Osburn and Elizabeth S. Alvarez filed their Opposition, to which Defendants filed their Reply. (Docket Nos. 73–74).

The Court has read and considered the papers filed on the Motion, and held a hearing on **July 19, 2016**.

For the reasons set forth below, the Motion is **DENIED** only as to Claim II for alleged violations of § 101(a)(2) of the Labor Management Reporting and

Disclosure Act ("LMRDA"); the Motion is otherwise **GRANTED *in its entirety***.

- Claims I and IV (for breach of IATSE's Constitution and Bylaws): The Motion is **GRANTED** as to claims arising from Osburn's hearing and suspension. Defendants' interpretation of the relevant constitutional provision is not patently unreasonable and therefore entitled to deference. Under this interpretation, the International President properly exercised original jurisdiction to appoint an International Representative to try the charges against Osburn without needing to refer the charges to the Board of Local 695. For the reasons discussed under Claim III, the Motion is also **GRANTED** as to claims arising from the imposition of trusteeship.

- Claim II (for LMRDA violations): The Motion is GRANTED as to Plaintiffs' claims under § 101(a)(5) and § 609 of the LMRDA. On the evidence presented, no reasonable jury could conclude that IATSE failed to observe the procedural safeguards as required under § 101(a)(5). And § 609 does not protect union officers or employees in their official capacities. But the Motion is **DENIED** as to Plaintiffs' claims under § 101(a)(2) because genuine issues of material fact exist as to whether the suspension of Plaintiffs as elected union officers was in retaliation against their exercise of free speech and assembly rights protected under the LMRDA.

- Claim III (for imposition of trusteeship): The Motion is **GRANTED** because Plaintiffs have failed to rebut by clear and convincing evidence the presumption of validity to the trusteeship.
- Claims V–VIII (for violations of the California Fair Employment and Housing Act ("FEHA")): The Motion is **GRANTED** because, on the evidence presented, no reasonable jury could conclude that any adverse employment consequences were causally connected to Alvarez's gender, ethnicity, national origin, or filing of a complaint with the Department of Fair Employment and Housing ("DFEH").

I. BACKGROUND

The background facts are largely undisputed:

IATSE is a labor organization and international union that represents theatrical stage employees, moving picture technicians, artists, and allied crafts employees in the United States and Canada. (Defendant's Statement of Uncontroverted Facts ("DSUF") ¶ 1 (Docket No. 63–8)). Defendant Matthew D. Loeb is the International President of IATSE. (*Id.* ¶ 2). Defendant Michael F. Miller, Jr. is one of multiple International Vice Presidents of IATSE. (*Id.* ¶ 3).

Local 695 is a local union affiliated with IATSE and headquartered in North Hollywood, California. (*Id*. ¶ 4). Plaintiffs Osburn and Alvarez are members of Local 695 as well as IATSE. (*Id.* ¶¶ 8, 12).

On February 20, 2014, Plaintiffs Osburn, Alvarez, and Local 695 filed suit against Defendants IATSE, Loeb, and Miller. (Docket No. 1). On June 5, 2014, the Court dismissed Local 695 as a Plaintiff in this action pursuant to the parties' joint request for dismissal. (Docket No. 37).

On June 13, 2015, Plaintiffs Osburn and Alvarez filed the governing First Amended Complaint ("FAC"). (Docket No. 45). Plaintiffs Osburn and Alvarez's first four claims for relief arise from disciplinary actions taken against Local 695, its officers and employees, as well as Osburn, following hearings on charges for violations of the IATSE Constitution and Bylaws. (FAC ¶¶ 59–74). Plaintiff Alvarez also alleges four separate FEHA claims for unlawful harassment, discrimination, and retaliation. (*Id.* ¶¶ 75–119).

A. Osburn and Alvarez's Protests Regarding the MPI Plan, Work Assessments, and Leadership Diversity

Plaintiffs' declarations recount a long history of their commitment to vindicate the interests of IATSE and Local 695 members, which date as far back as four decades ago. The Court focuses on Plaintiffs' most recent complaints regarding the (1) Motion Picture Industry Pension and Health Plans ("MPI Plan"); (2) work assessments due to sister Locals under Article Nineteen, Section 26 of the IATSE Constitution; and (3) lack of diversity amongst the IATSE leadership ranks.

1. MPI Plan

In approximately April 2012, Osburn became concerned that residuals and royalties were not being deposited into the MPI Plan or accounted for by employers pursuant to the governing collective bargaining agreements. (Declaration of James. A. Osburn ("Osburn Decl.") ¶ 44 (Docket No. 70)). Loeb and Miller were among the 32 trustees of the MPI Plan. (DSUF ¶ 88). As a vested participant in the MPI Plan, Osburn became concerned about what the trustees had characterized as a "financial crisis of the MPI Plan," and accordingly, requested transparency into the finances of the MPI Plan from the trustees. (Osburn Decl. ¶ 44).

In February 2014, Osburn learned that the trustees intended to eliminate new enrollments in the MPI "Home Plan," which had previously allowed vested members to deposit their contributions to the MPI Plan regardless of the jurisdiction in which they worked. (*Id.* ¶ 46). A letter signed by Miller announced that the 76 members of Local 695 who had already had their MPI Home Plan applications approved would remain unaffected. (*Id.*). Osburn spoke out against this change and also believed that Local 695 members had been discriminated against when their MPI Home Plan applications were denied. (*Id.* ¶¶ 47–50).

2. Work Assessments

Article Nineteen, Section 26 of the IATSE Constitution provides that: "If a member of a Local of [IATSE] works in the jurisdiction and under contract held by a

sister Local[,] he shall pay the same work assessment to such Local as is paid by member[s] of the Local in which he works." (DSUF ¶ 25).

Between 2010 and 2011, other local unions filed charges against Thomas Conrad, Mark Weber, and Kate Jesse, all members of Local 695, for failing to pay work assessments in violation of Article Nineteen, Section 26. (*Id.* ¶¶ 40–42).

In defense of Conrad, Osburn became involved in protesting the charges by Local 478. (Osburn Decl. ¶ 64). Osburn demanded Local 478 provide a thorough billing. (*Id.*).

On behalf of Jesse, Osburn and Alvarez became involved with protesting work assessments charged by Local 485 in the absence of an itemized invoice. (Declaration of Elizabeth S. Alvarez ("Alvarez Decl.") ¶¶ 20–23 (Docket No. 71)). For example, on behalf of Jesse, Alvarez and Osburn filed charges against the Local 485 member who had initially charged Jesse for failure to pay work assessments to Local 485. (*Id.* ¶ 22).

The dispute over Jesse's work assessments was eventually brought to the attention of Loeb, who repeatedly ordered Jesse to pay the outstanding amount. (*Id.* Exs. 3–4). In February 2011, Loeb sent a letter to Jesse, copying Osburn, that stated, in part: "[I]f I find any evidence that an officer has counseled you to engage in this behavior, s/he will be brought up on charges and subject to the full panoply of penalties

including suspension and expulsion if charges are proved." (DSUF ¶ 43).

In March 2011, Loeb sent another letter to Jesse indicating that, "[s]ince my February 18th letter, I have been inundated with an unending back-and-forth, tit-for-tat between Locals 485 and 695. Sister Jesse, let me be crystal clear this is between *you* and Local 485, notwithstanding letters that I have received from Local 695. Your failure to remit immediately what is owed will result in charges being filed against you for blatant violation of Article Nineteen, Section 26 of the International Constitution. If you have received advice to the contrary, you are hereby directed to advise forthwith." (Alvarez Decl. Ex. 5).

Around this time, Osburn also began vocally expressing his concerns that the work assessment requirement disparately impacted Local 695 members. (Osburn Decl. 66). According to Osburn, he repeatedly reminded Miller "that such conduct was prohibited by RICO and repeatedly contrasted the treatment being received by Local 695 members with the more favorable conditions then being afforded members of IATSE Locals 600, 700 and 800[,] who unlike Local 695 members, were not required to pay fees [] let alone excessive working dues." (*Id*.). According to Osburn, "Miller became red faced and then refused to address [Osburn's] concerns." (*Id.*).

3. Lack of Diversity

For an unspecified period, Alvarez also expressed concerns about the lack of women among the ranks of IATSE leadership. (Alvarez Decl. ¶ 28). For example, at a General Executive Board dinner for women in IATSE, Alvarez spoke to Samantha Dulaney regarding the need for women to hold more leadership positions. (*Id.*).

Alvarez's complaint appears to be that, although Loeb had the opportunity to appoint women to vacancies on the General Executive Board, he has failed to do so, as recently as 2013. (*Id*.). Alvarez herself disclaims any interest in a leadership position on the General Executive Board. (*Id.*).

B. Hearings on Charges Filed by Local 478 Against Local 695 Member, Joshua Levy

In August 2012, Local 478, a local union affiliated with IATSE that covers Louisiana, southern Mississippi, and Mobile, Alabama filed charges against Joshua Levy, a member of Local 695, for alleged failure to pay work assessments due to a sister Local. (DSUF ¶¶ 5, 44). On June 2013, the Executive Board of Local 695 conducted a hearing regarding the charges. (*Id*. ¶ 46). The Board's findings issued in January 2014 and concluded that Levy did not willfully violate Article Nineteen, Section 26. (*Id*.). The Board, however, fined Levy $25.00 for failing to get the requisite work permit to work in Local 478's jurisdiction. (*Id*.).

In September 2012 and July 2013, Local 478 again filed charges against Levy for failure to pay work assessments for work on two other films. (*Id.* ¶ 48). Loeb appointed IATSE International Vice President William E. Gearns, Jr. to conduct a hearing on these remaining charges, which had not been the subject of review by Local 695's Board. (*Id.* ¶ 49). Levy did not appear at the hearing in December 2013; Gearns issued a "Decision After Hearing" the following month and fined Levy $12,500. (*Id.* ¶ 50). Defendants include a copy of the notice sent to Levy, but Plaintiffs dispute whether Levy was provided notice of the hearing. (*Id.* ¶ 49; Plaintiffs' Statement of Genuine Issues ("PSGI") ¶ 48 (Docket No. 78)). Loeb notified Levy of the decision by letter on January 7, 2014. (*Id.* ¶ 51).

That following week, Levy made repeated attempts to contact Osburn through email. (DSUF ¶¶ 52–53). On January 16, 2014, Levy emailed Loeb, stating that Osburn had previously told him in spring of 2013 not to pay the work assessments. (*Id.* ¶ 54). Furthermore, Levy indicated that Osburn had read the IATSE Bylaws to Levy telling him that the assessment "makes no sense." (*Id.* ¶ 54). Osburn's declaration submitted to the Court disputes Levy's claims; according to Osburn, he instructed Levy to "pay the dues owing" and offered to advance the funds to Levy out of Osburn's personal checking account. (Osburn Decl. ¶ 70).

By letter dated January 17, 2014, Loeb told Levy that he had considered Levy's request to reopen the record to permit Levy to introduce evidence of mitigating factors and that the $12,500 fine would be

suspended and held in abeyance as long as Levy abided by the IATSE and his local union's Constitution and Bylaws going forward. (DSUF ¶ 55).

C. Trusteeship on Local 695 Following Hearing on Charges Filed by Local 478 Against Local 695

Local 478 also filed charges against Local 695 for alleged obstruction of the IATSE Constitution based on the interference with payment of work assessments owed to sister Locals. (*Id.* ¶ 56). Loeb set a hearing on these charges for November 4, 2013, before International Representative Donald Gandolini. (*Id.*). The hearing was continued to January 7, 2014. (*Id.*).

At the hearing, IATSE International Vice President John Lewis and Local 478 Secretary-Treasurer Chandra Miller represented Local 478 (no relationship to Defendant Miller). (*Id.* ¶ 58; Declaration of Michael F. Miller in Support of Motion ¶ 3 (Docket No. 63–6)). Osburn represented Local 695; Alvarez testified as a witness. (DSUF ¶¶ 58–59). Loeb was not present at the hearing. (*Id.* ¶ 60).

On February 19, 2014, Gandolini issued his "Recommendations to the International President After Hearing." (*Id.* ¶ 61). On February 24, 2014, Loeb adopted Gandolini's recommendations in a "Decision and Order of the International President After Hearing," and accordingly ordered that trusteeship be imposed on Local 695 as a penalty. (*Id.* ¶ 63).

As a result of the trusteeship, all officers of Local 695, including Osburn and Alvarez, were suspended as officers (but not as members) of Local 695 on that day. (*Id.* ¶¶ 11, 64).

At the time of trusteeship, Alvarez was also employed by Local 695 as a Special Representative. (*Id.* ¶ 14). Two days after the trusteeship, on February 26, 2014, IATSE terminated Alvarez's employment. (*Id.* ¶ 15). On that day, IATSE also terminated two other Local 695 employees: Alvarez's sister, Delia Hee, and Dean Striepeke. (*Id*. ¶ 17). All other employees of Local 695 remained on staff (Declaration of Delia Hee ("Hee Declaration") ¶ 5 (Docket No. 71)).

IATSE submits that Alvarez, Hee, and Striepeke were terminated as employees "due to the closeness of their relationships to [Osburn], against whom charges filed by the International President were pending." (Miller Decl. ¶ 4). According to Miller, IATSE needed "to ensure the smooth running of the trusteeship without any interference." (*Id.*). IATSE feared that the loyalty of these employees to Osburn would distract them and prevent them from "properly perform[ing] their jobs and serv[ing] the membership." (*Id.*).

Osburn and Alvarez appealed the trusteeship and officer suspensions unsuccessfully to the General Executive Board. (*Id.* ¶ 65). Osburn then appealed the General Executive Board's decision; this appeal is currently docketed to be heard in 2017 by the Grievance Committee at IATSE's 68th Quadrennial Convention. (*Id.* ¶ 68).

D. Charges Filed by Loeb Against Osburn

On January 30, 2014, pursuant to Loeb's judicial powers as International President, Loeb personally brought charges against Osburn. (*Id.* ¶ 76). According to the letter, the charges were brought pursuant to Article Sixteen, Section 1, Article Nineteen, Section 4, and the Bylaws; the hearing officer would be Scott Harbinson; the hearing would be held on February 24, 2014; and the charges were based on Osburn's advice to Local 695 members Josh Levy, Jonathan Andrews, and Richard Hansen not to pay assessments to sister Locals in violation of Article Nineteen, Section 26. (Declaration of Helena S. Wise ("Wise Decl."), Ex. G, D/E3 at 86–87 (Docket No. 69-1)).

Osburn requested a continuance and questioned Loeb's jurisdiction to appoint Harbinson to try Osburn on the charges. (Osburn ¶ 74).

In a letter dated February 12, 2014, Samantha Dulaney, General Counsel of IATSE, rejected Osburn's jurisdictional challenge. (DSUF ¶ 77; Osburn Decl. Ex. 53). According to Dulaney, Loeb had original jurisdiction because Osburn had been on notice since February 2011 that Loeb would file charges if he received evidence that any officers of Local 695 had counseled members to violate the IATSE Constitution. (Osburn Decl. Ex. 53). Therefore, Loeb acted properly in filing charges when he received direct evidence from Joshua Levy and Jonathan Andrews in January 2014 that Osburn had directed Local 695 members to violate Article Nineteen, Section 26. (*Id.*). Nevertheless, the letter

indicated the hearing scheduled for February 24, 2014, is "adjourned" and that new charges would be served on the Local 695 Secretary pursuant to Article Sixteen, Sections 6 and 6A "in a good faith effort to provide the fairest possible trial and to remove any claim that there is a procedural flaw with respect to this matter." (*Id*.).

On March 3, 2014, Loeb served a new set of charges against Osburn, this time expressly invoking his powers under "Articles Seven, Section 5(b), Sixteen and Twenty" of the IATSE Constitution. (Wise Decl., Ex. G, D/E8 at 146 (Docket No. 69-1)). The new charges took "recognizance" of the charges previously filed. (*Id.*). The remaining information in the charges stayed the same except that the hearing date had been continued to March 25, 2014. (*Id.*).

The hearing on charges against Osburn took place before Harbinson as scheduled. (DSUF ¶ 80). Loeb was not present at the hearing. (*Id.*). On July 10, 2014, Harbinson issued a "Corrected Decision After Hearing" suspending Osburn from membership in IATSE and Local 695 for one year. (*Id.* ¶ 81).

Osburn appealed Harbinson's decision to the General Executive Board. (*Id.* ¶¶ 82–83). At a meeting on January 26, 2015, the General Executive Board sans Loeb, Miller, Lewis, Gearns, and Phil LiCicero, who had recused themselves, voted to uphold the suspension. (*Id.* ¶ 83). Osburn appealed the General Executive Board's decision; the appeal is set to be heard at the Convention in 2017. (DSUF ¶ 84).

Between July 2014 and 2015, Osburn's membership with IATSE was suspended for one year as a result of charges filed by Loeb against Osburn. (*Id.* ¶ 8). Relatedly, the trusteeship on Local 695 was lifted on January 17, 2015. (*Id.* ¶ 70). Elections were held, but Osburn was not eligible to run because his membership status was suspended until July 10, 2015. (*Id.* ¶ 72).

E. Facts Underlying Alvarez's FEHA Claims

One year following Alvarez's termination as an employee of Local 695, on February 23, 2015, she filed a complaint with the DFEH against IATSE, Loeb, and Miller for employment discrimination, harassment, and retaliation. (DSUF ¶ 16; Declaration of Lisl R. Soto ("Soto Decl.") Ex. B (Docket No. 63–4)).

In support of her FEHA claims, Alvarez cites the following examples in her declaration:

- On an unspecified date, Alvarez attended a fundraiser for Hilda Solis, a Hispanic woman seeking election to the Los Angeles County Board of Supervisors. When Alvarez noticed that neither Loeb nor Miller was speaking to Solis, Alvarez "finally went up to her to make her feel more comfortable." Loeb and Miller glared at Alvarez for doing so. (Alvarez Decl. ¶ 30).
- On another occasion, Alvarez overheard Miller make condescending remarks about Cathy Repola, another female union member. Specifically, at a Business Agents meeting, Alvarez

heard "Miller [] discuss[]the grievance at Technicolor on the Paramount Lot" and "referenc[e] Repola a[s] his 'technical expert.'" Miller then "openly laughed in Repola's direction." (*Id.* ¶ 31).

- On another unspecified date, Alvarez confronted Miller about the lack of women leadership in IATSE. Miller cited Repola as an example, "prompting Repola, who is Italian, to remark, she means Mexican." (Osburn Decl, ¶ 20; *but see* Alvarez Decl. ¶ 31 (citing Buffy Snyder as the person to reference Repola, thereby "prompting Repola, who is Italian to remark that [Alvarez] meant 'Mexican'").
- At a meeting conducted by Miller with Local 695 members days before the trusteeship was imposed, Miller ignored the questions of Rachel Stanely [sic], a female union member from Costumers Union. When Alvarez pointed out that Miller had ignored the question, "his facial feature exhibited disgust as he turned away from [Alvarez]." At the end of the meeting, Miller turned to Osburn and in Alvarez's presence stated, "at least I don't have to go home with that." (Alvarez Decl. ¶ 32).
- On February 24, 2015, Loeb, Miller, and other male colleagues, along with Los Angeles police officers, surrounded Alvarez as she entered the second floor of the Local 695 office. When she went to her office, Miller followed her and blocked her doorway. He said, "we can do this the easy way . . . or the hard way . . . it's not going to be a Mexican standoff." (*Id.* ¶ 33).

II. REQUEST TO STRIKE AMENDED OPPOSITION

On June 15, 2016, Plaintiffs filed their Opposition to the Motion. (Docket No. 67). On June 20, 2016, Plaintiffs filed an "Amended Opposition" without a Notice of Errata or any explanation. (Docket No. 73).

In their Reply, Defendants request that the Court strike the Amended Opposition because of its untimely nature. (Reply at 1). Plaintiffs' counsel then filed a supplemental declaration explaining that the amendments corrected "missing words and typographical errors" only. (Supplemental Declaration of Helena S. Wise ¶ 3 (Docket No. 79)). Given the non-substantive nature of the changes, the Court **DENIES** the Request.

III. EVIDENTIARY OBJECTIONS

Defendants object to the declarations submitted by Plaintiffs in support of the Opposition. (Docket Nos. 75–77).

The Court finds that none of the objections is convincing. Defendants' arguments are garden variety evidentiary objections based on, for example, lack of relevance, improper legal conclusion, and lack of foundation. (*Id.*). While these objections may be cognizable at trial, on a motion for summary judgment, the Court is concerned only with the ***admissibility*** of the relevant ***facts*** at trial, and not the ***form*** of these facts as presented in the Motion. *See Burch v. Regents of Univ.*

of California, 433 F. Supp. 2d 1110, 1119–20 (E.D. Cal. 2006) (making this distinction between facts and evidence, Fed. R. Civ. P. 56(e), and overruling objections that evidence was irrelevant, speculative and/or argumentative).

As the Court only relies on admissible, material facts, the individual objections raised here are **OVERRULED *without prejudice*** to their being renewed at trial. *See id.* at 1119 ("[A]ttorneys routinely raise every objection imaginable without regard to whether the objections are necessary, or even useful, given the nature of summary judgment motions in general, and the facts of their cases in particular.").

As a separate but related matter, Plaintiffs' counsel is **ADMONISHED** that Federal Rule of Civil Procedure 56 requires parties opposing a summary judgment motion to cite to ***particular parts of*** materials in the record to support their contention that certain facts remain genuinely disputed. Fed. R. Civ. P. 56(c)(1). Plaintiffs' briefs have largely failed in this respect. Moreover, the lack of meaningful citation to the record is compounded by Plaintiffs' submission of what appears to be all or nearly all of the discovery in this action. The Court is unable to discern any serious effort to present the Court with only evidence relevant to the Motion. For example, rather than submitting relevant excerpts of deposition transcripts, Plaintiffs' counsel submitted full transcripts with lines running through the margin of each page, suggesting to the Court counsel's belief that each page is relevant.

Plaintiffs' submissions are not only out of compliance with Rule 56(c) but also unhelpful to the Court's adjudication of the Motion. Counsel is reminded that summary judgment is won by reference to substantiating and relevant evidence, not by burying the Court, and thereby obscuring the genuine issues of material fact, with endless volumes of discovery. It is not the Court's responsibility to parse through the parties' discovery to determine if evidence exists to support Plaintiffs' claims at summary judgment. Pursuant to Rule 56(c)(3), the Court "need consider only the cited materials." Fed. R. Civ. P. 56(c)(3). In light of Plaintiffs' counsel's failure to assist the Court in this respect, and in an attempt to avoid unduly prejudicing Plaintiffs by said failure, in addition to Plaintiffs' sparse citations to evidence in the record, the Court's review includes evidence it deems most relevant based on each Plaintiff's declaration submitted in support of the Opposition.

IV. DISCUSSION

In deciding motions under Federal Rule of Civil Procedure 56, the Court applies *Anderson, Celotex*, and their Ninth Circuit progeny. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "When the party moving for summary judgment would bear the burden of proof at trial, 'it must come forward

with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.'" *C.A.R. Transp. Brokerage Co. v. Darden Restaurants, Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citation omitted). In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case. *See Houghton v. South*, 965 F.2d 1532, 1537 (9th Cir. 1992). Once the moving party comes forward with sufficient evidence, "the burden then moves to the opposing party, who must present significant probative evidence tending to support its claim or defense." *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991) (citation omitted). "A motion for summary judgment may not be defeated, however, by evidence that is 'merely colorable' or 'is not significantly probative.'" *Anderson*, 477 U.S. at 249–50.

The Court has a duty to evaluate the evidence independently when it decides a diapositive pre-trial motion. *Credit Managers Ass'n of S. California v. Kennesaw Life & Acc. Ins. Co.*, 25 F.3d 743, 749 (9th Cir. 1994). The Court must grant summary judgment if it ultimately determines that no rational or reasonable jury might return a verdict in the nonmoving party's favor based on all the evidence. *T. W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987) (explaining the standard for summary judgment).

A. Claims I and IV Against IATSE: Breach of IATSE Constitution and Bylaws

A union constitution is a contract between labor organizations. *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. v. Local 334*, 452 U.S. 615, 627 (1981). "As such, in an action brought under 29 U.S.C. § 185, it may be enforced like any other contract." *Local 1052 of United Bhd. of Carpenters & Joiners of Am. v. Los Angeles Cnty. Dist. Council of Carpenters*, 944 F.2d 610, 613 (9th Cir. 1991) (citations omitted). The Ninth Circuit recognizes an individual union member's right to sue a union for breach of a union constitution. *Bldg. Material & Dump Truck Drivers, Local 420 v. Traweek*, 867 F.2d 500, 507 (9th Cir. 1989).

However, "[w]hen reviewing a union's interpretation of its own constitution, our review is deferential." *Local 1052*, 944 F.2d at 613. "There is a well-established federal policy of avoiding unnecessary interference in the internal affairs of unions. . . . [A]bsent bad faith or special circumstances, an interpretation of a union constitution by union officials, as well as interpretations of the union's rules and regulations, should not be disturbed by the court." *Id.*

Claims I and IV assert claims for breach of the IATSE Constitution based on the following events: (1) Osburn was suspended from IATSE for one year after charges against him were heard by a trial body appointed by Loeb rather than the Board of Local 695; (2) Alvarez was suspended as an officer and later terminated as an employee of Local 695 when IATSE

imposed the trusteeship on Local 695; and (3) trusteeship was imposed and maintained on Local 695.

1. Suspending Osburn from IATSE for One Year

Article Seven, Section 5 provides, in relevant part, "[t]he International President shall have original jurisdiction to try charges against individual members or officers of local unions . . . [w]hen charges are preferred against a member of a dissolved or suspended local union." (Soto Decl. Ex. E (Docket No. 63-5)). Furthermore, "[t]he President shall be empowered to appoint a Trial Board to try charges within the scope of his original jurisdiction. . . ." (*Id.*). Defendants argue that, pursuant to Article Seven, Section 5, Osburn's charges were properly heard by the hearing officer appointed by Loeb. (Motion at 6–8).

As discussed above, "'an interpretation of a union constitution by union officials . . . should not be disturbed' by a reviewing court absent bad faith or special circumstances." *Local 1052*, 944 F.2d at 614 (citation omitted). Leaving bad faith aside, which the Court discusses below, IATSE's interpretation of its own Constitution is not "patently unreasonable" and therefore entitled to "substantial deference." *Id.*; *Parmeter v. Am. Fed'n of Musicians of U.S. & Canada*, 391 F. App'x 625, 627 (9th Cir. 2010) ("[A] union's interpretation of its own rules, regulations and governing documents will not be disturbed if that interpretation is not patently unreasonable, and if there is no evidence of bad faith

or special circumstances that justifies judicial interference.").

Plaintiffs argue that Article Seven, Section 5 does not apply and Loeb was obligated under Article Sixteen, Section 1 to refer the charges to the Board of Local 695 because Local 695 was not suspended at the time Loeb first served the charges. (Opposition at 11). It is true that the plain language of the IATSE Constitution does not definitively resolve the question of when the suspension of Local 695 must have taken place for the charges to fall within Loeb's original jurisdiction.

The Court concludes, however, that Defendants' interpretation is not patently unreasonable given that Section 5 provides "the International President [with] original jurisdiction to ***try*** charges against individual members or officers of local unions. . . ." (Soto Decl. Ex. E (emphasis added)). At the time the charges against Osburn were tried, Local 695 had been suspended for one month. Therefore, Defendants' position that Loeb did not breach the IATSE Constitution in appointing Harbinson instead of referring the matter to the Board of Local 695 is rather reasonable and supported by the IATSE Constitution. *See Stelling v. International Bhd. of Elec. Workers, Local 1547*, 587 F.2d 1379, 1389 (9th Cir. 1978) (affirming reasonable union construction of constitution despite ambiguity in constitutional provisions).

Plaintiffs further argue that the following acts or omissions evince bad faith: (1) failure to discipline

members who refused to pay working assessments; (2) appointment of Harbinson to hear the charges against Osburn; and (3) failure to file charges in a timely manner. (Opposition at 11–15). None of these rise to the level of "bad faith" required in the Ninth Circuit. Bad faith requires evidence that "union officials acted contrary to the [union's] best interest, out of self-interest, or in an unconscionable or outrageous way." *Teamsters Joint Council No. 42 v. Int'l Bhd. of Teamsters, AFL-CIO*, 82 F.3d 303, 306 (9th Cir. 1996).

Plaintiffs' first argument ignores the undisputed fact that Levy, who repeatedly refused to pay work assessments to other local unions, was indeed charged and disciplined. Although the fine was later held in abeyance, Loeb found that mitigating circumstances, such as encouragement by Local 695 officers like Osburn, warranted the adjustment.

Plaintiffs also state in conclusory terms that Harbinson was biased because he was "employed" by Loeb and implicated in a scheme to dissuade employers of the movie *Bad Lieutenant* from employing two Local 695 members, Mark Weber and Eric Moorman. (Opposition at 13). But, without more, Loeb's appointment of an International Representative on IATSE's payroll to try the charges is not evidence of bias. Furthermore, Plaintiffs fail to cite any supporting evidence in the record from which a reasonable jury could conclude that Harbinson was biased against *Osburn*.

Finally, Plaintiffs argue that Loeb should have filed charges against Osburn as early as when Loeb

warned Jesse in February 2011 that Loeb will bring charges if he "find[s] any evidence that an officer [] counseled [her]" to refuse to pay work assessments to sister Locals. (*Id.* at 14–15). Although Article Sixteen requires the timely filing of charges within 30 days, Article Seven of the IATSE Constitution does not require the International President to file charges within a specific time period. Furthermore, the record demonstrates that Loeb did not receive direct evidence of Osburn's encouragement of Local 695 members to refuse to pay work assessments until Loeb received Levy's letter in January 2014. Loeb's knowledge of the charges against Jesse as early as 2011 does not equate to knowledge of Osburn's alleged encouragement that Local 695 members not pay working assessments as early as 2011. Therefore, no reasonable jury could conclude in Plaintiffs' favor that the timing of when Loeb filed charges against Osburn was "contrary to the [union's] best interest, out of self-interest, or in an unconscionable or outrageous way." *Teamsters Joint Council No. 42*, 82 F.3d at 306; *cf. United Bhd. of Carpenters & Joiners of Am., Lathers Local 42-L v. United Bhd. of Carpenters & Joiners of Am.*, 73 F.3d 958, 963 (9th Cir. 1996) (affirming summary judgment because the union's interpretation of its constitution "was not unreasonable or made in bad faith as a matter of law"); *Lucas v. Bechtel Corp.*, 800 F.2d 839, 842 (9th Cir. 1986) (same).

2. Suspending Alvarez as an Officer and Later Terminating Alvarez as an Employee of Local 695

Defendants argue that Plaintiffs failed to allege what provisions of the Constitution IATSE violated when suspending Alvarez as an officer and later terminating her as an employee of Local 695. (Motion at 8 (emphasis omitted)). The Court agrees.

In addition to this omission in the FAC, even Plaintiffs' Opposition continues to remain silent about which provisions of the Constitution IATSE allegedly breached in suspending Alvarez as an officer and later terminating her as an employee of Local 695.

Therefore, Defendants are entitled to summary judgment on Plaintiffs' Claims I and IV as they relate to Alvarez's suspension and termination.

3. Imposing and Maintaining Trusteeship on Local 695

Because, as discussed in more detail under Claim III, the Court concludes that the imposition and maintenance of trusteeship was not improper, this claim similarly fails as a matter of law.

Therefore, Defendants are also entitled to summary judgment on Plaintiffs' Claims I and IV as they relate to the trusteeship.

The Motion is **GRANTED** as to Claims I and IV in their entirety.

B. Claim II Against IATSE and Loeb: LMRDA Violations

Claim II asserts that IATSE and Loeb violated Plaintiffs' rights to free speech and assembly under § 101 and § 609 of the LMRDA.

Section 101(a)(2) provides, in relevant part, that union members have the right to "meet and assemble freely with other members" and "express any views, arguments, or opinions." 29 U.S.C. § 411(a)(2). Furthermore, § 101(a)(5) guarantees certain procedural safeguards against improper discipline. *Id.* § 411(a)(5). Union members may invoke federal jurisdiction under § 102 to redress infringement of these rights. 29 U.S.C. § 412.

Section 609 also prohibits labor organizations from fining, suspending, expelling, or otherwise disciplining members for exercising their rights protected under the LMRDA. 29 U.S.C. § 529.

As the Ninth Circuit explained, "[t]he primary difference between § 609 and § 102 is that § 609 protects against retaliation for the exercise of any right secured under the LMRDA, whereas § 102 only protects rights secured under Title I." *United Steel Workers Local 12-369 v. United Steel Workers Int'l*, 728 F.3d 1107, 1115 (9th Cir. 2013).

1. Section 101(a)(2)

Plaintiffs claim that they were terminated as elected officers of Local 695 because of their outspoken

opposition to the MPI Plan, work assessments, and lack of diversity amongst the IATSE leadership.

Defendants' Motion does not expressly contest the sufficiency of Plaintiffs' LMRDA claim under § 101(a)(2). (Motion at 13). Exercising the Court's independent judgment, the Court concludes that the claims under §101(a)(2) do raise genuine issues of material fact.

In *Sheet Metal Workers' International Association v. Lynn*, the Supreme Court held that an elected union officer could bring suit under § 102 on allegations that his removal from elected position was retaliatory against his opposition to a measure advocated by the local union's leadership. 488 U.S. 347, 349–53 (1989) (holding that "[t]he removal of an elected business agent, in retaliation for statements he made at a union meeting in opposition to a dues increase sought by the union trustee, violates the LMRDA").

As to Alvarez, although not discussed by the parties, the cited reason for terminating Alvarez's employment (*i.e.*, her association with Osburn) would appear to violate Alvarez's free speech and assembly rights protected under the LMRDA. *See Ostrowski v. Local 1-2, Util. Workers Union of Am., AFL-CIO*, 530 F. Supp. 208, 218 (S.D.N.Y. 1980) ("An examination of the legislative history of the LMRDA leaves little doubt that [29 § U.S.C. [sic]] 411(a)(2) should be read as protecting freedom of association."); *Magriz-Marrero v. Union de Tronquistas de Puerto Rico, Local 901,* 933 F. Supp. 2d 234, 248 (D.P.R. 2013) ("Section 101(a)(1) and (2) [of the LMRDA] 'is intended to ensure that unions use

democratic processes' and grants union members equal rights of association and expression." (citing *Johnson v. Kay*, 860 F.2d 529, 536 (2d Cir. 1988)). Alvarez's enumerated right to free speech and assembly under Title I of the LMRDA "does not vanish with the imposition of a trusteeship." *Sheet Metal Workers' Int'l*, 488 U.S. at 358.

As to Osburn, although a close call, the Court similarly concludes that a reasonable jury could find on the evidence in the record that the cited reason for the suspension of Osburn was pretext for removing dissidents to the MPI Plan or work assessments. Osburn heavily disputes the truthfulness of Levy's accusations and contends that the statements made in January 2014 were extracted by Loeb, in exchange for holding the $12,500 fine in abeyance, so that Loeb could manufacture a reason to suspend Osburn. A jury may very well find in Defendants' favor given that Loeb's charge against Osburn had also cited evidence from Andrews, another [sic] Local 695 [sic] member, but the weighing of the evidence as well as the credibility of Osburn, Loeb, Levy, and Andrews is properly within the domain of the jury.

At the hearing, counsel for Defendants cited a Second Circuit case in which the Court of Appeals reversed the district court's dismissal, at the pleading stage, of an elected union officer's claim under § 101(a)(2). *Maddalone v. Local 17, United Bhd. of Carpenters & Joiners of Am.*, 152 F.3d 178, 183 (2d Cir. 1998). The Second Circuit held that the district court erred in failing to address the plaintiff's § 101(a)(2) claims when the rights guaranteed under § 101(a)(2) are different from

those guaranteed under § 101(a)(5) and § 609. *Id.* The Second Circuit acknowledged that, in the Second Circuit, a claim for retaliatory removal may proceed if buttressed by "clear and convincing proof" that the dismissal was "part of a series of oppressive acts by the union leadership that directly threaten the freedom of members to speak out." *Id* at 184. ("In the past, we have allowed such claims to go forward where the removal of an officer or employee stemmed from longstanding and well-documented patterns of harassment and intimidation.").

Although the "clear and convincing evidence" standard may be the law in the Second Circuit, the Court has not found any binding Ninth Circuit case law that requires the same. This evidentiary standard is also not found in the Supreme Court's decision in *Sheet Metal Worker's International*, which examined the very issue of retaliatory removals of dissidents under § 101(a)(2). Therefore, in the absence of binding case law, the Court declines to apply a heightened burden of proof to Plaintiffs' claims.

Finally, the Court is unpersuaded by Defendants' argument that, at a minimum, the Court should dismiss the claim as to Loeb. (Motion at 13–14). Contrary to Defendants' contention, the Supreme Court in *Atkinson v. Sinclair Refining Co.* did not reach the issue presented here. 370 U.S. 238, 249 (1962). In *Atkinson*, the Supreme Court considered whether union officers could be held personally liable for union actions. *Id.* (interpreting § 301 of the LMRDA to preclude liability of union agents or members "for damages for violation

of a collective bargaining contract for which damages the union itself is liable"). Here, Plaintiffs' claims against Loeb arise from his alleged abuse of office and not solely from potentially wrongful actions of IATSE. Factual disputes exist as to the identity of, if any, liable parties. *Aguirre v. Auto. Teamsters*, 633 F.2d 168, 172 (9th Cir. 1980) ("[T]he only agency issue usually present in LMRDA suits has been whether liability should be limited to the union itself or extended to individual union officers. In most instances liability has been imposed on the union and on its agents if they acted abusively with reference to their union duties.").

Therefore, the Motion is **DENIED** as to Plaintiffs' § 101(a)(2) claims.

2. Section 101(a)(5)

Under § 101(a)(5), except for nonpayment of dues, union members cannot be fined, suspended, expelled, or otherwise disciplined unless the member has been (1) served with written specific charges; (2) given a reasonable time to prepare his defense; and (3) afforded a full and fair hearing. 29 U.S.C. § 411(a)(5).

Plaintiffs claim that Defendants violated Osburn's rights under § 101(a)(5) by filing untimely charges. (Opposition at 19). Even if timely charges were a procedural requirement under § 101(a)(5), the evidence demonstrates that Loeb filed the charges in January 2014, shortly after learning of Levy and Andrews' accusations against Osburn.

Plaintiffs' challenges aim to discredit the evidence presented at Osburn's hearing. (*Id.* ("This evidence is sorely wanting in credibility. . . . Undoubtedly Levy's inability to recall dates and events . . . brings Levy's credibility into doubt. . . .")). But the Court does not sit in review of the recommendation or decision to suspend Osburn. Instead, the Court is reviewing the sufficiency of evidence to support Plaintiffs' claim that he was denied his due process rights as guaranteed under the LMRDA.

Plaintiffs also contest the impartiality of the appointed International Representatives, Gandolini and Harbinson. (*Id.* at 21). Plaintiffs cite no evidence but argue that the fact that Loeb himself made these appointments indicates that the hearing tribunals were biased. These arguments are unpersuasive. If every hearing officer appointed by the International President necessarily implies that the hearing officer is biased, that would render meaningless the judicial powers provided under Article Seven, Section 5 of the IATSE Constitution.

Finally, Plaintiffs argue that Osburn's ability to call percipient witnesses was severely restricted. (Opposition at 21 n.6). Plaintiff cites no evidence in the record, not even Osburn's own declaration, that would indicate that Osburn requested the attendance of any witnesses at his hearing.

Because no reasonable jury could conclude on this evidence that Osburn's procedural rights had been

violated, the Motion is **GRANTED** as to Plaintiffs' claim under § 101(a)(5).

3. Section 609

To the extent Plaintiffs present claims under § 609 for their suspension as elected officers or termination as appointed employees, these claims fail as a matter of law. *See Finnegan v. Leu*, 456 U.S. 431, 436–37 (1982) (holding that appointed union employees are not protected against discipline under § 609 of the LMRDA); *Childs v. Local 18, Int'l Bhd. of Elec. Workers*, 719 F.2d 1379, 1383–84 (9th Cir. 1983) (removal from employment as union business representative did not fall within the scope of sanctions prohibited by § 609), *abrogated on other grounds, Swift v. Realty Executives Nevada's Choice*, 211 F. App'x 571, 573 (9th Cir. 2006); *United Steel Workers Local 12-369 v. United Steel Workers Int'l*, 728 F.3d 1107, 1117 (9th Cir. 2013) (holding that the prohibition on suspension without observing safeguards applies only to suspension of membership in the union and "does not refer to suspension of a members' status as an officer of the union" under § 609).

Plaintiffs' reliance on *Kinney v. International Brotherhood of Electrical Workers* is misplaced; in *Kinney*, the Ninth Circuit examined the issue of attorney's fees after a union elected official prevailed on his claim that he had been discharged in violation of ***§ 101*** of the LMRDA. 939 F.2d 690, 692 (9th Cir. 1991).

C. Claim III Against IATSE: Improper Imposition and Maintenance of Trusteeship

A labor organization's trusteeship of an affiliate is entitled to a presumption of validity for the first 18 months if it has been "established . . . in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing." 29 U.S.C. § 464(c). The trusteeship was authorized after a hearing before Gandolini and in which Osburn and Alvarez both testified. The trusteeship, imposed in February 2014 and lifted in January 2015, is therefore entitled to a presumption of validity.

The effect of this presumption is to shift the burden of proof to Plaintiffs to show by "clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under [29 U.S.C. 462]." *Id.* Therefore, to overcome summary judgment, Plaintiffs must establish that there are genuine disputes of material fact, which if resolved in their favor by a reasonable fact-finder, would meet this heightened burden of proof.

IATSE is entitled to summary judgment as long as one of its rationales for imposing the trusteeship was proper, assuming Plaintiffs cannot create a triable issue of fact as to the existence of that purpose. *Serv. Employees Int'l Union Local 87 v. Serv. Employees Int'l Union Local No. 1877*, 230 F. Supp. 2d 1099, 1104 (N.D. Cal. 2002). In other words, in order to survive summary judgment, Plaintiffs must raise a dispute as to

each purpose IATSE has put forward to justify the trusteeship.

Allowable purposes for establishing a trusteeship include:

> correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

29 U.S.C.§ 462.

Here, Plaintiffs have not proven by clear and convincing evidence that IATSE's reasons for the trusteeship were impermissible. It is undisputed that members of Local 695 had failed on multiple occasions to pay work assessments, thereby necessitating sister Locals to bring charges against Local 695 and its members. IATSE's attempt to secure compliance with Article Nineteen, Section 26 of its Constitution is without a doubt a "legitimate object" of the organization. Even if there is evidence raising the specter of bad faith regarding Osburn's suspension and perhaps even the imposition of trusteeship to remove Osburn and his supporters from elected office, the Court's inquiry stops here. "As long as the trusteeship is supported by at least one proper purpose, it is immaterial that the labor union which imposed the trusteeship also may have had an impermissible motive." *SEIU Local 87*, 230 F. Supp. 2d at 1104 (citations omitted).

Therefore, the Motion is **GRANTED** as to Claim III.

D. Claim V Against IATSE, Loeb, and Miller: Unlawful Harassment

Alvarez also brings a hostile work environment claim for unlawful harassment against all Defendants. (Opposition at 27).

To prevail under FEHA, an employee claiming unlawful harassment based upon a hostile work environment must demonstrate that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of, for example, their sex or national origin. *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 42 Cal. Rptr. 3d 2 (2006).

Alvarez has not put forth sufficient evidence to survive summary judgment. Even accepting all of Alvarez's complaints as true and construing them in the light most favorable to her, the evidence put forth fails as a matter of law to establish a sufficiently pervasive or severe conduct to qualify as hostile or abusive under California law. Although Miller and Loeb may have glared at Alvarez, ignored her and another female colleague's question, or made derogatory remarks about a "Mexican standoff," courts have generally required more to withstand summary judgment. *See, e.g.*, *id.* at 293 (collecting cases). Although the complained of conduct may have been offensive and improper, FEHA is

not a "civility code" and does not outlaw coarse and vulgar language or conduct that merely offends. *Id.* at 295.

Therefore, the Motion is **GRANTED** as to Claim V.

E. Claims VI–VIII Against IATSE: Sexual Discrimination, National Origin/Ethnicity Discrimination, and Unlawful Retaliation

As a Hispanic woman, Alvarez also brings three FEHA claims against IATSE for gender discrimination, national origin/ethnicity discrimination, and unlawful retaliation. (Opposition at 28–31).

Under FEHA, to establish a prima facie case for employment discrimination, Alvarez must prove that she: "(1) was a member of a protected class, (2) was qualified for the position she sought or performing competently in the position she held, (3) suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) other circumstance suggests discriminatory motive." *Oliver v. Microsoft Corp.*, 966 F. Supp. 2d 889, 897 (N.D. Cal. 2013).

Although Alvarez claims that Loeb has repeatedly failed to appoint women to vacancies on the General Executive Board, Alvarez has never sought appointment. In fact, she disclaims any interest in the position. Therefore, on this evidence, she has no standing to assert a claim for gender discrimination.

In support of her claim for discrimination on account of her national origin or ethnicity, Alvarez points to the "Mexican standoff" comment Miller made the morning that Alvarez was terminated. (Opposition at 30). There is, however, no direct or indirect evidence establishing a causal connection between Alvarez's protected status and her termination as an employee of Local 695. Although the evidence may show that Alvarez was terminated for another improper purpose (*i.e.*, association with Osburn), no reasonable jury would conclude on these facts that Alvarez's termination was due to her Mexican heritage. *Day v. Sears Holdings Corp.*, 930 F. Supp. 2d 1146, 1161 (C.D. Cal. 2013) ("A plaintiff also 'must prove by a preponderance of the evidence that there was a 'causal connection' between [her] protected status and the adverse employment decision.'" (citation omitted)).

Finally, Alvarez has not—indeed, cannot—put forth evidence establishing a causal connection between her filing of the DFEH complaint and her termination as an employee of Local 695. Plaintiff was terminated on February 26, 2014; her complaint was not filed until February 23, 2015. At the hearing, Plaintiffs' counsel argued that IATSE also retaliated against Plaintiff for her vocal opposition to the working assessments and lack of diversity in the IATSE leadership. Nevertheless, Plaintiff has not cited to any direct or indirect evidence establishing the causal link between any protected activity and her termination.

The Motion is **GRANTED** as to Claims VI, VII, and VIII because they fail as a matter of law.

F. Defendants' Request for Attorney's Fees

Defendants' request for attorney's fees is **DENIED *without prejudice*** to Defendants' ability to renew the request in accordance with Federal Rule of Civil Procedure and Local Rule 54.

V. CONCLUSION

For the above reasons, the Motion is **DENIED** as to Plaintiffs' LMRDA § 101(a)(2) claim. The Motion is otherwise **GRANTED *in its entirety***.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL

Case No. CV-14-1310-MWF (CWx) **Date: December 6, 2016**

Title: James Osburn et al. *-v-* International Alliance of Theatrical Stage Employees et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
None Present	None Present

Proceedings (In Chambers):

ORDER RE DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT [99]

Before the Court is Defendants International Alliance of Theatrical Stage Employees ("IATSE") et al.'s Second Motion for Summary Judgment (the "Motion"). (Docket No. 99). Plaintiffs James A. Osburn and Elizabeth S. Alvarez filed their Opposition, to which Defendants filed their Reply. (Docket Nos. 105–106).

The Court previously granted in part and denied in part Defendants' Motion for Summary Judgment in an Order filed on July 27, 2016. (the "July Order") (Docket No. 82). The Court denied the first Motion for Summary Judgment only as to Plaintiffs' claims under

§ 101(a)(2) of the Labor Management Reporting and Disclosure Act ("LMRDA"). (Docket No. 82 at 1). The Court subsequently granted Defendants request to file a Second Motion for Summary Judgment on these claims alone. (Docket No. 97).

The Court has read and considered the papers filed on the Motion, and held a hearing on **December 5, 2016**.

For the reasons set forth below, the Motion is **GRANTED**. Defendants have adequately shown that the IATSE Constitution called for the removal of ***all*** elected officers upon the imposition of the trusteeship. Because Plaintiffs were not singled out or targeted, and the removals occurred at the same time the trusteeship was imposed, Plaintiffs cannot show a violation of the LMRDA.

I. BACKGROUND

The background facts were set out in the Court's previous Order, and are largely undisputed:

IATSE is a labor organization and international union that represents theatrical stage employees, moving picture technicians, artists, and allied crafts employees in the United States and Canada. (Defendant's Statement of Uncontroverted Facts ("DSUF") ¶ 1 (Docket No. 63-8)). Defendant Matthew D. Loeb is the International President of IATSE. (*Id.* ¶ 2). Defendant Michael F. Miller, Jr. is one of multiple International Vice Presidents of IATSE. (*Id.* ¶ 3).

Local 695 is a local union affiliated with IATSE and headquartered in North Hollywood, California. (*Id.* ¶ 4). Plaintiffs Osburn and Alvarez are members of Local 695 as well as IATSE. (*Id*. ¶¶ 8, 12).

On February 20, 2014, Plaintiffs Osburn, Alvarez, and Local 695 filed suit against Defendants IATSE, Loeb, and Miller. (Docket No. 1). On June 5, 2014, the Court dismissed Local 695 as a Plaintiff in this action pursuant to the parties' joint request for dismissal. (Docket No. 37).

On June 13, 2015, Plaintiffs Osburn and Alvarez filed the governing First Amended Complaint ("FAC"). (Docket No. 45). Plaintiffs Osburn and Alvarez's first four claims for relief arise from disciplinary actions taken against Local 695, its officers and employees, as well as Osburn, following hearings on charges for violations of the IATSE Constitution and Bylaws. (FAC ¶¶ 59–74). Plaintiff Alvarez also alleges four separate FEHA claims for unlawful harassment, discrimination, and retaliation. (*Id*. ¶¶ 75–119).

A. Osburn and Alvarez's Protests Regarding the MPI Plan, Work Assessments, and Leadership Diversity

Plaintiffs' declarations recount a long history of their commitment to vindicate the interests of IATSE and Local 695 members, which date as far back as four decades ago. The Court focuses on Plaintiffs' most recent complaints regarding the (1) Motion Picture Industry Pension and Health Plans ("MPI Plan");

(2) work assessments due to sister Locals under Article Nineteen, Section 26 of the IATSE Constitution; and (3) lack of diversity amongst the IATSE leadership ranks.

1. MPI Plan

In approximately April 2012, Osburn became concerned that residuals and royalties were not being deposited into the MPI Plan or accounted for by employers pursuant to the governing collective bargaining agreements. (Declaration of James. A. Osburn ("Osburn Decl.") ¶ 44 (Docket No. 70)). As a vested participant in the MPI Plan, Osburn became concerned about what the trustees had characterized as a "financial crisis of the MPI Plan," and accordingly, requested transparency into the finances of the MPI Plan from the trustees. (Osburn Decl. ¶ 44).

In February 2014, Osburn learned that the trustees intended to eliminate new enrollments in the MPI "Home Plan," which had previously allowed vested members to deposit their contributions to the MPI Plan regardless of the jurisdiction in which they worked. (*Id*. ¶ 46). Osburn spoke out against this change and also believed that Local 695 members had been discriminated against when their MPI Home Plan applications were denied. (*Id.* ¶¶ 47–50).

2. Work Assessments

Article Nineteen, Section 26 of the IATSE Constitution provides that: "If a member of a Local of [IATSE]

works in the jurisdiction and under contract held by a sister Local[,] he shall pay the same work assessment to such Local as is paid by member[s] of the Local in which he works." (DSUF ¶ 25).

Between 2010 and 2011, other local unions filed charges against Thomas Conrad, Mark Weber, and Kate Jesse, all members of Local 695, for failing to pay work assessments in violation of Article Nineteen, Section 26. (*Id.* ¶¶ 40–42).

In defense of Conrad, Osburn became involved in protesting the charges filed by Local 478. (Osburn Decl. ¶ 64). Osburn demanded Local 478 provide a thorough billing. (*Id.*).

On behalf of Jesse, Osburn and Alvarez became involved with protesting work assessments charged by Local 485 in the absence of an itemized invoice. (Declaration of Elizabeth S. Alvarez ("Alvarez Decl.") ¶¶ 20–23 (Docket No. 71)).

In February 2011, Loeb sent a letter to Jesse, copying Osburn, that stated, in part: "[I]f I find any evidence that an officer has counseled you to engage in this behavior, s/he will be brought up on charges and subject to the full panoply of penalties including suspension and expulsion if charges are proved." (DSUF ¶ 43).

In March 2011, Loeb sent another letter to Jesse indicating that, "[s]ince my February 18th letter, I have been inundated with an unending back-and-forth, tit-for-tat between Locals 485 and 695. Sister Jesse, let me

be crystal clear—this is between you and Local 485, notwithstanding letters that I have received from Local 695. Your failure to remit immediately what is owed will result in charges being filed against you for blatant violation of Article Nineteen, Section 26 of the International Constitution. If you have received advice to the contrary, you are hereby directed to advise forthwith." (Alvarez Decl. Ex. 5).

Around this time, Osburn also began vocally expressing his concerns that the work assessment requirement disparately impacted Local 695 members. (Osburn Decl. ¶ 66). According to Osburn, he repeatedly reminded Miller "that such conduct was prohibited by RICO and repeatedly contrasted the treatment being received by Local 695 members with the more favorable conditions then being afforded members of IATSE Locals 600, 700 and 800[,] who unlike Local 695 members, were not required to pay fees [] let alone excessive working dues." (*Id.*).

3. Lack of Diversity

For an unspecified period, Alvarez also expressed concerns about the lack of women among the ranks of IATSE leadership. (Alvarez Decl. ¶ 28). For example, at a General Executive Board dinner for women in IATSE, Alvarez spoke to Samantha Dulaney regarding the need for women to hold more leadership positions. (*Id.*).

Alvarez's complaint appears to be that, although Loeb had the opportunity to appoint women to

vacancies on the General Executive Board, he has failed to do so, as recently as 2013. (*Id.*). Alvarez herself disclaims any interest in a leadership position on the General Executive Board. (*Id.*).

B. Hearings on Charges Filed by Local 478 Against Local 695 Member, Joshua Levy

In August 2012, Local 478, a local union affiliated with IATSE that covers Louisiana, southern Mississippi, and Mobile, Alabama filed charges against Joshua Levy, a member of Local 695, for alleged failure to pay work assessments due to a sister Local. (DSUF ¶¶ 5, 44). The Board's findings issued in January 2014 and concluded that Levy did not willfully violate Article Nineteen, Section 26. (*Id.*). The Board, however, fined Levy $25.00 for failing to get the requisite work permit to work in Local 478's jurisdiction. (*Id.*).

In September 2012 and July 2013, Local 478 again filed charges against Levy for failure to pay work assessments for work on two other films. (*Id.* ¶ 48). Loeb appointed IATSE International Vice President William E. Gearns, Jr. to conduct a hearing on these remaining charges, which had not been the subject of review by Local 695's Board. (*Id.* ¶ 49). Levy did not appear at the hearing in December 2013; Gearns issued a "Decision After Hearing" the following month and fined Levy $12,500. (*Id.* ¶ 50).

C. Trusteeship on Local 695 Following Hearing on Charges Filed by Local 478 Against Local 695

Local 478 also filed charges against Local 695 for alleged obstruction of the IATSE Constitution based on the interference with payment of work assessments owed to sister Locals. (*Id.* ¶ 56).

At the hearing, IATSE International Vice President John Lewis and Local 478 Secretary-Treasurer Chandra Miller represented Local 478 (no relationship to Defendant Miller). (*Id.* ¶ 58; Declaration of Michael F. Miller in Support of Motion ¶ 3 (Docket No. 63-6)). Osburn represented Local 695; Alvarez testified as a witness. (DSUF ¶¶ 58–59). Loeb was not present at the hearing. (*Id.* ¶ 60).

On February 19, 2014, Gandolini issued his "Recommendations to the International President After Hearing." (*Id*. ¶ 61). On February 24, 2014, Loeb adopted Gandolini's recommendations in a "Decision and Order of the International President After Hearing," and accordingly ordered that trusteeship be imposed on Local 695 as a penalty. (*Id.* ¶ 63).

As a result of the trusteeship, all officers of Local 695, including Osburn and Alvarez, were suspended as officers (but not as members) of Local 695 on that day. (*Id.* ¶¶ 11, 64).

At the time of the trusteeship, Alvarez was also employed by Local 695 as a Special Representative. (*Id.* ¶ 14). Two days after the trusteeship, on February

26, 2014, IATSE terminated Alvarez's employment. (*Id.* ¶ 15). On that day, IATSE also terminated two other Local 695 employees: Alvarez's sister, Delia Hee, and Dean Striepeke. (*Id.* ¶ 17). All other employees of Local 695 remained on staff. (Declaration of Delia Hee ("Hee Declaration") ¶ 5 (Docket No. 71)).

IATSE submits that Alvarez, Hee, and Striepeke were terminated as employees "due to the closeness of their relationships to [Osburn], against whom charges filed by the International President were pending." (Miller Decl. ¶ 4). According to Miller, IATSE needed "to ensure the smooth running of the trusteeship without any interference." (*Id.*). IATSE feared that the loyalty of these employees to Osburn would distract them and prevent them from "properly perform[ing] their jobs and serv[ing] the membership." (*Id.*).

Osburn and Alvarez appealed the trusteeship and officer suspensions unsuccessfully to the General Executive Board. (*Id*. ¶ 65). Osburn then appealed the General Executive Board's decision; this appeal is currently docketed to be heard in 2017 by the Grievance Committee at IATSE's 68th Quadrennial Convention. (*Id.* ¶ 68).

D. Charges Filed by Loeb Against Osburn

On January 30, 2014, pursuant to Loeb's judicial powers as International President, Loeb personally brought charges against Osburn. (*Id.* ¶ 76).

Osburn requested a continuance and questioned Loeb's jurisdiction to appoint Harbinson to try Osburn on the charges. (Osburn ¶ 74).

In a letter dated February 12, 2014, Samantha Dulaney, General Counsel of IATSE, rejected Osburn's jurisdictional challenge. (DSUF ¶ 77; Osburn Decl. Ex. 53).

On March 3, 2014, Loeb served a new set of charges against Osburn, this time expressly invoking his powers under "Articles Seven, Section 5(b), Sixteen and Twenty" of the IATSE Constitution. (Wise Decl. Ex. G, D/E8 at 146 (Docket No. 69-1)). The new charges took "recognizance" of the charges previously filed. (*Id*.). The remaining information in the charges stayed the same except that the hearing date had been continued to March 25, 2014. (*Id.*).

The hearing on charges against Osburn took place before Harbinson as scheduled. (DSUF ¶ 80). Loeb was not present at the hearing. (*Id.*). On July 10, 2014, Harbinson issued a "Collected Decision After Hearing" suspending Osburn from membership in IATSE and Local 695 for one year. (*Id.* ¶ 81).

Osburn appealed Harbinson's decision to the General Executive Board. (*Id.* ¶¶ 82–83). At a meeting on January 26, 2015, the General Executive Board sans Loeb, Miller, Lewis, Gearns, and Phil LiCicero, who had recused themselves, voted to uphold the suspension. (*Id*. ¶ 83). Osburn appealed the General Executive Board's decision; the appeal is set to be heard at the Convention in 2017. (DSUF ¶ 84).

Between July 2014 and 2015, Osburn's membership with IATSE was suspended for one year as a result of charges filed by Loeb against Osburn. (*Id*. ¶ 8). Relatedly, the trusteeship on Local 695 was lifted on January 17, 2015. (*Id.* ¶ 70). Elections were held, but Osburn was not eligible to run because his membership status was suspended until July 10, 2015. (*Id*. ¶ 72).

E. Facts Underlying Alvarez's FEHA Claims

One year following Alvarez's termination as an employee of Local 695, on February 23, 2015, she filed a complaint with the DFEH against IATSE, Loeb, and Miller for employment discrimination, harassment, and retaliation. (DSUF ¶ 16; Declaration of Lisl R. Soto ("Soto Decl.") Ex. B (Docket No. 63-4)).

In support of her FEHA claims, Alvarez cites several examples in her declaration, including incidents involving Loeb and Miller glaring at Alvarez, (Alvarez Decl. ¶ 30), condescending remarks made by Miller, (*Id.* ¶ 31), racial comments about "Mexicans," (Osburn Decl. ¶ 20; *but see* Alvarez Decl. ¶ 31), comments made about Alvarez's appearance, (Alvarez Decl. ¶ 32), and comments about a "Mexican standoff," (*Id.* ¶ 33).

II. DISCUSSION

In deciding motions under Federal Rule of Civil Procedure 56, the Court applies *Anderson, Celotex*, and

their Ninth Circuit progeny. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The moving party initially bears the burden of proving the absence of a genuine issue of material fact. Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial." *Coomes v. Edmonds Sch. Dist. No.* 15, 816 F.3d 1255, 1259 n.2 (9th Cir. 2016) (citing *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)). "When the party moving for summary judgment would bear the burden of proof at trial, 'it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.'" *Miller v. Glenn Miller Productions, Inc.*, 454 F.3d 975, 987 (9th Cir. 2006) (quoting *C.A.R. Transp. Brokerage Co. v. Darden Restaurants, Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)).

Once the moving party comes forward with sufficient evidence, "the burden then moves to the opposing party, who must present significant probative evidence tending to support its claim or defense." *C.A.R. Transp. Brokerage Co.*, 213 F.3d at 480 (quoting *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558

(9th Cir. 1991)). "A motion for summary judgment may not be defeated, however, by evidence that is 'merely colorable' or 'is not significantly probative.'" *Anderson*, 477 U.S. at 249–50.

The Court has a duty to evaluate the evidence independently when it decides a dispositive pre-trial motion. *Credit Managers Ass'n of S. California v. Kennesaw Life & Acc. Ins. Co.*, 25 F.3d 743, 749 (9th Cir. 1994). The Court must grant summary judgment if it ultimately determines that no rational or reasonable jury might return a verdict in the nonmoving party's favor based on all the evidence. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

A. Claim II Against IATSE and Loeb: LMRDA Violations

The only claim still remaining in this case is Claim II, which asserts that IATSE and Loeb violated Plaintiffs' rights to free speech and assembly under § 101(a)(2) of the LMRDA.

Section 101(a)(2) provides, in relevant part, that union members have the right to "meet and assemble freely with other members" and "express any views, arguments, or opinions." 29 U.S.C. § 411(a)(2). But that provision shall not be "construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." *Id.*

Accordingly, "[u]nions may adopt and enforce rules that interfere with the interests protected by § 411(a)(2) so long as the rules are reasonable." *Kofoed v. Int'l Bhd. of Elec. Workers, Local 48*, 237 F.3d 1001, 1005 (9th Cir. 2001). Union members may invoke federal jurisdiction under § 102 to redress infringement of these rights. 29 U.S.C. § 412. To make a successful showing, Plaintiffs must show that "but for" their protected conduct, IATSE would not have removed them from their elected positions. *See Serafinn v. Local 722, Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 597 F.3d 908, 914–15 (7th Cir. 2010) (requiring but-for causation in LMRDA case); *Keenan v. Int'l Ass'n of Machinists & Aerospace Workers*, 937 F. Supp. 2d 93, 109 (D. Me. 2013) ("In order to prevail on a claim for retaliation, Keenan must prove that retaliation was the 'but-for' cause of the adverse actions.").

1. Claims against IATSE

Plaintiffs claim that they were terminated as elected officers of Local 695 because of their outspoken opposition to the MPI Plan, work assessments, and lack of diversity amongst the IATSE leadership.

The Court previously concluded, given the lack of any real briefing on the issue, that the claims under §101(a)(2) raised genuine issues of material fact. (July Order at 22). The parties have now briefed this specific issue.

Defendants' primary argument is that, under relevant provisions of the union's Constitution, the imposition of the trusteeship required Defendants to remove Plaintiffs, as well as every other officer of Local 695, as elected officers of Local 695. And because the Court upheld the imposition of the trusteeship in the July Order, Defendants' actions were not unlawful. Stated succinctly, Defendants argue the removal of ***all*** officers from a local chapter after the lawful imposition of a trusteeship does not give rise to liability under § 101(a)(2) of the LMRDA. (Motion at 2). In addition, Defendants argue that Alvarez's removal from her ***appointed*** position was proper as a matter of law. (Motion at 2).

Plaintiffs' response is somewhat confusing and seems to be directed primarily at the procedural due process arguments already rejected by the Court. (July Order at 22–24). In the July Order, the Court concluded that Osburn's arguments concerning the processes by which the Defendants tried him and terminated him were without merit, and granted summary judgment to Defendants. (*Id.* ("Because no reasonable jury could conclude on this evidence that Osburn's procedural rights had been violated, the Motion is GRANTED as to Plaintiffs' claim under § 101(a)(5)."). Therefore, any arguments in Plaintiffs' Opposition as to the procedures used by the union are unhelpful in deciding the only issue before the Court at this time.

Importantly, he [sic] Court does not find in Plaintiffs' Opposition any response to the Defendants' primary

argument: that the union Constitution required the removal of Local 695's officers upon the imposition of the trusteeship. At the hearing, Plaintiff's counsel argued for the first time that Defendants' primary argument is flawed because three of the elected officers—including Scott Bernard and Mark Ulano—were reinstated after the trusteeship was imposed. To the extent this argument was raised for the first time at oral argument, the Court need not consider it. *Bose v. Wahl Clipper Corp.*, No. CV1106087MMMSHX, 2012 WL 12861186, at *6 n.25 (C.D. Cal. Mar. 29, 2012) ("This argument was not raised in defendant's briefing, and the court declines to consider the argument absent a full opportunity for all parties to provide input.") (citing *Heffelfinger v. Electronic Data Systems Corp.*, 580 F. Supp. 2d 933, 966 n.116 (C.D. Cal. 2008)).

Defendants acknowledge that Plaintiffs make a vague reference in their Opposition that "other officers and members of Local 695 were reinstated as employees . . . after the trusteeship was imposed. . . ." (Opposition at 13). But as Defendants point out, that assertion is entirely unsupported by relevant evidence in the record. The Court has reviewed Plaintiffs' Opposition and finds no mention of the three officers mentioned at the hearing. The Court repeats the admonition issued in the July Order: Federal Rule of Civil Procedure 56 requires parties opposing a summary judgment motion to cite to particular parts of materials in the record to support their contention that certain facts remain genuinely disputed. Fed. R. Civ. P. 56(c)(1). Plaintiffs' brief has largely failed in this

respect. Furthermore, even accepting as true that these three officers were reinstated, this does not account for the other nine or ten officers removed from their posts, excluding Plaintiffs.

The Court agrees with Defendants that a fair reading of the union's Constitution contemplates the suspension of all active elected officers of a local chapter when that chapter is put into trusteeship. The Constitution states in relevant part that the International President may declare a state of emergency in a local union. (Docket No. 63-5, Art. Seven, ¶ 16(b)). Doing so suspends the chapter, the effect of which is to place the chapter into trusteeship. (*Id.* ¶ 16(c)). Part of this process involves suspending and rendering temporarily inoperative "all of the rights, powers and privileges granted to such local union, its officers and members to conduct its own affairs. . . ." (*Id.*). Defendants argue that these provisions required—or at least allowed—IATSE to suspend all officers of Local 695 upon the imposition of the trusteeship. (Motion at 2). The evidence shows that Defendants indeed suspended *all sixteen* of the officers, not just Plaintiffs Osburn and Alvarez. Attached as Exhibit G to the FAC are the letters sent to each of the sixteen Local 695 officers upon imposition of the trusteeship, which explained that each officer was being suspended. (Ex. G to FAC, Docket No. 45-1).

Given the lack of briefing, the Court failed to appreciate the significance of this fact in the previous Order. The union was allowed, as a matter of law, to adopt and enforce "reasonable rules." *Kofoed*, 237 F.3d at 1005; *Yager v. Carey*, 910 F. Supp. 704, 722 (D.D.C.

1995). One such reasonable rule is the removal of elected officers upon the imposition of a trusteeship. As stated in the July Order, IATSE's interpretation of its own Constitution is entitled to "substantial deference." (July Order at 16 (citing *Local 1052 of United Bhd. of Carpenters & Joiners of Am. v. Los Angeles Cnty. Dist. Council of Carpenters*, 944 F.2d 610, 614 (9th Cir. 1991)). And the Court is hesitant to interfere with the "internal affairs" of IATSE. *Local 1052*, 944 F.2d at 613. Upon determining that Local 695 needed to be placed into a trusteeship to ensure the proper functioning of the union, IATSE was entitled to remove the current leadership of the local chapter and replace it with leadership of its choosing. To hold otherwise would subject the union to litigation each time it reasonably found a local chapter in need of a trusteeship.

Defendants are correct that *Sheet Metal Workers' International Association v. Lynn* can be distinguished. 488 U.S. 347, 349–53 (1989) (holding that "[t]he removal of an elected business agent, in retaliation for statements he made at a union meeting in opposition to a dues increase sought by the union trustee, violates the LMRDA"). In that case, the plaintiff had been removed from his post weeks after the imposition of a trusteeship. In addition, he was the only officer removed. The primary legal holding of the case was that unions and trustees are not automatically immune from liability for actions taken during a valid trusteeship merely because a trusteeship exists. 488 U.S. at 356 ("Petitioners next contend that, even if the removal of an elected official for the exercise of his Title

I rights ordinarily states a cause of action under § 102, a different result obtains here because Lynn was removed during a trusteeship lawfully imposed under Title III of the LMRDA. We disagree").

Therefore, trustees may be held liable for their actions that violate § 101(a)(2). For example, had Osburn been removed from his post by the trustee weeks or months after the imposition of the trusteeship, the fact that he had been suspended by a trustee—and not the union itself—would not preclude liability. As stated in the July Order, Plaintiffs' enumerated rights to free speech and assembly under Title I of the LMRDA "do[ ] not vanish with the imposition of a trusteeship." (July Order at 21 (quoting *Sheet Metal Workers' Int'l*, 488 U.S. at 358).)

The holding of *Sheet Metal Workers' Int'l*, however, has little applicability here. The trustee did not remove Plaintiffs from their elected positions. Rather, IATSE removed them at the same time it imposed a trusteeship on Local 695. The acts of imposing the trusteeship and removing the officers were, essentially, one and the same. And IATSE removed all sixteen officers, not just Plaintiffs. Given this broad, uniform action, Plaintiffs cannot, as a matter of law, show that Defendants' actions targeted them in a retaliatory fashion, or that any protected conduct on their part was a "but for" cause of the union's actions. The Court previously stated that the cited reason for Alvarez's removal—her association with Osburn—might violate her freedom to assemble. (July Order at 20). The Court's concerns have been allayed by Defendants' arguments

concerning the IATSE Constitution and the understanding that all elected officers—not just Plaintiffs—were terminated upon imposition of the trusteeship.

Defendants are correct that the Court limited the scope of the Motion to the question of whether "the suspension of Plaintiffs as elected union officers was in retaliation against their exercise of free speech and assembly rights protected under the LMRDA." (July Order at 2). Therefore, arguments concerning Plaintiffs' removal from posts other than their elected offices fall outside the permissible scope of the Motion. Nonetheless, to the extent Plaintiffs' Opposition repeats such arguments, the Court will address them. Alvarez was removed from her post as an appointed official as well as from her elected position. (Alvarez Decl. ¶ 5). The removal from the at-will, appointed position as Special Representative did not violate the law. As the Court stated in the context of Plaintiffs' allegations under § 609, unions may suspend or terminate appointed employees without liability under the LMRDA. (July Order at 24 (citing *Finnegan v. Leu*, 456 U.S. 431, 436–37 (1982) (holding that appointed union employees are not protected against discipline under § 609 of the LMRDA); *Childs v. Local 18, Int'l Bhd. of Elec. Workers*, 719 F.2d 1379, 1383–84 (9th Cir. 1983) (removal from employment as union business representative did not fall within the scope of sanctions prohibited by § 609), *abrogated on other grounds, Swift v. Realty Executives Nevada's Choice*, 211 F. App'x 571, 573 (9th Cir. 2006); *United Steel Workers Local 12-369 v. United Steel Workers Int'l*, 728 F.3d 1107, 1117 (9th Cir. 2013)

(holding that the prohibition on suspension without observing safeguards applies only to suspension of membership in the union and "does not refer to suspension of a members' status as an officer of the union" under § 609)).

Accordingly, Plaintiffs cannot show that their termination as elected officers was in violation of § 101(a)(2). Likewise, Alvarez's removal from her appointed position does not give rise to liability.

2. Claims against Loeb

Defendants argue that the claims against Loeb as an individual are subject to summary judgment as well. The Motion argues that Loeb merely implemented the IATSE Constitution in removing Plaintiffs—and fourteen other elected officers—from their posts following the imposition of a trusteeship over Local 695. Having concluded that no liability may attach to the union's actions, the Court agrees that summary judgment on the claims against Loeb must be granted as well. The imposition of the trusteeship was lawful, as determined previously by this Court. (July Order at 19, 26). In this Order, the Court has clarified that the suspension of Plaintiffs from their positions as elected officers was in accordance with a reasonable rule adopted and enforced by IATSE.

While the Ninth Circuit has yet to address the issue, courts around the country have addressed liability of individuals under the LMRDA. "It is only when a union official acts outside his authority that personal

liability may arise." *Nix v. Fulton Lodge No. 2 of Int'l Ass'n of Machinists & Aerospace Workers*, 262 F. Supp. 1000, 1008 (N.D. Ga. 1967), *rev'd on other grounds*, Fulton Lodge No. 2 of Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Nix, 415 F.2d 212 (5th Cir. 1969). The Fifth Circuit has held that "officers of the union have a defense where they have acted within their official capacities and in a good faith effort to discharge their official duties." *Keene v. Int'l Union of Operating Engineers, Local 624, AFL-CIO*, 569 F.2d 1375, 1381 (5th Cir. 1978). The Ninth Circuit has held that common law agency principles should apply to LMRDA cases. *Aguirre v. Auto. Teamsters*, 633 F.2d 168, 172 (9th Cir. 1980) (considering the question of union liability under § 101(a)(1) for ballot tampering).

The Court concludes that under these principles, Loeb cannot be held liable for carrying out his official duties under the IATSE Constitution. Under a reasonable interpretation of that document, Loeb was entitled to place the local chapter under a trusteeship and remove all elected officers. Had he removed only Plaintiffs the Court's conclusion might well change. But for the reasons stated above with respect to IATSE's liability, the Court concludes that Loeb cannot be held liable for the broad, uniform actions taken with respect to removing each of the elected officers of Local 695. Even if Loeb made some independent "judgment call" as to whether to remove the local chapter's officers, his decision to remove all officers at the time the trusteeship was imposed shows Plaintiffs were not targeted by his actions. In their Opposition, Plaintiffs seem to

assume this Court already concluded that Loeb abused his office. But no such conclusion existed in the July Order.

Accordingly, the Court concludes that summary judgment is appropriate on the claims against Defendant Loeb under § 101(a)(2).

Therefore, the Motion is **GRANTED** as to Plaintiffs' § 101(a)(2) claims.

B. Defendants' Request for Attorney's Fees

Defendants argue they are entitled to attorney's fees because "Plaintiffs' lawsuit is unreasonable and without foundation." (Motion for Summary Judgment, Docket No. 63-1 at 26). Defendant requested fees specifically under the FEHA. California has cautioned that "such awards should be permitted not routinely, not simply because he succeeds, but only where the action brought is found to be unreasonable, frivolous, meritless or vexatious." *Cummings v. Benco Bldg. Servs.*, 11 Cal. App. 4th 1383, 1387, 15 Cal. Rptr. 2d 53 (1992). "In applying these criteria, it is important that a district court resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." *Id.* The Court concludes that although her claims were without merit, Alvarez's FEHA claims were not so meritless or without foundation as to justify an award of attorney's fees under California law.

Accordingly, Defendants' request for attorney's fees is **DENIED.**

III. CONCLUSION

For the above reasons, the Motion is **GRANTED** as to Plaintiffs' LMRDA § 101(a)(2) claim. No claims remain in this litigation.

This Order shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. Pursuant to Local Rule 58-6, the Court **ORDERS** the Clerk to treat this order, and its entry on the docket, as an entry of judgment.

IT IS SO ORDERED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES A. OSBURN, its duly elected Business Representative/ Executive Director; ELIZABETH S. ALVAREZ, Plaintiffs-Appellants, v. INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES; MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, AFL, CIO, CLC; MATTHEW LOEB, its International President; MICHAEL F. MILLER, Defendants-Appellees.	No. 17-55022 D.C. No. 2:14-cv-01310-MWF-CW Central District of California, Los Angeles ORDER (Filed Oct. 12, 2018)

Before: CLIFTON and CALLAHAN, Circuit Judges, and HOYT,* District Judge.

The panel has unanimously voted to deny Appellant's Petition for Panel Rehearing and Rehearing En

* The Honorable Kenneth M. Hoyt, United States District Judge for the Southern District of Texas, sitting by designation.

Banc (Docket Entry No. 63). Judge Callahan has voted to deny the petition for rehearing en banc, and Judge Clifton and Judge Hoyt so recommend. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and rehearing en banc are DENIED.

PERTINENT CONSTITUTIONAL PROVISIONS

U.S. Constitution, Article VI, Section 2:

> "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land. . . ."

U.S. Constitution, Bill of Rights, First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

PERTINENT STATUTES AND REGULATIONS

The Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401, et seq., provides in relevant part:

29 USC § 411

§ 411. Bill of rights; constitution and bylaws of labor organizations

(a)(1) Equal rights

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly

Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable

rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce *reasonable rules as* to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments

Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except—

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such

notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue

No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, ...

(5) Safeguards against improper disciplinary action

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Invalidity of constitution and bylaws

Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

(Pub. L. 86-257, title I, § 101, Sept. 14, 1959, 73 Stat. 522.)

29 U.S.C. § 412

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate . . .

(Pub. L. 86-257, title I, § 102, Sept. 14, 1959, 73 Stat. 523.)

29 U.S.C. § 462

§ 462. Purposes for establishment of trusteeship

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic

procedures, or otherwise carrying out the legitimate objects of such labor organization.

(Pub. L. 86-257, title III, § 302, Sept. 14, 1959, 73 Stat. 531.)

§ 464. Civil action for enforcement

(c) Presumptions of validity or invalidity of trusteeship

In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title. . . .

(Pub. L. 86-257, title III, § 304, Sept. 14, 1959, 73 Stat. 531.)

29 USC § 529

§ 529. Prohibition on certain discipline by labor organization

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative

> of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

(Pub. L. 86-257, title VI, § 609, Sept. 14, 1959, 73 Stat. 541.)

PERTINENT PORTIONS OF INTERNATIONAL CONSTITUTION AND BY-LAWS

ARTICLE SEVEN: The International President

Section 5. Judicial Powers

The International President shall have original jurisdiction to try charges against individual members or officers of local unions:

a. When charges have been preferred against a member to his local union and the local union has wrongfully neglected or refused to take cognizance of them; or where, after taken cognizance of charges and conducting a trial thereon, the Local imposes a penalty or renders a verdict that is, on its face, not supported by the evidence or the law, or

b. When charges are preferred against a member of a dissolved or suspended local union.

c. When charges have been preferred against a member alleging a violation of Article Twenty One, Section 8, relative to refusal to withdraw from the jurisdiction of a sister Local.

d. When charges are preferred against a member of the I.A. who does not hold membership in a Local thereof.

e. When charges are preferred against an officer alleging failure or refusal on his or her part to comply with a lawful order or directive of the International President or General Executive Board of the Alliance.

f. When charges are preferred against an officer of a local union alleging that such officer, while in office, caused or attempted to cause the Local to disaffiliate from the Alliance or to decertify the Local or the International as the bargaining agent or to transfer the bargaining agent status to another union not affiliated with the Alliance.

The President shall have jurisdiction to try all charges against an affiliated local union whether these charges are preferred by an individual member or by another affiliated local union.

The President shall have authority to entertain appeals from the decisions of the affiliated local unions, as provided in Article Seventeen of this Constitution.

The President shall be empowered to appoint a Trial Board to try charges within the scope of his original jurisdiction hereunder and to appoint an officer or representative of the Alliance to determine appeals filed with him, whenever, in his judgment, he deems it necessary or advisable to do so.

(See ER 4436-4438)

ARTICLE FIFTEEN: Impeachment of Officers

Section 1. International Officers

This Article applies only to International Officers. *Charges against Local officers must be brought under Article Sixteen.*

(See ER 4452-4454)

ARTICLE SIXTEEN: Discipline of Members

Section 1. Grounds

In addition to the penalties expressly provided under the various sections of this Constitution and Bylaws, any member who shall breach his duty as a member by violation of the express provisions of this or the local union's Constitution and Bylaws or by such conduct as is detrimental to the advancement of the purposes which this Alliance pursues, or as would reflect discreditably upon the Alliance, shall be subject to discipline in the manner set forth in the sections following. Charges filed against officers of local unions shall be filed pursuant to this Article, except as provided in Article Seven, Section 5(e).

Section 2. Fair Trial

Nothing in the provisions of this or the local union's Constitution and Bylaws shall be construed to deprive a member charged with a violation thereof of the right to a fair trial whereby his guilt or innocence may be determined, *with the exception that a member who has defaulted in the payment of any dues, fees, fines or assessments lawfully imposed shall not be entitled to stand trial, but shall be punished summarily as this Constitution and Bylaws provide.* (emphasis added)

Section 3. Charges

All charges against a member of this Alliance for a violation of the provisions of this or the local union's

Constitution or Bylaws must be in writing, in the form of a sworn affidavit, reciting clearly the offense charged, the name of the accused, the time, place and nature of the violation, over the signature of the accuser, together with a statement of the names of all witnesses to the offenses charged who shall be known to the accuser.

Section 4. Penalty for Preferring False Charges

If false charges shall be maliciously preferred against any member, the person or persons preferring such charges shall be fined Five Hundred Dollars ($500.00), the fine to be imposed upon the acquittal of the member accused.

Section 5. Charges Filed in Duplicate

Charges shall be filed in duplicate, but only the original need bear the seal of the Notary Public before whom the affidavit was sworn.

Section 6. To Whom and When Preferred

Charges shall be filed with the Secretary of the local union of which the accused is a member or with the General Secretary-Treasurer of the Alliance where the charges are preferred against a member who does not hold membership in a local union thereof.

Charges must be filed with the Local of which the accused is a member within 60 calendar days after the

offense becomes or should have become known to the person making the charge.

If the Secretary of the local union be the charged party, the charges may be filed with any other officer of the local union who is not a charged party.

Section 6A. Charges Against a Local Officer

Charges shall be filed with the Secretary of the local union of which the accused officer is a member. If cognizance is taken of the charges, the Executive Board of the Local may, if it deems it necessary or advisable, temporarily suspend the accused from office and, in that event, further payment of salary to such officer shall be withheld pending the outcome of the trial.

If the accused was temporarily suspended from office pending the outcome of the trial, and he is not found guilty after the trial, he shall be immediately reinstated to office with pay for the period he was under suspension.

Whenever an officer of a local union as against whom charges are preferred is temporarily suspended from office, such officer shall be entitled to a trial no later than thirty days after the date of his suspension. In the absence of extenuating circumstances, failure of the local union to comply with the foregoing requirement shall result in dismissal of the charges by the International President.

Section 7. Withdrawal of Charges

After charges have been filed with the Secretary of the local union they shall not be withdrawn unless the member accused shall consent to withdrawal.

Section 8. Publication of Charges

After the local union has taken cognizance of the charges, they shall be read at the next regular meeting of the local union by the presiding officer. No debate or discussion shall be permitted, but the presiding officer shall request those having personal knowledge of any of the facts alleged in the charges to submit their names as witnesses to the secretary of the meeting. The presiding officer shall refer the charges to a Trial Committee or the Executive Board in accordance with the Constitution or Bylaws of the local union.

If no regular membership meeting is scheduled within a period of 30 days after the date cognizance of the charges is taken, or if a meeting is scheduled but no quorum is present, the charges shall then be read by the presiding officer at the meeting of the executive board of the Local, to be scheduled no later than 10 days after the end of such 30-day period.

Section 9. Waiver of Trial

If charges as required by Section 3 hereof have been filed, the accused may plead guilty and waive the holding of the trial provided he does so in a written notarized and witnessed statement and has been advised

in writing as to the range of penalties that may be imposed upon him by reason of such plea. If the accused wishes to plead guilty with an explanation, such explanation shall also be in written form. An accused who pleads guilty to charges shall be deemed to have waived his right on any appeal to raise any question concerning his guilt or innocence and his appeal in that event shall be limited to the question of the appropriateness of the penalty or penalties imposed upon him. No stenographic transcript or tape recording shall be required if a plea of guilty is entered in accordance herewith.

Section 9A. Notice

Within one week after reference of the charges the Executive Board or committee shall cause to be served upon the accused personally, or by certified mail to his last known address, a duplicate copy of the charges, and shall notify him of the time and place appointed for the hearing thereon. Provided, that such notice shall be served or sent to the accused at least fifteen calendar days prior to the date for the hearing.

Section 10. Postponements

Should the accused be unable for proper cause to attend the hearing at the time and place designated, he shall, at the discretion of the Executive Board or committee, and upon application, be granted a postponement or continuance to some place and date agreed upon.

Section 11. Appearance for Trial

If the accused so desires, he may waive the right of appearing before the Executive Board or committee for hearing upon the charges preferred against him, or may designate a fellow member as counsel to appear for him and conduct the defense. Provided, that waiver of appearance shall not be prejudicial to the accused, and trial shall, if he fails to appear, proceed in his absence, the Board or committee hearing all evidence and basing its decision as to the guilt of the accused solely thereon.

Section 12. Trial Body

The Executive Board or committee of the local union, as provided by its Constitution or Bylaws, shall sit as a trial body to hear all evidence upon the charges, and to determine the guilt or innocence of the accused and make recommendations as to the penalty to be imposed if found guilty.

Section 13. Challenges

The accused shall have the privilege of challenging the right of any member of the Board or committee to sit upon his case, and in the event of such a challenge, the other members of the Board or committee shall pass upon its validity, sustaining or overruling it.

Section 14. Trial in Open Meeting

Where the accused shall be aggrieved by the ruling of the Board or committee upon his challenge of an individual member or members, he shall have the election to proceed before the Board or committee, waiving his challenge, or to demand trial before the members of the local union in open meeting. Provided, that if he elects to be tried in the last-named manner the hearing shall be conducted in the manner set forth for trials before the Board or committee.

Section 15. Right to Trial

The International President, at his discretion for good cause shown, may allow a local union to eliminate from its constitution the right of a member to a trial in open meeting as provided in Section 14 above. Should the International President decide that a local has cause to eliminate the right to trial in open meeting, it is necessary for such local to properly amend its constitution accordingly. Cause shall include consideration of the geographical jurisdiction of the local, the number of members in the local, and whether such local regularly conducts business at membership meetings at a single location.

Section 16. Hearing

The accused shall, at the hearing upon the charges, have the right to present his defense in full, and to confront and question all witnesses and to examine all the evidence of the case.

Section 17. Member Counsel

The accused shall have the right to be represented by counsel, who shall be a member of this Alliance in good standing.

Section 18. Witnesses Sworn

Whenever the accused or the Executive Board or committee so request, the testimony of any witness must be taken under oath, to be administered by the Chairman of the Board or Committee.

Section 19. Interrogatories and Depositions

If a witness be unable to attend the trial, written interrogatories and cross interrogatories, on notice to the adverse party, may be allowed upon due application to the trial body; or a written deposition of his testimony may be taken in the form of an affidavit, in which latter case such portions of it as are not denied by the adverse party shall be admitted as evidence.

Section 20. Transcript

A written transcript of all testimony adduced at the hearing shall be made, provided, however, that in the event the Local elects to tape record the proceedings, such recording must be fully and accurately transcribed by the Local in typewritten form in the event of an appeal to the International President.

Section 21. Report Findings

The Executive Board or Trial Committee shall, after hearing all the evidence, render a written report of its findings as to the guilt or innocence of the accused and, if the accused be found guilty, the penalty to be imposed. A copy thereof shall be filed with the Secretary of the local union and a copy shall be served either personally or by certified mail on the accused within five working days. A copy of the transcript of the evidence and proceedings at the hearing shall be available for examination by the accused or his/her member counsel. If so requested by the accused in writing, a copy thereof shall be furnished to the accused at his or her own expense. Immediately upon receipt of the transcript, the local union shall notify the accused in writing of its availability.

Section 22. Action by Membership of a Local Union

At the next membership meeting of the local union but in no event sooner than 20 days from the date on which the accused has been notified of the availability of the written transcript or tape recording, the report of the Executive Board or Trial Committee shall be submitted to the membership for appropriate action as hereinafter provided. The transcript of the hearing shall not be read except upon motion duly seconded and carried by a majority vote of the members present or if so requested by the accused or in any case under the circumstances referred to in Section 23 hereof.

Section 23. Acquittal or Conviction

After submission of the report, the accused, if aggrieved by the decision of the Executive Board or Trial Committee, shall be afforded an opportunity to speak either in favor of or against such decision. Upon completion of debate, the membership shall proceed to vote upon the findings of the Executive Board or Trial Committee as to the guilt or innocence of the accused. If a majority of the members present so vote, the findings of the Executive Board or Trial Committee shall be adopted. If the findings are not accepted, the transcript shall be read unless this has been done theretofore, and the question shall be put whether the accused shall be granted a trial by the membership or whether the membership shall proceed to vote upon the guilt of the accused. If a majority of the members present vote for the latter procedure, a vote shall be taken on the guilt of the accused, and if two-thirds of the members present shall vote contrary to the findings of the Executive Board or Trial Committee, the findings shall stand reversed, otherwise, the findings shall stand upheld.

Section 24 Imposition of Penalties

If the accused be found guilty, the membership shall then proceed to vote upon the decision of the Executive Board or Trial Committee as to the penalty to be imposed. If a majority of the members present so vote, the penalty fixed by the Executive Board or Trial Committee shall be adopted. If a majority of the

members present reject the penalty decided upon by the Executive Board or Trial Committee, the membership shall then proceed to vote upon the penalty to be imposed, the members voting to expel, suspend, fine and/or reprimand.

When membership voting on the report of the Executive Board or Trial Committee is completed, available remedies within the local union shall be deemed exhausted.

Section 25. Where Trial Was Before Membership

When the accused is tried before the membership as provided in Section 14, the guilt or innocence of the accused shall be determined by majority vote, and the penalty shall be imposed as prescribed in Section 24.

Section 26. Sentence Reported to International President

A report of the sentence imposed upon an accused member shall be forwarded by the President of the local union to the International President of this Alliance for filing.

Section 27. Appeals

Appeals may be taken from decisions upon the charges against members of this Alliance in the manner provided by Article Seventeen of this Constitution. Members shall exhaust all remedies by appeal within

this Alliance and shall be bound by the decisions of its tribunals as to all their rights.

(See ER 4454-4457)

ARTICLE SEVENTEEN: Appeals

Section 1. Right of Appeal

Any member (after exhausting the appeal procedure provided within his local union) or any local union aggrieved by the decision, rule, regulation, order, mandate, or act or omission of any officer, body or tribunal of this Alliance may appeal his or its case in the following order: (1) from the decision, rule, regulation, order, mandate or act or omission, of the local union to the International President of this Alliance; (2) from the decision, rule, regulation, order, mandate or act of omission, of the International President to the General Executive Board; (3) from the decision, rule, regulation, order, mandate or act or omission of the General Executive Board to this Alliance in Convention assembled, and the latter body shall be the tribunal of ultimate judgment. However, in the interim, the decision, rule, regulation, order, mandate, or act or omission, of any proper officer, body, or tribunal of this Alliance shall be enforced pending disposal of appeal; except that, in the discretion of the International President or of the tribunal from which or to which the appeal is taken, the effect of any such decision, rule, regulation, order, mandate or act or omission, may be stayed pending appeal. If the report of the Executive Board or Trial Committee of the local union is not submitted to and acted on by the membership within sixty (60) days from the date of the report, any party aggrieved may

file an appeal with the International President. If the International President is of the opinion that the interests of justice would be served by dispensing with membership review, he shall entertain the appeal; otherwise, he shall remand the case to the local union with such directions as he may deem appropriate to require a review by the membership.

Section 2. Time Allowed for Filing

Appeals from a lower to a high tribunal of this Alliance shall be cognizable only if filed within thirty (30) days after the decision. Appeals concerning nominations or elections must be made within fifteen (15) days.

Section 3. Must Be In Writing

All appeals must be in writing, setting forth those facts which the appellant shall consider entitle him to a reversal of the ruling, and signed by the appellant and properly dated.

Section 4. Copy of Appeal

When an appeal is taken, a copy of the appeal shall be filed with the lower tribunal. Within two weeks the lower tribunal shall forward to the tribunal to which the appeal is taken all the records in the case. If the appeal be from a decision rendered after trial on charges, this shall include the sworn charges, the transcript of testimony, or if a tape recording was made, the original unedited tape recording and a typewritten

transcript thereof, the findings and sentence, and any additional matters of evidence on record. The correctness of the transcript, or of the tape recording and stenographic transcript thereof, and of the record as a whole shall be certified by the lower tribunal under the appropriate seal. The lower tribunal shall also answer the appeal, setting forth reasons in support of its decision, and shall at the same time serve a copy of such answer by certified mail upon the appellant at the address specified by him in his appeal.

Decisions of an appellate tribunal shall be based entirely upon the record as a whole and evidence not introduced before the tribunal of original jurisdiction shall not be permitted.

Section 5. Appeal to Convention

If appeal be entered from the decision of the General Executive Board it shall be the duty of the General Secretary-Treasurer, upon receipt of notice from the appellant, immediately to inform all interested parties that the case has been docketed for consideration by the Alliance in Convention assembled.

Section 6. Decisions Conclusive

The members of this Alliance shall submit all their rights within the Alliance to the determination of its proper tribunals, and agree that the decisions of these tribunals shall be conclusive as to all rights and privileges accruing from membership.

Section 7. Exhausting Internal Remedies

The members of this Alliance further consent to be disciplined in the manner provided by this Constitution and Bylaws.

Under no circumstances shall a member resort to the civil courts until all remedies and procedures herein provided shall have been exhausted.

Section 8. Appellate Process

In order for an appeal to be cognizable by the International President, all remedies within the local union, including an appeal to the membership, must be exhausted. Appeals within Locals from the decision of an officer to the executive board and from the executive board to the membership must be made within thirty (30) days. Appeals concerning nominations or elections must be made within fifteen (15) days.

(See ER 4458-4459)

ARTICLE NINETEEN: Powers and Duties of Local Unions

Section 1. Title and Number

Each affiliated local union of this Alliance shall adopt as its title: International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local No. (the number to be supplied by the Alliance). No local union shall be permitted to use any other number upon its stationery, forms, documents, etc., than that number appearing upon its

charter. Any local union violating the provisions of this section shall be subject to a fine of not less than One Hundred Dollars ($100.00) and for the continued violation shall be subject to revocation of charter.

Section 2. Home Rule

Home Rule is granted to all affiliated local unions of this Alliance and this shall be construed to confer upon each local union the authority to exercise full and complete control over its own affairs; provided, however, that no local union shall take any actions or adopt any laws which conflict with any portion of this Constitution and Bylaws.

Section 3. Constitution and Bylaws

The affiliated local unions of this Alliance may adopt individual Constitutions and Bylaws for their own government, but such laws or any proposed amendments thereto must be submitted to the International President for his approval before adoption. No constitutional provision or by-law shall be adopted by any affiliated local union without such approval by the International President.

Any local union failing to comply with the provisions of this Section shall be punishable by a fine, or suspension, or revocation of its charter.

In the event that any affiliated local union shall adopt any law without the approval hereinabove provided for or inconsistent with the provisions of this

Constitution and Bylaws, such Local law shall be void and of no effect and the members of the local union shall not be bound thereby.

Section 4. Officers

Affiliated local unions of this Alliance shall, once every three years, elect by secret ballot such officers as are necessary for the proper administration of their respective Local affairs, and these officers shall be responsible to their respective local unions and to the Alliance for the faithful performance of the duties assigned them. Immediately upon the election of its officers, each local union shall forward it [sic] the General Secretary-Treasurer of this Alliance the names and permanent mailing addresses of its President, Corresponding Secretary and Business Agent, preferably a home address, but under no circumstances in care of any place of amusement. The Secretary of each local union shall immediately notify the General Secretary-Treasurer of the Alliance of any change in the addresses of these officers. The International President shall have the authority to grant approval for "staggered" terms of office for an officer(s) of a local union when such approval is so requested by the local union in writing.

Officers of affiliated local unions must be members of such local unions but to be eligible for elective or appointive office in any local union of this Alliance a person shall be actively engaged in the industry within the Local's jurisdiction and have worked for at least

one hundred and twenty (120) days in the past thirty-six (36) months, *and have been a member of that local union in continuous good standing for two years,* except that this provision shall not apply to any newly-chartered Locals or where such requirement has been waived in writing by the International President in special cases where the circumstances in his judgment warrant it. Time served as an officer of a local union shall be applicable towards the "one hundred and twenty (120) days in the past 36 months" requirement. The continuous good standing for two years is not broken unless the member has been suspended under the Local's Constitution and Bylaws.

. . . .

Section 26. Additional Revenue

No local union of this Alliance shall be allowed to charge members of affiliated sister local unions for the privilege of working within its jurisdiction, except that any Local which obligates its own individual members to contribute a given percentage of their earnings, over and above the monthly dues, shall be permitted to collect from the members of affiliated sister local unions working within its jurisdiction the same percentage.

If a member of a Local of this Alliance works in the jurisdiction and under a contract held by a sister Local he shall pay the same work assessment to such Local as is paid by members of the Local in which he works.

If the work assessment paid to the sister Local is the same as or more than is charged by the home Local, he shall pay nothing to his home Local.

However, if the work assessment to the home Local is greater than the assessment to the sister Local in which he is employed, he shall first pay the sister Local its percentage and then pay the home Local the difference between such payment and the work assessment due to the home Local.

(See ER 4465-4473)

ARTICLE TWENTY: Discipline of Local Unions

Section 1. Grounds for Discipline

Any affiliated local union violating the provisions of the Constitution and Bylaws or engaging in conduct that is detrimental to the advancement of the purposes which this Alliance pursues, or as would reflect discreditably upon the Alliance, or that is involved in any corruption or financial malpractice, or interferes with the performance by the Alliance of any contracts it holds or of any duties it may have as bargaining agent or the fulfillment of its legitimate objects as a labor organization in any other respects, shall be subject to the penalties imposed for such violations upon conviction therefor where specific penalties are provided in this Constitution and Bylaws, and where no specific penalties are provided, shall be subject to such penalties as may be deemed appropriate by the trial body including fine, trusteeship and/or revocation of charter.

Provided, however, that the specific penalties for violation of any section of this Constitution and Bylaws shall not be exclusive and in the event that the violation committed by the local union is of a gross and willful nature or is a repeated violation, the local union shall upon conviction be subject not only to the express penalty provided for each offense but also to such additional penalties including additional fines, trusteeship and/or revocation of charter as may be deemed appropriate by the trial body.

Section 2. Charges

Charges against an affiliated local union for violation of the Constitution and Bylaws of this Alliance may be preferred by any member, officer, International Officer or affiliated local union. Such charges must be in writing setting forth the offense charged and the Section of the Constitution or Bylaws alleged to be violated thereby. Charges must be made in the form of a sworn affidavit and in duplicate.

Section 3. To Whom and When Preferred

All charges against an affiliated local union shall be preferred to the International President of this Alliance, who shall, if the charges are cognizable, appoint a time and place for trial.

To be cognizable, charges against a local union must be filed within sixty (60) days after the offense

becomes or should have become known to the person making the charge.

Section 4. Notice

The International President shall cause notice to be given to the proper officers of the accused local union of the time and place appointed for trial and shall cause this notice to be served with a copy of the charges upon such officers, either personally or by certified mail, at least twenty-one (21) days in advance of the date set for trial.

Section 5. Trial

Upon the trial of charges against an affiliated local union the International President or an officer or representative of the Alliance designated by him for such purpose shall preside and shall accord to the representatives of the accused union and its accuser or accusers a full and fair hearing upon the merits of the case. The provisions of Article Sixteen of this Constitution, relating to the conduct of trials, shall be rigidly observed except that local unions may be represented only by elected officials.

Section 6. Appeals

Appeals may be taken from the decision rendered after trial upon charges against affiliated local unions in the manner provided by Article Seventeen of this Constitution.

Local unions shall exhaust all remedies by appeal within this Alliance and shall be bound by the decisions of its highest tribunal as to all their rights.

Section 7. Emergency

The procedure in cases where a state of emergency exists in a local union as defined in Article Seven, Section 16 of this Constitution shall be as set forth therein.

(See ER 4473)

INTERNATIONAL BY-LAWS

ARTICLE TEN
Official Forms

Section 1. Official Forms

The following forms shall be recognized as the official forms of the Alliance, to be used pursuant to the provisions of this Constitution and Bylaws.

Each official form shall bear the imprint of the seal of the Alliance.

Any officer or member of this Alliance who fails to use the appropriate form whenever such form is required by the Constitution and Bylaws shall, upon conviction, be subject to a fine of Twenty-Five Dollars ($25.00) for each offense.

(See ER 4492)

Section 5. Charges

Charges against Local members shall be preferred in the following manner:

International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada

Affidavit of Charges

State of ___
County of ss:

..... being duly sworn according to law deposes and says that he is a member of Local No. ..... of the I.A.T.S.E. of the United States, its Territories and Canada; that ..... being a member (or members) of that Alliance, Local No. ..... did on or about ..... at ..... in violation of the Constitution (or Bylaws) of the I.A.T.S.E. of the United States, the Territories and Canada, Article ..... Section ..... or of the Constitution (or Bylaws) of Local No. ..... Section .....; commit the following acts .....
that these charges are made not in levity or out, of malice, but in good faith that the laws of the Alliance be upheld; that to the best of his knowledge, information and belief the acts here complained of were committed in the presence of, or are within the personal knowledge of ..... who are members of this Alliance, Local No. ....

Deponent

.....

Deponent

Sworn to and subscribed before me this ..... day of ..... A.D.20 .....

.....
(Seal) (Notary Public)

The charge shall be filed in duplicate and endorsed on the back as follows:

INSTRUCTIONS

1. This affidavit must be filled out in duplicate and one copy sealed by a Notary Public. If the charges are sustained by the Local, Notary's fee will be refunded to the member lodging the charge.

2. Before making a charge against a fellow member, read the Constitution and Bylaws of the Local and International Alliance as to trials and discipline.

3. These must be filed with the Local of which the accused is a member within sixty calendar days after the offense becomes or should have become known to the person making the charge.

4. Under the Constitution and Bylaws, any member who prefers false charges against a fellow member will be fined Five Hundred Dollars ($500.00), and the costs of the proceedings.

5. These charges once filed cannot be withdrawn without the consent of the accused.

(See ER 4496-4497)

Pertinent Portions of IATSE Local 695's Constitution and By-Laws

Pledge:

I, the undersigned, as a condition of my membership in Local No. 695 and in the International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, do solemnly pledge myself to accept and abide by the provisions of the Constitution and By-Laws of this Local and of the Alliance, as now in force and as hereafter legally amended, and hereby express my consent to be governed thereby in the conduct of my trade and in my relationship with this Local and the Alliance. I solemnly pledge myself not to resort to legal proceedings against this Local and the Alliance for any grievance, but first to seek my remedies within this Local and the Alliance before resorting to any other tribunals.

Signature of Member IATSE, Local No. 695

(See ER 4616-4617)

LOCAL NO. 695 EXECUTIVE BOARD OF DIRECTORS AND CORPORATION EXECUTIVE OFFICERS

President	-	Mark Ulano
Vice-President	-	Jay Patterson
Recording-Secretary	-	Elizabeth S. Alvarez
Business-Representative	-	James A. Osburn
Secretary-Treasurer	-	Susan Moore-Chong
Sergeant-at-Arms	-	Dean R. Striepeke

Board of Trustees	- Edward L. Moskowitz - Eric Pierce - Peggy Waggoner Names
Board Members	- Scott Bernard - Laurence Abrams - Courtney M. Goodin - Richard Lightstone - Andy Rovins - Jeff Wexler

(Newly elected "2010 Officers")

(See ER 4618)

ARTICLE ONE Name, Affiliation and Jurisdiction

Section 1. NAME

The name of this organization shall be "IATSE Production Sound Technicians, Television Engineers, Video Assist Technicians and Studio Projectionists, Local Union No. 695, (hereinafter referred to "Local 695").

Section 2. ESTABLISHED

This Local has been established and exists by virtue of a Charter issued September 15, 1930, by the International Alliance of Theatrical Stage Employes, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (hereinafter called the "Alliance" or "International") and pursuant to the Constitution and By-Laws of the

International, as duly amended. And certified by the NLRB 1930.

Section 3. JURISDICTION

Jurisdiction of this Local shall embrace the jurisdiction set forth in the Charter granted and thereafter amended, and as more fully defined in Article Eighteen, Sections 9 and 10, (g) of the International Constitution (g) and (b).

(g.) Motion Picture Studio Sound Technicians' Charter.

Full and direct charter issued to Motion Picture Studio Technicians shall be construed as granting jurisdiction to members of such locals over all persons engaged in or doing work of any nature in or incidental to the transmission of sound and carrier frequencies and recording same in the production of motion pictures; including all sound, recording employes and classifications engaged in all operation, setting-up, handling, inspecting, striking, testing, temporary running, repairing, sound servicing, scoring, synchronizing recording, reproducing, re-recording, dubbing, playbacks, electrical transcriptions, sound public address units, acoustics amplification transmission, transference, sound effects, research, experimental development and all speech and audio frequency work of those electrical devices, excepting those electronic devices used as motion picture projectors or component parts of motion picture projectors of any nature, including the classification of first soundpersons, second

soundpersons, third soundpersons, fourth (or assistant) soundpersons, sound film loaders, sound public address operators, sound playback operators, newsreel persons, commercial and industrial soundpersons.

This is not to include theaters, places of amusement or jurisdiction of sister locals of the I.A.T.S.E. and M.P.M.O. of the United States and Canada.

(b.) Moving Picture Machine Operators. Full and direct moving picture machine operators' charters shall be construed as conferring upon the local unions to which they are issued by the Alliance jurisdiction over all employees of operating rooms and operators of apparatus and any connections appertaining thereto in locations where moving pictures are exhibited and also over the operators of all spot lights in conjunction with moving picture exhibitions, when such spotlights are located within the operating room or moving picture exhibitions, and further confers jurisdiction over the operators of all stereopticons, moving picture booths in all cities. This jurisdiction shall not apply to the operating of stereopticons outside a moving picture booth in connection with a show as a stage effect. No member of a moving picture machine operators' local union shall be permitted to operate any stage lights, scenery, or curtains from the front of the theater operated by remote control or otherwise, where operation would displace a stage employee.

(c.) Motion Picture Projectionists and Video Technicians shall enjoy the same craft jurisdiction as "Moving

Picture Machine Operators" local unions whether film or electronic.

(See ER 4620-4621)

ARTICLE SEVEN
Duties of Officers

Section 3. RECORDING-SECRETARY.[1] [Corresponding Secretary, IATSE Required Basic Duties, (1)-(13).]

(1) The Recording-Secretary is the official correspondent from whom and to whom communications from the General Office are directed. It is therefore the responsibility of that office to properly communicate with other officers of the local union as well as the membership. It is the duty of the Recording-Secretary to disseminate information properly within the local union whether that be by way of membership meetings, mailings, etc.

(2) The Recording-Secretary is the custodian of all official records of the local and all official stationery and forms. The yearly supplies are mailed to the Secretary and include the official forms for filing quarterly reports, ordering per capita stamps and acknowledging receipt of such supplies.

(3) The Recording-Secretary must notify the General Office each year of the current officers of the local and their addresses by completing the Officers'

[1] [I.A.T.S.E. Local Secretary's Handbook. Rev: 5/98]

Address Cards and forwarding same to the General Office. This card must be submitted to the General Office regardless of whether there have been any changes during the year.

(4) The Recording-Secretary shall report the admission of new members, expulsion of members, the reinstatement of expelled members and other matters (withdrawal, death or transfer of members) to the General Office upon the official quarterly report form. Any information forwarded in a letter must appear in the appropriate quarterly report in order for the information to be officially entered in the membership records of the local.

(5) The Recording-Secretary shall answer all correspondence addressed to his/her office by affiliated locals, members of the local and the I.A. General Office, and shall file all communications received, and copies of replies, in a systematic manner.

(6) The Recording-Secretary shall in collaboration with the Secretary-Treasurer shall collect all monies payable to the local and shall acknowledge all monies received by him/her. This responsibility also extends to the issuance of a local union membership card and appropriate quarterly per capita stamps to paid-up members in good standing.

(7) When an application of a new member is being prepared for submission to the General Office for endorsement, the Recording-Secretary shall make sure that the application is completed entirely and

that he signs it. He must also make sure that the processing fee is attached and the local seal is affixed.

(8) When the application is endorsed and returned to the local, and the member is initiated, the Recording-Secretary shall return the completed application stub to the General Office in order to receive a membership card.

(9) The Recording-Secretary shall in collaboration with the Secretary-Treasurer shall [sic] purchase per capita stamps on the first day of each quarter based on the number of members recorded the previous quarter.

(10) The Recording-Secretary shall in collaboration with the Secretary-Treasurer and C.P.A. prepare and file yearly the appropriate tax forms as required by the Internal Revenue Service, LM Reports to the Department of Labor, and EEO-3 Reports to the Equal Employment Opportunity Commission if the local has 100 or more members.

(11) The Recording-Secretary is obligated to read to the membership all official communications from the International at the next regular meeting after receipt.

(12) The Recording-Secretary shall perform such duties as may be set forth in the Local's Constitution and By-Laws.

(13) As per Article Nineteen, Section 11 of the International Constitution, the Recording Secretary of the local must report all litigation and administrative proceedings to the International President. The

Recording-Secretary should forward copies of appropriate documents and give a short, written summary of the nature of the matter and its status.

(14) It shall be the duty of the Recording-Secretary to attend all meetings of the Local and Executive Board, and when required, of committees. The Recording-Secretary shall keep minutes of all proceedings of the Local and shall read the names of the maker of motions, and those that second the motions, at all of the meetings. The Recording-Secretary shall keep the minutes of the Local and Executive Board and faithfully and regularly record the same in a book provided for that purpose.

(15) A duplicate copy of the minutes shall be mailed to the President, Business Representative, and the Secretary-Treasurer prior to the next meeting and they shall check same and each shall sign both copies.

(See ER 1137-1139)

Section 4. BUSINESS REPRESENTATIVE

The duties, powers and responsibilities of the Business Representative shall be:

(a) To assist employers in hiring members, when appropriate and consistent with applicable law, when called upon to do so, and to keep a correct list of all work given out, as well as a list of the unemployed.

(b) To report to the Executive Board all alleged violations by members of the laws of the Local.

(c) To perform such duties as ordered by the membership or by the Executive Board between membership meetings.

(d) To have full charge of the office of this Union and its business affairs, represent the Local in all dealings with employers, but at all times be under the supervision of the Executive Board.

(e) To be a member, ex-officio, of all negotiating committees. Contracts negotiated by any such committee shall be subject to ratification of the membership unless the membership has in advance empowered the Committee to conclude the contract without ratification.

(f) To investigate all complaints of members and decide, of [sic] possible, upon all questions in dispute between employer and employee, accepting any honorable means toward an amicable settlement that may be deemed essential to the best interests of this organization.

(g) To have a voice but no vote on the Executive Board.

(h) Subject to approval of the Executive Board, to hire clerical and representative staff and retain legal counsel and other professionals, where appropriate.

(i) To serve, by virtue of his or her office, as Delegate to the International Convention.

(See ER 4623)

New Orleans, LA

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL ALLIANCE
OF THEATRICAL STAGE
EMPLOYEES LOCAL 478
(LT PRODUCTIONS, LLC)

and Case 15-CB-5827

MARK WEBER

ORDER

On February 17 2010, Administrative Law Judge Margaret G. Brakebusch of the National Labor Relations Board issued her Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to and continued before the Board in Washington, D.C. The Administrative Law Judge found that the Respondent has engaged in certain unfair labor practices, and recommended that it take specific action to remedy such unfair labor practices.

No statement of exceptions having been filed with the Board, and the time allowed for such filing having expired,

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, and Section 102.48 of the National Labor Relations Board Rules and Regulations, the Board adopts the findings and conclusions of the Administrative Law Judge as contained in her Decision, and orders that the Respondent, International

Alliance of Theatrical Stage Employees, Local 478, its officers, agents, and representatives, shall take the action set forth in the recommended Order of the Administrative Law Judge.

Dated, Washington, D.C., April 16, 2010.

By direction of the Board:

Richard D. Hardick
Associate Executive Secretary

JD(ATL)–3–10
New Orleans, LA

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES LOCAL 478 (LT PRODUCTIONS, LLC)[1]

and **CASE 15–CB–5827**

MARK WEBER, an Individual

Andrea Wilkes, Esq. and Lindsy Lee, Esq., for the General Counsel.
John Shepherd, Esq., for the Respondent.

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[1] The name of the Employer was amended at hearing.

DECISION

Statement of the Case

MARGARET G. BRAKEBUSCH, Administrative Law Judge. This case was tried in New Orleans, Louisiana, on December 7 and 8, 2009. The charge was filed by Mark Weber (Weber) on December 12, 2008. The first amended charge was filed by Weber on January 23, 2009, and the second amended charge was filed by Weber on March 11, 2009.

The complaint alleges that during a period between June 16, 2008, and July 1, 2008, agents of International Alliance of Theatrical Stage Employees Local 478 (referred to in this decision as either Respondent or Local 478) engaged in conduct toward Weber and Eric Moorman (Moorman) violating Section 8(b)(1)(a) of the National Labor Relations Act (the Act.) The complaint alleges that such conduct included threats of expulsion from the International Alliance of Theatrical Stage Employees (IATSE), a refusal to issue Weber and Moorman a work permit to work for LT Productions, LLC, (the Employer) denial of membership in Local 478, and threats of retaliatory legal action if Weber and Moorman did not refuse to work for the Employer. The complaint also alleges that Local 478 requested the Employer to withdraw its offers of employment to Weber and Moorman and that Local 478 caused the Employer to withdraw its offer of employment to Weber and Moorman in violation of Section 8(b)(2) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering

the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

LT Productions, LLC (Employer) is a limited liability company with an office and jobsite in New Orleans, Louisiana, where it was engaged in filming and producing a motion picture entitled "Bad Lieutenant." During a 12-month period prior to the issuance of this complaint, the Employer, in conducting its operations described above in paragraph 2, derived gross revenues in excess of $100,000. During the 12-month period prior to the issuance of the complaint, the Employer, in conducting its operations purchased and received at its New Orleans, Louisiana, jobsite, goods valued in excess of $50,000 directly from points outside the State of Louisiana. Respondent admits, and I find, that the LT Productions, LLC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7). Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

1. Local 478's officers and jurisdiction

Local 478 is located in New Orleans, Louisiana. Michael James McHugh (McHugh) has served as Local

478's business agent since March 2005. He has been a member of Local 478 since 1997. McHugh's responsibilities include securing contracts with film makers, finding jobs for Local 478's members, helping motion picture and television productions to find employees, enforcing the contract, enforcing Local 478's constitution and IATSE's International constitution, and otherwise running Local 478's business office. Phil Salvatore LoCicero (LoCicero) has been president of Local 478 for 15 years. Members of Local 478 do all the behind-the-camera craft work on film productions including such areas as sound, grip, electrical, carpentry, painting, wardrobe, sound, props, set dressing, and set medic. The jurisdiction of Local 478 covers only Louisiana and the southern portion of Mississippi. McHugh testified that when he learns that a particular movie or show is coming into Local 478's jurisdiction, he gives the production company a roster of all members in good standing who have worked in specific crafts and a roster of members who are available for work. McHugh confirmed that while the production company is not obligated to hire from the roster, the company is obligated to give due consideration to hiring from the roster before hiring someone outside the roster. McHugh also gives his members a lead sheet or production report of available jobs.

In addition to Local 478, IATSE has various craft-specific national locals that have jurisdiction from coast to coast and perform some of the same work as Local 478. The members of the national locals can work almost anywhere in the country without geographic

jurisdictional boundaries[2] as long as they are under contract. The national locals are covered by the Hollywood Basic Agreement. Local 695, a Los Angeles national local, performs sound work throughout the United States.

Article 21 of IATSE's constitution pertains to the privileges and duties of membership. Section 7 of the Article relates to working privileges and provides the following:

> No member of this Alliance may accept a position without first obtaining a working card from his local union. Such working cards shall confer upon the recipients the privilege to work within the territory over which the issuing local union enjoys jurisdiction.
>
> All members of this Alliance operating under the Local or Alliance working cards must confine their work directly to that territory over which their particular union enjoys jurisdiction unless permission to work in the jurisdiction of a sister local union be first secured in writing from the local union enjoying such jurisdiction. Any member violating this provision shall be subject to disciplinary action.
>
> Any member of this Alliance engaging in work in the jurisdiction of any local other than the local union of which he is a member, shall be

[2] McHugh testified that there may be a restriction for the national locals to work in New York.

> subject to the rules and laws of the local union within whose jurisdiction he is employed.

Section 8 of the same Article provides:

> Any member who refuses to withdraw immediately from the jurisdiction of a sister local union when so ordered by the local union of which he is a member shall, upon being found guilty thereof, be subject to fine, suspension, or expulsion.

2. The employer

Elliott Rosenblatt (Rosenblatt) has been a film producer for 25 years. In describing his responsibilities as a film producer, Rosenblatt testified that he organizes the physical qualities of a show, puts the show together, and delivers the finished product. During 2008, Rosenblatt produced a movie entitled "Bad Lieutenant" for the Employer in New Orleans, Louisiana. Cathy Gesualdo has worked in film production for 25 years. In 2008, she worked as the production manager for the filming of "Bad Lieutenant." In their respective positions, Rosenblatt and Gesualdo hired the crew and supervised the production of the film. These responsibilities also included setting the budget and supervising the day-to-day production of the film.

Through its parent company, New Image Millennium, the Employer was subject to IATSE's Area Standards Agreement in its making of "Bad Lieutenant." Under the agreement, IATSE is required to provide a roster of potential employees to the employer

and the employer is obligated to give due consideration to the names on the roster. There is no requirement that obligates the employer to hire a minimum number of employees from the roster. Additionally, there is nothing in the agreement that contractually obligates the employer to use Local 478 as a hiring hall for its employees.

3. The employees in issue

In the television and motion picture industry, the individual responsible for recording dialogue, extraneous sounds, special effects, and communications for film and television projects is known as a sound mixer. Traditionally, the sound mixer heads the sound department or sound crew for a film project and is responsible for selecting the crew members. The sound crew usually consists of a boom operator and utility worker and may sometimes include a video assistant. The boom operator is responsible for microphone placement on the set as well as wiring actors with radial microphones. The utility person assists both the sound mixer and boom operator and is responsible for laying out the cable. Because the sound mixer is a department head, the sound mixer is usually selected by the director and producer. Although the producer ultimately hires the boom operator, the selection is usually made by the sound mixer. Mark Weber has worked as a sound mixer in the television and motion picture industry for over 30 years. Since 1986, Weber has been a member of IATSE Local 477 based in Miami, Florida.

Eric Moorman has worked as a boom operator since 2001 and has been a member of Local 477 since 2004.

4. Weber and Moorman's work in Louisiana

In the Spring/Summer of 2008, Weber was working as a sound mixer on the movie "I Love You, Phillip Morris" (ILYPM). The movie was scheduled to begin in Florida and then to relocate to Louisiana for further filming. Initially Weber was only hired to work on the filming in Florida. Jeff Cannon worked with him as a boom operator and Kyle Weber worked as utility operator. Weber testified that two days before the relocation, the directors and producer of ILYPM asked him if he would be willing to also work on the Louisiana filming of the movie. Weber testified that when he was told that he would be going to Louisiana, he was in a bit of a panic to select a new crew. He began calling other individuals who had worked with him in Florida. He learned that Eric Moorman was already in Louisiana working on a reality show. Moorman agreed to remain in Louisiana and join the production with Weber. With the approval of the producer, Weber hired Moorman as the boom operator and Chris Walker as the utility worker for the Louisiana filming.

Weber does not dispute the fact that he failed to secure a work permit from Local 478 to work in the local's jurisdiction. Weber contends that because he only received two days' notice before joining the production in Louisiana, he simply did not have time to

notify Local 478. He added that he also assumed that he would see the business agent on the production set.

5. Weber and Moorman are hired for "Bad Lieutenant"

Gesualdo testified that as she was in the process of interviewing members of Local 478 for the various crew positions with "Bad Lieutenant," she was contacted by McHugh; Local 478's business agent. During their conversation, McHugh not only inquired as to whether she had selected anyone for the job of sound mixer, he also asked her if she was familiar with Mark Weber. She was not. He went on to explain that Weber was not part of Local 478 and asked her to continue to consider members of Local 478 for the position. Gesualdo also recalled that McHugh told her that there was a problem with Weber paying his dues.

Weber testified that while he was working on ILYPM in Louisiana, the Employer contacted him about his working on the "Bad Lieutenant" film. After submitting a resume, Weber spoke with the [sic] Gesualdo during the first week of June, 2008. Weber spoke first with Gesualdo and then with producer Rosenblatt in a telephone interview. At the conclusion of the telephone conversation, Gesualdo and Rosenblatt told Weber that they would like to schedule a one-on-one meeting for him with the film's director; Werner Herzog. Weber testified that his meeting with Herzog had gone extremely well. Weber explained that Herzog had just finished a major documentary film and he had used

the same equipment package used by Weber. Weber also testified that he hit it off well with Herzog because Herzog's filming style matched the way in which Weber worked on documentaries and feature films. During Weber's pre-hiring interviews, Weber submitted Moorman's name as the boom operator that he would use if hired for the job. Gesualdo recalled that after interviewing Weber, Herzog chose him for the job. After learning of the director's decision, Gesualdo telephoned Weber and offered him the position as sound mixer.

Gesualdo recalled that when she spoke with Weber to offer him the position, she told him about McHugh's statement that Weber needed to pay his dues. Gesualdo told Weber that he should take care of that right away and get back to her as soon as he had done so. Gesualdo recalled that within five minutes of her job offer to Weber, she received a telephone call from McHugh informing her that she could not hire Weber. McHugh told her that the Employer could not hire him because he had not paid his dues and he needed a permit. Gesualdo recalled that she immediately telephoned Weber and told him to take care of obtaining the permit and to do it fast.

6. The events of June 20, 2008

On June 20, 2008, Gesualdo sent an e-mail to Scott Harbinson of the International Union, confirming that she had hired 95 percent of their crew locally. She listed the six sound mixer/boom operator teams that

the Employer had interviewed and identified Weber and Moorman as the company's creative choice. Gesualdo also added that both Weber and Moorman were IATSE members who reside in Miami. On the same day, Harbinson responded to Gesualdo's e-mail. He stated that it appeared that she was in compliance with the contractual provision requiring good faith consideration of those individuals referred by the union, particularly noting that she had hired 95 percent of the crew locally. Harbinson added, however, that anyone working in a covered craft residing out of town must be treated as a distant hire under the agreement. He suggested that she contact him if she had any other questions regarding her obligations under the agreement.

McHugh acknowledged that he received a copy of Gesualdo's e-mail and he also received the e-mail response from Harbinson. Although McHugh denied that he personally spoke with anyone from Local 477 about Weber's working on "Bad Lieutenant," he acknowledged that he forwarded the e-mail to Local 477's president, asking that he forward it to Local 477's business agent. Although LoCicero acknowledged that he spoke with Harbinson about Weber, he could not recall Harbinson's response. He asserted, however, that Harbinson did not tell him to issue a permit to Weber.

Weber recalled that the day following the job offer, he had several telephone conversations with the Employer about his pay rate, Moorman's pay rate, equipment rental rates, housing, per diem, and travel compensation. Weber testified that when he spoke with

Gesualdo on June 18, she mentioned that she was getting abusive phone calls from the Respondent in regard to the hiring of Weber and Moorman and that Rosenblatt was refusing to take further calls from Respondent. Weber asserts that he asked Gesualdo if the Respondent's telephone calls would have any affect on his employment. Weber testified that Gesualdo responded "Absolutely not," telling him that he had sterling references and that Herzog was excited about working with him. Following his notice of employment, Weber communicated with the Employer concerning such matters as the script, crew list, telephone numbers, the insurance rider, and other things pertinent to the production. Moorman also received e-mails with crew lists, contact sheets, as well as location scout information and production meeting information. Moorman also spoke with the Employer's accountant and production manager concerning proposed housing, locations, and schedules. Both Rosenblatt and Gesualdo testified that the Employer offered Weber the job.

On June 20, 2008, and approximately four weeks after Weber began working in Louisiana, Weber returned to Miami during a hiatus in the filming of ILYPM. While there, he received an e-mail from McHugh informing Weber that it had come to McHugh's attention that Weber had not completed a dues deduction consent form. McHugh attached a regular deduction and retroactive deduction form for Weber to complete and return to ILYPM. McHugh not only reminded Weber that he was obligated to pay dues to the local in whose jurisdiction that he was working, but also that he had been

obligated to request a work permit to work in Local 478's jurisdiction. McHugh also reminded Weber "In the future, if you wish to work on a show in Louisiana please contact this office for the appropriate permit." McHugh asserted that he only learned of Weber and Moorman working on ILYPM a week or two prior to the e-mail and the e-mail was his first contact with Weber about his working on the film.

After receiving the June 20, 2008, e-mail, Weber contacted Gesualdo and told her about the notice from the union and that he was required to obtain the appropriate permit from the Local. Weber testified that Gesualdo assured him that he shouldn't worry about getting the permit. Weber also recalled that Gesualdo told him that because of the earlier telephone calls from Local 478, the Employer had already contacted the Union's southeast regional representative and had been assured that the company had the right to hire whoever they wanted and there should be no problems with Weber's hire.

7. The June 25, 2008 conversation on the production set

During his lunch break on June 25, 2008, Weber received a telephone call from McHugh telling him that he was on the production set and he wanted to meet with him. Weber and Moorman met McHugh at the sound cart on the set. McHugh was accompanied by LoCicero. Moorman was able to hear only a part of Weber's conversation with McHugh and LoCicero.

Weber assumed that the meeting concerned his failure to obtain a permit from the Local 478 before working in Louisiana. Weber apologized for not getting the permit, explaining that with all of the last-minute details of getting the show started in Louisiana, he had been unable to call. Weber testified that McHugh assured him that there was no problem with his working on ILYPM and it was not an issue.

Both Weber and Moorman recalled that McHugh and LoCicero then told them that they should do the right thing and not take the "Bad Lieutenant" job. Moorman recalled that the union representatives told them that they should not take the job because there were other sound mixers that would be available during that time period. Moorman understood that because he was a part of Weber's crew, the request pertained to him as well. Weber testified that he told McHugh and LoCicero that if he did not take the job, the production company would bring in Local 695, a Hollywood local to do the sound. Weber testified that when he asked what would happen if he worked the film without the permit, McHugh and LoCicero told him that he and Weber [sic] would probably be thrown out of the union. Weber also testified that when he asked what would happen if they withdrew from the union and worked nonunion, McHugh and LoCicero replied that they would never get back into the union. Before leaving the set, McHugh and LoCicero asked for Weber's commitment to honor their request to refuse to work the show. Weber told them that he really couldn't give it to them at that time.

McHugh denied that he ever asked Weber not to take the job on "Bad Lieutenant" when he spoke with him on the set of ILYPM. He also denied that he ever told Weber "to do the right thing and not take the job." McHugh denied that he ever called Weber to arrange the meeting. He contended that while he was visiting the set for other reasons, he stopped to introduce himself to Weber. McHugh acknowledged, however, that he had wanted to speak with Weber to find out if he were going to take the job. He also wanted to talk with him about his obligation to complete the dues assessment forms for working on ILYPM. McHugh said that even though he had already sent Weber the e-mail about paying his dues for ILYPM, he wanted to speak with him personally. McHugh testified that the show was ending and he didn't want Weber to leave town before paying the dues he owed.

LoCicero recalled that when he and McHugh met with Weber, Weber apologized for not asking permission to work on ILYPM and Weber assured them that he had just signed a 3 percent dues assessment form. In response to Weber's apology, LoCicero recalled that McHugh responded: "That's fine, but, you know, everybody was working, you would have been granted permission anyway." LoCicero recalled that when Weber told them that he wanted to work on "Bad Lieutenant," they told him that because all of Local 478's sound mixers were available to work, Local 478 could not grant him permission to work on "Bad Lieutenant." LoCicero testified that although he and McHugh unequivocally told Weber that he would not be granted permission to

work on "Bad Lieutenant," they did not threaten him or ask him to leave the state of Louisiana or Local 478's jurisdiction.

8. Weber's additional conversations on June 25, 2008

After speaking with McHugh and LoCicero, Weber telephoned his own Local in Florida and spoke with the Local's secretary-treasurer, George Turkii, and told him that he had been hired for the "Bad Lieutenant." Weber testified that Turkii indicated that there should be no problem in his doing so.

Later in the day on June 25, 2008, Weber received a telephone call from Gesualdo, who reported that she had again spoken with representatives from Local 478. In response to her questions, Weber assured Gesualdo that he was a member in good standing with the Union and that he was in the process of paying assessments. Gesualdo urged him to make sure that he made his assessment payments to the Local as soon as possible.

Not long after the call from Gesualdo, Weber received a telephone call from Greg Kasper; the President of Local 477. Kasper told Weber that the information that he had previously received from Local 477 was "not necessarily true." Kasper told Weber that there was a provision that permitted a union jurisdiction to request a member's home jurisdiction to pull him out of the sister jurisdiction. Kasper further confirmed that if Local 478 requested him to do so, he would have to ask Weber to leave the Louisiana

jurisdiction and Weber would have to immediately leave. Weber asked Kasper if he were ordering Weber to leave the jurisdiction. Kasper told him that he was not doing so, however, it could happen. Kasper added that if Weber did not leave the jurisdiction, he could face actions by the union which could extend to expulsion from the union.

9. The events of June 26, 2008

Local 478 submitted into evidence an e-mail from Fred Moyse; Local 477's business agent to McHugh. In the e-mail dated June 26, 2008, Moyse includes: "Sorry to hear that this has become an issue. I spoke with Mr. Weber on Friday p.m. assured him he must (1) get your permission to work in your area, and (2) pay all dues appropriate to your local. If this issue remains unresolved other than a short period, please advise me."

10. The events of June 27, 2008

Weber testified that on the following Friday, he had a telephone conversation with McHugh that he described as cordial. Weber recalled that during the conversation, he tried to plead his case as best as he could. Weber argued that there was nothing to be gained by the Local's blocking Moorman and him from working on the film. If the crew came in from the California local, Local 478 would lose their assessment contributions. He also argued that he was a member of a sister local. Weber recalled that McHugh told him that he

made a good point and that he would take his comments into consideration. McHugh told Weber that after speaking with LoCicero, he would talk with Weber again on Monday morning.

11. The events of June 29, 2008

The following Saturday, after obtaining the International Union's telephone number from the production company, Weber telephoned Scott Harbinson with the International Union. Weber testified that Harbinson said that he would contact the Local on behalf of Weber and Moorman to see if he "could smooth the waters." Harbinson also clarified, however, that the International could not get involved in the affairs of the Local.

12. Gesualdo and Rosenblatt's conversation with McHugh

Although Gesualdo did not identify a date of the conversation, she recalled that both she and Rosenblatt had a conference call with McHugh about hiring Weber. Gesualdo recalled that she and Rosenblatt did not understand why Weber couldn't work on their film when he was already working on a film in New Orleans. McHugh stated in the conversation that the Employer was supposed to hire members of Local 478. Gesualdo testified that she was unaware that the Area Standards Contract did not require her to hire members of Local 478. She also confirmed that she was unaware that there was a union rule that prohibited

members from working outside the jurisdiction without permission of the local in whose jurisdiction they were working. She explained that she simply took McHugh's word for the union rules because he was the head of the union. Gesualdo testified that McHugh said that the Employer couldn't hire Weber and McHugh wouldn't give him a permit and she concluded "that was that." She also explained that she assumed that because Weber was working on ILYPM, he had obtained a permit to work on that film.

13. The events of June 29, 2008

The following Monday, Weber was scheduled to attend a production meeting for "Bad Lieutenant." When Gesualdo told him that he should get things smoothed out with the Union, Weber began trying to reach McHugh. Weber telephoned Gesualdo and told her that he would not be able to speak with McHugh until Tuesday. Gesualdo told him that rather than attending "tech scout, " . . . he should stay behind and work things out with Local 478 and then join tech scout as soon as possible." "Tech scout" is the procedure in which the department heads tour the filming sites to evaluate coordination problems.

14. The events of July 1, 2008

On Tuesday, July 1, 2008, Weber again tried to reach McHugh. He testified that he also received telephone calls from Gesualdo and Herzog, inquiring as to how things were going with Local 478. Around noon,

Weber and Moorman went to the union hall and spoke with McHugh and LoCicero. Weber reiterated his argument that nothing would be gained by preventing Moorman and him from working on the film because otherwise the Los Angeles crew would be brought in to do the job. Moorman recalled that the representatives told them that they would not give them a permit for the film because they were taking job opportunities away from local Louisiana sound mixers. Weber recalled that although he asked if they could transfer into the Local and work as Local 478 members, he received a "blanket no." When Weber told McHugh and LoCicero that they were exposing the Local to legal liabilities, LoCicero responded that the conversation was ended. He told Weber that if he wanted to sue Local 478, he would give him their attorney's business card. LoCicero handed him the card and said that if he took any action against the Local 478, they would have him thrown out of the union. Moorman also recalled that one of the representatives asked Weber if he wanted to work on low-budget independent films for the rest of his life.

McHugh acknowledged that Weber and Moorman came to the union hall to discuss their working on "Bad lieutenant." McHugh recalled that when Weber asked if they could work on the movie, he and LoCicero told them that Local 478 would not issue a permit for them to do so. McHugh denied that there was any discussion with Weber and Moorman about possible consequences if Weber and Moorman worked the movie without the permit or that there was any discussion about

potential legal action. McHugh acknowledged, however, that he told them that under the constitution, Local 478 would contact Local 477 and ask that Weber and Moorman be removed from Local 478's jurisdiction. McHugh denied that the subject of expulsion was ever discussed in the meeting. McHugh acknowledged that when Weber asked if he could join Local 478, LoCicero and McHugh told him "no" because he did not live in Louisiana.

LoCicero recalled that he and McHugh told Weber that Local 478 had 10 or 12 sound mixers who were qualified and available and Local 478 could not grant permission to Weber to work on "Bad Lieutenant." LoCicero denied that they threatened to have Weber removed from the jurisdiction or that they threatened him with expulsion from the union.

15. Weber's employment offer is withdrawn

After leaving the meeting, Weber telephoned Gesualdo and told her that things did not look promising and that the matter had actually gotten worse. Weber told Gesualdo that he and Moorman had decided that they were going to stay with the production and work on the film. He told her that he would deal with the union problems at some future date. Weber testified that it was at that point that Gesualdo told him that the production company had decided that they would bring in the California crew rather than employ Weber and Moorman. Weber testified that he had been very disappointed to learn that he would not be able to do

the film. He explained that not only was it a lucrative job, but it was an incredible career opportunity for him to work with Werner Herzog.

16. Rosenblatt's explanation for withdrawing the offer

Rosenblatt testified that even though the Employer initially hired Weber and Moorman, the Employer did not employ them to work on the movie as planned. Rosenblatt recalled that after selecting Weber and Moorman for the job, Local 478 informed the Employer that Weber and Moorman would not be permitted to work on the movie because Local 478 would not give them a permit to do so. Rosenblatt testified that he assumed that the "permit" was needed for Weber and Moorman to work in New Orleans. He further testified that he didn't know whether the permit was required by the Area Standards Agreement or the internal union dues. He assumed that it was a "jurisdictional thing." Rosenblatt recalled that after receiving the call, he and Gesualdo contacted Scott Harbinson with the International Union for clarification on the union's rules. During the conversation, Harbinson clarified that the Employer had the right to hire nationally rather than using anyone locally. When Rosenblatt and Gesualdo telephoned Local 478, McHugh told them that Weber would not be able to work the show because the Local would not give him a permit. McHugh told them that Local 478 wanted the Employer to use local members. Rosenblatt testified that although the Employer gave Weber the

opportunity to go back to Local 478 to try to resolve the matter, there was no resolution. Rosenblatt and Gesualdo then decided that they did not want to use local members and they hired from the national union.

17. McHugh and LoCicero's account of the incidents

In contrast to LoCicero's testimony, McHugh testified that he only spoke with Gesualdo and Rosenblatt once about hiring Weber. He testified that his only discussion had been during the "meet-and-greet" meeting that he and LoCicero had with Gesualdo and Rosenblatt. McHugh described a meet-and-greet as a meeting that is typically held a week to two months prior to the beginning of a film or movie. During the meeting, the union provides the dues assessment forms and discusses with the production company the jobs that have been filled and the jobs that are still open. McHugh recalled that it was during the meet-and-greet that he learned that Weber was being considered for the show. McHugh also recalled that he asked Gesualdo and Rosenblatt to consider Local 478 members who were available and qualified for the job. McHugh acknowledged, however, that the Employer would not have been in violation of the Area Standards Agreement if they had hired Weber for the movie. McHugh denied that he had any other discussions by telephone, in person, or by fax with the Employer about their hiring Weber. He denied that he ever told anyone from the Employer that Weber owed money to Local 478. McHugh testified that he never told the Employer that it had to hire

Local 478 members; however, he acknowledged that he may have told representatives of the Employer that Local 478 would not issue Weber a work permit.

In contrast to the testimony of McHugh, LoCicero testified that other than the meet-and-greet meeting, there were two other discussions with the Employer about Weber. LoCicero recalled that about a week or two after he and McHugh met with Weber on the set of ILYPM, LoCicero and McHugh participated in a telephone conversation with Gesualdo. Both McHugh and LoCicero were on a speakerphone. During the conversation, Gesualdo told them that the Employer really wanted to have Weber do the job. LoCicero recalled that he and McHugh told her that Local 478 had about 10 or 12 very qualified sound mixers who were available and Local 478 could not grant him a permit letter. LoCicero denied that they told Gesualdo that she could not hire Weber. He also denied that they made any threats or implied that anything would happen if the Employer nevertheless hired him. LoCicero also acknowledged that approximately a week later, Rosenblatt telephoned Local 478's office and again spoke with McHugh and him on the speaker phone. Rosenblatt asked them if he were going to have to bring in a sound mixer from California. LoCicero recalled that they told him that if he wanted to bring in a mixer from California that was up to him, however, they wished he would consider one of Local 478's members. LoCicero denied that he made any threats to Rosenblatt or told him what would happen if he hired Weber. He testified

that he did not tell Rosenblatt that he could not hire Weber.

LoCicero testified that had Weber worked on "Bad Lieutenant," Local 478 could have filed charges against him through his local union and it would have been up to his local to take action against him. LoCicero denied that he asked Local 477 to take any action against Weber. He acknowledged, however, that when he spoke with Local 477's business agent, he asked the business agent to talk with Weber and explain the rules to him. LoCicero testified that he did not ask Local 477 to bring charges against Weber for working on ILYPM without permission.

III. Legal Analysis and Conclusions

A. Whether Respondent violated Section 8(b)(2) and (1)(a) of the Act

Section 8(b)(2) of the Act provides that it is an unfair labor practice for labor organizations "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of the Act. The complaint alleges that Respondent requested that the Employer withdraw its offers of employment to Weber and Moorman and that through its conduct attempted to cause and caused the Employer to withdraw its offers of employment to Weber and Moorman. The General Counsel alleges that it [sic] doing so, Respondent violated Section 8(b)(2) of the Act.

Clearly, the Board has held that in the absence of an exclusive hiring hall arrangement, a union cannot seek the termination of employees who were not referred by the union or for union-related reasons and a union's pressure on the employer to do so is violative of the Act. *Kvaerner Songer, Inc.*, 343 NLRB 1343, 1346 (2004); *Sheet Metal Workers Local 16 (Parker Sheet Metal)*, 275 NLRB 867 (1985).

1. Respondent's affirmative conduct

Respondent argues that the Employer ultimately chose not to hire Weber and Moorman and that Local 478 had no legal authority or control over the Employer's decision not to hire them and took no inappropriate actions relative to the Employer's decision. The overall evidence, however, contradicts this argument. In *Carpenters Local 592 (Brunswick Corp.)*, 135 NLRB 999, 1000 (1962), the employer was under no contractual requirement to hire union members or to seek referrals from a union. When the business agent for the respondent local communicated to the employer that an employee's work permit was defective and strictly against the union constitution, the employer discharged an employee. The Board found the union's statement to constitute an order or demand that the employer terminate the employee and violative of the Act.

Citing the Board's decision in *Glaziers Local 513 (National Glass)*, 299 NLRB 35 (1990), the Respondent argues that an inappropriate act on the part of the

union is always involved in cases where the Board has found that a union committed an unfair labor practice against a union member that affects his employment. Pointing out that Local 478 is not a hiring hall, Respondent argues that it did not engage in any affirmative, inappropriate act that directly affected the employment of either Weber or Moorman, nor did it improperly manipulate union procedure in any other way.

With respect to the issue of whether Respondent caused or attempted to cause the Employer to withdraw its offer of employment to Weber and Moorman, Respondent relies upon the testimony of McHugh and LoCicero. Their testimony is contradicted by the testimony of Rosenblatt and Gesualdo. McHugh acknowledged that he made sure that the producers of "Bad Lieutenant" knew that he wanted them to hire one of the sound mixers on his roster. He asserts that when the producers told him that they were going to hire Weber for "Bad Lieutenant," he simply told them that he wished that they would hire his folks instead and that had been the end of it. McHugh further testified that the only contact he had with Rosenblatt and Gesualdo about Weber occurred during an initial "meet and greet" meeting in which general production matters were discussed. I do not find McHugh's testimony to be credible in light of the testimony of other witnesses. McHugh's testimony is contradicted by not only Rosenblatt and Gesualdo, but also by LoCicero. In contrast to McHugh's testimony, LoCicero acknowledged that there were two other conversations in which he and McHugh spoke with either or both Rosenblatt and

Gesualdo. These discussions were by telephone and both McHugh and LoCicero were on a speakerphone for the calls.

In further contrast to McHugh's testimony that there was only the one conversation during the meet-and-greet session, Gesualdo described two additional conversations that she had with McHugh concerning Weber. Gesualdo recalled that as she was interviewing members of Local 478 for the various crew positions, McHugh contacted her and inquired whether she had selected anyone for the sound mixer position. During the inquiry, McHugh asked Gesualdo if she were familiar with Weber. McHugh then asked that she consider members of Local 478, pointing out that Weber was not a member and also adding that there was a problem with Weber's paying his dues. Gesualdo specifically recalled that after she offered the job to Weber, she received a telephone call from McHugh telling her that she could not hire Weber because he had not paid his dues and because he did not have a permit. Rosenblatt also testified that once the job was offered to Weber, Local 478 contacted the Employer and stated that Weber and Moorman would not be permitted to work on the movie because Local 478 would not give them a permit to do so. Rosenblatt recalled that McHugh again repeated this during one of the telephone conversations. Although McHugh denied that he ever told the Employer that Weber owed money to Local 478, he acknowledged that he may have told the Employer that Local 478 would not issue Weber a work permit. LoCicero also confirmed that during one of the

telephone conversations that he and McHugh had with the Employer, he and McHugh told the Employer that Local 478 would not give Weber a permit for the job.

Respondent asserts that during conversations with the Employer, neither LoCicero nor McHugh threatened the Employer, raised their voices, yelled or lost their tempers. Respondent is correct in that there is no evidence that specific threats were made to the Employer and all of the conversations were described by both the Employer and the Respondent as civil and non-confrontational. In similar circumstances, however, the Board has found that it is immaterial that no explicit threat or demand was voiced; finding that a union's actions and thinly veiled hints of the union's displeasure were sufficient to influence an employer not to employ an employee as planned. *Carpenters Local 2396 (Tri-State Ohbayashi)*, 287 NLRB 760, 763 (1987). As the Court stated in *NLRB v. Jarka Corporation of Philadelphia*, 198 F.2d 618, 621 (1952), "This relationship of cause and effect, the essential feature of 8(b)(2), can exist as well where an inducing communication is in terms courteous or even precatory as where it is rude and demanding." See also *Local Union No. 441, IBEW*, 221 NLRB 214, 214 (1975), enfd. 562 F.2d 55 (9th Cir. 1977); *Yellow Freight Systems, Inc.* 197 NLRB 979, 981 (1872), enfd. 478 F.2d 703 (6th Cir. 1973). As the Board noted in *San Jose Stereotypers, (Dow Jones & Co.)*, 175 NLRB 1066 fn. 3 (1969), the statutory requirement of "cause and effect" is satisfied by an "efficacious request." Furthermore, the Board has found that direct evidence of an express demand

by the union is not necessary where the evidence supports a reasonable inference of a union request. *Avon Roofing & Sheet Metal*, 312 NLRB 499, 499 (1993).

Rosenblatt credibly testified that when he telephoned Local 478, McHugh told him that he was not going to allow Weber to work on the movie and would not give him a permit. McHugh said that he wanted the Employer to use one of Local 478's members. When Rosenblatt was asked during the hearing why he did not use Weber for the movie, he responded that it was because Weber was not allowed to work under the contract. Gesualdo also testified that when McHugh telephoned her after her offer of employment to Weber, McHugh told her that the Employer could not hire Weber because he did not have a permit. Gesualdo also recalled that McHugh told her that he expected the Employer to hire Local 478 members for the movie. Overall, I found Gesualdo and Rosenblatt's testimony to be credible. The Employer was not a party to this proceeding and its representatives had no apparent vested interest in the outcome of the proceeding. Because the Employer could potentially work with Local 478 on future projects that might be scheduled in Louisiana and southern Mississippi, it would be incumbent upon the Employer to remain on good teens with Local 478. Thus, it is reasonable that Gesualdo and Rosenblatt would have had more incentive to testify in line with the testimony of McHugh and LoCicero. Thus, the credibility of their testimony is enhanced by their failure to do so.

2. The effect of the Employer misunderstanding

Respondent argues that there is neither a union security clause in the Area Standards Contract nor any other provision requiring this Employer to hire union referrals. Respondent submits that under the terms of the Area Standards Agreement, the Employer had the right to hire whomever it so chose. Accordingly, Respondent argues that the Employer should be charged with knowledge of the applicable bargaining agreement which would allow the Employer to hire whomever it wants. Respondent asserts that the Employer should have known the terms of the Area Standards Contract and should have know [sic] that the Employer was under no contractual obligation to require the Employer to hire only local members or union referrals.

Gesualdo acknowledged that she was not aware of the contract terms. She testified that she took McHugh's word for whether the Employer could hire Weber. She explained that he was the head of the union and he told her that the Employer couldn't hire Weber. Gesualdo recalled that McHugh told her that if the Employer wanted to hire someone outside Local 478, the individual would have to have a permit. She assumed that Weber had obtained a permit to work on ILYPM because he was working on the film. Gesualdo also testified that even though Harbinson told her that it appeared that she was in compliance with the contractual provision requiring good-faith consideration of local members, she did not hire Weber. She explained that after Harbinson's e-mail, McHugh told her: "Harbinson does not run the local; I run the local here, and

you have to listen to me." Gesualdo testified that despite what Harbinson told her, she understood that the Employer was not allowed to hire Weber without the permit from Local 478.

In finding that a labor organization has unlawfully caused the termination of an employee, the employer's lack of understanding or misinterpretation has not been found to diminish the union's culpability. In *Carpenters Local 742 (J L. Simmons Co., Inc.)*, 157 NLRB 451, 453 (1966), enfd. 377 F.2d 929 (D.C. Cir. 1967), the union refused to renew an employee's work permit because the union believed that the employee was not complying with apprentice training requirements and the employer terminated the employee. The Board noted that even in the absence of an agreement between the union and the employer requiring the work permit as a condition of employment, the labor organization would have violated the Act by telling the employee that he could not work without a permit. The Board found that the union's statement to the employee in the presence of the employer was a clear indication to the employer to terminate the employee because of the lack of the work permit. The Board also observed that the employer was "not interested enough" to contact the union to obtain additional information from the union concerning the union's refusal to renew the permit. The Board further noted that the employer simply acted on the proposition that "whatever the reason, they had no alternative but to bring about the termination." Ibid at 454. Gesualdo's conclusion that she could not allow Weber to work on the film

without the permit from Local 478 was not that different from the position taken by the employer in *J. L. Simmons Co., Inc.*

3. Conclusion

The overall evidence establishes that Local 478, through the efforts of McHugh and LoCicero, attempted to prevent Weber's employment with the Employer. Despite the fact that no specific threats were made to the Employer, it is apparent that Respondent's overall course of conduct constituted an attempt to persuade the Employer not to hire Weber, and the attempt succeeded. I credit the testimony of Gesualdo who recalled that it was McHugh who first initiated the conversations about Weber and talked about Weber's negative standing with Local 478. Based upon statements made by McHugh and LoCicero, and the repeated requests to the Employer to hire Local 478 members rather than Weber, Respondent clearly communicated it's [sic] displeasure with the Employer's plan to hire Weber. LoCicero's own testimony reflects that after several conversations concerning the hire of Weber, Rosenblatt contacted Local 478 and asked if he were going to have to bring in a sound mixer from California. Clearly, Rosenblatt saw no alternative if Local 478 would not give Weber a permit to work the job. The very fact that Rosenblatt posed this question to Local 478 is indicative of the degree of "direct interference" exerted by Local 478. *Carpenters Local 2396 (Tri-State Ohbayashi)* at 761. Accordingly, I find that Respondent attempted to cause and caused the Employer

to withdraw its offer of employment to Weber in violation of Section 8(b)(2) of the Act. Additionally, I note that for purposes of applying Section 8(b)(2), specific intent to cause discrimination against a specific individual does not need to be proven where the natural and foreseeable consequences of a party's action would be discriminatory to certain classes. *Teamsters Local 17 (Universal Studios)*, 251 NLRB 1248, 1255 (1980). Accordingly, Respondent's actions as described above also interfered with Moorman's employment in violation of Section 8(b)(2) of the Act.

B. Whether Local 478 violated Section 8(b)(1)(a) of the Act

Section 8(b)(1)(a) of the Act makes it an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of Section 7 rights. The complaint alleges that Local 478 violated Section 8(b)(1)(a) of the Act by asking Weber and Moorman to refuse to work for the Employer, threatening Weber and Moorman with expulsion from the IATSE International, refusing to issue Weber and Moorman a work permit to work for the Employer, and advising Weber and Moorman that there was no way Local 478 would let Weber and Moorman work for the Employer. The complaint also alleges that Local 478 engaged in violations of 8(b)(1)(a) of the Act by advising Weber and Moorman that they would not work in Local 478's jurisdiction, denying Weber and Moorman membership in Local 478, and threatening Weber and Moorman

with retaliatory legal action because they did not refuse to work for the Employer.

McHugh denies that he ever told Weber to do the right thing and not take the job with "Bad Lieutenant" and he denies that he ever asked Weber not to take the job. LoCicero denied that he ever threatened Weber or asked him to leave Louisiana. LoCicero further denied that he ever threatened Weber with expulsion from the union or threatened to have him removed from Local 478's jurisdiction. Although McHugh denied that he ever discussed potential legal action or threatened expulsion from the union with Weber and Moorman, he admitted that he discussed taking internal union action against Weber. McHugh recalls that he and LoCicero told Weber that by the constitution, Local 478 would notify Weber's business agent and ask that he be removed from Local 478's jurisdiction. Both McHugh and LoCicero acknowledged that they told Weber that they would not give him a permit to work on "Bad Lieutenant." McHugh also recalled that he told Weber that he could not join Local 478. McHugh testified that because Weber lived in Florida, he did not satisfy the residency requirement to join Local 478.

Respondent asserts that this case deals with internal union rules which all members are pledged to follow. Respondent asserts that each member of the union is free to resign from membership and avoid the imposition of the union rules. Respondent further asserts that the jurisdictional requirements imposed by Local 478 on Weber and Moorman were fair, reasonable, and the means by which all affiliate locals can enhance the

job opportunities for their members. Respondent maintains that by telling Weber and Moorman that they could not have a permit to work on "Bad Lieutenant," Local 478 was simply addressing an internal union matter that is not prohibited by the Act.

The Board has found, however, that even though Section 7 of the Act may permit a union to prescribe rules with respect to acquisition and retention of membership, "a union's ability to enforce such rules in such a way that it affects a member's employment status is restricted." *Iron Workers Local 111 (Steel Builders)*, 274 NLRB 742, 745 (1985), enfd. in relevant part, 792 F.2d 241 (D.C. Cir. 1986).

The Board's analysis of a very early case is very helpful in analyzing the facts in the instant case. In *Carpenters Local 141 (Stop and Shop, Inc.)*, 143 NLRB 142 (1963), the Board found that a respondent union violated Section 8(b)(1)(a) of the Act by attempting to cause an employer to refuse to hire the charging parties who did not have permits to work in the local's jurisdiction. Similar to the circumstances of the present case, the union's constitution prohibited a member from going to work in the jurisdiction of another local without a permit from that local and the respondent union refused to issue work permits to the charging parties. The judge found that the combination of the respondent union's failure to issue the work permits and the respondent's statement to the employer objecting to the hire of the charging parties constituted a violation of 8(b)(1)(a) and (2). The Board, however, disagreed with the judge's findings in part. While the

Board agreed that the respondent union unlawfully attempted to cause the employer not to hire the charging parties, the Board disagreed that the respondent union did in fact cause the employer not to hire the individuals. The Board made this distinction, finding that the charging parties "had every intention of adhering to that constitutional requirement." The Board specifically noted "the decisional causative factor here is that neither would accept employment unless Respondent local first granted them work permits." Ibid at 143. Obviously, it is this factor that is absent in the facts of the instant case. Weber credibly testified that when he last spoke with Gesualdo, he told her that he and Moorman had decided that they wanted the jobs despite their differences with the union and they would take the jobs and try to work things out with the union at a later time. Thus, it was not their adherence to the internal union rules that prevented their obtaining the jobs, but the actions of Local 478 that prevented their obtaining these jobs.

Although the Board ultimately reached a different conclusion because of the charging parties' adherence to the internal union rules, the judge's analysis is especially insightful with respect to the situation in which the applicant employees are kept from employment despite their willingness to reject internal union rules. The judge noted "The difference between a lawful act and one proscribed by law is dependent upon whether the employee alone is given the opportunity to decide whether to work without a permit. If a union causes or attempts to cause an employer to deny

employment, then it is pulling the rug from under the employee. In effect it is depriving him from making a free choice and forcing him to be a good union member in derogation of his rights." Ibid at 147. It appears that this same logic applies to the instant case. Despite the fact that Moorman and Weber were prepared to accept the results of their going against internal union rules, they were denied the opportunity to do so. Local 478 made that decision for them by exerting pressure on the Employer and ultimately causing the Employer to utilize the Los Angeles local rather than hiring Moorman and Weber.

Overall, there is no evidence to indicate that Local 478 was required to give Weber and Moorman a permit to work on "Bad Lieutenant" or to allow them to join Local 478. The evidence would further indicate that Local 478 had authority to request Local 477 to proceed against Weber and Moorman if they remained in Local 478's jurisdiction and worked on the film in question. Despite the authority given to Local 478 by its own internal union rules, the conduct of McHugh and LoCicero nevertheless violated Section 8(b)(1)(a) of the Act.

The credible evidence reflects that McHugh made the first contact with the Employer to determine if Weber were [sic] under consideration for the position. Thereafter, McHugh and LoCicero engaged in continuing telephone conversations with Employer in an effort to convince the Employer to hire one of the local sound mixers. It is undisputed that McHugh sent Weber an e-mail telling him that he needed a permit to take

another job in Louisiana. McHugh and LoCicero met twice with Weber in which his taking the job with the Employer was discussed. LoCicero admits that he contacted Weber's Local in Florida to ask Local 477 to intervene and to speak with Weber. Additionally, McHugh forwarded the Employer's email correspondence with the International about Weber on to Local 477. Despite all of these various contacts, conversations, and discussions with the Employer and with Weber about his taking the job, McHugh and LoCicero nevertheless assert that they never asked Weber to refuse to take the job. Such an assertion is not plausible. The overall record indicates that Local 478 engaged in a "deliberate pattern of conduct" designed to force Weber and Moorman to reject the Employer's job offer and to allow the positions to be filled by local members of Local 478. *Sachs Electric Company*, 248 NLRB 669, 670 (1980). I find that Respondent violated the Act by asking Weber and Moorman to refuse to work for the Employer and by threatening them with expulsion from IATSE if they did not refuse to work for the Employer as is alleged in complaint paragraph 7(a) and (b). I further find that Respondent threatened Weber and Moorman with expulsion from IATSE if they worked on "The Bad Lieutenant" as alleged in complaint paragraph 8(c). I credit the testimony of both Weber and Moorman with respect to the allegations for which I find merit. I found Weber and Moorman's testimony concerning the conversations with the union representatives on June 25, 2008, and July 1, 2008 to be credible with respect to the allegations contained in 7(a) and (b) and 8(c) of the complaint.

Complaint paragraph 7(c) alleges that LoCicero and McHugh refused to issue Moorman and Weber a work permit to work for the Employer and complaint paragraph 8(b) alleges that McHugh and LoCicero denied Moorman and Weber membership in the Local. There is no dispute that Local 478 denied Weber and Moorman's request to join the local or to obtain the work permit. There is, however, no evidence that Local 478 was required to do so. Respondent had the authority to limit local membership to individuals who resided within the jurisdiction of the local. Furthermore, Respondent was not obligated to issue a permit to Weber or Moorman upon request. Accordingly, I have not found merit to the allegations contained in complaint paragraphs 7(c) and 8(b).

Additionally, I have not found merit to the allegations contained in complaint paragraphs 7(d) and 8(a) and (d). Complaint paragraph 7(d) alleges that McHugh and LoCicero advised Weber and Moorman that "there was no way they would let them work for the Employer and complaint paragraph 8(a) alleges that McHugh and LoCicero advised Weber and Moorman that they would not work in Respondent's jurisdiction. Complaint paragraph 8(d) alleges that McHugh and LoCicero threatened Weber and Moorman with retaliatory legal action because they did not refuse to work for the Employer. Because the record testimony does not correlate to these specific allegations, I find no merit to complaint paragraph 7(d), 8(a) or 8(d). Nevertheless, as evidenced by the conduct alleged in complaint paragraphs 7(a) and (b) and 8(c), as well as the

Respondent's attempt to cause, and Respondent's causing, the Employer to withdraw the job offers to Moorman and Weber, I find that Respondent restrained and coerced Weber and Moorman in violation of their Section 7 rights. *Glaziers Local 513 (National Glass)*, 299 NLRB 35, 43 (1990).

Conclusions of Law

1. By asking employees to refuse to work for the Employer, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(a) of the Act.

2. By threatening employees with expulsion from IATSE if they did not refuse to work for the Employer, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(1)(a) of the Act.

3. By requesting the Employer to withdraw its offers of employment to Mark Weber and Eric Moorman, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(a) of the Act.

4. By attempting to cause, and by causing, the Employer to withdraw its offers of employment to Mark Weber and Eric Moorman, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(2) and (1)(a) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having violated Section 8(b)(2) and (1)(a) of the Act, it must make whole Mark Weber and Eric Moorman for any loss of earnings that they may have suffered as a result of the discrimination against them with interest compounded thereon in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[3]

ORDER

The Respondent, International Alliance of Theatrical Stage Employees, Local 478, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall:

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Asking employees to refuse to work for an Employer because they are not members of Local 478.

(b) Threatening employees with expulsion from the union if they do not refuse to work for an employer.

(c) Requesting an employer to withdraw its offers of employment to employees because they are not members of Local 478.

(d) Attempting to cause and/or causing an employer to withdraw its offer of employment to employees in violation of Section 8(b)(2) of the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Make whole Mark Weber and Eric Moorman for any loss of earnings they, may have suffered because of the discrimination against them in the manner set forth in the section of this decision entitled "The Remedy."

(b) Within 14 days after service by the Region, post at Local 478's New Orleans, Louisiana facility copies of the attached notice marked as

"Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 17, 2010

/s/ Margaret G. Brakebusch
Margaret G. Brakebusch
Administrative Law Judge

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[4] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT ask you to refuse to work for an employer in violation of Section 8(b)(1)(a) of the Act.

WE WILL NOT threaten you with expulsion from the union because you do not refuse to work for an employer.

WE WILL NOT request an employer to withdraw its offer of employment to employees because they are not members of Local 478.

WE WILL NOT attempt to cause or cause an employer to withdraw its offers of employment to employees because they are not members of Local 478.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Mark Weber and Eric Moorman for any loss of earnings that they may have suffered as a result of the discrimination against them.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, LOCAL 478

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 South Maestri Place, Seventh Floor,
New Orleans, LA 70130-3413
(504) 589-6361, Hours: 9:00 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY

QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER. (504) 589-6389.

68TH QUADRENNIAL CONVENTION
HOLLYWOOD, FLORIDA – JULY 17-21, 2017

PROCEEDINGS

GROWTH =
STRENGTH

2017 PROCEEDINGS

ELIZABETH ALVAREZ V. LOCAL 695

The appeals of Elizabeth Alvarez and James Osburn concern the 2014 trusteeship of Local 695. Alvarez and Osburn were officers of Local 695 at the time the Local was placed in trusteeship. They each appealed President Loeb's Decision to place Local 695 in trusteeship and to remove them from office. The facts leading up to the trusteeship occurred over a period of years. They concern Local 695's interactions with other IATSE local unions. The facts involve Article Nineteen, Section 26, Article Twenty, Section 1, and Article Seven, Section 5(f), of the International Constitution.

Committee Member Peter Marley and Local 695 member Jay Patterson excused themselves from the proceedings during the appeals of Sister Alvarez and Brother Osburn.

HISTORY: Article Nineteen, Section 26, requires a member who works under International collective bargaining agreements such as the Area Standards Agreement or the Low Budget Agreement to pay work assessments to the Local where the member is working.

In 2010, Local 695 member Kate Jesse was working in the jurisdiction of Local 485. Sister Jesse refused to pay work assessments to Local 485. Local 485 reached out to Local 695, namely Local 695 Business Manager James A. Osburn. After unsuccessfully dealing with Brother Osburn, Local 485 asked President Loeb to intervene.

Also in 2010, Local 695 member Thomas Conrad was working in the jurisdiction of Local 478. Conrad also refused to pay work assessments to Local 478, which led to a series of discussions between Brother Osburn and Local 478. Local 478 filed charges against Conrad for violating Article Nineteen, Section 26. Local 695 never had a trial on the charges Local 478 filed against Conrad and the assessments owed by Conrad to Local 478 remain unpaid.

In February and March 2011, Sister Jesse was again working in the jurisdiction of Local 485. She again refused to pay work assessments to Local 985. Sister Jesse told Local 485's Business Agent William Randall that on the advice of Osburn she was not going to pay any fees to Local 485. Again, Local 485 reached out to Local 695 without any success. As it had done before, Local 485 requested President Loeb's assistance.

When President Loeb got involved in February 2011, he issued a directive to Local 695 advising Local 695 that its members are required to follow Article Nineteen, Section 26, of the International Constitution. President Loeb stated that if he found out that

anyone in Local 695 had advised members not to pay work assessments required by Article Nineteen, Section 26, that he himself would file charges against that person.

A mere four months after President Loeb's February 2011 directive, Local 695 was again leading Local 478 on a chase for work assessments from Local 695 members Conrad and Mark Weber; both of whom were working in Local 478's jurisdiction. Local 478 filed charges against Weber. Local 695 never prosecuted the charges and neither Weber nor Conrad ever complied with Article Nineteen, Section 26.

Beginning in 2012 through September 2013, Local 478 pursued Local 695 member Joshua Levy for the same violations that had been committed by Jesse, Conrad, and Weber in 2010 and 2011. Local 478 officers Michael McHugh and Chandra Miller filed charges against Levy. Local 695 only heard one set of charges, those filed by Brother McHugh. It never heard the charges filed by Sister Miller. The McHugh v. Levy charges were filed in August 2012, but Local 695 did not hear the charges until 10 months after they were filed June 2013, and it did not issue a decision until January 2014, 17 months after the charges were filed. Local 695 fined Brother Josh Levy $25 for violating Article Nineteen, Section 26.

Brother Osburn testified that Local 695 was only addressing the Levy charges "under threat of trusteeship." The charges Sister Miller filed against Levy

from September 2012 through September 2013, were never heard by Local 695.

Because Local 695 had done nothing to prosecute the charges Sister Miller filed against Brother Levy, President Loeb took jurisdiction of those changes under Article Seven, Section 5(a), of the International Constitution. Vice President William E. Gearns conducted a hearing on the charges. The hearing took place on December 18, 2013. Brother Levy did not appear. He was found guilty of all five charges and lined $12,500.00.

. . . Committee Co-Chairperson Di Tolla read the following:

LOCAL 478 V LOCAL 695
(TRUSTEESHIP)

In October 2013, Sister Chandra Miller, Secretary-Treasurer of Local 478 filed charges against Local 695. The charges were filed under Article Twenty, Section 1, of the International Constitution. Because the charges involved one Local against another Local, the International took jurisdiction under Article Seven, Section 5(f), of the International Constitution. The charges also alleged that Local 695 had violated Article Nineteen, Section 26.

On January 7, 2014, the International held a trial on these charges. The charges alleged that Local 695:

"encouraged its members to violate Article Nineteen, Section 26, of the International Constitution; and

"encouraged its members not to pay dues and work assessments to sister Locals in whose jurisdiction Local 695 members were working; and

"engaged in delay and obstructionist behavior encouraging members to disregard their constitutional obligations."

During the hearing on the charges between Local 478 and Local 695, the testimony established that when members of Local 695 worked in the jurisdiction of Local 478 or another Local, they would not pay work assessments required by Article Nineteen, Section 26, of the International Constitution.

After both sides presented all their evidence, the Hearing Officer recommended to the International President that the Local be placed in trusteeship.

The International President completely reviewed the entire record in the case before he issued his "Decision and Order" on February 20, 2014, placing Local 695 in trusteeship. President Loeb found that Local 695 and its officers ignored the directive he issued on February 18, 2011, that required all members of Local 695 to abide by Article Nineteen, Section 26. President Loeb also found that Local 695:

"willfully and intentionally violated the International Constitution;

"aided, abetted and encouraged their members to violate the International Constitution;

"obstructed their members from paying work assessments."

President Loeb found that International intervention was necessary because Local 695's conduct would continue otherwise.

Pursuant to Article Twenty, Section 1, of the International Constitution and Section 462 of the Labor-Management Reporting and Disclosure Act, President Loeb found that Local 695 was:

"engaging in conduct that reflects discreditably upon the International; and

"engaging in conduct that interferes with the International's responsibilities under the Low Budget and Area Standards Agreements; and

"interfering with the fulfillment of the legitimate objects of the International and Local 478 as labor organizations."

On February 24, 2014, President Loeb suspended all of the Local 695 officers and directors from office and placed Local 695 into trusteeship. Sister Alvarez and Brothers [sic] James Osburn received President Loeh's decision and order.

On March 25, 2014, Sister Alvarez appealed to the General Executive Board her suspension from office and the decision to place Local 695 into trusteeship. She argued that

"she had not been charged with "any unlawful crime or with any specific violations" of the Constitution of the International or the Local; and

"that she has not been properly charged with any misconduct and/or misfeasance as an Officer of the Local and/or as a Special Representative employed at the Local 695 business office."

She demanded that she be reinstated to her "duly elected office of Secretary-Treasurer."

On May 29, 2014, the General Executive Board denied Sister Alvarez's appeal. The following members of the Board recused themselves from the proceedings, did not participate in the deliberations, and did not vote on the final decision of the Board:

International President Matthew D. Loeb and International Vice Presidents Michael F. Miller, Jr., John M. Lewis, William E. Gearns, Jr., and Phil LoCicero.

The Board held that there was substantial evidence justifying the trusteeship. The Board also found that Sister Alvarez and Local 695 received due process; that Local 695 received notice of the charges; and that Local 695 prepared and presented a vigorous defense. The Board held that Local 695 had violated the International Constitution and had encouraged its members to violate the International Constitution.

On June 26, 2014, Sister Alvarez appealed the decision of the General Executive Board to this Convention. She claims that President Loeb violated due process and the democratic rights under federal law

and the IATSE Constitution and Bylaws by placing the Local in trusteeship.

COMMITTEE CO-CHAIRPERSON DI TOLLA: The committee voted unanimously to uphold the decision of the General Executive Board. The Committee believes the decision of the International President, which was affirmed by the General Executive Board, was correct and should be upheld by the convention; and I so move you, Mr. President.

INTERNATIONAL PRESIDENT LOEB: Can I get a second?

Microphone No. 5.

DELEGATE DEBORAH LIPMAN, Local 600: Deborah Lipman, Local 600. I second that.

INTERNATIONAL PRESIDENT LOEB: Thank you.

It's been moved and seconded to adopt the recommendation of the committee. Is there any discussion?

There being none, those in favor of the recommendation of the committee, say aye.

Opposed, say no.

Recommendation is adopted.

. . . Committee Co-Chairperson Di Tolla read the following:

APPEAL OF JAMES A. OSBURN
(Local 695 TRUSTEESHIP)

On February 24th, 2014, Brother James A. Osburn and all the officers and Board of Directors of Local 695 received President Loeb's Decision and Order placing Local 695 into trusteeship and suspending them from office in the Local.

On March 25th, 2014, Brother Osburn appealed to the General Executive Board from the Decision and Order of the International President. He argued that:

a) he was prevented from appealing the decision of the hearing officer at the January 7th, 2014 trusteeship hearing referenced earlier;

b) Osburn also contended that the International President did not have the prior consent of the General Executive Board to suspend Local 695 officers and terminate its employees;

c) Osburn also argued that he was deprived of his fair trial rights under the International Constitution.

Brother Osburn further "demanded" that he be reinstated to his duly elected office.

The following members of the Board recused themselves from the proceedings, did not participate in the deliberations and did not vote on the final decision of the Board:

International President Matthew D. Loeb and International Vice Presidents Michael F. Miller, Jr., John Lewis, William E. Gearns, Jr., and Phil LoCicero.

The remaining General Executive Board members – namely, General Secretary-Treasurer James B. Wood and International Vice Presidents Michael Barnes, J. Walter Cahill, Thom Davis, Anthony DePaulo, Damian Pattie, John T. Beckman, Jr., Daniel Di Tolla, John R. Ford and Craig P. Carlson – affirmed the decision of President Loeb and denied Brother Osburn's appeal.

The Board found that Local 695 repeatedly violated and advised its members to violate the International Constitution and Bylaws, including Article Nineteen, Section 26. It held that President Loeb acted properly under Article Twenty of the International Constitution and Local 695 had nearly three (3) months to prepare a defense to the charges. The Board also found that the Trusteeship was fairly and timely issued by the International President under Article Twenty and that Brother Osburn's claim of being denied due process is without merit. The Board concluded that the International followed all procedural and legal guidelines. It held that the evidence overwhelmingly supported the Decision and Order of the International President to place Local 695 into trusteeship.

On June 24, 2014, Brother Osburn appealed to the Convention. He contends that;

a) The General Executive Board did not review pertinent legal documents that supported Local 695's defense;

b) the General Executive Board was not fair and that it was absurd for Board members to recuse themselves;

c) that it was unfair to exclude Local 695 members and officers from the deliberations of the General Executive Board; and

d) Local 478 should not have filed charges against Local 695 members who refused to pay work assessments; instead, Local 478 should have disciplined those members under Article Sixteen, Section 2 of the International Constitution.

Brother Osburn requests that the International withdraw the trusteeship and reinstate all officers to their former positions; He requests an apology from the International President, and he requests that his appeal be heard under United States Department of Labor rules.

COMMITTEE CO-CHAIRPERSON DI TOLLA: The Committee voted unanimously to adopt the decision of the General Executive Board; and I so move you, Mr. President.

INTERNATIONAL PRESIDENT LOEB: Microphone No. 1.

DELEGATE GREG R. HANCOX, Local 59: Mr. President, Greg Hancox, Local 59. I second.

INTERNATIONAL PRESIDENT LOEB: Thank you.

It's moved and seconded to adopt the recommendation of the committee. Is there any discussion?

There being none, those in favor of the recommendation, say aye.

Opposed, say no.

Recommendation is adopted.

. . . Committee Co-Chairperson Di Tolla read the following:

APPEAL OF JAMES A. OSBURN
(SUSPENSION FROM MEMBERSHIP)
LOEB V. OSBURN

The final appeal related to Local 695 and its interactions with affiliated IA local unions, concerns charges filed on January 30, 2014, by International President Matthew D. Loeb against James A. Osburn. The delegates will recall that when I read the Alvarez Appeal Summary I mentioned a letter dated February 2011, from President Loeb to Local 695. In that letter, President Loeb stated that if he ever found out that anyone in Local 695 had directed its members to violate the International Constitution that he would file charges against that person.

The Loeb v. Osburn charges allege that Osburn:

"Counseled and advised Local 695 member Joshua B. Levy not to pay work assessments to Local 478 in violation of Article Nineteen, Section 26 of the IA Constitution; and

"Advised Local 209's Secretary-Treasurer Jonathan D. Andrews, that Local 695 members, namely, Brother Richard Hansen, did not need to pay working dues to Local 209 when Local 695 members worked in Local 209's jurisdiction.

By these actions, Brother Osburn blatantly disregarded the IA Constitution; interfered with the International's efforts to enforce its Constitution; encouraged officers and members to ignore the IA Constitution, including Article Sixteen, Section 1, Article Nineteen, Sections 4 and 26, and Bylaws; undermined the authority and office of the International; and acted in a manner detrimental to the advancement of the purposes of the International.

A trial took place on March 25, 2014. Vice President John Lewis was the prosecutor. Local 695 member Joshua Levy testified that Brother Osburn advised him not to pay work assessments to Local 478.

Local 209 Secretary-Treasurer Andrews testified by affidavit that Brother Osburn told them that Local 695 members did not have to pay dues or assessments when they worked in another Local's jurisdiction, including Local 209.

Brother Osburn and Sister Alvarez testified on behalf of Osburn and presented a vigorous defense to the

charges. In addition, several members of Local 695 were present on behalf of Brother Osburn.

After careful consideration of all the evidence and testimony, Representative Scott Harbinson issued his decision in July 2014. He found that the charges against Brother Osburn were true and correct and that Brother Osburn was guilty as charged. Brother Osburn appealed to the General Executive Board.

1. He alleged that Representative Harbinson did not present any proof or citations in his decision;

2. Osburn argued that he had legal support for his actions;

3. Osburn contended that the Local 695 members who owed work assessments to Local 478 should not have had charges filed against them, but Local 478 should have disciplined the members under Article Sixteen, Section 2, of the International Constitution;

4. Osburn argued that the Local 478 charges against Local 695 members were time barred and he was denied due process;

5. He also contended that the charges filed by the International President against Local 695 member Joshua Levy were unconstitutional;

6. He alleged that he should have been made aware of the charges filed against Levy;

7. Osburn alleged that Levy's testimony against him was untruthful; he denied advising Levy not to pay work assessments;

8. Osburn contended that Vice President John Lewis should not have prosecuted the charges.

9. He contended that the hearing was biased; the charges without merit; and the hearing violated his due process rights and his suspension from membership is unlawful.

Osburn requested that the General Executive Board lift the trusteeship; remove his suspension and the suspension of the other officers. He requested that the Board order Local 695 to rehire four employees who were discharged.

At the General Executive Board meeting held in Charlotte, North Carolina, January 26-30, 2015, Brother Osburn's appeal was heard. The following members of the Board recused themselves from the proceedings, did not participate in the deliberations and did not vote on the final decision of the Board: International President Matthew D. Loeb and International Vice Presidents Michael F. Miller, Jr., John M. Lewis, William E. Gearns, Jr., and Phil LoCicero.

The remaining General Executive Board members – namely, General Secretary-Treasurer James B. Wood and International Vice Presidents Michael Barnes, J. Walter Cahill, Thorn Davis, Anthony DePaulo, Damian Pettie, John T. Beckman, Jr., Daniel Di Tolla, John R. Ford and Craig P. Carlson – reviewed the appeal.

On February 23, 2015, the Board affirmed the decision of Hearing Officer Harbinson and denied the appeal.

1. The Board found that Brother Harbinson carefully considered all evidence and testimony. The Board observed that Brothers Levy and Andrews provided direct evidence that Brother Osburn told members of Local 695 not to pay dues when they worked in another Local's jurisdictions.

2. The Board held that the discipline against Local 695 members Levy and Thomas Conrad was appropriate because they violated Article Nineteen, Section 26; and

3. There was no requirement that Brother Osburn should have been made aware of the charges filed by the International President against Levy.

4. The Board found that Brother Osburn did not file a timely appeal to the decision against Josh Levy

5. The Board found that Brother Osburn received due process;

6. It held that Vice President Lewis could prosecute the charges against Brother Osburn because any member in good-standing may participate in internal union trials;

7. Finally, the Board noted that Local 695 had its autonomy restored in January 2015.

On April 1st, 2015, Brother Osburn appealed to this Convention. He requests that the Convention consider the following:

1. The March 2014 hearing was a sham legal proceeding, a kangaroo court. He contended that Sister

Alvarez and other Local 695 officers were not called to testify on his behalf;

2. The Board did not accurately cite evidence from the official recorded, certified transcript.

3. International President Loeb should have attended the hearing on March 25th, 2014, so that he could be confronted and questioned by Brother Osburn.

4. President Loeb's charges against Brother Osburn were based on heresay. Brother Osburn argues that he did not receive a fair trial according to Article Sixteen, Section 2, of the International Constitution, because it was a hearing, not a trial.

COMMITTEE CO-CHAIRPERSON Di TOLLA: The committee voted unanimously to uphold the decision of the Board; and I so move you, Mr. President.

PRESIDENT LOEB: Microphone No. 7.

DELEGATE BUD RAYMOND, Local 479: Mr. President, Bud Raymond from Local 479. I second the motion.

PRESIDENT LOEB: Moved and seconded to adopt the recommendation of the committee. Is there any discussion?

There being none, all those in favor of the committee recommendation, say aye.

Opposed, say no.

The recommendation is adopted.

---------- Forwarded message ----------
From: "Chandra Miller" <chandra.miller@yahoo.com>
Date: Jan 15, 2018 11:54 AM
Subject: My speech at meeting – Farewell
To: "Chandra Miller" <iamthesecretarytreasurerof478
@gmail.com>
Cc:

I would like one final ask of all of you: a few minutes of your time. I really want to thank all of you for the support over the past 13 years, most of that time spent as your Secretary-Treasurer. I admit, I needed a short break before I was able to address and write to all of you . . . mainly because. . . . for anyone to be so ugly, to treat me like my time with Local 478 was insignificant, quite frankly hurt! Then it occurred to me those people either don't know the facts or history of the Local, or they choose not to acknowledge it. On top of me being a good person, I was dedicated, loyal and honest, and I genuinely cared about each of you! I fought for you when others were unknowingly being treated unfairly. I honestly thought those were traits people wanted and respected in a labor leader.

* * *

Cory told Phil well before elections that 'he couldn't stand me, he wanted me out, he wanted me gone'. I see now, of course they wanted me out, because once I'm gone, no one is going to question their actions like I was. No one will be questioning why policy/procedures are being circumvented. No one is even going to know. I witnessed and called out, almost on a weekly basis, data being manipulated in the membership database,

invoices being voided, or certain members being hand-picked to not be invoiced at all, non-action being taken allowing certain people to work out of their home jurisdiction without having to pay their fare [sic] share of work dues, reinstatement procedures and fees being waived for a select few, residential addresses being changed for some to be able to apply rules for certain people as local hire versus distant hires, while other members were being scorned for doing the very same thing, crafts being invented and added to the contracts without going through the proper procedure, people being overlooked working in certain departments clearly not abiding by the rules and procedures that should be applied to all, equally and justly, I even witnessed manipulating the 45 day requirement as proof of craft to join; all these things and more . . . clearly against the C&BL, Labor Law, and other procedures put in place for the betterment of all.

* * *

I thank everyone for your patience tonight and all your support in past years. Peace Out!

Secretary/Treasurer Emeritus, Chandra Miller.