

## **JUNE 16, 2021 RULING OF THE LOCAL ELECTION COMMITTEE**

Members of The NewsGuild of New York (“Guild”) have asked whether Guild members who are employed in shops that have been certified or recognized, but have no first CBAs (“New Shops”) are eligible to vote in the upcoming Guild dues increase referendum despite the fact that members in the New Shops do not yet pay union dues.

The Local Election Committee (the “Committee”) issues the following ruling on this issue. Subject only to changed facts, changed law, or changes in governing documents, this is the Committee’s final ruling on this issue. As we explain below, under Article XVIII(5) of the Constitution of The NewsGuild (“TNG”), in the absence of an executed first collective bargaining agreement covering them, members employed in New Shops are eligible to vote in the upcoming referendum, and in all future Guild elections, even if they do not yet pay dues.

### **RELEVANT LANGUAGE OF THE TNG CONSTITUTION**

Article XI(2) of the TNG Constitution states: “Locals shall be charged with the duty of enforcing provisions of this Constitution affecting their membership.”

Article XVIII(5) of the TNG Constitution states: “Notwithstanding any other provision of this Constitution or the CWA Constitution to the contrary, where TNG-CWA or any Local is organizing a new bargaining unit, and the applicable federal or provincial law requires a showing that a certain percentage of employees in the unit are members of TNG-CWA or the Local as a precondition to certification or representation vote, any of said employees who apply shall be admitted as members without payment of initiation fees or dues ... during the organizing campaign. The obligation of such members to pay initiation fees and dues as specified in this Constitution or the CWA Constitution shall commence upon the execution of the first collective bargaining agreement covering their bargaining unit. Such members shall have all rights, privileges and obligations of membership, except the right to vote in Sector referenda and to participate in Sector Conferences.”

### **THE COMMITTEE’S RATIONALE**

In concluding that New Shop members have the right to vote in the upcoming referendum and Guild-wide elections, the Committee relies on the following:

- a. The plain language of Article XVIII(5) of the TNG Constitution.
- b. The Guild’s practice.
- c. The TNG’s expressed view on the topic.

We discuss each below.

### **The Language of Article XVIII(5)**

Under U.S. labor law, to obtain an NLRB representation election, the workers and their union must present union cards from at least 30% of the proposed bargaining unit. Thus, the Article XVIII(5) prerequisite is met for employees and shops in the U.S. Because the prerequisite has been met, under Article XVIII(5), employees in New Shops “shall have all rights, privileges and obligations of membership, except the right to vote in Sector referenda and to participate in Sector Conferences.” As the TNG is a “Sector” of the Communications Workers of America, AFL-CIO (“CWA”), and the Guild is a local affiliated with TNG, the references in Article XVIII(5) to “Sector referenda” and “Sector Conferences” refer to TNG referenda and conferences, not to Guild-wide referenda and conferences. Thus, the Committee finds that the plain language of Article XVIII(5) requires that members employed in New Shops where a first collective bargaining agreement has not been executed be permitted to vote in Guild-wide elections and referenda, because Article XVIII(5) specifies that such members “shall have all rights ... of membership,” and excludes *only* voting in Sector referenda and attending Sector conferences.

### **The Practice of The Guild**

The Committee’s ruling is informed by the practice of the Guild. That practice, which encompasses two Guild-wide officer elections and multiple elections of Unit officers, is unvarying and has been in existence since at least 2016.

The Guild conducts a Guild-wide election of officers every three years. In both the 2016 and 2019 Guild-wide officer elections, New Shop members were treated as eligible to vote notwithstanding the fact that they did not pay dues. At the time of the November 2016 union-wide election, members at Law360, then a New Shop, were eligible to vote. At the time of the November 2019 union-wide election, members at The New Yorker, New York Magazine, The New Republic, BuzzFeed, Ars Technica, Pitchfork, Quartz, Wirecutter, and Ziff Davis, all New Shops, were eligible to vote. While one slate did lodge a challenge to the eligibility of New Shop members prior to the 2019 count, they withdrew the challenge shortly after submitting it, and there was no ruling from the Committee on the challenge.

Some shops which were New Shops at the time of the November 2019 election are still New Shops, as the Guild does not have executed collective bargaining agreements with the employers. Such shops include New York Magazine and Ziff Davis. The Committee notes the anomalous result were it to now rule that members in New Shops are not eligible to vote in the referendum - members in New Shops who were eligible to vote in the 2019 union-wide election would be disenfranchised in the upcoming referendum, despite the fact that between the time of the 2019 election and now, there have been no changes to the relevant facts, law, or governing documents.

Similarly, in the 2019 union-wide election, four members from what were at that time New Shops - one each from New York Magazine, The New Yorker, Wirecutter, and Ziff Davis - were nominated for Executive Committee seats, ran for office, elected, and seated. These four continue to serve in office to date.

The Committee rejects the request to interpret Article XVIII(5) in a way that would disenfranchise members in New Shops under these circumstances.

The Guild also conducts Unit elections for Unit-wide offices--i.e. offices at the level of individual shops. Shortly after each of the New Shops mentioned above were recognized/certified, they conducted Unit officer elections. In each such Unit officer election, members were deemed eligible to vote notwithstanding the fact that they did not pay dues.

The Guild had a Guild-wide election of officers in 2013. To the knowledge of the Committee, there were no members in New Shops at that time so there was no relevant practice in 2013. Before 2013, the Guild did not conduct Guild-wide officer elections at least as far back as 1992. Thus, to the knowledge of the Committee, there is no other relevant past practice.

### **The TNG's Expressed Views**

The Guild is a local of the TNG. Recently, Guild members have asked TNG President Schleuss about the TNG's views on the meaning of Article XVIII(5). In an email to two Guild members dated May 28, 2021 (attached), President Schleuss stated:

Article 18.5 of the Guild Constitution states that new members not yet under first contract have "all rights, privileges and obligations of membership" except the right to vote in Sector elections and participate in Sector Conferences. Under that language, there has been a historical practice within the Guild of allowing Guild locals to determine in their own bylaws the extent to which new members can vote in local elections and local affairs. Some Guild locals, like New York, have allowed new members to vote. I also asked around and at least one other local also enfranchises not-yet-paying-dues members: St. Louis/United Media Guild.

I also queried our lawyer on whether there was any issue with the potential ambiguity in the New York bylaws around this matter. She said that the DOL would look at past practice of the local and that New York's allowing members to vote in 2019 (and based on Hanan's email, 2016 too) would be something that the DOL would look at too on this issue. The reverse would likely become a large issue: removing the ability to vote from members that had previously had that membership right (if there was no change in the bylaws). They'd likely have legal standing to protest losing that right.

So, in my review, locals can adopt bylaws and adjust them in a way that allows

new members not yet paying dues to vote on local issues if the local allows it; and where there is no clear bylaw language to govern, the local should continue to follow its historical practices.

In the Committee's view, TNG President Schleuss' May 28, 2021 email bolsters its conclusion that, under Article XVIII(5) of the TNG Constitution, members employed in New Shops have the right to vote despite not paying dues. We note the concern President Schleuss expressed about "removing the ability to vote from members that had previously had that membership right" absent a bylaw change. In the view of the Committee, that concern is a further basis to deem members employed in New Shops eligible to vote in the upcoming dues referendum.

### **Right of Appeal**

The Committee understands that this is a matter that Guild members care about. In the past several weeks, a number of members have asked the Committee about this issue, and the Committee has responded to those inquiries. However, the Committee will not engage in a back and forth with members on this topic. Instead, it is issuing this ruling to be its final statement on this issue.

The Committee reminds members who are unhappy with this ruling of Article II(8) of the TNG Constitution. Article II(8) states, in relevant part: "The facts of eligibility under the Constitution shall be determined by the Local in which they arise ... and shall be subject to appeal to the E.C. by the person concerned or by any aggrieved members."

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