

## MEMORANDUM

**To:** Alan Rosenberg, President, Screen Actors Guild

**Cc:** Connie Stevens, Anne-Marie Johnson, Paul Christie, Steve Fried, Sam Freed, Bob Carlson, Elliott Gould

**From:** Steve Diamond

**Date:** June 14, 2006

**RE:** **The future of the Screen Actors Guild**

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As you no doubt realize, I was both surprised and disappointed with the decision of the Guild to delay a decision for several weeks on the NED position. I had been very pleased with the approach you and I had agreed upon with respect to salary and union governance in our two-hour discussion over the Memorial Day weekend. Because of my teaching commitments in the fall, this likely makes it impossible for me to join the Guild at the present time.

I thought it might nonetheless be helpful for you to have a sense of the strategy and approach that I would have recommended implementing as NED. These ideas emerged over the past four months as I explored the very significant issues the Guild membership is facing in the \$230 billion global entertainment and media industry. My frequent and in depth discussions over the last few months with the Guild leadership and members were helpful in shaping these ideas. I hope they are of some use to you and the Guild's membership.

### **The Role of the NED**

As you know, I believe that the Guild faces a very significant challenge in a rapidly changing external industrial environment. I believe this external change has been nothing short of traumatic for the membership. It has led the Guild to cycle dramatically between moderate and radical approaches over the last decade. This has had a deleterious effect on union morale and reputation. Thus, anyone who takes on the NED role faces a monumental task. Not only must the NED comprehend and respond to the external industrial forces, s/he must tackle the severe internal dysfunction now plaguing the organization.

As I suggested at the outset of our negotiations the NED must be responsible for five major areas of concern:

- 1) Negotiations with the industry;

- 2) Development of a strategic vision for the Guild;
- 3) Re-building and leading a depleted and demoralized staff;
- 4) Managing complex regional and occupational differences within the Guild; and
- 5) Coordinating relationships between the Guild and sister labor bodies, including fellow guilds and the larger labor movement.

I believe that the skill set required to take on such a role would require you to pay the NED somewhere within the range of comparable organizations such as AFTRA, the Writers Guilds and Directors Guild.

### **“CEO” title and responsibilities**

In addition, you may recall that I was asked in the interview process whether or not I believed that the NED should be the “CEO” of the organization in light of the potential impact that title would have on the ability of the NED to negotiate credibly with the employers. I pointed out that I did not think that mattered terribly much. I did think, and still think, that the NED must be the chief executive officer for a simple reason: if the elected President is the CEO it creates a dual line of authority for the paid staff, thus tempting the staff to play politics with leaders and members, and vice versa. A better approach is to hire the right NED, who, of course, must answer to the President, top Guild officers, the NEC and the Board, and then allow the NED to manage the paid staff in a manner calculated to achieve Guild goals.

As you know, the Guild’s Constitution, consistent with California’s non-profit corporation law appoints the NED as the CEO. I believe that this has been the case at the Guild for many decades, even in the era when the NED was National Executive Secretary. This makes sense because, while the National Board has the potential to direct senior staff itself, a decision not to delegate that authority would greatly increase the potential personal liability of board members for the actions of staff. I personally do not know of any non-profit board that attempts to exercise its latent power to hire staff beyond that of the executive director/CEO. I hope this makes clear why I objected to the language proposed to me in the draft contract prepared by your outside counsel.

In light of the deep and understandable concern the Guild membership has about senior staff power and trust, the approach I recommended to you and Anne-Marie is that the Guild require the NED to engage in “meaningful consultation” with the top five union officers when it comes to the management of senior staff (those at the deputy NED level). Meaningful consultation would require the NED to take specific steps prior to the decision to hire or fire a senior staff member. These steps could include discussions between the NED and the leadership and a requirement that the NED take into account the results of such discussions in a decision about a particular senior staff person. Such steps could be made explicit in the contract negotiated upon hiring of an NED.

Of course, this assumes the Guild agrees with my view that it must, indeed, agree to honor the contracts it makes with its senior staff. As you recall, your attorney, Steve Kaplan, takes what I, and other labor law experts, consider to be an extreme position with respect to a labor union's obligation to honor employment agreements with senior staff. According to one of the country's leading experts on union governance, Professor Alan Hyde of Rutgers and Cornell Law Schools, federal labor law does not preempt state laws that protect the employment rights of union staff members. Thus he believes the Screen Extras Guild case that Steve argued was wrongly decided. This makes perfect sense because if, in fact, a new union leader could fire the staff of the former union leadership it would chill the ability of union members who become staff to participate in internal union democratic processes like elections. Presumably, the Guild would not have paid out close to \$2 million to departing CEO's Pisano and Hessinger if, in fact, the Guild genuinely believed their employment contracts could be voided.

Of course, Guild employees are not Guild members. Thus, it should not be necessary for newly elected leaders to dismiss union employees to insure union democracy. Union staffers at the Guild should not be playing a political role at all. They should be, and presumably throughout most of the Guild's history were, willing to serve the entire membership through whichever leaders are elected by that membership. Certainly that would have been my goal as NED. In order to address the concern about long-term contracts, of course, you and I agreed during our Memorial Day discussion to a one-year contract with an option to renegotiate and renew the contract at the end of one year along with a one-year severance payment in case of non-renewal. I believe we both agreed this would provide the Guild with an appropriate level of flexibility at the senior staff level yet would have allowed me to attract talented senior staff.

### **NED salary issue: two competing models**

While I do not think the outside impression of the credibility of the NED is affected by the CEO title I do believe it is affected by the salary you pay the NED. In our two-hour discussion on Memorial Day weekend, of course, we mutually agreed upon a salary of \$450,000 per year. This would have placed the Guild in parity with its sister guilds. To pay the NED nearly 40% less than the average of the other entertainment industry guilds, as was initially proposed to me, would have sent a signal that the NED was, in fact, a weak figure. It may well be that that is the signal some in the Guild wish to send. However, in that case, as I suggested to you and others at various points, the Guild should take a very different approach to the NED role: create a COO position with significant control over major staff responsibilities and then hire a talented labor lawyer to negotiate your major contracts alongside rank and file activists and the elected leadership.

However, if the Guild chooses that path – and I assume the Guild's silence since our last discussions suggests that remains the goal of some within the union – it means effectively ignoring the nature of the environment in which the Guild now lives. This is an environment of immense complexity and rapid evolution. I believe the Guild needs, and deserves, a solid and professional senior staff, one that it indeed can trust, to analyze

this new environment and develop a policy menu for you and your fellow elected leaders to choose from and implement in the best interests of the Guild membership. This kind of staff is initially more expensive than the COO/Negotiator model, but I believe it would more than pay off in light of potential gains for the membership in future contract negotiations.

### **A new approach to Guild strategy**

#### 1. *Step One: 2008 begins now.*

The central motivation of such a senior staff must be the zealous pursuit of Guild goals through development and implementation of a strategic direction designed in collaboration with Guild leaders and members. *The starting point of my approach would be quite simple: success in the 2008 contract negotiations requires that the Guild begin to bargain now.* That may seem an odd suggestion since the contract does not expire until 2008. But as I suggested in the second in-person interview held at Guild headquarters with the search committee, the employers in your industry have already begun the bargaining process in the form of Nick Counter's interview with *The Hollywood Reporter*. They are already beginning their attack on the union because they know that the technological change in the industry (broadly, the shift from a theatrical release driven model to a digital delivery driven model) is well underway (from DVDs to iPod downloads, for example). Another recent article in *The Hollywood Reporter* called "The New Deal" provided Counter yet another opportunity for an attack. This article indicated the huge vacuum that has been created as the talent side lawyers look to the Guilds for help and leadership. Meanwhile, the employers have begun their effort to win the hearts and minds of their consumers, their shareholders, their business partners and, most importantly, your members, with an argument about their business model in the digital era.

The Guild must begin its own offensive with an independent analysis and proposed model of value creation and revenue sharing in the industry. I believe there are three major forces changing the industry:

- 1) Technology,
- 2) Industrial re-organization, and
- 3) Financial capital.

Overall, the studios are moving away from a classic close corporation model to a model of conglomerate organization and widespread institutional ownership. This is required to finance the massive technological shift underway and to support the global distribution and marketing campaigns associated with film and television today. While change of this magnitude has ordinarily been used to undermine workers and their unions, in the entertainment industry it can be argued that it has made the role of actors even more valuable. And it has made them more valuable at a point when global

distribution creates hundreds of millions of new paying customers for the product they produce! This means the industry is creating a large multiple of value previously created. In addition, the move to wide outside share ownership creates an alternative line of attack via corporate governance mechanisms.

However, a classic and infamous example of what can happen if one does not engage in a Guild led strategic effort is the DVD situation. As you are well aware, the studios have succeeded in out maneuvering the Guild, and the other guilds, by retaining 80% of the revenue from DVD sales in their in house distribution arms. This now amounts to billions of dollars each year. As confirmed to me in a discussion I had with a former producer and senior figure in the industry, a similar pattern will be used in the battle over digital delivery. For example, Microsoft recently negotiated a contract with Hollywood to provide content for Microsoft's web offerings. The Guild was not at the table during those negotiations. Instead, the studios isolate the Guild and only allow them to bargain with the producer arm of the industry. But Microsoft and Hollywood certainly had estimates of how large the pie in this environment is, and there is no logical reason that the Guild should not be part of cutting up that pie now.

## 2. *Step two: Mobilization of Guild's key resources*

Of course, this may not be able to happen through formal collective bargaining. Instead, the Guild must begin its offensive through a variety of forums. Thus we come to the second major piece of the strategy: once one accepts that "bargaining" must begin now, the Guild *must mobilize the key resources available to it in this effort*.

I have identified six major resources available to the Guild for this mobilization:

- 1) Membership;
- 2) Staff;
- 3) Community;
- 4) Consumers;
- 5) Organized labor; and
- 6) Politics and law.

There is a wide array of possibilities with each of these resources. I will not develop these here at any length, but let me explore one resource, the membership. It is obvious, of course, that the membership must be an active and constant player in any mobilization. That first requires an educational process where the analysis developed by the senior staff and elected leaders is communicated across the entire membership. The analysis, to be credible, must explain to the members how the staff and leaders understand the nature of developments in the industry. I believe that the rancor and

distrust that the members now express can be overcome as the leadership begins this process of analysis and education. Of course, this effort is an iterative one: while the NED must begin the analysis process, the conclusions reached will reflect feedback from the senior staff and leaders and then again from the first round of educational efforts from the membership.

Keep in mind here the real goal: if Guild leaders do not develop an argument about how the industries they work in are changing and how Guild members create value in that environment, then a vacuum is created in your own membership. And the employers will try to fill that vacuum. In fact, they are already trying to do so. Nick Counter attempted to do so in his *Hollywood Reporter* interview.

3. *Step Three: Identify impact areas for Guild offensive.*

Finally, the Guild *must identify key "impact areas" in which it can mobilize its resources to initiate its offensive.* Once the staff and leadership agree on the basic argument developed out of an analysis of the industry, it must carry that argument to the membership (and to the other resource groups) and then use those resource groups to impact the industry on the available terrain.

Four such impact areas are:

- 1) Public at large (remember, the entertainment industry's consumers and customers are actors' fans);
- 2) Capital markets;
- 3) Political arena and legal tactics; and
- 4) Collective bargaining and job actions.

While I could develop each of these areas in much greater detail, I think this gives you a flavor of what is required. In sum, the Guild must begin its offensive now in order to prevail in 2008. This offensive requires the development of an alternative analysis of the value created by Guild members in the new environment. That argument must then be explained and discussed and evolved in contact with the various resource groups and, in turn, applied in the impact areas the Guild identifies. I believe this has a much greater chance of success in 2008, and in other contract negotiations, than the approach suggested by a COO/Negotiator approach to senior staff.

I wish you and the Guild leadership the very best of luck.