

Statement Summary

SAY Sí awaits the pending decision of the National Labor Relations Board (NLRB) on eligible positions for inclusion in a union election. A tentative date for an election has been set for early 2023, pending the NLRB's decision. The SAY Sí board as part of its legal responsibility of the organization, hired an attorney to represent the organization during the NLRB process to ensure the organization met all federal labor laws. From the date SAY Sí staff petitioned to unionize on October 5, 2022, the SAY Sí board has supported the rights of eligible employees to make decisions concerning their employment status and to work collectively to form associations to represent their interests. The board in fact, offered to voluntarily recognize a majority of staff positions for a bargaining unit, which staff declined. As SAY Sí waits for the outcome of the NLRB's determination, the board's work continues to advocate for equity through the arts as it searches for a new Executive Director. The board issues this statement in answer to questions presented by various members of the larger San Antonio community.

Background

SAY Sí Organization Overview

Say Sí has successfully implemented youth arts leadership programming for 27 years, including:

- Growing from 12 students from one high school to over 400 students annually from 70 San Antonio schools and Bexar County
- Adding new media and theater arts to programming
- Recently move to 100,000 square feet of improvable property on the westside, to be closer to the community it serves
- Consistent high school graduations of 100%
- National recognition from the United States President Arts and Youth Commission

For more about our history, visit: <https://saysi.org/about/history/>

Between April and early August, staff received pay increases ranging from 9% to 20%. Staff makes at least \$16.50 an hour, and have flexible and hybrid hours. Full time staff receive health benefits, paid time off, and a retirement plan with matching funds from Say Sí.

The SAY Sí Board is an oversight board composed of volunteer members. The board does not manage staff or have day-to-day purview over the organization. The board manages an Executive Director who has oversight over staff. The board is currently conducting a search for a new Executive Director.

Current Actions

On September 19, 2022, staff requested voluntary recognition of a bargaining unit giving the SAY Sí Board one week to decide. The board requested an extension to October 3, 2022, to have time to research the process. After initial research and discussion with various labor authorities, including local union leaders and labor attorneys, the board decided to decline voluntary recognition and instead follow the democratic process created by the National Labor Review Board. This decision was made due to there being:

- a. insufficient time to fully research information to make an informed decision by the deadline requested by staff
- b. indeterminate and timely information on staff eligible to be included in a bargaining unit

c. an NLRB process that would provide clear direction and allow the organization to proceed in a lawfully determined path, should the staff decide to move forward with a petition.

On October 5, 2022, SAY Sí filed a petition to the National Labor Review Board. The NLRB hearings began on November 1, 2022. On November 2, 2022, SAY Sí offered to voluntarily recognize 12 positions that all agree are eligible to be in a bargaining unit. The offer was made on public record at the hearing per standard procedure. Staff neither accepted nor declined on the record. Through social media, the board learned that staff appeared to decline the offer. The NLRB hearings ended on November 15, 2022, with written briefs due to the NLRB on December 7 and an election date tentatively set for early January, pending the NLRB's decision on who is eligible to vote.

The National Labor Review Board states that after a hearing “the NLRB Regional Director will issue a written decision as promptly as possible allowing for thorough and complete consideration of all the evidence and issues ... you should expect a regional decision after hearing normally within 45 days.”

Background on Unions in the Arts Sector

At the end of the Federal government's fiscal year (Sept 2022) the NLRB counted a total of 2,510 union representation petitions that were filed during that period, a 53 percent increase from the 1,638 petitions filed in the previous fiscal year.

A surge of unionization in the arts sector has seen a large increase over the last two years, including staff at major arts institutions such as the Whitney Museum of Art and MOMA.

According to the Washington Post, employees at 13% of museums were unionized by 2020 a significant increase from 2013. Since the WP's article one year ago, a number of additional museums staffs have unionized including staff at the New Museum, the Guggenheim, and the Philadelphia Museum of Art among many others. The phenomenon appears to have been fueled by COVID-19 restrictions which shuttered many public facing art institutions, causing layoffs for many employees and exposing a vulnerable arts worker sector.

However, while the growing number of unionized nonprofits is growing, data from the U.S. Census Bureau, Current Population Survey indicates that in 2019, just 8 percent of nonprofit workers were members of unions, compared to 33 percent of federal, state, and local government employees.

The National Labor Review Board has, in the past, ruled that temporary workers may be included in a bargaining unit. However, who is considered a temporary worker must be established by the NLRB. A National Law Review article stated that a 2021 ruling on a question of fellows at a Phoenix newspaper were ineligible as temporary employees because of the nature and work length of the positions.

The National Labor Relations Act explicitly states that staff members in supervisory positions are prohibited from inclusion in a bargaining unit and from involvement in a union organizing effort.

Currently, SAY Sí staff alleges the board is:

- inappropriately stalling the union election
- retaining an irreputable law firm
- misrepresenting the programmatic role of peer-to-peer mentoring
- not solving daily operational gaps presented by the Executive Directorship vacancy

Position Statement

SAY Sí encourages a culture where everyone can speak their minds. Staff is currently exercising their right to speak on behalf of their cause – a SAY Sí union petition. Though it leads to a one-sided discussion, the board has chosen to give staff room to voice their expectations and concerns. We realize this approach provides the public with only the staff's narrative which may, to some, appear to be an antagonistic narrative. While the board feels it is important to allow staff to strategize as they feel they need, questions presented by various members of the larger San Antonio community necessitate some answers. This position statement was prepared to address these questions.

From the beginning of the unionization process, the SAY Sí board has supported the inclusion of eligible staff members in the election process. Unfortunately, the public narrative has centered on a handful of employees that SAY Sí believes by law are ineligible for inclusion. The presumption that the board is demonstrating animosity towards union formation and engaged in union busting activity is incorrect. The board strongly believes in labor rights, and the laws that govern the protection of workers.

The National Labor Relations Act explicitly states that staff members in supervisory positions are prohibited from inclusion in a bargaining unit and from involvement in a union organizing effort. While researching personnel records, we discovered that five of the positions included in the petition were likely supervisory. Job descriptions for these positions, and other documentation, explicitly detail their role in hiring and providing feedback to staff. It is the role of NLRB to determine whether these managers may be allowed within the bargaining unit.

The NLRB will also determine whether Working Artist Mentors (WAM) are considered eligible as “temporary workers.” WAM instructors typically work 2 to 4 hours per week. SAY Sí WAM is a multidisciplinary program in visual arts, theatre, media arts and new media. SAY Sí provides opportunities for its junior and senior high school students to work as student instructors, allowing for mutually beneficial peer-to-peer mentoring. Once these students graduate from SAY Sí, they are no longer eligible to participate. In 2023, because of leadership transition, two individuals were authorized to continue their WAM roles beyond graduation.

The attorney’s expertise in navigating the NLRB process enabled us to ensure that workers’ rights were not violated. SAY Sí does not consider itself above the law which is why we are waiting for the legal ruling from the NLRB. We will honor the NLRB’s decision.

The NLRB process explains the timing involved. The board is not involved in any activity stalling the deliberation of the NLRB process and complied, as required by law, with the December 7 deadline for a written brief.

The SAY Sí board reached out to its local partners and community leaders to identify a legal firm to guide them through the unionization activities to ensure we fully complied with the law while at the same time, supported the employee expectations. The specific lawyers handling the SAY Sí case are former NLRB attorneys who take great pride in ensuring SAY Sí is adhering to federal labor law principles.

With the end of the hearing complete, the need for an attorney is reduced. We hear staff's call to terminate the attorney, but the process itself terminates the use of an attorney. The election's tentative date early in 2023, (dependent on the NLRB's decision), the polling location, and procedures have already been determined, thanks to the SAY Sí attorney work. We look forward to hearing the NLRB's determination so that the election may take place.

On November 21st, two staffers attending the board meeting were provided with the latest financial report which shows the financial health of the organization. Invitations to the board meeting are the prerogative of the Executive Director and are not rendered by the board. No funds used for the legal process affect program funding. Payment for legal counsel from Ogletree Deakins is being provided by administrative funds previously budgeted and not spent in the 2022 budget. The financial statements of SAY Sí are public information and can be found at www.saysi.org/board.

Strategic Operations Plan

The board is currently interviewing specialists to assist in the operational gaps such as accounting, special events and data entry. The board is also seeking a consultant to conduct an organizational assessment to determine the overall needs of the organization as we move forward to a new future.

The process of closing on New Market Tax Credits which will position the organization on a new path of financial health is set to complete before the end of 2022.

As the board works to close on the New Market Tax Credits, the search for an Executive Director continues. Executive Director searches typically take anywhere from 4 months to a year. We expect SAY Sí's search to be no different. While the focus on the NLRB hearings set our schedule behind, the board is more focused than ever on finding a new leader.

Moving Forward

We are all SAY Sí. We all want what's best for students, the organization, and the community. As a nonprofit, we rely not only on artist workers but volunteers, including board members, and the many others who volunteer to assist in programming and events. We believe the community at large could benefit from taking time to reflect on how the work of cultural workers could be improved and what new opportunities must be created to support nonprofits working with tight budgets primarily reliant on grants and donations.

In the end, we believe this will make SAY Sí a better and more inclusive place to work while stewarding future artist leaders. SAY Sí will continue to be guided by the opportunity to provide safe spaces for young people to develop their voices, and apply themselves towards impacting the community.

References

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