

October 7, 2002

Jim Fahey
Executive Director
Association of Commuter Rail Employees
420 Lexington Avenue
Suite 215
New York, NY 10017

Dear Jim:

I must share with you my experiences to date concerning the actions of ACRE officers in Local Division 9. As Executive Director for the ACRE, what actions and penalties are you going to institute to protect members rights from the flagrant violations of these ACRE officers? How can you prevent and ensure that these deliberate violations by our ACRE officers will not occur again? The officers of Local 9 have together conspired to violate our basic rights as union members of the ACRE. These rights are guaranteed to us under our ACRE Constitution and Local Division By-Laws. Agreements have been negotiated with the MTA Metro-North Railroad without a vote and consent from our membership. Changes to our contract have been negotiated with the MTA Metro-North also without our consent and approval. These agreements and changes must be voided with the MTA Metro-North and our contract returned to a pre-ACRE condition until such approval is received from our membership. Are you as Executive Director of the ACRE going to allow these officers to get away with imposing these unlawful contract violations on our membership and violate our guaranteed rights as ACRE members?

Please provide some background information on how you became Executive Director for the ACRE. When the ACRE was first formed Jack Gaines was elected as Interim Director until January 2001. Then Anthony Bottalico was elected as Executive Director. When and why did Anthony step down as Executive Director? When, how and by whom were you elected to replace Anthony as Executive Director? Is your term as Executive Director for the balance of Anthony's term, or did you receive a new full term of office?

March 1st, I sent a letter to Jack Gaines as Editor for News By The ACRE. This was in response to an article which appeared in an ACRE Newsletter which tried to justify the Vanguard contributions which our officers changed during contract talks in 1999. This set up a two tier contribution system based on an Engineers length of service to Metro-North instead of an across the board increase which we previously had. I asked for someone to explain the handout which was published and given out to the membership at a union meeting showing how much money we would have in our Vanguard accounts with 3 percent annual salary increases and a conservative 10 percent annual market return. I pointed out that our raises have only averaged 2.68 percent and the market is currently in the toilet. I also sent this letter to Mike Doyle on August 1st. To date no response has ever been received.

July 27th, I sent out a certified letter to Joe Lindenberg our Secretary / Treasurer seeking documentation concerning our financial records, annual reports and LM1, LM2, or LM3's for both the Executive and Local Divisions of the ACRE and a copy of our Constitution and Local Division By-Laws. To date the only information which I have received is a copy of our Constitution and Local By-Laws which was mailed to me on August 22.

August 1st, I wrote to Mike Doyle our General Chairman seeking information concerning the formation of our Local and the writing of our Division By-Laws. I requested copies of our current contract(s) with Metro-North, any written or verbal changes to this contract(s), any side bars, letters of understandings, the 14b changes to our contract which the officers of the ACRE signed away, the CMS agreement and the Salary Agreement which our officers negotiated with MTA Metro-North putting them on the MTA Metro-North payroll. All of this information requested is guaranteed to me as a union member under our ACRE Constitution. To date, no useful response has ever been received. Mike Doyle did write back to me on August 9th, stating he gave my letter a "cursory" reading. He passed my letter on to Mike McCarthy our President of Local 9 for a response. Mike Doyle did make a long list of assertions and attacked my character.

- He makes a "ludicrous assertion" that I beat my wife, I never attend union meetings and never call him. All of which he admits later on to be false.

- He calls my home when he knows that I am at work and goes over these two letters with my wife trying to explain his side of the story. My wife does not work at Metro-North. He has no business calling her.
- He meets me and I am informed the questions contained in my letter are “hypothetical” and can not be answered. He will not release our contracts or agreements. If I do not like this situation, I should try and get a petition signed by our membership to make changes.
- He calls me at home and not only demands I attend the union meeting on September 9th, but also I must come in early so we can finish our “talk”.
- He calls my home when I did not make this meeting and complains that I was a no show.
- My personal salary information is released for open discussion among Engineers. Mike informs me that his theory is a New Haven Engineer looked up on the CMS system what jobs I worked . Then cross referenced the run book and figured out to the penny what I made for the past two years.

Is this how a General Chairman for the ACRE is supposed to act? To date, neither Mike Doyle nor Mike McCarthy has responded to my letter dated August 1st.

Officers salaries are for public record and debate not individual members . Concerning officers salaries let’s review our officers salaries listed under our Local Division By-Laws. General Chairman receives 10 days per month, Local chairman receives 4 days per month, Secretary / Treasurer receives 4 days per month, President receives 2 days per month and Legislative Representative receives 2 days per month. In 2001 our daily rate was \$248.16. Listed on the ACRE’s LM2 report, which I had to download, is the following information:

<u>Name</u>	<u>Position</u>	<u>Salary on LM2</u>	<u>By-Law Salary</u>	<u>Overpayment</u>	<u>Expenses</u>
Mike Doyle	General Chairman	\$41,662.00	\$29,779.20	\$11,882.80	\$ 0.00
Dick Gunderman	Local Chairman	\$17,174.00	\$11,911.68	\$ 5,262.32	\$ 4,906.00
John Potthast	Local Chairman	\$18,353.00	\$11,911.68	\$ 6,441.32	\$ 3,066.00
Tom Cooper	Local Chairman	\$16,304.00	\$11,911.68	\$ 4,428.32	\$ 2,606.00
Ron DeAndrus	Local Chairman	\$19,583.00	\$11,911.68	\$ 7,671.32	\$10,133.00
Joe Lindenberg	Secretary/Treas	\$14,517.00	\$11,911.68	\$ 2,605.32	\$ 986.00
John Gains	Legislative Rep	\$10,702.00	\$ 5,955.84	\$ 4,746.16	\$ 4,746.16
Mike McCarthy	President	\$ 6,545.00	\$ 5,955.84	\$ 589.16	\$ 0.00

Why the overpayments in officers salaries. Over \$10,000.00 in expenses for a Local Chairman while our General Chairman has none? How is all this possible?

September 7th, I sent a certified letter to Joe Lindenberg containing a check for \$50.00 requesting the minutes of our monthly meetings which are guaranteed under our ACRE Constitution. Minutes are never are posted for our membership to read. This is a real concern since the ACRE changed our union meetings from Saturdays where 54% of the membership could attend meetings to Mondays where now only 15% of the membership can attend. I posted this letter so our membership and officers could see this request. The ACRE knew this letter was coming and sitting in their Post Office Box. Amazingly, this letter was returned to me unclaimed.

I have sent out other letters to ACRE officers all of which have gone unanswered. ACRE members certified letters have been returned either marked refused or unclaimed. Why and how can the ACRE refuse certified mail from their membership? What will you do to ensure that all of my letters receive a meaningful response and the practice of the ACRE refusing mail is terminated. Our rights as ACRE members are being violated by these officers refusing our mail and refusing to answer our concerns. Are you going to hold anyone accountable for their actions?

Concerning members rights, lets review our ACRE history. This membership received a letter dated December 8, 2000, signed by Anthony Bottalico, Mike Doyle, James Fahey and Gerry Politi all General Chairman of ACRE. This letter informed our ACRE membership “As far as four officers being paid a full-time by Metro-North and drawing a salary from ACRE, all of our officers work full-time for Metro-North and most draw a salary from ACRE. Two of our officers, General Chairman Anthony Bottalico and General Chairman Mike Doyle are on full-time union release positions which have been **negotiated** with MTA Metro-North Railroad.” This information was never presented to us from the informative meetings concerning the formation of the ACRE. If this information was presented to our membership it could have changed the outcome of this election for the ACRE. Acre officers have refused to release this Salary Agreement to our membership even though it has been requested and is guaranteed to

us under our ACRE Constitution. Our membership never got to vote on this negotiated change concerning our contract with MTA Metro-North, which again, is guaranteed to us under our ACRE Constitution. Our ACRE Constitution clearly states under Members Bill Of Rights, each member of the ACRE shall have the right to vote by secret ballot in all elections and **binding agreements with management**. Why were we not given a ballot to vote on this major change to our contract? Full-time union release positions are new here on Metro-North. Before ACRE, these full-time positions were not part of our history with Metro-North, Conrail or Penn Central Railroads. Union release positions were always on a part time basis. Officers would be scheduled for a conference with management for a day or two. Once their business was completed, these officers would return to operating trains, their normal duties. Therefore, this change in our contract and understanding with MTA Metro-North must and should have been sent out to our membership for a vote and acceptance. Since this was never done, it violated our rights as union members under the ACRE Constitution. Are these officers salaries illegal under the Railway Labor Act? I ask you to immediately terminate this salary agreement with MTA Metro-North. I request you have these ACRE officers return all of their illegal salaries back to MTA Metro-North.

These salaries which MTA Metro-North pays to our ACRE officers presents a direct conflict of interest against our rights as union members. As employees of Metro-North we come under conflict of interest laws. Where are the checks and balances in either our ACRE Constitution or Local Division By-Laws to protect us from this type of salary agreement? These ACRE officers ask us to "trust them" to do the right thing. Well that's not good enough. Union members need protection under our ACRE Constitution or Local Division By-Laws. If some kind of protection is not provided from within our ACRE Constitution against these double-dipping officers, how can they be held accountable to the ACRE and its membership? This salary letter lists no explanation of the duties nor responsibilities for Anthony Bottalico or Mike Doyle in receiving this salary from MTA Metro-North. Duties and responsibilities have been listed for both Ralph Sanzari and Ronald DeAndrus for their salaries. Metro-North claims that this salary agreement is strictly a business decision. They put our officers on their honor system where they can not do strictly union business during the day. They must do some business for Metro-North. What about the salaries we pay our union officers? They should not be doing Metro-North business or furthering Metro-North's interests on paid union time. How can they do two jobs, collect two salaries and protect our ACRE memberships rights and interests against Metro-North at the same time?

ACRE officers have changed our turnaround points with the MTA Metro-North which are contained in our contract under our 14b agreement. These changes were made without a vote or approval from our membership. Our rights under the ACRE Constitution have been violated. These 14b changes have been requested from ACRE officers. They refuse to release them. A copy of these changes is guaranteed to us under our ACRE Constitution. I ask that you void these changes immediately with the MTA Metro-North Railroad. These changes were implemented without a vote and the consent of our membership. These actions violated our rights as ACRE union members. Contract changes can not take place without our approval, especially in the middle of our contract for no apparent reason. Whose benefit did this changes favor? Was this done for the benefit of ACRE Locomotive Engineers or for Metro-North Railroad?

All of these actions taken by our officers under Local Division 9 are illegal under our ACRE Constitution and Local Division By-Laws. I request you return all of our agreements with MTA Metro-North to pre-existing ACRE days. Everything done by these ACRE officers has been done without the consent of our membership and therefore is illegal and unconstitutional. ACRE certainly does give new meaning to their favorite phrase "Democratic and User Friendly." These ACRE officers have conspired among themselves to suppress all information requested by this membership. This information is guaranteed to us under our ACRE Constitution and Local Division By-Laws. I have written to most of our officers and not one has responded. How is this possible? Maybe they are too busy with Metro-North work and can not fulfill their responsibilities as officers under the ACRE? Mike Doyle has not answered. Mike McCarthy has not answered. Joe Lindenberg has not answered. Jack Gaines has not answered. Ronald DeAndrus denies and delays claims. Conspiracy or coincidence, you tell me.

The ACRE takes \$80.00 a month from my paycheck for union dues. Once this money is deducted from my pay check it becomes the ACRE's responsibility to protect my rights and address my concerns. I do not know what game these officers are playing or what they have to hide. Sooner or later these ACRE officers will be held accountable for their actions. Whether it comes from this membership, an outside agency or a combination of the two, we will see. Hopefully, when this action comes our ACRE officers will be able to handle the consequences for their actions. Inform Metro-North payroll to stop having this mandatory dues reduction taken from my paycheck.

Contact Joe Lindenberg and have him refund my union dues. I will not pay union dues to the ACRE. Why should I pay the ACRE for the privilege of having ACRE officers ignore my concerns, violate my guaranteed rights and return my mail. I would not accept this type of treatment from anyone else or any other organization. I certainly refuse to accept it from the ACRE and its officers. Now I know why the ACRE instituted a seniority maintenance fee with mandatory payroll deduction for its union dues. As a matter of fact , the ACRE should return all dues collected from this membership until these violations of our rights is corrected. This should go back to when the first member of either the ACRE or BLE requested documentation and our ACRE officers refused to provide it. Or when the ACRE officers failed to put out contract changes without a vote and our consent from the membership. Whichever came first.

I have enclosed a complete set of letters for your review and response. I request that you or the ACRE officers which I initially wrote to respond to me within ten days upon receipt of this letter. This should not be a problem since they have had most of these letters for over sixty days now. Release all of our contract(s) and any changes associated with these contract(s), any letters of understandings, side bar agreements either verbally or written, 14b changes or modifications, the CMS agreement and the Salary Agreement negotiated between the ACRE and MTA Metro-North. Void this salary agreement with MTA Metro-North along with the 14b changes which were instituted without our approval and consent. Return our contracts with MTA Metro-North to pre-ACRE status since any and all agreements and changes to this contract have been made without a vote or consent of the ACRE membership. Return all union members dues for the ACRE's willful violations of our guaranteed rights. Most importantly, censure these ACRE officers for their actions and willful violations against our membership. You must correct the injustices which have been forced upon our membership and insure that this type of action will not be tolerated and happen again. We have nominations for officers taking place on October 14th. Will you stand up as Executive Director to enforce and protect our rights as ACRE members. Rights which are guaranteed to us under our ACRE Constitution and Local Division By-Laws. Or will you be lead down the same path as our officers in Local 9?

Our Installation Oath for officers under the ACRE Constitution reads "Do you pledge to honestly and faithfully fulfill the tasks that be before you to the best of your ability within the framework of the Constitution and the Local Division Bylaws of the Association of Commuter Rail Employees?" How many of our ACRE officers can honestly say they have lived up to this oath which they swore to?

Tired of ACRE's unethical and illegal nonsense,

James W. Ekberg

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CC: U.S. Department of Labor
Attorney General of New York

Sent via overnight certified mail