

TRANSLATION

News

SPECIAL EDITION

NO. 2

ATA BOARD ISSUES POWERFUL STATEMENT ON ANTITRUST

EFFECTIVELY TERMINATES RATE GUIDELINES PROGRAM

Chicago, March 25th.- The Board of Directors of the American Translators Association issued a strong policy statement today on antitrust matters. The statement, which will be circulated among all ATA members, chapters and divisions, warns of the dangers of making any agreements among competitors which directly or indirectly affect prices. In addition, the Board's statement urges ATA members to refrain from any discussion of (translation) rates and prices, and from circulating any statements, comments, suggestions or views on any matters which might affect translation rates.

The Board's action also in effect terminated the activities of the Rate Guidelines Committee (RGC). This official body, established in 1987, had been recommending certain rates to be charged by translators to clients.

However, the position taken by the Board will not preclude ATA from gathering and disseminating economic data on the translation industry, provided that the data is collected and published in strict abidance with antitrust guidelines.

Warning Ignored

The action taken by ATA officials was the direct result of the failure by Steven Sachs, RGC Chairman, to heed a warning given to him 3 years ago by an ATA member about the dangers of running afoul of Federal

antitrust laws, and his continued influencing of other ATA officials that there were no legal flaws in the program.

According to documents obtained from ATA headquarters, Sachs was aware that there were elements of illegality in a price recommendation program. These documents also indicate that the Board did consider the idea of consulting an attorney on the question, but was dissuaded both by Sachs and then-Treasurer William Bertsche, who took the position that if an objection were made (by the authorities), ATA would be told to stop and prosecution would follow only if ATA failed to abide by directives to terminate the program. Documents also indicate that even after an attorney was retained in early 1989, he was not fully informed of the program, even though Sachs claimed he was.

In May 1988, some 14 months after it was established, the Rate Guidelines Committee published its initial rate recommendations, revising them one year later. Its work continued unobstructed, as there were no protests from either ATA members or outside parties until late November 1989.

Questions Without Answers

The question of the legality of the rate guidelines program was raised (outside of official ATA circles) more pointedly in November 1989 in a letter sent by Bernard

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Bierman, President of AdEx Translations International, Inc., in New York, to some 25 ATA corporate member translation companies. Several translation companies indicated to Mr. Bierman that they too felt that the program was legally doubtful, but offered no suggestions on what action could be taken. However, more positive responses came from Marc Masurovsky, Vice-President of William Gray Enterprises, Inc., in Washington, DC, and Robert Addis, Director of Ad-Ex Translations International/ USA in Menlo Park, California.

The three then agreed that the most effective way for handling the situation would be to get a professional opinion on the program. Accordingly, they retained a Washington attorney specializing in antitrust matters.

While waiting for the attorney's opinion, Mr. Addis sent a letter on December 30th to the ATA Chronicle embodying some questions about certain legal aspects of the rate guidelines program.

Following the editorial policy prescribed by the ATA Board, Jane Zorrilla, Chronicle editor, forwarded Addis' letter to Mr. Sachs. At the same time, ATA President Deanna L. Hammond ordered a "hold" placed on publication of the Addis letter.

Sachs' response to Addis contained mere generalizations about the program. Nevertheless, he assured Addis that "ATA's legal counsel is aware of the RGC's activities and has found no objection to them."

Show Me Proof

Addis answered Sachs' letter by requesting a copy of the ATA attorney's opinion on the legality of the rate guidelines program. Sachs, evidently miffed at Addis' seeming mistrust of him, fired back a letter in which he said, "If you wish to investigate the legal admissibility of ATA's rate guidelines further, I would suggest that you consult your attorney."

In the meantime, President Hammond's order to withhold publication of Addis' letter continued in effect. Another letter sent by Addis requesting the opinion of ATA's attorney also went unanswered.

In mid-January, the attorney retained by Addis, Masurovsky and Bierman submitted his report. Its conclusions were that the rate guidelines program was in prima facie violation of numerous antitrust statutes.

At a luncheon meeting held between Mr. Masurovsky and President Hammond, the former expressed his concern over the apparent illegalities of the program, and urged Ms. Hammond to get the ATA attorney, Frank Patton, involved immediately. According to Masurovsky, Ms. Hammond also expressed concern over the program, and assured him that she would call Mr. Patton promptly.

Nevertheless, by the end of January, it appeared to Masurovsky that Hammond had taken little or no action. It was determined by him and his two colleagues that Mr. Patton had still not been fully informed of all of the developments.

On January 31st, Mr. Bierman sent Mr. Patton a package containing all of the documents dealing with the history and development of the rate guidelines program.

A week later, President Hammond informed Masurovsky that the rate guidelines question would be taken up at the Board meeting scheduled in Chicago on March 24th. She also assured him that Mr. Patton would examine the matter carefully and be present at the Board meeting.

Reading of the Riot Act?

What precisely transpired at the ATA Board meeting is not known as of press time. It can only be assumed that, given the strong language of the statement that was subse-

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quently issued, Mr. Patton must have been exceedingly forceful in urging the Board to take steps that would clear the dark clouds of alleged price-fixing that were hanging overhead. In fact, there were already clear indications of what the Board would do prior to its meeting, for in the March edition of the ATA Chronicle, President Hammond issued a statement to the effect that "the Association does not recommend rates and does not encourage its members to adopt any particular rates." That statement, which clearly contradicted the position of the Rate Guidelines Committee ("The American Translators Association recommends that members take the following average prevailing rates into consideration when determining the amount to be charged the client..."), was evidently the initial step in the Association's abrupt about-face. An excerpt from the Board statement of March 25th follows:

"Antitrust laws make unlawful any agreements among competitors that directly or indirectly restrain competition, including agreements among competitors which directly or indirectly affect prices. Gathering and publishing of information on competitive rates charged by translators must be performed under procedures intended to ensure that the information gathered and published is impartial and objective and does not encourage the setting of rates. ATA intends to comply with such procedures in the dissemination of any rate information.

"ATA intends to comply strictly with antitrust laws and all other laws that affect ATA. The association requires that its Divisions and Chapters comply strictly with those laws. It is essential that ATA, its Divisions and Chapters, and its members ensure that activities comply with antitrust laws. The purpose of this Policy Statement is to focus on the need for antitrust compliance."

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ATA BOARD TAKES STRONG POSITION ON "VIVIAN YU AFFAIR"

At its March 25th meeting in Chicago, the ATA Board also took up the matter of former

[continued in next column]

VIVIAN YU AFFAIR [continued]

ATA associate-student member Yam Che Yu, who also went by the name of Vivian Yu. In July 1989, Ms. Yu undertook a survey of translation company rates, using ATA corporate members as her source of information. Making use of a fictitious company name, she sent letters of inquiry to some 23 corporate members asking for price information. Virtually all of the respondents unwittingly answered her questions, believing they were dealing with a legitimate firm and a legitimate request. She published part of her findings in the September edition of the ATA Chronicle. After her scheme was uncovered by one corporate member, she attempted to circulate more data privately.

Several ATA corporate members subsequently filed complaints against her with the Board of Directors, and reacting to those complaints, the Board established an investigative committee to look into the charges. Following an examination of the facts, the Board issued the following statement: "The Board of Directors of ATA supports the free exchange of information but condemns the use of deceit to gather information and the presentation of data in a biased manner." According to a Board memo, Ms. Yu resigned from ATA, so expulsion was not considered.

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QUESTIONS AND ANSWERS ABOUT THE BOARD'S ANTITRUST POSITION

- Q. *What is antitrust?*
- A. Basically, there are four laws (Sherman Antitrust Act, Clayton Act, Robinson-Patman Act and the Federal Trade Commission Act) which prohibit the establishment of monopolies, price-fixing arrangements, price recommending and a host of other arrangements that can affect free and independent competition.
- Q. *What are the penalties for antitrust violations?*

[see "Questions & Answers", page 4]

A. Generally speaking, they can be quite severe. For corporations, they can often run to 7 figures; for individuals, up to six figures. In addition, prison terms of up to 3 years can be prescribed for each offense. And all of this is without prejudice to a damaged individual or entity seeking compensation in a civil action.

Q. Was the ATA Board aware of antitrust strictures when it established the rate guidelines program?

A. Apparently, some members were. Director Kurt Gingold had long been on record as being opposed to any rate recommending program. RGC Chairman Sachs had been clearly informed about antitrust dangers.

Q. Why didn't the Board seek legal counsel on the question?

A. ATA Boards have historically shown a reluctance to retain an attorney. Money has often been cited as a consideration.

Q. Was the ATA's attorney, who was retained in February 1989, aware of ATA's activities in rate recommending?

A. All signs indicate that he was not fully informed by ATA officials of the scope and extent of the program.

Q. The Rate Guidelines Committee said on several occasions that one purpose of the program was to afford newcomers to the profession an idea of the prevailing economics of the industry. How will the effective dismantling of the program affect them?

A. Doubtless they will have to learn about the economics of the translation industry in the so-called traditional way, i.e., by casual, private conversation. However, there is still a good possibility that both newcomers and "old-timers" can still be given constructive and factual information.

Q. How can that be done?

A. By gathering and publishing data that is collected in accordance with antitrust guidelines, and which is highly objective and free of recommendation and/or suggestion.

Q. What will that entail for ATA?

A. First of all, it will necessitate the commitment of funds in an amount greater than what ATA has traditionally committed for economic research. Secondly, it will involve entrusting this research to outside, independent specialists who have the means and expertise to undertake objective and unbiased economic studies.

Q. What kind of money are we talking about?

A. At minimum, we are talking about \$10,000 for an initial study of a relatively-narrow scope.

Q. How could ATA afford that?

A. Clearly, it could not at the present time, especially given its current priorities. However, something rudimentary could be done if the organization re-ordered its priorities.

Q. Could you elaborate on that?

A. The most likely place to start would be with the \$7500 which ATA has budgeted in FY 89-90 for foreign liaison, FIT dues, JNCL dues and the FIT North American Regional Center. Many members believe that these activities are of questionable value. In addition, monies from ATA's unrestricted reserve fund (presently standing at ca. \$158,000) could also be allocated without in any way damaging the Association's financial condition.

Q. Will the Board's action have any effect on freelance-agency relations within ATA, given the fact that the Board obviously reacted to pressure exerted by 3 translation company executives?

A. It is hard to speculate on what reaction will be forthcoming from both sides. One might conjecture that bureaus will be pleased, while freelancers will be disappointed. Nevertheless, if ATA takes positive steps to find a replacement program, the freelance-agency relationship could improve, only because the debate will no longer be centered around personal perceptions, rumors and idle gossip.

**STATUS OF FREELANCE DIVISION
IN DOUBT**

Efforts to determine the status of a proposed Freelance Division within ATA have been unsuccessful.

A proposal to establish this new Division was an outgrowth of a session entitled "Freelance Concerns" held at the 1989 ATA Conference in Arlington, Va. The ATA Chronicle of December 1989 reported that the purpose of the Division would be to promote and research those issues affecting freelance translators in particular (as opposed to those employed full-time by an organization).

The session itself was conceived by Isabel Leonard and William Grimes of Hingham, Mass., both of whom have been in the forefront of freelance translator issues. The session was restricted solely to those translators who met certain freelance criteria as determined by Ms. Leonard and Mr. Grimes.

Although the holding of such a restricted session violated ATA by-laws (the by-laws mandate that all meetings must be open to all ATA members), Convention Manager Deanna Hammond ignored protests from numerous members, and permitted the meeting to go on. Some 40 wouldbe attendees were turned away at the door, either because they did not have "invitations" or because they failed to meet the criteria set. A security guard was posted at the door to keep out those without "invitations".

Robert Johnson, reporting in the Capital Translator, newsletter of ATA's Washington Area Chapter, said that an adversarial attitude towards translation bureaus was evident from the outset, but that many positive suggestions were offered for dealing successfully with them.

Mr. Johnson further reported that Ms. Leonard asked the attendees to list on 3 x 5 cards the bureaus they recommended working for and to turn in the cards after the session.

When TRANSLATION NEWS asked Mr. Johnson about who collected the cards, he replied that he didn't know, since he had left the meeting early to cover another session.

Susanna Greiss, a New York freelance translator told TRANSLATION NEWS that she saw no cards being collected, although she clearly recalled seeing them distributed and attendees filling them out.

One Washington-based freelancer, who requested that his name be withheld, told TRANSLATION NEWS that the cards were turned in at the end of the session to Mr. Grimes and taken away by him.

Efforts to confirm the ultimate disposition of these cards were unsuccessful.

ATA officials who commented on the proposal to establish a Freelance Division, were divided in their opinions on its effectiveness or usefulness.

Director William Bertsche indicated that he was "uncomfortable" with the idea, because he felt that it would bring divisiveness to ATA. Director Kurt Gingold supported the proposal on the grounds that it would allow a forum for special concerns.

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EDITORIAL

Why TRANSLATION NEWS? We believe that there is a need for it within the ATA community. We believe that one important aspect of ATA's publications program sorely cries out for a newsletter like TRANSLATION NEWS. Indeed, we have nothing but praise for that aspect of ATA's publications which gives members essential news about dictionaries, terminology, computer hardware and software and a host of other subjects vital to the professional translator. But our praise ends there. We wish it could extend to the Association's handling of news about the Association. But where ATA rates an unqualified "A" in providing helpful information about the daily challenges of translation, it gets a sorrowful "D" when it comes to telling its members what the Association is doing.

"Managed news" about the Association is today's reality. Secretive officials, burdened with a "let's-pull-the-wagons-tighter-around-us" mentality, give out only the news they feel is "good". It is well-known, both from documents and from accounts by past-ATA officials, that Board members spend literally hours discussing which of their deliberations should see the pages of the Chronicle, and often select the most innocuous ones. ATA officials look even more dimly on any criticism of their management, so much so that any letter critical of any aspect of ATA management cannot be published without a response right at its side (curiously, it doesn't work the other way around). Ted Crump, one Chronicle editor who had some different ideas on exchange of views, violated that "commandment" and was summarily fired. Worse, there is the Board's attitude towards the publication of views which do not "enhance the image" of the Association, or "reflect badly upon the Association". Code words for "you say nice things about ATA or you don't say them".

And finally, there is the distortion of news. We all remember the Board's proposal to move ATA headquarters to Washington and buy some real estate there. To do this, the Board proposed a fund-raising scheme. But that had to be put aside when it became clear that a not-for-profit membership organization could not engage in fund-raising. So then we were told about converting to non-profit status. But all of a sudden, the idea of fund-raising (as a nonprofit corporation) for buying real-estate was dropped like a hot potato, and instead we got this nonsense about being an "educational" organization. We were also told that we would save \$10,000 in taxes by converting, although any first-year accounting student would have laughed at that (the actual figure is \$2000 on a worst-case scenario).

So why TRANSLATION NEWS? Because we believe that all ATA members have a right to know what is going on in their Association. They are the owners. They have a right to express their opinions and views, without any interference from 13 people, who believe that they alone have wisdom. This newsletter will continue to exist as long as there is secrecy and secretiveness in the American Translators Association. That's why TRANSLATION NEWS.