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July 20, 2009

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Re: Trusteeship Recommendation Concerning Local 726

Dear Mr. Hoffa:

Enclosed are the Independent Review Board (IRB) report and accompanying exhibits with respect to Local 726. We believe the evidence detailed in this report warrants the imposition of a Trusteeship. This report and accompanying exhibits are being forwarded to you under Section G, paragraphs (d) and (e) of the March 14, 1989 Consent Order entered in United States v. IBT. Please report within two weeks from receipt hereof and inform the IRB of the actions planned or taken. In this respect, our Chief Investigator, Mr. Carberry, may contact you.

Very truly yours,

Members of the
Independent Review Board

By: 

John J. Cronin, Jr.
Administrator

Enclosures

cc: Members of the IBT General Executive Board, w/o Exhibits
Bradley T. Raymond, Esq., w/Exhibits
Beth Goldman, AUSA, w/o Exhibits

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

To: James P. Hoffa, IBT General President
From: Members of the Independent Review Board
Date: July 20, 2009
Re: Trusteeship Recommendation Concerning Local 726

I. RECOMMENDATION

The Independent Review Board ("IRB") recommends to the General President that Local 726, located in Chicago, Illinois, be placed in Trusteeship because the Local is not being conducted in accordance with the IBT Constitution and the Local's Bylaws and the Local has engaged in financial malpractice.¹

¹ Pursuant to Article VI, Section 5(a) of the IBT Constitution,

If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union or its subordinate bodies, or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures or preventing any action which is disruptive of, or interferes with the performance of obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body. . .

II. SUMMARY

Three Local officers, principal officer Thomas P. Clair ("Clair"), President John Falzone ("Falzone") and Local Trustee Michael Marcatante ("Marcatante"), were also Trustees of the Local 726 Employee Pension Fund ("Pension Fund"). (Ex. 12 at 38-39; Ex. 6 at 28-29; Ex. 114) These Trustees breached their fiduciary duties under Article II, Section 2(b) of the IBT Constitution by causing the Pension Fund to transfer \$125,000.00 to the Local.² (Ex. 1) There was no contemporaneous documentation reflecting approval of the Pension Fund for or the nature of these transfers. As

² Article II, Section 2(b) of the IBT Constitution entitled "Union Fiduciary's Code of Ethics" provides:

[a]ny member who serves as a fiduciary of an employee benefit plan covering members or employees of the International or any of its subordinate bodies shall pledge to follow the following Code of Ethics with respect to his or her service as a fiduciary to the plan.

* * *

(1) The fiduciary shall faithfully serve the best interests of the participants and beneficiaries of the plan in accordance with the requirements of applicable law

(2) The fiduciary shall exercise his or her duties with respect to the plan with the care, skill, prudence, and diligence under the circumstances that a prudent person familiar with such matters would use acting under similar circumstances. (Ex. IBT Constitution)

* * *

(6) The fiduciary shall take the reasonable steps, consistent with his or her obligations under applicable law, to ensure that all employers who are required to contribute to the plan under a collective bargaining agreement fully comply with their reporting and contribution obligations.

(Ex. 1)

detailed below, there were two transfers totaling \$125,000.00. (Ex. 55; Ex. 56; Ex. 46) The transfers were prohibited transactions under the Employee Retirement Income Security Act ("ERISA") because the Local was a party in interest to the Pension Fund to which it was forbidden to make loans. (Ex. 36) Further evidencing the three Trustees' breaches of their fiduciary duties, there were no promissory notes or other documents memorializing the loans. (Ex. 128) Nor were any loan repayment terms defined, such as interest or any date for repayment. (Ex. 11 at 24; Ex. 6 at 45-47; Ex. 114) Nor were there any Pension Fund minutes reflecting the transfers, the reasons for them, and their terms. (Ex. 6 at 67; Ex. 114)

Several months later, when the Local's outside accountant became aware of the transfers, he instructed the Fund Trustees that the Local must repay the amount of the prohibited transactions. (Ex. 58) Three Local officers, Clair, Marcatante and Recording Secretary John Hurley ("Hurley"), loaned a total of \$112,000 to the Local in order for the Local to repay the Pension Fund. (Exs. 2-4) Unlike the alleged loan from the Pension Fund, these loans were documented, had specific rates of interest, and were secured by the Local's assets. (Exs. 2-4) Without the Local Executive Board approval Section 14(A)(3) of the

Local's Bylaws required, Clair, who signed the notes on behalf of the Local, pledged the assets of the Local to secure the three loans, including his. (Exs. 2-4; Ex. 59; Ex. 13 at 46; Ex. 7 at 30; Ex. 10 at 23; Ex. 9 at 43-44; Ex. 114) This was a violation of Section 14 (A)(3) of the Local's Bylaws which provides that the Local's Executive Board is empowered to:

(3) Loan and borrow monies directly and indirectly for such purposes and with such security, if any, as it deems appropriate, and with such arrangements for repayment as it deems appropriate - all to the extent provided by law.

(Ex. 59)

In addition to causing the Pension Fund to engage in two transactions prohibited under ERISA, the Pension Fund Trustees breached their fiduciary duties by failing to maintain proper records such as minutes or any other documentation of Trustees meetings. (Ex. 6 at 34) Indeed, in response to a subpoena, the Pension Fund was unable to provide copies of the Plan Document or Summary Plan Description.³ (Ex. 5; Ex. 37) Clair, the Local's principal officer and a Trustee of the Pension Fund for six years,

³ Upon application of the Chief Investigator on January 12, 2009, United States District Court Judge Loretta Preska issued a subpoena to the Pension Fund requiring the production of "[a]ll versions of the Plan Document in effect during any part of the period from January 2003 to the present" and "[a]ll versions of the Summary Plan Description in effect during any part of the period from January 2003 to the present." (Ex. 5)

testified that he had never seen the Plan Document or trust instrument creating the Pension Fund. (Ex. 6 at 30-32) In addition, as of April 30, 2009, the Local owed \$119,422.00 in delinquent contributions to the Pension Fund and \$77,325.79 to the three officers who made loans to the Local in order to repay the Pension Fund. (Ex. 14)⁴

Moreover, the Local's monthly Trustee Reports did not accurately portray the Local's financial condition. For example, the Trustee Reports did not include at least two large liabilities. In August 2007, the Local entered into an agreement to pay \$216,597.09 in delinquent contributions to the Central States Pension Fund and Health and Welfare Fund ("Central States Funds"). (Ex. 50) This liability was not reflected on the Trustee Reports and was not reported to the members. (Ex. 62) In addition, the Local did not report its severance obligation to current employees on its Trustee Reports despite explicit instructions from the IBT to do so. (Ex. 42; Ex. 78) As of December 2008, the severance liability was approximately \$69,582.09. (Exs. 71-72)

In addition, on at least two occasions, Secretary-Treasurer Clair misled the IBT regarding steps the Local had taken to improve its financial affairs. For example,

⁴ The April 2009 Trustee Report incorrectly reported the \$77,325.70 owed to the three officers as a negative liability. (Ex. 14)

despite the Local's failure to follow the IBT's explicit instruction to record its severance obligation on its Trustee Reports, Clair falsely reported to the IBT that the Local had begun doing so. (Ex. 81) Similarly, there was another misleading response to the IBT. The IBT initiated an investigation into the Local's financial condition, prompted by its review of the Local's November 2007 Trustee report, which listed a balance of negative \$205,022.00 in the Local's General Checking Account. (Ex. 62; Ex. 70) Joint Council 25 President John T. Coli ("Coli"), who was asked to handle the inquiry, wrote a letter to IBT General Secretary-Treasurer Thomas Keegel ("Keegel") stating that the Local had reduced the salaries of its officers and business agents by approximately \$4,000.00 in total per month. (Ex. 110) Clair was copied on this letter. (Ex. 110) In fact, Local 726 did not reduce the salaries of its officers and business agents at all. (Ex. 6 at 86) Although Clair was copied on Coli's letter, he did not correct Coli's misstatements regarding salary reductions. (Ex. 6 at 86-89)

Furthermore, the Local did not comply with the requirements in the Local's Bylaws and the IBT Constitution regarding financial disclosure to the members. (Ex. 1; Ex. 59) As a public service local, Local 726 was not required

to file Forms LM-2. As detailed below, the limited financial information reported to the members under the Bylaws appears to have been inaccurate and incomplete. Some form of the Trustee Reports was read to the members. These reports were constantly inaccurate. For example, in none of the 28 months between January 2007 and April 2009 did the Local's checking account balance shown on its bank statement match the General Fund Checking balance on the monthly Trustee Report. (Ex. 86; Ex. 88; Ex. 90) One Trustee, Linda Cruz ("Cruz"), acknowledged that she did not perform her duty to verify the Local's bank balance each month as the Local Bylaws and IBT Constitution required. (Ex. 7 at 9-10, 16, 18) She did not even know where the Local had its bank account. (Ex. 7 at 11)

In addition, the Local failed to comply with the IBT Constitution and the Local's Bylaws regarding the waiver of membership dues. (Ex. 1; Ex. 59) In violation of the Local Bylaws and the IBT Constitution, on at least 23 occasions between June 1, 2007 and November 3, 2007 the Local waived membership dues without the required Executive Board approval. (Ex. 66; Ex. 126)

III. INVESTIGATIVE FINDINGS

A. Background

Local 726 has approximately 3,773 members who are public employees for state and municipal governments. (Ex. 8) As a union exclusively representing public employees, Local 726 is not required to file Form LM-2 reports with the United States Department of Labor. The current Local 726 officers are: Secretary-Treasurer and principal officer Thomas P. Clair, President John Falzone, Vice President Kenneth R. Brantley ("Brantley"), Recording Secretary John F. Hurley, and Trustees Linda Cruz, Anthony Fiori ("Fiori") and Michael Marcatante. (Ex. 6 at 5-6; Ex. 7 at 5-6; Ex. 9 at 5-6; Ex. 10 at 5-6; Ex. 11 at 5-6; Ex. 12 at 5; Ex. 13 at 5-7; Ex. 14)

B. 1993 IRB-Recommended Trusteeship

On October 21, 1993, the IRB recommended to the IBT General President that Local 726 be placed in Trusteeship because several of its officers at that time embezzled Local 726 funds and breached their fiduciary duties by taking a trip at Local expense to the U. S. Virgin Islands. (Ex. 15) In the same report, the IRB recommended that three Local officers be charged with embezzlement. (Ex. 15)

The IBT found that then Secretary-Treasurer Carlo Spranzo ("Spranzo") and President Thomas Moskal ("Moskal")

breached their fiduciary duties to the members by engaging in a pattern of holding yearly "special" or "emergency" unscheduled Executive Board meetings for the sole purpose of awarding quarterly bonuses to themselves and some of the other officers. (Exs. 16-17) The IBT found that certain Executive Board members were excluded from these unscheduled meetings. (Exs. 16-17) The Local's practice was to read the minutes of the previous month's Executive Board meeting at the Regular membership meetings. However, contrary to this practice, the minutes of the "special" and "emergency" Executive Board meetings held solely to discuss bonuses for some officers were not read to the membership. As a result, Spranzo and Moskal each received large bonuses which were not disclosed to the members or to all members of the Executive Board. For example, in 1992 Spranzo received a bonus of \$18,000 each quarter for an annual total of \$72,000. (Exs. 16-17)

On December 21, 1993, the IBT placed Local 726 in emergency Trusteeship. (Ex. 18) On January 3, 1995, the IBT released Local 726 from Trusteeship. (Ex. 19)

The IRB also recommended that then Secretary-Treasurer and principal officer Spranzo, President Moskal and Vice President Robert E. Wilson ("Wilson") be charged with embezzling Local 726 funds. (Ex. 15) In December 1989,

Spranzo, Moskal, Wilson and another officer traveled to St. Thomas in the U. S. Virgin Islands at Local 726 expense. This trip, which cost the Local over \$11,000, was for the personal benefit of these officers and was of no benefit to the Local 726 membership. (Ex. 15) This trip taken at Local expense was not disclosed to the membership. (Ex. 15) On January 20, 1994, Spranzo, Moskal and Wilson each entered into an agreement permanently resigning from Local 726 and the IBT. (Exs. 20-22)

C. Current Officers

1. Thomas P. Clair

Clair joined Local 726 in 1971. (Ex. 6 at 5; Ex. 23) Clair has been an employee of the Local since 1995, when he began as a business agent. (Ex. 6 at 6) In 2003, Clair was appointed Secretary-Treasurer and principal officer of Local 726. (Ex. 6 at 5-6) In 2007, Clair was elected Secretary-Treasurer. (Ex. 6 at 6) From 1997 to 2003, Clair had been the Local 726 Recording Secretary. (Ex. 6 at 5-6) Clair is also a Trustee of the Local 726 Pension Fund and the Plan Administrator. (Ex. 6 at 33; Ex. 34)

In 2008, Clair's salary from Local 726 was \$136,590.86. (Ex. 6 at 6; Ex. 25)

2. John Falzone

Falzone joined Local 726 in 1982. (Ex. 9 at 4; Ex. 26)⁵ Falzone was elected Local 726 President in 1995 when the Local was released from Trusteeship. He has held that position since then. (Ex. 9 at 5-6) In addition to his position on the Executive Board, Falzone is a Trustee of the Local 726 Employee Pension Fund. (Ex. 12 at 38-39; Ex. 6 at 28-29)

In 2008, Falzone's salary from Local 726 was \$118,903.07. (Ex. 9 at 5; Ex. 25)

3. Kenneth R. Brantley

Brantley joined Local 726 in 1978. (Ex. 10 at 4-5; Ex. 27) Brantley was elected Vice President in approximately 1997. (Ex. 10 at 5-6) Prior to becoming Vice President, he had been a business agent. (Ex. 10 at 6) He is a full time employee of the Local.

In 2008, Brantley's salary from Local 726 was \$120,064.18. (Ex. 10 at 5; Ex. 25)

4. John F. Hurley

Hurley became a member of Local 726 in 1968. (Ex. 11 at 5; Ex. 28) In 1995, he was appointed a Trustee. (Ex. 11 at 6) In 2003, he was elected Recording Secretary. (Ex. 11

⁵ Prior to becoming a member of Local 726, Falzone had been a member of Teamster Local 714. (Ex. 9 at 5)

at 5-6) Since 1999, Hurley has been employed as a business agent. (Ex. 11 at 6)

In 2008, Hurley's salary from Local 726 was \$114,904.34. (Ex. 11 at 7; Ex. 25)

5. Trustees

a. Michael Marcatante

Marcatante became a member of Local 726 in 1978. (Ex. 12 at 4-5; Ex. 29) In 1995, Marcatante was elected a Trustee. (Ex. 12 at 5; Ex. 6 at 9) He has been a business agent since 1996. (Ex. 12 at 6; Ex. 6 at 9) In addition to his position on the Executive Board, Marcatante is also a Trustee of the Local 726 Employee Pension Fund. (Ex. 12 at 38-39; Ex. 6 at 28-29)

In 2008, Marcatante's salary from Local 726 was \$107,842.96. (Ex. 25) The other two Trustees are not Local 726 employees.

b. Linda Cruz

Cruz became a member of Local 726 in 1989. (Ex. 7 at 5; Ex. 30) She is employed as a truck driver with the Chicago Department of Water Management. (Ex. 7 at 6) Cruz was elected a Trustee of Local 726 in 2003. (Ex. 7 at 5-6; Ex. 6 at 9)

In 2008, Cruz received \$15,839.60 from Local 726 for being a Trustee. (Ex. 7 at 6; Ex. 25)

c. Anthony Fiori

Fiori became a member of Local 726 in 1977. (Ex. 13 at 4; Ex. 31) Since 1999, the IBT has employed Fiori as a full-time Field Representative. (Ex. 13 at 5-6) In April 2003, Fiori was appointed a Trustee of Local 726. (Ex. 13 at 5-6; Ex. 6 at 9) He was elected a Trustee in 2007. (Ex. 13 at 7)

In 2008, Fiori received \$15,600.00 from Local 726 for being a Trustee. (Ex. 25) The IBT paid him \$88,940.00 in 2008. (Ex. 32)

D. Prohibited Transactions between the Local 726 Pension Fund and Local 726

1. The Local 726 Pension Plan

Effective January 1, 1983, Local 726 adopted a plan calling for a Local 726 Pension Fund. (Ex. 33) The Pension Fund covers all Local employees. (Ex. 33 at 1) Pursuant to the Pension Fund's Trust Agreement, a board consisting of three Trustees appointed by the Local 726 Executive Board ("Fund Trustees") was to administer the Pension Fund.⁶ (Ex. 33 at 2) Since 2003, when the current Executive Board took office, Falzone, Marcatante, and Clair have been the three Fund Trustees. (Ex. 6 at 28-29, 33-34) Pursuant to the

⁶ The Trust Agreement defined the "Pension Committee" as "the person or persons appointed by the Employer to administer the Pension Plan in accordance with the provisions of the Pension Plan." (Ex. 33 at 2) Fund Trustees Clair and Marcatante testified that the Pension Fund did not have a Pension Committee. (Ex. 6 at 28-29; Ex. 12 at 46)

Trust Agreement, in administering the Pension Plan, the Fund Trustees were required to use "ordinary care" and "reasonable diligence" in carrying out their duties. (Ex. 33) In addition, the Fund Trustees were required to hold meetings and to maintain "accurate and detailed records and accounts of all properties held under this agreement and of all investments, receipts, disbursements, and other transactions hereunder." (Ex. 33 at 5) Under Article II, Section 2(b)(2) of the IBT Constitution, the Fund Trustees must

[e]xercise his or her duties with respect to the plan with the care, skill, prudence, and diligence under the circumstances that a prudent person familiar with such matters would use acting under similar circumstances.

(Ex 1)

As of December 31, 2007, the Pension Fund had 35 participants and projected Net Assets of \$1,191,027.00.

(Ex. 34; Ex. 35 at 6)

2. The Fund Trustees Breached Their Fiduciary Duties Under ERISA and the IBT Constitution In Their Administration of the Pension Fund

As detailed below, Fund Trustees Clair, Marcatante, and Falzone did not perform their duties with the "care, skill, prudence, and diligence" the IBT Constitution and

ERISA required.⁷ (Ex. 36; Ex. 1) For example, in response to a subpoena, the Pension Fund was unable to produce the Plan Document establishing the Pension Fund or the Summary Plan Description. (Ex. 37; Ex. 5) In addition, the Fund Trustees did not have any minutes or records of any meetings. The Fund Trustees claimed they held undocumented "informal" meetings. (Ex. 12 at 46; Ex. 6 at 34-35, 67) The Fund Trustees gave inconsistent testimony on the basic question of who had the authority to disburse Pension Fund money. (Ex. 6 at 67; Ex. 9 at 13) Indeed, Fund Trustee Falzone testified that he was not a Trustee. (Ex. 9 at 8)

Pursuant to a subpoena District Court Judge Loretta Preska signed on January 12, 2009, the Pension Fund was required to produce all versions of the Plan Document and Summary Plan Description in effect since January 2003. (Ex.

⁷ Section 404(a)(1) of ERISA, 29 U.S.C.S. § 1104(a)(1), provides the general fiduciary responsibility rules applicable to employee benefit plans under the statute, and states in relevant part:

Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and -

- (A) For the exclusive purpose of:
 - (i) providing benefits to participants and their beneficiaries; and
 - (ii) defraying reasonable expenses of administering the plan;
- (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. . . (Ex. 36)

5) Although ERISA required the Pension Fund to be administered in accordance with the instruments governing the plan⁸, the Pension Fund was unable to produce the Plan Document or the Summary Plan Description for the Pension Fund. (Ex. 37) Moreover, in response to the subpoena, the attorney for the Pension Fund, wrote,

. . . a search of the local union records and the records of the Pension Fund do not reveal any trust document establishing the Pension Fund. Originating documents such as the trust agreement were not in the offices of the local union at the time the current officers assumed office. . .

(Ex. 37) Fund Trustee Clair testified that he had never seen the Trust Instrument or the Plan Document for the Pension Fund. (Ex. 6 at 30-32) Clair testified that he did not receive any documents when he became a Trustee of the Pension Fund. (Ex. 6 at 30-31) Moreover, Clair acknowledged that after becoming a Fund Trustee, he had never attempted to locate the Trust Instrument or the Plan Document for the Pension Fund. (Ex. 6 at 32) Fund Trustee Falzone testified that he first saw the Trust Instrument in

⁸ Section 404(a)(1)(D) of ERISA, 29 U.S.C.S. § 1104(a)(1)(D) states:

(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and-

* * *

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and title IV. (Ex. 36)

1995 when he took office as President, but that he had never received a copy. (Ex. 9 at 8-9) Falzone testified that he kept a copy of the Plan Document in his desk at the Local. (Ex. 9 at 8-9) Fund Trustee Marcatante testified that he kept a copy of both the Trust Instrument and the Plan Document in his filing cabinet and that he provided the plan actuaries with copies of the Plan Document. (Ex. 12 at 40-41)

Although Fund Trustees Falzone and Marcatante claimed to have copies of the Plan Document, in response to the January 12, 2009 subpoena requiring the production of the Plan Document, the attorney for the Pension Fund wrote a letter to the Chief Investigator stating that the current officers never possessed any of the originating documents for the Pension Fund. (Ex. 37) The Chief Investigator obtained the trust agreement and Plan Document from the current and former Pension Fund actuaries pursuant to subpoenas. (Exs. 38-39; Ex. 61; Ex. 33; Ex. 129)⁹

During his IRB sworn examination, Clair testified that he did not have any duties as a Trustee of the Pension Fund. (Ex. 6 at 29-30)¹⁰ Clair further admitted that he was

⁹ The current actuary for the Pension Fund is Hartman & Associates Actuaries and Consultants and the former Pension Fund actuary was Howard Simon & Associates, Inc.. (Ex. 6 at 36)

¹⁰ Clair testified as follows:

unfamiliar with ERISA and had never discussed his duties under ERISA with anyone. (Ex. 6 at 29-30)

During his sworn examination, Falzone, whom the other Trustees identified as a Trustee of the Pension Fund and who had signed a Certificate of Corporate Resolution as a Fund Trustee in 2005, denied holding any position with the Pension Fund. (Ex. 12 at 39; Ex. 6 at 28-29; Ex. 9 at 8; Ex. 127; Ex. 24) Moreover, Falzone testified that he did not think the Pension Fund had any Trustees at all. (Ex. 9 at 11-12) Fund Trustee Marcatante testified that his duties under ERISA as a Fund Trustee, were simply, "The fund has to be funded, and they can't make certain investments that would cause a liability to the fund." (Ex. 12 at 39-40)

Moreover, the Fund Trustees' testimony concerning who had authority to disburse funds from the Pension Fund was inconsistent. According to Clair, he and Falzone shared signatory authority over the Pension Fund. (Ex. 6 at 67)

Q. What are your duties with respect to the 726 employee pension plan?

A. Well, we actually - we don't have any duties. What - the plan administrator is the one that administers it.

Q. As a trustee, do you understand you have any duties under the plan?

A. No.

(Ex. 6 at 29-30)

During his sworn examination, Clair, who was listed as the plan administrator on the 2007 Form 5500 the Pension Fund filed with the IRS, testified that the plan actuary, Hartman & Associates Actuaries and Consultants, was the plan administrator. (Ex. 6 at 29; Ex. 34)

In contrast, Falzone testified that he did not know how funds were disbursed from the Pension Fund and stated that, as the Local's Secretary-Treasurer, Clair was "in charge of all the money." (Ex. 9 at 13) Falzone testified that Clair alone had authority to disburse funds and make investment decisions regarding the Pension Fund. (Ex. 9 at 13) Contrary to Falzone's testimony, Marcatante testified that the three Trustees made investment decisions together based on the advice of Eric Fudula ("Fudula"), an employee of the Bank of America Investment Services, who acted as financial advisor to the Pension Fund. (Ex. 12 at 39, 73)

Marcatante testified that upon receiving advice from Fudula, the Fund Trustees,

[w]ould meet, talk among ourselves and just call him [Fudula] back and say, Go ahead and do it. And then he would make all the financial arrangements and make the changes.

(Ex. 12 at 73) Marcatante admitted that there were no documents memorializing any discussions and authorizations for any Pension Fund investments. (Ex. 12 at 69-72)

In addition, the Fund Trustees failed to hold formal, documented meetings. (Ex. 12 at 46) Although Clair testified that the Board of Trustees met approximately once or twice a year, (Ex. 6 at 34) Fund Trustees Marcatante and

Clair acknowledged that such meetings were not memorialized in any way. (Ex. 6 at 34; Ex. 12 at 46) Clair further acknowledged that the Board of Trustees did not maintain any records. (Ex. 6 at 35)

In addition, in apparent violation of Article II, Section 2(b)(6) of the IBT Constitution, the Fund Trustees failed to ensure that contributions were timely made and the Pension Fund was properly funded. (Ex. 1) For example, in 2005, Local 726 did not make any employer contributions to the Pension Fund. (Ex. 40; Exs. 119-124) In 2007, the plan was underfunded. (Ex. 41; Ex. 43)¹¹ On February 13, 2009, Pension Fund actuary Thomas Hartman wrote a letter addressed to the Pension Committee, which stated that the Local was required to contribute \$119,422.00 for the plan year ending December 31, 2007 and requested that the Local "forward copies of any payments made for the 2007 plan year." (Ex. 41)

An \$119,422.00 liability to the Pension Fund first appeared on the December 2008 Trustee Report, which was prepared in February 2009. (Ex. 42) As of April 2009, the

¹¹ From documents the actuary produced, it appears that contributions the Local made in 2006 were credited to plan year 2005 and contributions made in 2007 were credited to the 2006 plan year. (Ex. 40)

\$119,422.00 liability to the Pension Fund remained on the Trustee Report.¹² (Ex. 14)

Indeed, in October 2008, Local 726 paid a \$1,192.00 fine to the IRS for failure to meet minimum funding standards for the Pension Fund in 2007. (Exs. 43-44) In addition, the Local paid a \$163.00 tax on the ERISA prohibited transactions which are discussed below. (Exs. 43-44) By check dated October 14, 2008, Local 726 paid the fine and tax, totaling \$1,355.00. (Ex. 44) During his sworn examination, Local 726 Secretary-Treasurer and Fund Trustee Clair testified that he was unaware of the fine and tax. (Ex. 6 at 52-53)¹³ The fine and tax were never disclosed to the members. (Ex. 6 at 52-53)

In addition to their breach of fiduciary duties in the administration of the Pension Fund, as detailed below, the Fund Trustees again violated their fiduciary duties under ERISA and the IBT Constitution, when they caused the Pension Fund to engage in two ERISA prohibited transactions in which the Pension Fund transferred to the Local a total of \$125,000.00. (Ex. 1; Ex. 36) Moreover, in addition to

¹² The April 2009 Trustee Report inaccurately listed the \$119,422.00 owed to the Pension Plan as a negative liability. (Ex. 14)

¹³ Contrary to Clair's testimony that he was unaware of the fine resulting from the prohibited transactions, Clair was copied on a memorandum from Pension Fund actuary Thomas Hartman which detailed the penalties that may be imposed as a result of the prohibited transaction. (Ex. 6 at 52-53; Ex. 45)

causing the Pension Fund to engage in two prohibited transactions, the Fund Trustees breached their duties to act in the best interest of the plan participants when they did not document the terms of the transfers including, if they were loans, any terms of repayment and interest to be paid. (Ex. 11 at 24; Ex. 6 at 45-47) The transfers were undocumented and unsecured. (Ex. 128)

3. The Fund Trustees Violated Section 406(a)(1)(B) of ERISA by Causing the Pension Fund to Enter Into Two Prohibited Transactions Totaling \$125,000

Between October and December 2007, the Pension Fund transferred to Local 726 a total of \$125,000.00. (Ex. 46; Ex. 6 at 47-48) If loans, as the Trustees maintain, these transfers were prohibited transactions under Section 406(a)(1)(B) of ERISA, 29 U.S.C.S. § 1106(a)(1)(B), which prohibits plan fiduciaries from causing the plan to engage in transactions that the fiduciaries know or should know constitute the lending of money between the plan and a party in interest.¹⁴ (Ex. 36) Under Sections 3(14)(C) and

¹⁴ Section 406(a)(1)(B) of ERISA, 29 U.S.C.S. § 1106 (a)(1)(B) provides:

A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect

* * *

(B) lending of money or other extension of credit between the plan and a party in interest.
(Ex. 36)

(D) of ERISA, 29 U.S.C.S. § 1002(14)(C), 29 U.S.C.S. § 1002(14)(D), a "party in interest" includes an employer any of whose employees are covered by an ERISA benefit plan and an employee organization any of whose members are covered by the plan. (Ex. 36) Accordingly, Local 726 is a party in interest to the Pension Fund.

The motivation for dipping into the Pension Fund appears to have been to pay off another obligation to a different fund for a different employee pension plan. (Ex. 51) On August 7, 2007, the Local entered into an agreement with the Central States Funds pursuant to which the Local agreed to pay \$216,597.09 in delinquent contributions owed to the Central States Funds. (Ex. 47)¹⁵ These funds provided pension plans for all Local employees. On October 19, 2007, more than two months after Local 726 reached this

¹⁵ The Local contributed to the Central States Funds on behalf of its employees. (Ex. 9 at 12) After receiving an anonymous letter from an alleged Local 726 employee, on February 5, 2007 and April 17, 2007, Central States audited Local 726's contributions for the period of 2003 to 2006. (Ex. 48) On May 9, 2007, in a letter addressed to then Local 726 office manager Cari Lamberg and copied to Clair, the Central States Funds informed Local 726 of its preliminary finding that Local 726 owed \$302,631.30 in contributions because the Local had reported inaccurate activation and termination dates for certain employees and had failed to report a number of eligible employees, including part-time employees to the Funds. (Ex. 49) On August 1, 2007, the Central States Funds notified Local 726 that the audit disclosed that Local 726 owed \$166,201.92 to the Pension Fund and \$50,395.17 to the Health and Welfare Fund. (Ex. 47) The Central States Funds requested Local 726 to "send a check immediately to cover the above amounts." (Ex. 47) On August 8, 2007, the Central States Funds confirmed a settlement of \$216,597.09 for full payment of all audit findings and interest related to their audit. (Ex. 50)

agreement with the Central States Funds, Clair called a Special Emergency Local Executive Board Meeting to discuss the Local's financial condition and the amount owed to the Central States Funds. (Ex. 51; Ex. 6 at 44) As discussed below, Trustees Fiori and Cruz, the only officers who were not full-time officers of the Local, did not attend this meeting. (Ex. 13 at 41; Ex. 7 at 27-28; Ex. 6 at 45; Ex. 51)

According to the minutes of the Special Emergency meeting, in order to pay the debt owed to the Central States Funds, the Local's Executive Board approved borrowing \$125,000.00 from the Pension Fund, \$70,000.00 to be transferred immediately and the remaining \$55,000.00 to be transferred at a later date pending future expenses. (Ex. 51) No terms of the loans, including interest rates and security, were detailed. (Ex. 51)

Recording Secretary Hurley testified that the Local's practice was to read the minutes of Executive Board meetings at General Membership Meetings. (Ex. 11 at 12) The minutes of this Special Emergency Executive Board meeting, contrary to established practice, were never read to the Membership. (Ex. 11 at 26-27; Ex. 6 at 51)

The regularly scheduled October Executive Board meeting, which all Executive Board members except Falzone

attended, was scheduled for October 22, 2007. (Ex. 52) On October 19, 2007, three days before the regularly scheduled Executive Board Meeting, Clair called the Special Emergency Executive Board meeting, to take place that afternoon. (Ex. 6 at 45) Clair claimed that he called the Special Emergency Executive Board meeting because he thought the "financial crunch" the Local was experiencing as a result of the money owed to the Central States Funds was "an emergency situation." (Ex. 6 at 44) However, the loan funds were not transferred to the Local before the regularly scheduled October Executive Board meeting. (Exs. 55-56) There was no mention of the loans from the Pension Fund at the regularly scheduled meeting. (Ex. 52) Nor were the minutes of the Special Emergency Executive Board meeting read at the regularly scheduled October Executive Board meeting. (Ex. 52) The only two Board members who were not Local employees were not in attendance at the Emergency meeting but were present at the regular meeting a few days later. (Exs. 51-52)

Clair claimed that he notified all Executive Board members of the emergency meeting and Trustees Fiori and Cruz could not attend because they were part-time employees of Local 726 and they were at their other jobs. (Ex. 6 at 45) However, during his IRB sworn examination, Trustee

Fiori testified that he was not aware that a Special Emergency Executive Board meeting had been called on October 19, 2007. (Ex. 13 at 41) According to Fiori, he did not become aware that the Executive Board had approved loans from the Pension Fund until January 2008. (Ex. 13 at 41-42) Trustee Cruz testified that she was not certain if she was aware that a Special Emergency Executive Board Meeting had been called, during which the Executive Board approved loans from the Pension Fund. (Ex. 7 at 27-28) She further testified, however, that she was not aware that subsequent to the emergency meeting, the Pension Fund wire transferred \$125,000.00 to Local 726. (Ex. 7 at 28)

On October 23, 2007, at Clair's direction, former Local 726 office manager Cari Lamberg ("Lamberg") wire transferred \$70,000.00 from the Pension Fund to Local 726's General Fund. (Ex. 6 at 47-49)¹⁶ There were no Pension Fund documents authorizing this loan. On December 21, 2007, again at Clair's direction, Lamberg wire transferred

¹⁶ Although the minutes from the October 19, 2007 Special Emergency Executive Board meeting suggested that the Executive Board agreed to use the \$70,000.00 transfer from the Pension Fund toward a payment of \$77,377.18 owed to the Central States Funds in order to be eligible for a payment plan with the Central States Funds, it does not appear that Local 726 used the whole initial \$70,000.00 for this purpose. (Ex. 51; Ex. 53) On November 19, 2007, Local 726 issued a check in the amount of \$25,122.87 to the Central States Funds. (Ex. 53) On December 21, 2007, after receiving the second transfer of \$55,000.00 from the Pension Fund, Local 726 issued a check in the amount of \$52,254.11 to the Central States Funds. (Ex. 46; Ex. 54; Ex. 56))

\$55,000.00 from the Pension Fund to the Local's General Fund. (Ex. 6 at 48)

There was no documentation establishing that the Fund Trustees met independently to determine whether the loans were in the best interest of the Pension Fund participants and to approve the Pension Fund transferring the \$125,000.00 to the Local. (Ex. 6 at 67) As Executive Board members, all three Fund Trustees attended the October 19, 2007 Special Emergency Executive Board meeting during which the Local approved taking loans from the Pension Fund. (Ex. 51) No terms for these loans were spelled out. (Ex. 51; Ex. 6 at 45-47) The interests of Local 726, as borrower, were adverse to the interest of the Pension Fund as lender. The Executive Board of the Local essentially declared it would take unsecured, interest free loans from the Pension Fund without any obligation to repay by a date certain. (Ex. 6 at 45-47) The Trustees did not even outline the barest of terms - repayment date, interest, security - for these transfers the Fund made to the Local. (Ex. 6 at 45-47; Ex. 11 at 24-25)

Clair claimed that the three Fund Trustees met to discuss "what was going to happen or how we could do it." (Ex. 6 at 67) There were no minutes of any such meeting. (Ex. 6 at 67) Despite Clair's testimony that the Fund

Trustees independently discussed the loan, Falzone testified that he was "not sure" of the purpose of the loan and further testified that he "was really not directly involved in some of these transactions." (Ex. 9 at 21, 27; Ex. 6 at 67) When asked if the Pension Fund approved the loan, Fund Trustee Falzone, who denied holding a position with the Pension Fund, answered, "I don't think the pension - well, they must have, they gave it to us." (Ex. 9 at 17) Given the inconsistent testimony and the lack of any documented meetings or loan documents protecting the Pension Fund, it does not appear that the Fund Trustees met independently of the Local's Executive Board to approve the transfers and determine whether the transfers benefited the plan participants. Moreover, if they did, granting an interest free, unsecured loan without payment terms to an interested party was an action in violation of their fiduciary duties.

It is dubious, contemporaneously with the taking of the money from the Pension Fund, whether, from the Fund's perspective, these were loans. There were no promissory notes. (Ex. 128) There was no date set for repayment nor was any interest payment required. (Ex. 51; Ex. 6 at 46; Ex. 11 at 25) Moreover, the loans were not secured. (Ex. 51; Ex. 128) During the October 19, 2007 Special Emergency

Executive Board meeting, the Executive Board members did not state that the Local agreed to any terms governing repayment. (Ex. 51; Ex. 11 at 24-25; Ex. 6 at 46)

Recording Secretary Hurley testified,

I don't recall that we set any terms for that really as to - I know obviously we intended to pay it back some way, but I don't think we laid out any particular terms. ..

(Ex. 11 at 24) ¹⁷

In addition, the Executive Board and the Fund Trustees did not seek the advice of an accountant, attorney, or actuary regarding the transfer of \$125,000.00 out of the Pension Fund into the Local. (Ex. 6 at 64-66) Instead, former Local 726 office manager Lamberg reportedly spoke to an employee of the Bank of America, where the Local had its checking account, who allegedly told Lamberg that it would be permissible for the Pension Fund to loan money to the Local. (Ex. 9 at 14-15; Ex. 6 at 64-66) Before approving the loan, no Fund Trustee or Executive Board member spoke to any Bank of America representative or any other professional regarding the legality of the loan. (Ex. 6 at

¹⁷ As discussed below, after being instructed that they had to repay the loans to the Pension Fund because the loans were prohibited transactions, three Local officers, including Fund Trustees Clair and Marcatante, made loans to Local 726. Each loan was supported by a promissory note and an irrevocable pledge signed by Clair. (Exs. 2-4) That Clair and Marcatante required promissory notes and pledges for their own loans to the Local, but not the loans the Pension Fund made, was further evidence of their failure to act prudently as fiduciaries of the Pension Fund.

64-66) Although the Fund Trustees regularly dealt with Fudula, an employee of the Bank of America Investment Services, who acted as a financial advisor to the Pension Fund, they failed to contact him about the loan. (Ex. 12 at 45-46; Ex. 6 at 64-66) Instead, the Fund Trustees claimed to have relied solely on a conversation that Local office manager Lamberg allegedly had with an employee of the Bank of America who was not an advisor to the Pension Fund and had never dealt with the Pension Fund before. (Ex. 6 at 64-66, 96-97; Ex. 12 at 57-58) Lamberg was not a Pension Fund employee and should not have had any decision making authority over the Pension Fund. (Ex. 6 at 96-97; Ex. 9 at 14-15) This reliance provides no defense to the violation.

E. Without the Required Executive Board Approval, Clair Pledged the Local's Assets to Guarantee Repayment of Loans Three Officers Made to the Local to Allow the Local to Repay the Amount of the Prohibited Transactions

Following an annual audit of Local 726 in March 2008, accountant James Giemzek of Legacy Professionals LLP told Clair that the loans from the Pension Fund to Local 726 were prohibited transactions that had to be repaid. (Ex. 6 at 49; Ex. 57 at 17-19) On March 19, 2008, following a conversation he had with Clair, Pension Fund actuary Hartman sent a letter to Clair, which stated that in order

to repay the prohibited transactions and prevent the Local from incurring further fines, Local 726 had to repay the loans from the Pension Fund in the amount of \$111,047.02, which included interest. (Ex. 58)¹⁸

Section 14(A)(3) of Local 726's Bylaws provides that the Executive Board is empowered to:

(3) Loan and borrow monies directly and indirectly for such purposes and with such security, if any, as it deems appropriate, and with such arrangements for repayment as it deems appropriate - all to the extent provided by law. (Ex. 59)

Without Executive Board approval, the Local borrowed money from three officers to repay the Pension Fund. There was no approval in the Executive Board minutes for the Local borrowing this money. (Ex. 67) Moreover, Clair pledged Local 726's assets to secure the repayment of the loans he and two other Local 726 officers made. (Exs. 2-4) This was more security than ever extended to the Pension Fund.

¹⁸ On October 31, 2007, Local 726 issued check number 041886, to the Local 726 Pension Plan in the amount of \$17,000. (Exs. 60-61) The check voucher read "Local 726 Pension (11,000 + 5,000 repay)." (Ex. 60) The Trustee Reports for October and November 2007 showed a negative asset of \$70,000.00 for the Pension Fund, which was the total amount the Pension Fund loaned to the Local during these months. (Ex. 62) It appears that when the Local was instructed to repay the total \$125,000.00 loan taken from the Pension Fund, the total \$17,000.00 payment made by check dated October 31, 2007, was considered to be in repayment of the loan. (Ex. 58) In his March 19, 2008 letter, Pension Fund actuary Hartman stated, "It is my understanding that a loan of \$70,000 was taken from the Fund on October 23, 2007; that \$17,000 was repaid on November 1, 2007; and that an addition [sic] \$55,000 was taken on December 21, 2007." (Ex. 58) Accordingly, Hartman credited the full \$17,000.00 payment toward the loan although the check voucher stated "5,000.00 repay". (Ex. 60)

In doing so, Clair violated the Bylaws. The Local's Bylaws did not authorize Clair to pledge the Local's assets without Executive Board approval. (Ex. 59)

After receiving Hartman's letter concerning repayment of the two loans the Pension Fund had made to the Local, Clair, Marcatante and Hurley made loans to the Local totaling \$112,000.00.¹⁹ (Exs. 2-4) On behalf of the Local, Clair, as the Local's Secretary-Treasurer, signed three Promissory Notes, including one to himself, wherein the Local agreed to repay each of the officers the amount of his loan plus interest of 5.25 percent. (Exs. 2-4) The promissory notes included a payment schedule the Local was required to follow and provided that the loans would be repaid by March 25, 2011.²⁰ (Exs. 2-4) The Executive Board did not approve these loans as the Bylaws required. (Ex. 52; Ex. 59) Nor were the loans from the officers and the consequent Local obligation disclosed to the general

¹⁹ Clair lent the Local \$45,000.00, Marcatante \$40,000.00 and Hurley \$27,000.00. (Exs. 2-4) In order to make their loans, Clair and Marcatante borrowed from their 401K accounts. (Ex. 6 at 56; Ex. 12 at 63)

²⁰ Although the promissory notes Clair signed required the Local to make specific weekly payments on the three loans, Marcatante testified that the Local has not timely paid the principal and interest due to him each month. (Ex. 12 at 66-67) He testified,

[b]ecause of the financial straits that we are in right now, I told the Local that just pay me when we get back on your own feet and financially stable, and I really didn't care when the time frame was on it." Marcatante testified that as of June 2009, the Local had paid him "probably under \$1,000.00." (Ex. 12 at 67)

membership. (Exs. 63-65; Ex. 11 at 39) Moreover, without the required Executive Board approval, Clair irrevocably pledged Local 726's assets in order to secure each of the three loans, including his own. (Exs. 2-4; Ex. 11 at 39; Ex. 9 at 43-44; Ex. 10 at 23; Ex. 13 at 46; Ex. 7 at 30) Clair's irrevocable pledges, one of which benefited Clair himself, violated the Local's Bylaws. (Ex. 59)

Following its receipt of these loans from the officers, on March 27, 2008, Local 726 repaid the Pension Fund \$111,174.85, the total amount the actuary calculated was due on the loans, as of March 27, 2008, including interest. (Ex. 58; Ex. 69)

F. Inaccurate Trustee Reports

Pursuant to the Local's Bylaws and the IBT Constitution, the Local's three Trustees were required to examine the Local's books each month, verify the Local's bank balances, submit a monthly Trustee Report to the IBT and report the results of their examination of the Local's records at the next membership meeting. (Ex. 1; Ex. 59)²¹

²¹ Section 12 of the Local 726 Bylaws stated:

It shall be the duty of the Trustees to conduct or have conducted a monthly examination of the books of the Local Union and the results thereof shall be reported at the next regular membership meeting. They shall sign the books of the Secretary-Treasurer if they have found them correct and the bank balances verified. . . . The Trustee's reports shall be sent to the General

According to Clair, the Local's principal officer, he also reviewed the monthly Trustee Reports which were submitted to the IBT. (Ex. 6 at 11)

Since, as a public sector Local, Local 726 was not required to file Forms LM-2 with the Department of Labor, which are available to the public, the monthly report the Trustees made to the membership was the only way for the members to learn of the Local's financial condition. Similarly, the monthly Trustee Reports submitted to the IBT were the means by which the IBT could determine the financial condition of the Local. Indeed, as described below, in February 2008, the Local's poor financial condition as reported on the November 2007 Trustee Report filed with the IBT, prompted the IBT's General Secretary-Treasurer to ask Joint Council 25, of which Local 726 was a member, to review the Local's operations. (Ex. 62; Ex. 70)

Despite the importance of the Local's Trustee Reports, there were frequent significant inaccuracies in the Trustee Reports. For example, as detailed below, at least two

Secretary-Treasurer as required by the International Constitution.

(Ex. 59)

In addition, Article X, Section 8(a) of the IBT Constitution stated that, "the books of the Local Union must be examined monthly by the Local Union Trustees and the Trustees shall make a monthly report of such examination." Section 8(b) stated, the "Trustees must sign the books of the Local Union if the Trustees have found them correct and the bank balances verified." (Ex. 1)

liabilities totaling over \$300,000.00 were not included on the Trustee Reports, the \$216,597.00 delinquent contributions owed to the Central States Funds reflected in the August 2007 agreement, described above, and the Local's liability under its Severance Plan which totaled approximately \$69,582.09 as of December 2008. (Ex. 6 at 21, 27-28, 39-50, 70-73; Ex. 9 at 4-6; Ex. 10 at 12-18; Ex. 12 at 4-5; Ex. 23; Exs. 26-29; Ex. 42; Ex. 50; Ex. 62; Exs. 71-77)

In 2004 and 2005, an IBT auditor and the IBT General Secretary-Treasurer instructed the Local to record the severance liability on the Local's Statement of Assets and Liabilities. (Ex. 78) On March 24, 2005, in response to an inquiry from the IBT Secretary-Treasurer, Clair misleadingly asserted in a letter to the IBT General Secretary-Treasurer that the Local was doing so. (Ex. 81) In fact, the Local had not and did not include the severance liability on the Trustee Reports. (Ex. 14; Ex. 42; Ex. 62; Exs. 78-84)²²

In addition, as discussed below, in none of the 28 months between January 2007 and April 2009, did the Local's checking account balance shown on its bank statement match

²² The Local also did not include its vacation liability on its Statement of Assets and Liabilities as the IBT had instructed. (Ex. 14; Ex. 42; Ex. 62; Ex. 82-84)

the General Fund Checking balance included on the monthly Trustee Report and reported to the members. (Ex. 14; Ex. 42; Ex. 62; Ex. 85-90)²³

Furthermore, Trustee Cruz, who has been a Trustee since 2003, did not perform her duties under the Bylaws and the IBT Constitution. She did not verify the bank balances as the Bylaws and IBT Constitution required. (Ex. 7 at 9-10, 16, 18) Indeed, Trustee Cruz did not know the bank at which the Local had its checking account. (Ex. 7 at 11) She testified that the only document she reviewed was the actual Trustee Report. (Ex. 7 at 9-11, 16)²⁴

1. The Failure to Include Liabilities on the Trustee Reports

a. The Unreported Liability to the Central States Funds

As discussed above, in August 2007, Local 726 entered into an agreement with the Central States Funds pursuant to which the Local agreed to pay \$216,597.09 to the Central States Funds for delinquent contributions. (Ex. 50; Ex. 6 at 27-28; Ex. 12 at 33; Ex. 9 at 13-14 & 20; Ex. 10 at 12-

²³ The April 2009 Trustee Report was the most recent report filed with the IBT as of the date of this report.

²⁴ The other Trustees, Fiori and Marcatante, each testified that he reviewed the Trustee Reports, the monthly expenditures, the cancelled checks and the Local's bank statements each month. (Ex. 13 at 9, 11-14 & 20; Ex. 12 at 12-13)

18; Ex. 13 at 33)²⁵ After making payments beginning November 19, 2007, by January 20, 2009, the total amount owed to the Central States Funds was paid. (Ex. 6 at 43; Ex. 91) However, between August 2007, when the Local entered into the agreement to pay the delinquent contributions, and January 20, 2009, when the total amount was paid, the liability to the Central States Funds was never included as a liability on the monthly Trustee Reports submitted to the IBT. (Ex. 14; Ex. 42; Ex. 62; Exs. 92-94) Principal officer Clair and Trustees Fiori, Marcatante and Cruz, who were aware of the liability to the Central States Funds (Ex. 12 at 32; Ex. 7 at 26; Ex. 13 at 37-39), testified that they did not know if the liability to the Central States Funds was listed on the Trustee Reports. (Ex. 6 at 28; Ex. 13 at 39; Ex. 12 at 33; Ex. 7 at 21-22)

As discussed below, this \$216,597.09 liability was not disclosed to the Local's members.

b. The Local's Unreported Severance Pay Liability and Clair's Misstatements to the IBT Regarding the Severance Pay Liability

²⁵ The original amount owed was approximately \$300,000. (Ex. 49) The agreement required the Local to pay \$216,597.09 which included interest. (Ex. 47; Ex. 50)

Local 726 had a Severance Plan for all officers, business agents and clerical employees. (Ex. 71)²⁶ Pursuant to the Severance Plan, such individuals would receive between two and six weeks severance pay upon termination from the Local for any reason "other than discharge for cause and voluntary resignation." (Ex. 71) As of December 2008, the severance liability was approximately \$69,582.09. (Ex. 72)²⁷ The Local did not record the severance liability on the Trustee Reports despite specific instructions from the IBT to do so. (Ex. 14; Ex. 42; Ex. 62; Ex. 78-80; Ex.

²⁶ Pursuant to the plan, Local employees who had 15 or more years of service in the public sector prior to their Local employment would be credited with 15 years of service upon employment at the Local, and, upon "termination from employment due to retirement, layoff or for any reasons other than discharge for cause and voluntary resignation," would be entitled to severance pay according to the following schedule:

15-20 years of service = five weeks severance pay
20-25 years of service = six weeks severance pay

The plan further stated that any permanent employee who did not have 15 years of public service prior to being employed at the Local would receive severance based upon the following schedule:

1-5 years of service = two weeks severance pay
5-10 years of service = three weeks severance pay
10-15 years of service = four weeks severance pay
15-20 years of service = five weeks severance pay
20-25 years of service = six weeks severance pay

(Ex. 71)

²⁷ As of December 31, 2006, the Local's severance liability for the Local's officers and business agents was approximately \$68,591.53. (Exs. 26-29; Exs. 72-77; Ex. 6 at 5-6; Ex. 9 at 5-6; Ex. 10 at 5-6; Ex. 11 at 5-6; Ex. 12 at 5-6) As of December 31, 2007, the severance liability for the officers and business agents was approximately \$70,649.25. (Exs. 26-29; Exs. 72-77; Ex. 6 at 5-6; Ex. 9 at 5-6; Ex. 10 at 5-6; Ex. 11 at 5-6; Ex. 12 at 5-6) These figures include the severance obligation for all full-time officers and Business Agents currently entitled to severance. These figures do not include Business Agent William McTighe because his start of employment date could not be determined.

82-83)²⁸ Moreover, Secretary-Treasurer Clair falsely represented to the IBT in response to a direct inquiry that the Local had followed its instructions and had begun recording severance as an obligation on its Trustee Reports. (Ex. 81)

In 2004, the IBT conducted an audit of Local 726. (Ex. 95) On October 29, 2004, IBT General Secretary-Treasurer Keegel sent a letter to Clair which stated, among other things, that the IBT's auditor had instructed the Local to record accrued vacation and accrued severance as obligations on the Local's Statement of Assets. (Ex. 78) Keegel instructed Clair to advise the IBT what steps the Local had taken in response to the auditor's instructions. (Ex. 78) Clair, who admitted that he received this letter, did not respond to Keegel's letter. (Ex. 6 at 70)

When Local 726 did not respond to Keegel's October 29, 2004 letter, Keegel sent another letter to Clair, dated February 23, 2005, which stated that since the Local had

²⁸ During his sworn IRB examination, Local 726 accountant Giemzik testified regarding Local 726's failure to record the Local's total severance obligation on its financial statements. In relevant part, Giemzik testified:

- Q. . . .My question is: Why would you put a number in for vacation and not severance?
- A. Because, again, vacation is a true amount that they may owe the individual when that individual leaves for whatever reason, whereas the severance, you again have to qualify, you have to cease employment for any reason other than discharge for cause. (Ex. 57 at 13)

not responded to the IBT's previous letter, the IBT was sending an International Auditor to the Local to determine whether the Local had complied with the instructions detailed in the IBT's October 29, 2004 letter. (Ex. 79)²⁹

By letter dated March 9, 2005, IBT auditor Ed Pratt reported to the General Secretary-Treasurer that the Local was not in compliance with the IBT's instructions regarding, among other things, recording the accrued severance and accrued vacation as obligations on the Statement of Assets. (Ex 80) In this letter, IBT auditor Pratt stated that he had instructed Clair to "attend to these matters immediately and to respond to the office of the General Secretary Treasurer on each singular item as they are fixed." (Ex 80) On March 24, 2005, Clair sent a letter to Keegel stating,

Statement of Assets - Severance

Local 726 has verified the start date of each employee and has calculated the number of years of service to date. It is currently being recorded as an obligation to the Statement of Assets and Liabilities. (Ex. 81)³⁰

This assertion was false.

²⁹ Trustees Fiori, Cruz, and Marcatante testified that they had never seen the two letters from the IBT. (Ex. 13 at 47-49; Ex. 12 at 36-37; Ex. 7 at 31-32)

³⁰ Clair made a similar representation that the Local's vacation liability was being included on the Statement of Assets as the IBT had instructed. (Ex. 81) This also was not done. (Ex. 14; Ex. 42; Ex. 62; Exs. 82-84)

Contrary to the IBT's specific instructions and Clair's explicit written representation that the Local was following such instructions, the Local 726 Trustee Reports for the period from March 2005 to the present did not include accrued vacation and severance as liabilities on the Statement of Assets and Liabilities. (Ex. 14; Ex. 42; Ex. 62; Exs. 82-83) Despite his deliberate representation to the contrary to the IBT, during his June 17, 2009 IRB sworn examination, Clair testified that he did not know if the accrued vacation and severance liabilities were recorded on the Statement of Assets and Liabilities on the Trustee Reports. (Ex. 6 at 72-73)³¹

³¹ In addition to the unreported liabilities discussed above, the Local's December 2008 Trustee Report listed three liabilities, totaling \$228,315.27, which had not been previously included on any monthly Trustee Reports. (Ex. 42) These liabilities were \$153,752.37 for legal bills, \$40,556.25 for accounting bills to Legacy Accounting and \$34,006.65 for rent to West Side Realty. (Ex. 42) It does not appear that these liabilities were incurred in total in December 2008. For example, while the December 2008 Trustee Report listed a previously unreported liability of \$34,006.65 to West Side Realty, Clair testified that in December 2008, the Local paid monthly rent of approximately \$9,000. (Ex. 6 at 77) Furthermore, while the December 2008 Trustee Report listed a previously unreported liability of \$40,556.25 to Legacy Accounting, Clair testified that the Local owed Legacy approximately \$50,000 because Legacy ran the Local's last election in 2007. Clair further testified that the Local agreed to a payment plan to pay off the election expenses to Legacy by October 2008. Contrary to Clair's testimony, the liability to Legacy, which totaled \$40,556.25, did not appear on the Trustee Reports until December 2008. (Ex. 6 at 85-89; Ex. 42)

2. The Balances for the General Checking Account Reflected on the Local's Trustee Reports Did Not Correspond to the Balances on the Local's Bank Statements

As detailed below, the Trustees failed to perform one of their basic duties. Despite the Trustee's obligation to verify the Local's bank balances each month, in none of the 28 months between January 2007 and April 2009 was the checking account bank statement balance the same as the General Fund Checking balance reported on the Trustee Report. (Ex. 14; Ex. 42; Ex. 62; Exs. 85-90)³² For example, the April 2009 Trustee Report reported that the Local's General Fund checking balance was \$244,735.62 while the bank statement stated that the balance was \$383,838.69. (Ex. 14; Exs. 89-90)

Principal officer Clair and Trustees Fiori and Marcatante each claimed that each month they verified the bank balance listed on the Trustee Report by checking it against the balance on the Local's bank statement. (Ex. 13 at 8-9, 11-14, 20; Ex. 12 at 12-13; Ex. 6 at 11) As noted above, although she was required to do so under the Bylaws

³² For the period from January 2007 to April 2009, the Local's bank statements provided balances as of the last day of each month which corresponds to the reporting date for the monthly Trustee Reports. (Ex. 14; Ex. 42; Ex. 62; Ex. 85; Ex. 87; Ex. 89) The April 2009 Trustee Report was the last report filed by Local 726 as of the date of this report. (Ex. 14)

and the IBT Constitution, Trustee Cruz admitted that she never verified the Local's bank balance. (Ex. 7 at 9, 11)

During their IRB sworn examinations, Clair, Fiori, Marcatante and Cruz were shown copies of the Trustee Reports and the corresponding bank statements for August and November 2007 and July 2008. (Ex. 13 at 15, 19-20, 22-24; Ex. 12 at 13-14, 16-17, 19; Ex. 7 at 12-14; Ex. 6 at 12-17; Ex. 42; Ex. 62; Exs. 85-90) In each of these months, the balance on the bank statement did not correspond to the General Fund Checking balance on the Trustee Report. (Ex. 14; Ex. 42; Ex. 62; Exs. 85-88)³³ Principal officer Clair and Trustees Fiori and Cruz could not explain the large discrepancies between the bank statement balances and the figures reported on the Trustee Reports. (Ex. 13 at 17-20; Ex. 7 at 13-14; Ex. 6 at 13-17)³⁴

³³ For example, the August 2007 bank statement reflected a balance of \$43,790.59 in the Local's checking account while the Trustee Report indicated the balance was a negative \$71,341.54. (Ex. 13 at 15-16; Ex. 12 at 14; Ex. 7 at 12-13; Ex. 6 at 12; Ex. 62, 85-86) For November 2007, the bank statement indicated that the balance was \$19,443.62, but the Trustee Report indicated the balance in the General Fund Checking account was a negative \$205,022.27. (Ex. 13 at 20; Ex. 12 at 17; Ex. 7 at 13-14; Ex. 6 at 13-15; Ex. 62, 85-86) For July 2008, the bank statement indicated that the balance was \$169,608.64, but the Trustee Report indicated the General Fund checking balance was a negative \$12,379.51. (Ex. 13 at 23; Ex. 12 at 20; Ex. 7 at 15; Ex. 6 at 15-17; Ex. 42; Exs. 87-88) In these months, there were large differences in the two figures: \$115,132.00 in August 2007, \$224,465.00 in November 2007 and \$181,918.00 in July 2008. (Ex. 14, Ex. 42; Ex 62; Exs. 85-90)

³⁴ At one point during his sworn examination, Fiori claimed that the difference between the bank statements and the Trustee Report could have been the result of outstanding checks that had not cleared the checking account. (Ex. 13 at 18-19) It appears that the checking balance on the Trustee Reports may have been taken from the Local's

Trustee Marcatante testified that he was aware of the discrepancies between the bank statement balances and the General Fund Checking balances on the Trustee Reports. (Ex. 12 at 14-15, 17-18) He testified that many of the discrepancies were due to mistakes in the Quick Books computer program. (Ex. 12 at 15)³⁵ Even though the bank statement balances and the General Fund Checking balances reflected on the Trustee Reports did not correspond, Marcatante signed the Trustee Reports which were submitted to the IBT. (Ex. 12 at 17-19, 22)

Marcatante also claimed that former Local 726 office manager Lamberg told him that the Quick Books program was putting in negative figures where there should have been positive figures. (Ex. 12 at 15)³⁶ This would not appear to explain why the bank statement checking account balance and the General Fund Checking balance on the Trustee Reports were not the same.

Checking Daily Cash Balance Record, which appears to have included all outstanding checks and deposits. (Ex. 96)

³⁵ Marcatante testified that then Local 726 office manager Lamberg told him about a problem with the Quick Books program, but since he knew nothing about the program, Lamberg could have told him that the "sun was falling" and he would not have known if it was true. (Ex. 12 at 18)

³⁶ It appears that for some entries on the Trustee Reports filed between January 2005 and April 2009, some liabilities were listed as negative figures when they should have been reported as positive figures. (Ex. 14; Ex. 42; Ex. 62; Exs. 82-83)

When shown the July 2008 bank statement and the July 2008 Trustee Report, which had been revised in November 2008, Marcatante testified that he was aware of the discrepancy and had spoken about it to Renee Pesci ("Pesci"), an International Titan Field Operator (Ex. 97), who was at the Local training the Local's new office manager on how to use the Quick Books program. (Ex. 12 at 21) Marcatante testified that after Pesci revised the July 2008 Trustee Report, he did not compare the bank balances reported on the Trustee Report to the balances listed on the bank statement. (Ex. 12 at 22) Marcatante and Fiori testified that after Pesci became involved in revising the Trustee Reports, they relied on her assertions that the Trustee Reports were accurate.³⁷ (Ex. 12 at 22; Ex. 13 at 26-27) According to Marcatante, Pesci told him that the Local's Quick Books was a "nightmare" and that it would take time to straighten out the problem. (Ex. 12 at 20-21) Although as of April 2009, any problem with Quick Books did not appear to be resolved since the bank statement balances and the balances on the Trustee Reports continued to

³⁷ All Local Trustee Reports from December 2007 through June 2008 were revised in 2008. (Ex. 42; Ex. 62) During their sworn examinations, Clair, Marcatante, and Fiori testified that the revisions were made under the direction of Pesci. (Ex. 6 at 18-20; Ex. 12 at 20-22; Ex. 13 at 26-27) During his sworn examination, Marcatante was questioned about the July 2008 Trustee Report that was revised in November 2008. Marcatante testified that he spoke to Pesci in November 2008 and that she told him the Trustee Report was accurate. (Ex. 12 at 21)

differ, Marcatante continued to sign the Trustee Reports.
(Ex. 14, Exs. 89-90; Ex. 12 at 22)

In half of the 28 months between January 2007 and April 2009, the Trustee Reports reflected negative General Fund Checking account balances which ranged from \$350.85 to \$205,022.27. (Ex. 14; Ex. 42; Ex. 62)³⁸ In addition, in two months during this period, December 2007 and February 2008, the Local's bank statement also reflected that the Local's checking account was overdrawn in the amounts of \$712.26 and \$35,844.65 respectively. (Exs. 85-87)

G. The 2008 IBT Initiated Review of the Local's Financial Condition And Clair's Failure to Correct a Mistatement to the IBT Regarding Steps Taken to Improve the Local's Financial Condition

By letter dated February 22, 2008, General Secretary-Treasurer Keegel sent a letter to Joint Council 25 President Coli asking the Joint Council to conduct a review of the operations of Local 726. (Ex. 70) Keegel's letter referenced the Local's November 2007 Trustee Report which stated that the Local's General Checking Account had a negative balance of \$205,022.00 and that the Local showed negative \$70,000.00 "in an account identified as Local 726

³⁸ In 2007, the Trustee Reports for the months of January, February, May, July, August, October, November and December reflected negative General Fund balances. (Ex. 62) In 2008, the Trustee Reports for the months of February, March, April, May, July and August showed negative General Fund balances. (Ex. 42)

Pension." (Ex. 62; Ex. 70)³⁹ Clair received a copy of Keegel's letter. He stated that as a result of Keegel's request, Joint Council 25 conducted a review of Local 726's operations. (Ex. 6 at 84-85)

After the review, on May 14, 2008, Coli sent a letter to General Secretary-Treasurer Keegel stating that, "Clair has taken numerous steps to address the deteriorating situation." (Ex. 110) In this letter, Coli told General Secretary-Treasurer Keegel that, as one of these measures, Local 726 had reduced the salaries of its officers and business agents by a total of approximately \$4,000.00 per month effective April 1, 2008. (Ex. 110) Clair was copied on Coli's letter and acknowledged receiving it. (Ex. 6 at 85-86; Ex. 110)

Contrary to the information in this letter, the Local's payroll records for 2008 did not reflect any salary reductions for the officers and business agents. (Ex. 77) Clair acknowledged that, contrary to the statements in Coli's letter, the salaries of the Local's officers and business agents were not reduced at all. (Ex. 6 at 86)⁴⁰

³⁹ This \$70,000.00, which was included on the November 2007 Trustee Report as a negative asset, appears to have been the first improper loan from the Pension Fund to the Local. (Ex. 62)

⁴⁰ Coli's May 14, 2008 letter also indicated that Local 726 had already made staff reductions, including the termination of one staff attorney and one administrative staff member that would save the Local \$8,000.00 per month. (Ex. 110) Local 726 did eventually make these reductions.

After receiving Coli's letter containing the incorrect statement about Local 726 salary reductions, Clair did not correct the letter. (Ex. 6 at 89) This was at least the second time Clair explicitly misled the IBT about steps he was taking at the Local.

Furthermore, Coli's May 14, 2008 letter to Keegel stated that "[i]f Brother Clair and Local 726 continue to follow through on these commitments, the local will have reversed its economic decline and be in the black by the end of 2008." (Ex. 110) According to the November 2007 Trustee Report, which appears to have prompted Keegel's request for a review of Local 726's operations, the Local's net assets were negative \$230,457.40. (Ex. 62) As of the April 2009 Trustee Report, the Local's net assets were negative \$32,399.73. (Ex. 14)

H. Lack of Financial Disclosure to the Members

Pursuant to Section 12 of the Local's Bylaws, the Trustees were required to make monthly reports to the members regarding their review of the Local's records. (Ex. 59) As discussed above, the oral reports given to the

(Exs. 115-118; Ex. 6 at 86-87; Ex. 77) Two months after Coli's letter represented that staff reductions had been made, administrative staff member and Secretary-Treasurer Clair's daughter, Jacqueline Clair, was fired because the Executive Board discovered that she had embezzled Local 726 funds. (Ex. 10 at 33-36; Ex. 113) Local 726 filed a police report as a result of Jacqueline Clair's embezzlement. (Ex. 10 at 35-36)

Local's members appear to have been incomplete and did not provide the members with accurate information about the Local's financial condition. For example, the members were not told of all the Local's liabilities. It appears that the members were only told the Local's monthly income and expenses. (Ex. 7 at 23; Exs. 98-103)

There was inconsistent testimony regarding what financial information was read at the membership meetings from the Trustee Reports.⁴¹ Although the minutes of the meetings reflected that the Trustee Reports and a list of monthly expenditures were read, the Local's Recording Secretary, who prepared the minutes and principal officer Clair testified that only the Statement of Income and Expenses from the Trustee Report was read. (Ex. 11 at 17-18; Exs. 63-65)

In contrast, according to Trustee Cruz, who was the officer who frequently read the financial information to the members at meetings, she only read the first five items

⁴¹ The monthly Trustee Report included a Statement of Income and Expenses, which consisted of an income section and an expense section. The expense section included the following: Salaries, Expense Allowance, Per Capita Tax, Contributions, Benefits Paid, Office and Administrative Expenses, Legal Fees, Arbitration Fees, Other Professional Fees, Taxes, Organizing Expense, Meeting and Committee Expense, Auto Expense, and Out of Town Travel. The Trustee Report also included a Statement of Assets and Liabilities. This portion of the Trustee Report had an Assets section, which included the General Fund Checking, Petty Cash, General Fund Savings, Cash in Special Funds, Office Furniture and Equipment, and Automobiles, as well as a Liabilities section, which included Credit Cards, Payroll Liabilities, and Car Loans. (Ex. 42)

from the Statement of Income and Expenses on the Trustee Reports to the members. (Ex. 7 at 23) This included only the following information: income: membership dues, initiation and re-initiation fees, non-member fees, other income amount and the amount of total income. (Ex. 7 at 23) According to Cruz, she did not read the expenses listed on the Statement of Income and Expenses. (Ex. 7 at 23)⁴²

In contrast to Cruz, Clair and Hurley, Marcatante claimed that Cruz read the entire Trustee Report at every membership meeting line by line. (Ex. 12 at 30)⁴³

Clair, Recording Secretary Hurley, and Trustees Marcatante and Fiori also testified that a separate list of the Local's monthly expenditures was read to the members at every membership meeting. (Ex. 6 at 24-26; Ex. 11 at 10, 12, 14-18; Ex. 13 at 36-37; Ex. 12 at 30-31; Exs. 63-65; Exs. 104-106)⁴⁴ Even if read, this list of monthly expenditures underreported the Local's monthly expenditures

⁴² According to the Trustee Reports, for the period from January 2004 through April 2009, expenditures exceeded receipts in twenty-nine of the sixty-four months. (Exs. 92-94; Exs. 107-109; Ex. 14; Ex. 42; Ex. 62; Ex. 82-84) Since Cruz testified that she only read the income and not the expenses listed on the Trustee Reports to the membership, it does not appear that this was disclosed to the membership.

⁴³ Trustee Fiore testified that "as much as I am paying attention" he believed that the entire Trustee Report was read. (Ex. 13 at 35-36)

⁴⁴ During her sworn examination, Cruz denied that the list of monthly expenditures was read during membership meetings (Ex. 7 at 24-25)

since it did not include the salaries paid to Local 726 employees. (Ex. 98-103)

In any event, it does not appear that the Local's assets, liabilities, and net assets, which were included on the Trustee Reports were read to the members. (Ex. 6 at 24-26; Ex. 11 at 10, 14-18; Ex. 7 at 23-25) For 28 of the 40 months between January 2007 and April 2009, the Trustee Reports showed negative net assets. (Ex. 14; Ex. 42; Ex. 62; Exs. 92-94) Accordingly, the members were not provided complete information about the Local's financial condition. (Ex. 14, 42, 63-65)

Moreover, as discussed above, the Local had liabilities which were not disclosed on the Trustee Reports, such as the delinquent contributions to the Central States Funds and the Severance Plan liability, which also were not disclosed to the members. (Exs. 47-50; Exs. 71-72; Ex. 14; Ex. 62; Exs. 82-84) Furthermore, although it was the Local's practice to read Executive Board meeting minutes at membership meetings, the October 19, 2007 "Special Emergency" Executive Board Meeting minutes, during which the Local's liability to the Central States Funds and the loan to the Local from the Pension Fund were discussed, were not read to the members. (Ex. 51; Ex. 11 at 26-27; Ex. 6 at 51; Ex. 63) The General

Membership Meeting minutes for the period from August 2007 through April 2009 did not reflect that the liability to the Central States Funds was disclosed to the membership. (Exs. 63-65)⁴⁵

In addition, the Local's minutes did not reflect any disclosure to the members of the secured \$112,000.00 obligation to the three officers for the money borrowed to repay the Pension Fund. (Exs. 63-68) Recording Secretary Hurley admitted that the loan that he made to the Local was never discussed at a General Membership meeting. (Ex. 11 at 39) Since there was no discussion of the loans from the three officers in the Executive Board Meeting minutes, which were read to the membership, or in the General Membership Meeting minutes, there was no disclosure to the members that the Local was indebted to three officers for \$112,000 and that the assets of the Local had been pledged as collateral for these loans.⁴⁶ (Exs. 63-68)

I. The Waiver of Dues Without Executive Board Approval

Pursuant to Local 726's Bylaws and the IBT Constitution, the Local's Executive Board was authorized to

⁴⁵ According to Hurley, who was the Recording Secretary from 2003 to the present, if the liability to the Central States Funds had been discussed at a General Membership meeting, it would have been recorded in the minutes. (Ex. 11 at 26-27)

⁴⁶ Although the total amount of these loans was reported on the Trustee

waive members' payment of delinquent dues or reinitiation fees for good cause.⁴⁷ (Ex. 59) According to the Bylaws, Business Agents were not authorized to grant dues waivers without the approval of the Executive Board. (Ex. 10 at 41; Ex. 59) In response to a complaint regarding improper dues waivers prior to the Local's election in November 2007, the IRB reviewed the Local's dues records for the period from June 1, 2007 to November 3, 2007. It appears that dues were waived during this period without any Executive Board approval reflected in the Executive Board minutes.

The Local 726 Executive Board Meeting minutes for 2007 all included a page entitled "Executive Board Waiver of Dues for Hardship" that read:

Secretary-Treasurer Thomas P. Clair motioned for approval of waiver of dues for hardship cases or clerical errors for the following members:

(Ex. 66) From the period of June 2007 through November 2007, October was the only month in which names were listed on the waiver of dues page of the Executive Board minutes.

(Ex. 66; Ex. 52)

⁴⁷ Section 18(D) of the Local's Bylaws, provided in relevant part,

[t]he Local Union Executive Board shall have the power to waive, on a non-discriminatory basis, the payment of delinquent dues and/or reinitiation fees.

(Ex. 59)

Article X, Section 5(e) of the IBT Constitution contained a similar provision. (Ex. 1)

In response to an IRB document request dated January 16, 2009, by letter dated January 27, 2009, Vice President Brantley stated, "Our records also show that we had no waiver of dues for the months of June, July, August and September 2007 nor do Titan records show any waivers for June 1, 2007 to November 3, 2007." (Ex.111; Ex. 125) Brantley's letter was inaccurate. Contrary to Brantley's letter, it appears that delinquent dues were waived for at least 29 individuals between June 1, 2007 and November 3, 2007. (Ex. 126; Ex. 52) Indeed, the minutes from the October 22, 2007 Executive Board meeting indicated that, upon Brantley's motion, the Executive Board approved the waiver of dues for three members who were named in the minutes. (Ex. 52)

In addition, pursuant to a document request to the International dated March 13, 2009, the Chief Investigator obtained copies of the Titan records for 110 members of Local 726. (Ex. 112; Ex. 126) Contrary to Brantley's letter that there were no dues waivers during this period, the dues records for these 110 members indicated that between June 1, 2007 and November 1, 2007, Local 726 waived membership dues at least 26 times. (Ex. 126) The minutes of the Executive Board meetings did not reflect Executive Board approval for these waivers. (Ex. 66)

IV. CONCLUSION

Based upon the foregoing, it is recommended that Local 726 be placed in Trusteeship.

EXHIBITS TO THE TRUSTEESHIP REPORT CONCERNING LOCAL 726

- Ex. 1 Excerpts from IBT Constitution
- Ex. 2 Promissory Note and Irrevocable Pledge to Thomas Clair
- Ex. 3 Promissory Note and Irrevocable Pledge to John Hurley
- Ex. 4 Promissory Note and Irrevocable Pledge to Michael Marcatante
- Ex. 5 Subpoena Issued January 12, 2009 by United States District Court Judge Loretta Preska Re: Plan Document and Summary Plan Description
- Ex. 6 Sworn Examination of Thomas Clair dated June 17, 2009
- Ex. 7 Sworn Examination of Linda Cruz dated June 16, 2009
- Ex. 8 Membership Roster from Local 726 dated November 18, 2008 Listing the Number of Members in Local
- Ex. 9 Sworn Examination of John Falzone dated June 16, 2009
- Ex. 10 Sworn Examination of Kenneth Brantley dated June 16, 2009
- Ex. 11 Sworn Examination of John Hurley dated June 17, 2009
- Ex. 12 Sworn Examination of Michael Marcatante dated June 16, 2009
- Ex. 13 Sworn Examination of Anthony Fiori dated June 16, 2009
- Ex. 14 Trustee Reports for Local 726 for January through April 2009

- Ex. 15 Proposed Charges Concerning IBT Local 726
Officers Carlo Spranzo, Thomas Moskal and Robert
E. Wilson, Jr. and Trusteeship Recommendation
Regarding Local 726
- Ex. 16 Letter dated October 1, 1993 from C. Sam Theodus
to Aaron Belk Re: Report and Conclusion of the
Hearing on Charges filed Against the Officers of
Local 726
- Ex. 17 Letter dated February 8, 1994 from Ron Carey to
C. Sam Theodus Re Decision on Charges filed
Against Thomas Moskal, Robert Wilson, Carlo
Spranzo, William Sheehan and Dean Milano
- Ex. 18 IBT Notice of Emergency Trusteeship of Local 726
- Ex. 19 Memorandum dated March 3, 2003 Re: Removal of
Local 726 from Trusteeship
- Ex. 20 Resignation Agreement for Carlo Spranzo
- Ex. 21 Resignation Agreement for Thomas Moskal
- Ex. 22 Resignation Agreement for Robert E. Wilson, Jr.
- Ex. 23 Dues Record for Thomas Clair
- Ex. 24 Form 5500 for the Employees Pension Plan of Local
Union No. 726, I. B. of T. for 2005
- Ex. 25 Form W-2's for Local 726 Officers for 2008
- Ex. 26 Dues Record for John Falzone
- Ex. 27 Dues Record for Kenneth Brantley
- Ex. 28 Dues Record for John Hurley
- Ex. 29 Dues Record for Michael Marcatante
- Ex. 30 Dues Record for Linda Cruz
- Ex. 31 Dues Record for Anthony Fiori
- Ex. 32 Excerpt from Form LM-2 for the IBT for 2008

- Ex. 33 Employees Pension Plan of Local No. 726, I.B. of T. Trust Agreement
- Ex. 34 Form 5500 for 2007 for Local 726 Pension Fund
- Ex. 35 Actuarial Valuation Report for 2007 for Local 726 Pension Fund
- Ex. 36 Excerpts from Employee Retirement Income Security Act (ERISA)
- Ex. 37 Letter dated February 11, 2009 from Joel A. D'Alba, Esq. to IRB Re: No Trust Document Establishing the Pension Fund
- Ex. 38 Subpoena Issued March 22, 2008 by United States District Court Judge Loretta Preska to Hartman & Associates
- Ex. 39 Subpoena Issued March 22, 2008 by United States District Court Judge Loretta Preska to Howard Simon Associates
- Ex. 40 Local 726 Pension Fund Trust Assets Report for 2006
- Ex. 41 February 13, 2009 Letter dated February 13, 2009 From Thomas Hartman to Local 726 Pension Committee Re: Annual Actuarial Report for Local Union No. 726 I.B. of T. and Enclosures
- Ex. 42 Trustee Reports for Local 726 for 2008
- Ex. 43 IRS Form 5330 for 2007 for Local 726 Pension Fund
- Ex. 44 Local 726 Check Register for October 2008
- Ex. 45 Memorandum from Thomas K. Hartman to Thomas Clair and James Gienzik dated March 17, 2008
- Ex. 46 Letter dated April 6, 2009 from Joel D'Alba Re: Loans of \$125,000 from Pension Fund to Local 726
- Ex. 47 Letter dated August 1, 2007 from Central States to Local 726 Re: Pension Fund Audit

- Ex. 48 Audit Summary by Central States of Local 726 Pension Fund
- Ex. 49 Letter dated May 9, 2007 from Central States to Local 726 Re: Adjusted Contributions of \$158,345.30 for Health & Welfare Fund and \$144,286.00 for Pension Fund for the Period from 2003 to 2006
- Ex. 50 Letter dated August 8, 2007 from Central States to Local 726 Re: \$216,597.09 Settlement
- Ex. 51 Minutes of October 19, 2007 Special Emergency Executive Board Meeting
- Ex. 52 Executive Board Meeting Minutes for October 22, 2007
- Ex. 53 Check Dated November 19, 2007 from Local 726 to Central States for \$25,122.87
- Ex. 54 Check Dated December 21, 2007 from Local 726 to Central States for \$52,254.11
- Ex. 55 Local 726 Bank Statement for October 2007
- Ex. 56 Local 726 Bank Statement for December 2007
- Ex. 57 Sworn Examination of James E. Gienzik dated December 11, 2008
- Ex. 58 Letter dated March 19, 2008 from Thomas K. Hartman Re: Payment of \$111,047.02
- Ex. 59 Excerpts from Local 726 Bylaws
- Ex. 60 Local 726 Check dated October 31, 2007 to Local 726 Pension Fund for \$17,000
- Ex. 61 Letter dated March 25, 2009 from Howard Simon & Associates to IRB
- Ex. 62 Trustee Reports for Local 726 for 2007
- Ex. 63 General Membership Meeting Minutes for 2007

- Ex. 64 General Membership Meeting Minutes for 2008
- Ex. 65 General Membership Meeting Minutes for January through June 2009
- Ex. 66 Executive Board Meeting Minutes for 2007
- Ex. 67 Executive Board Meeting Minutes for 2008
- Ex. 68 Executive Board Meeting Minutes for January to June 2009
- Ex. 69 Local 726 Check dated March 27, 2008 to Local 726 Pension Fund for \$111,174.85
- Ex. 70 Letter dated February 22, 2008 from General Secretary-Treasurer C. Thomas Keegel to John Coli
- Ex. 71 Severance Fund Plan for Local 726
- Ex. 72 Calculation of Severance Pay for Officers and Business Agents for 2006, 2007 & 2008
- Ex. 73 Dues Record for Business Agent Kevin Kaiser
- Ex. 74 Dues Record for Business Agent Luther Woodruff
- Ex. 75 Payroll Records for 2006
- Ex. 76 Payroll Records for 2007
- Ex. 77 Payroll Records for 2008
- Ex. 78 Letter dated October 29, 2004 from C. Thomas Keegel to Local 726
- Ex. 79 Letter dated February 23, 2005 from C. Thomas Keegel to Local 726
- Ex. 80 Letter dated March 9, 2005 from International Auditor Pratt to C. Thomas Keegel
- Ex. 81 Letter dated March 24, 2005 from Thomas Clair to C. Thomas Keegel
- Ex. 82 Trustee Reports for Local 726 for 2005

- Ex. 83 Trustee Reports for Local 726 for 2006
- Ex. 84 Trustee Reports for Local 726 for 2004
- Ex. 85 Excerpt from the Bank Statements of Local 726 at LaSalle Bank for 2007
- Ex. 86 Schedule Comparing Balance on Bank Statement with Bank Balance on Trustee Reports for 2007
- Ex. 87 Excerpts from the Bank Statements of Local 726 at LaSalle Bank for 2008
- Ex. 88 Schedule Comparing Balance on Bank Statement with Bank Balance on Trustee Reports for 2008
- Ex. 89 Excerpts from the Bank Statements of Local 726 at LaSalle Bank for the months of January through April 2009
- Ex. 90 Schedule Comparing Balance on Bank Statement with Bank Balance on Trustee Reports for January through April 2009
- Ex. 91 Central States Schedule of Payments made by Local 726 to Reduce Outstanding Liability
- Ex. 92 Schedule of Assets and Liabilities and Receipts and Expenditures taken from the Trustee Reports for 2007
- Ex. 93 Schedule of Assets and Liabilities and Receipts and Expenditures taken from the Trustee Reports for 2008
- Ex. 94 Schedule of Assets and Liabilities and Receipts and Expenditures of Local 726 taken from the Trustee Reports for the Period from January through April 2009
- Ex. 95 Excerpt from the IBT Audit of Local 726 in 2004
- Ex. 96 Checking Daily Cash Balance Record from January 1, 2008 to November 28, 2008
- Ex. 97 Excerpt from Form LM-2 for IBT for 2007

- Ex. 98 Monthly Expenditures for 2004 (except December)
- Ex. 99 Monthly Expenditures for 2005
- Ex. 100 Monthly Expenditures for 2006
- Ex. 101 Monthly Expenditures for 2007 (except December)
- Ex. 102 Monthly Expenditures for 2008 (except May)
- Ex. 103 Monthly Expenditures for January and February
2009
- Ex. 104 General Membership Meeting Minutes for 2004
- Ex. 105 General Membership Meeting Minutes for 2005
- Ex. 106 General Membership Meeting Minutes for 2006
- Ex. 107 Schedule of Assets and Liabilities and Receipts
and Expenditures taken from the Trustee Reports
for 2004
- Ex. 108 Schedule of Assets and Liabilities and Receipts
and Expenditures taken from the Trustee Reports
for 2005
- Ex. 109 Schedule of Assets and Liabilities and Receipts
and Expenditures taken from the Trustee Reports
for 2006
- Ex. 110 Letter dated May 14, 2008 from John T. Coli to
C. Thomas Keegel
- Ex. 111 Letter dated January 27, 2009 from Kenneth
Brantley to IRB Re: Waiver of Dues Records
- Ex. 112 Letter dated March 13, 2009 from IRB to IBT Re:
Titan Records
- Ex. 113 Minutes of July 21, 2008 Special Emergency
Executive Board Meeting
- Ex. 114 Exhibits to the IRB Sworn Examinations of Local
726 Officers taken June 16-17, 2009
- Ex. 115 Dues Record for Jaclyn Clair

- Ex. 116 Dues Record for Nancy Hordecki
- Ex. 117 Payroll Records for Jaclyn Clair
- Ex. 118 Payroll Records for Nancy Hordecki
- Ex. 119 Schedule of Checks Issued to the LU 726 Pension Fund for 2004-2008
- Ex. 120 Local 726 Pension Fund Bank Statements for 2004
- Ex. 121 Local 726 Pension Fund Bank Statements for 2005
- Ex. 122 Local 726 Pension Fund Bank Statements for 2006
- Ex. 123 Local 726 Pension Fund Bank Statements for 2007
- Ex. 124 Local 726 Pension Fund Bank Statements for 2008
- Ex. 125 IRB Document Request to Local 726 dated January 16, 2009
- Ex. 126 Excerpts from Titan Dues Records for Local 726 Members Provided to the IRB by the International
- Ex. 127 Certificate of Corporate Resolution
- Ex. 128 Letter from Joel A. D'Alba to the IRB dated February 23, 2009
- Ex. 129 Plan Document for Local 726 I.B. of T. Pension Plan