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August 15, 2014

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The Honorable William H. Webster
1850 K Street, NW, Suite 1100
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John T. Coli, Trustee
Local 710
9000 West 187th Street
Mokena, Illinois 60448

Re: Proposed Charge Against Local 710 Former Officers
Michael Sweeney, Gerald Pauli, Charles DeCola, Larry
Alexander, Anthony Lamy and Kevin Wagoner

Dear Mr. Coli:

Enclosed are the Independent Review Board's (IRB) report and accompanying exhibits concerning former Local 710 Officers Michael Sweeney, Gerald Pauli, Charles DeCola, Larry Alexander, Anthony Lamy and Kevin Wagoner. This report is forwarded to you for appropriate action under Section G, paragraphs (d) and (e) of the March 14, 1989 Consent Order entered in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.).

Upon review of the report, if you deem it appropriate, a charge under Article XIX of the IBT Constitution should be filed. You have ninety days within which to file the charge, hold a hearing and forward a final written report to the IRB. Pursuant to paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Copies of hearing transcripts should be furnished to the IRB and to the Chief Investigator.

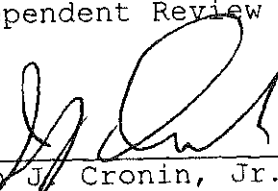
Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

If you decide to reject the IRB's recommendation, you must provide a written explanation with the specific reasons for failing to accept. Within seven days of receipt of this letter, please inform the IRB of the actions planned.

Very truly yours,

Members of the
Independent Review Board

By:



John J. Cronin, Jr.
Administrator

Enclosures

cc: Bradley T. Raymond, Esq., w/Exhibits
Charles M. Carberry, Esq., w/Exhibits
Tara M. La Morte, AUSA, w/Exhibits
Michael Sweeney, w/Exhibits
Gerald Pauli, w/Exhibits
Charles DeCola, w/Exhibits
Larry Alexander, w/Exhibits
Anthony Lamy, w/Exhibits
Kevin Wagoner, w/Exhibits

To: IBT Local 710 Trustee, John T. Coli
From: Independent Review Board Members
Re: Proposed Charges against Former Local 710 Officers
Michael Sweeney, Gerald Pauli, Charles DeCola, Larry
Alexander, Anthony Lamy and Kevin Wagoner
Date: August 15, 2014

I. RECOMMENDATION

The Independent Review Board recommends to the IBT Trustee for Local 710, John T. Coli, that charges be filed against former Local 710 officers Michael Sweeney ("Sweeney"), Gerald Pauli ("Pauli"), Charles DeCola ("DeCola"), Larry Alexander ("Alexander"), Anthony Lamy ("Lamy") and Kevin Wagoner ("Wagoner"), who were all fiduciaries under 29 U.S.C. §501, for breaching their fiduciary duties to protect Local assets by failing to investigate unusual financial transactions, particularly in 2011 and 2013.¹ In 2011, the Board approved then principal officer Patrick Flynn's ("Flynn") request to purchase 1,000 \$25 gift cards for the purpose of distribution of one card to each attendee at the November 2011 membership meeting. (Exs.

¹ On June 25, 2014, based upon an IRB recommended charge, the IBT filed a charge against principal officer Patrick Flynn for embezzlement and breaching his fiduciary duties. (Ex. 396) Based upon an IRB recommendation, on July 30, 2014 the IBT placed Local 710 in Trusteeship and removed its officers. (Ex. 397)

65, 69)² At the time of that vote, the officers knew or should have known that 1,000 gift cards were substantially more than necessary for the purported purpose because not even 600 members had attended any membership meeting since at least January 2007. (Ex. 177) Indeed, only 598 members attended the November 20, 2011 membership meeting. (Ex. 177) The officers also knew that at least \$10,000 of surplus cards would go into Flynn's possession and he would use them for non-approved purposes. (Ex. 7 at 60-64, 69-71; Ex. 97 at 46, 49-50; Ex. 100 at 44; Ex. 6 at 78-79) Yet they acquiesced in allowing Flynn to buy and then control these \$10,000 worth of cards that would not be used for the authorized purpose. (Ex. 65) The cards were cash equivalents. Under the guise of the authorized purpose, these Board members moved \$10,000 of the Local's funds to Flynn. Despite being present at the membership meeting in November 2011 when far fewer than 1,000 members attended, the Board members did not have Flynn report to the Board on the surplus cards. (Exs. 69, 177, 166) Indeed, the cards were not accounted for in any Local record. (Ex. 5 at 180-182, 186; Ex. 197 at 54-55, 65; Ex. 199 at 27-28; Ex. 6 at 80-81; Ex. 8 at 43; Ex. 97 at 46; Ex. 7 at 63-64; Ex. 100 at 44) That the officers did nothing to determine what happened to the over 400 unused cards in his

² DeCola became an officer in December 2011 and did not attend this Executive Board meeting. (Ex. 402)

possession worth over \$10,000 after the November 2011 membership meeting evidenced their determination to remain blind to Flynn's misconduct. They abandoned their fiduciary responsibilities to protect the Local's assets. This was consistent with their pattern over prior years of failing to determine what happened to surplus gift cards in Flynn's possession of which they were aware.

Fourteen months later, in January 2013, the former officers also gave Flynn blanket authority to dispose of undefined "surplus items" that were Local property without knowledge of the value of the items, including gift cards, that were covered by the resolution. (Ex. 42)³ At that time they did not inquire into how the surplus had occurred or what Local records reflected about it. (Ex. 42)⁴ If they had, they would have learned these items were acquired without authorization and not reported in the Local's records. This was only 14 months after they knew or should have known there was an over 400 card surplus resulting from their November 2011 resolution which they had made no inquiry about. (Ex. 65, 177, 42) Yet, shortly after, they learned Flynn had only 10 of those cards. (Ex. 122) They made no inquiry into the cards they knew were unaccounted for.

³ This was the description in the minutes which the Recording Secretary claimed were as accurate as possible short of verbatim. (Ex. 8 at 11)

⁴ Lamy was not an officer in January 2013 and did not attend this meeting. (Ex. 102)

By their conduct as described below, it appears that the former officers brought reproach upon the IBT and breached their fiduciary duties to protect Local assets in failing to investigate these unusual transactions in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution and 29 USC §501(a).

II. JURISDICTION

Pursuant to Article XIX, Section 14(c) of the IBT Constitution, this matter is within the jurisdiction of the IBT Trustee for Local 710. Paragraph G(e) of the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") require that within 90 days of the IRB's referral of a matter to an IBT entity, that entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph (I)(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB.

III. INVESTIGATIVE FINDINGS

A. Local Officers

1. Michael Sweeney

From September 2011 until July 30, 2014, Michael Sweeney ("Sweeney") was the Local President. (Ex. 6 at 11; Ex. 40; Ex.

272; 397)⁵ Sweeney had been a full-time officer and business agent since December 1996 when he was appointed Recording Secretary. (Ex. 6 at 10) He was Vice-President from 2003 until 2011. (Ex. 6 at 10-11; Ex. 78) He was elected a full-time business agent in 1994. (Ex. 6 at 9) He has been a member of the IBT since 1984. (Ex. 6 at 9) Sweeney was also a Trustee of the Local 710 Pension Fund, the Local 710 Health & Welfare Fund, the Employees' Pension Plan and the Local 744 Beverage Division Pension Fund. (Ex. 6 at 11-12; Ex. 60; Ex. 49)

In 2013, the Local paid Sweeney \$90,480 in salary and commissions of \$283,602.67, totaling \$374,082.67. (Ex. 284)⁶ At the end of 2013, the Local owed Sweeney an additional \$33,675.19 in earned but unpaid commissions. (Ex. 331; Ex. 339 at 3-4)

2. Gerald Pauli

Gerald Pauli ("Pauli") was the Local's Vice-President from December 2011 until July 30, 2014. (Ex. 7 at 8-9; Ex. 72; 397) He had been a member of the IBT since 1987. (Ex. 352) He was elected a full-time business agent in 1994, taking office in

⁵ On September 30, 2011, the former President of Local 710, James Dawes, retired. (Ex. 272) The Executive Board appointed Vice-President Sweeney to be President. (Ex. 78; Ex. 72)

⁶ His gross income from the Local was \$376,218.67 in 2013. (Ex. 284) Sweeney also received taxable per diem of \$345.00, taxable income of \$291.00 for the personal use of a union automobile and a phone allowance of \$1,500.00. Sweeney's total income as reported on form W-2 was \$376,218.67. (Ex. 284) Sweeney was also reimbursed \$11,421 for expenses that year. (Ex. 59)

January 1995. (Ex. 7 at 9) In 2004, he became the Recording Secretary. (Ex. 7 at 8-9) Pauli became Vice-President in December 2011. (Ex. 72) While an officer, Pauli was also a business agent. Pauli was a Trustee of the Local 710 Soft Drink Pension Fund. (Ex. 7 at 18-19; Ex. 49)

In 2013, the Local paid Pauli \$97,680 in salary and \$181,252.82 in commissions, totaling \$279,932.82. (Ex. 346)⁷ Pauli was owed \$14,208.16 in earned but unpaid commissions as of December 31, 2013. (Ex. 339 at 3-4)

3. Charles DeCola

Charles DeCola ("DeCola") was the Local's Recording Secretary from December 2011 until July 30, 2014. (Ex. 8 at 8; Ex. 40; Ex. 72) He was also a business agent. He had been a member of the IBT since 1970. (Ex. 316) DeCola was an organizer for Local 710 from 1998 until 2002 when he became a business agent. (Ex. 8 at 8) In December 2011, he was appointed Recording Secretary and in September 2012, he was elected to the position. (Ex. 8 at 8; Ex. 72; Ex. 102) In 2013, the Local paid DeCola \$85,416 in salary and \$29,167.77 in commissions totaling \$114,583.77. (Ex. 347)⁸ As of December 31, 2013, the Local owed

⁷ His gross income from the Local for 2013 was \$279,278. (Ex. 59) Pauli also received taxable per diem of \$345.00. (Ex. 346) Pauli was reimbursed \$46,592 for expenses that year. (Ex. 59)

⁸ His gross income in 2013 from the Local was \$117,637.77. (Ex. 347) DeCola was reimbursed \$10,100 for expenses that year. (Ex. 59)

DeCola \$41,482.61 in earned but unpaid commissions. (Exs. 335, 339)

4. Larry Alexander

Alexander has been a member of the IBT since 1978. (Ex. 316) He was a Trustee from approximately 2003 until July 30, 2014. (Ex. 100 at 8; Ex. 397) In 2013, the Local paid Alexander \$22,387. (Ex. 59)⁹

5. Anthony Lamy

Anthony Lamy ("Lamy") was a Trustee from 2005 through December 2012. (Ex. 97 at 9; Ex. 40)¹⁰ In 2008, he became a full-time organizer. (Ex. 76; Ex. 97 at 8)¹¹

6. Kevin Wagoner

Wagoner has been a member of the IBT since 1987. (Ex. 352) He was a Trustee from 2008 through July 30, 2014. (Ex. 103 at 8; Ex. 397) He was elected in September 2009. (Ex. 101) In 2013, the Local paid Wagoner \$24,091. (Ex. 59)¹²

⁹ Alexander was paid \$10,548 in salary, \$6,250 for attending meetings, \$819 per diem, \$3,520.40 for lost wages and a bonus of \$1,250, totalling \$22,387.40. (Ex. 285)

¹⁰ In 2012, Lamy did not run for the position of Trustee. (Ex. 102)

¹¹ In 2013, Lamy received a salary as an organizer of \$85,416 and a telephone allowance of \$1,500 from the Local. (Ex. 59)

¹² Wagoner was paid \$10,548 in salary, \$6,250 for attending meetings, \$345 for per diem, \$5,698.40 for lost wages and a bonus of \$1,250 for a total of \$24,091. (Ex.285)

**B. Sweeney, Pauli, DeCola, Alexander, Lamy and Wagoner
Breached Their Fiduciary Duties**

1. Overview

From 2007 through 2011, each year the Local's Executive Board authorized the purchase of \$25 gift cards to be distributed to members at a designated membership meeting. (Exs. 399, 62, 63, 64, 65) In 2007, 2009 and 2011, the Executive Board decided how many \$25 cards to buy. (Ex. 399, 63, 65)¹³ In 2008 and 2010, the Board did not specify the number of cards to be bought for this purpose. (Exs. 62, 64) Flynn decided how many to buy. (Ex. 197 at 53-55, 62) In each of the years 2007 through 2011, there were at least 109 extra \$25 cards after the distributions at the membership meetings. (Exs. 405, 28-33, 67, 164-166, 69, 177, 399, 400, 171)

In November 2011, the Local's Executive Board approved Flynn's request to purchase 1,000 \$25 gift cards for distribution at the November 2011 membership meeting. (Ex. 65)¹⁴ This was the largest number of \$25 gift cards purchased for that purpose by 400 cards. (Ex. 403) It was 500 more than the Board had specifically authorized in prior years when there were

¹³ In 2007 and 2009, the Executive Board authorized the purchase of 500 \$25 gift cards to be distributed at a specific membership meeting. (Exs. 399, 63) In 2011, the Executive Board approved the purchase of 1,000 \$25 gift cards for the same purpose. (Ex. 65)

¹⁴ DeCola was not an officer at the time of this meeting and did not attend the meeting. (Exs. 402, 65)

surplus cards after distribution. (Exs. 399, 63) The officers at the November 2011 meeting, Sweeney, Pauli, Alexander, Lamy and Wagoner, knew or should have known that since at least January 2007, even 600 members had never attended a membership meeting. (Exs. 65, 177)

In addition, the officers knew that in the prior years from the purchases of several hundred fewer \$25 cards there had been extra cards. (Ex. 405) For example, from the purchase of 500 gift cards in 2009 that the Board had specifically authorized, there were 109 surplus cards. (Exs. 63, 405) In 2010, the Local raffled 61 of these surplus \$25 cards at three membership meetings. (Exs. 404, 48, 120, 60)¹⁵ That was not the purpose for which their purchase had been authorized. (Ex. 63) Sweeney, Pauli, Alexander, Lamy and Wagoner, who attended these three meetings, were aware that there were surplus \$25 gift cards from the 500 they had approved for purchase. (Exs. 65, 48, 60, 120) Nevertheless, two years later in 2011, they approved Flynn's request to purchase double the number of cards than had been purchased in 2009 when they knew there had been a surplus. (Ex. 65)

The officers knew that Flynn controlled the surplus \$25 cards. (Ex. 7 at 60-64; Ex. 97 at 46; Ex. 100 at 44; Ex. 6 at

¹⁵ These meetings were on January 31, 2010, April 25, 2010 and September 26, 2010. (Exs. 48, 120, 60)

78-79) They remained studiously uninquisitive as to what he did with them. At no time prior to January 2013 had he requested Board approval to dispose of extra cards as the Bylaws required. (Exs. 70-74, 408) Moreover, at the time of the November 2011 \$25,000 purchase, the officers knew that the Local was in poor financial condition since Flynn had announced at a staff meeting that he was deferring commissions owed to some officers and employees which were due in July 2011 because of that poor condition. (Ex. 7 at 54-55; Ex. 100 at 34-35; Ex. 8 at 39) This should have put the Local's officers on heightened notice to scrutinize the unusual purchase of 1,000 gift cards.

Over the years, the officers engaged in a pattern of failing to investigate what happened to surplus gift cards which went into Flynn's possession. The Local purchased \$150 cards for stewards in 2009, 2010 and 2012 as holiday gifts. (Exs. 22, 23, 24, 26) The number of stewards was known at the time of the purchases. (Exs. 213, 19-21; Ex. 197 at 28, 30-31) Each year, Flynn caused the purchase of substantially more \$150 cards, at least 48 more cards worth \$7,200 or greater, than necessary for the authorized purpose, distribution to the stewards. (Exs. 41, 19-26) The Board never caused Flynn to inform it of how much he spent and how many cards he purchased. (Exs. 70-74) They passed non-detailed resolutions allowing him to purchase unnamed gifts that required no reporting information to the Board as to the

purchases for it to determine if he complied with the resolutions. (Exs. 85, 64) This was despite the Local's officers knew there were extra \$150 gift cards after the authorized distribution to the stewards. (Ex. 97 at 49; Ex. 8 at 45-47; Ex. 7 at 66-67, 69-70; Ex. 100 at 41-46)¹⁶

As the officers knew, after the \$150 and \$25 cards had been distributed for the authorized purposes, the remaining cards went under Flynn's exclusive control. (Ex. 5 at 180-186; Ex. 6 at 78, 84-85; Ex. 7 at 60, 63-66, 69-71; Ex. 8 at 43, 45-46; Ex. 197 at 29-34, 38; Ex. 199 at 10-12; Ex. 100 at 44; Ex. 97 at 46, 49) There were no Local records tracking either the cards in Flynn's sole possession or his use of them. (Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 197 at 28-36, 38-40, 53-56, 65; Ex. 198 at 12-16, 23; Ex. 199 at 22-23, 27-28; Ex. 6 at 80-81, 99; Ex. 8 at 45-46, 48; Ex. 97 at 46-47; Ex. 7 at 62-64; Ex. 100 at 45-46)

After the IRB investigation began, on January 24, 2013, the Executive Board voted to "to grant Secretary Treasurer Pat Flynn the authority to distribute to, or use for, the Membership, surplus items as he deems appropriate, which were previously purchased for specific occasions throughout the year, and

¹⁶ The cards were not kept in the Local's safe with petty cash, but kept in Flynn's office. (Ex. 5 at 180-182; Ex. 199 at 23; Ex. 49 at B-2)

approved for by the Executive Board." (Ex. 42)¹⁷ There was no indication of what those items were or their value. (Ex. 42) Based upon the subsequent use of \$150 gift cards and the raffling of \$25 gift cards to members shortly after this meeting, the resolution would have covered, at least, gift cards, although it was broad enough to cover other Local property. (Exs. 41, 42, 122) At the time of this resolution, the officers did not know how many gift cards were in Flynn's possession or the value of the Local property he was given power to dispose of. (Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 197 at 28-36, 38-40, 53-56, 65) Given the absence of Local records, they could not have known that unless they had taken control of and counted the cards. They did not do so.

2. Local Bylaw Provisions Required Executive Board Approval for the Purchase and Disposal of Local Property

Pursuant to Article 13, Sections 1(h) and (i) of the Local's Bylaws, the Executive Board had the authority to purchase and dispose of, among other things, ". . . property, rights and privileges . . . on such terms and conditions as they think fit. . .". (Ex. 27 at 8-9; Ex. 207 at 9)¹⁸ The Local's

¹⁷ Lamy was not an officer at the time of this meeting and did not attend the meeting. (Ex. 42) DeCola, who was not an officer at the time of the November 2011 meeting, attended the January 2013 Executive Board meeting. (Exs. 402, 42)

¹⁸ Article 13, Sections 1(h) and (i) of the Local's Bylaws provides that the Executive Board has the authority to:

Executive Board also had the general responsibility to manage the Local's affairs. (Ex. 27 at 7; Ex. 207 at 9)¹⁹ It is axiomatic that the Board should know what the purpose is for an asset it is buying and know what it is disposing of before it can exercise its authority to buy or dispose consistent with the Board members' fiduciary duties. In the case of the November 2011 resolution and the one 14 months later in January 2013, the Board did not undertake any inquiry necessary to gain the knowledge needed to exercise its fiduciary duties.

Prior to the IRB's investigation, there was no Executive Board approval for the disposal of any of the surplus cards

(h) To lease, purchase or otherwise acquire in any lawful manner for and on behalf of the organization, any and all real estate and other property, rights and privileges whatsoever deemed necessary or convenient for the prosecution of its affairs, and which the organization is authorized to acquire, at such price or consideration and generally on such terms and conditions as they think fit, and at their discretion, to pay therefor either wholly or partly in money or otherwise;

(i) Sell or dispose of any real or personal estate, property, rights or privileges belonging to the organization whenever in their opinion its interests would thereby be [sic] promoted;

(Ex. 27 at 8-9; Ex. 207 at 9)

¹⁹ Pursuant to Article 13, Section 1 of the Local's Bylaws,

. . . the Local Union Executive Board is authorized and empowered to conduct and manage the affairs of this organization, and to manage, invest, expend, contribute, use, lend and acquire Local Union funds and property in the pursuit and accomplishment of the objectives set forth in the Constitution of the International and these Bylaws and resolutions adopted in furtherance thereof.

(Ex. 27 at 7)

Flynn controlled. For the first time, in January 2013, after the IRB's investigation had been ongoing, the Executive Board gave ". . . Flynn the authority to distribute to, or use for, the Membership, surplus items as he deems appropriate. . . ."

(Exs. 42, 125, 126)

3. Background regarding the Local's Purchases of \$25 Gift Cards for Distribution at Designated Membership Meetings

Between January 1, 2007 and December 31, 2011, Local 710 purchased 3,000 \$25 gift cards costing \$73,100 to distribute to members at designated meetings. (Exs. 403, 28-33, 399, 171)²⁰ As of September 5, 2013, the Local claimed it had no \$25 cards in its possession. (Ex. 2) Indeed, in a membership meeting in January 2013, Flynn announced the raffle of what he described as the last 10 \$25 cards in the Local's possession. (Ex. 122) In connection with the cards purchased between 2007 and 2011, the Local could not account for 1,115 \$25 cards valued at \$27,875. (Ex. 404)

²⁰ These cards were good at either of two Chicago area supermarkets or at Walgreen's. (Exs. 28, 29, 30, 32, 33) The Local represented its records regarding the \$25 cards, "show no indication of any expiration dates". (Ex. 161)

The Local's purchase of \$25 cards to distribute to the members each year at a designated meeting was as follows:

<u>Year</u>	<u># of Cards</u>	<u>Denomination</u>	<u>Cost</u>
2007	500	\$ 25.00	\$ 12,000.00 ²¹
2008	400	\$ 25.00	\$ 9,600.00 ²²
2009	500	\$ 25.00	\$ 12,000.00 ²³
2010	600	\$ 25.00	\$ 14,500.00 ²⁴
2011	<u>1,000</u>	\$ 25.00	\$ 25,000.00
Total	<u>3,000</u>		\$ 73,100

(Exs. 28, 30-33, 171, 399, 403)

In the years 2007 and 2009, the Executive Board authorized the purchase of 500 gift cards for distribution to the members at a designated meeting. (Exs. 63, 399) In both those years after the distribution of cards at the meeting, there were extra cards; in 2007 there were 181 and in 2009 there were 109. (Exs. 405, 399, 163-164)²⁵ In the years 2008 and 2010, the Executive Board did not specify the number of cards to be purchased for

²¹ The Local received a \$500 discount. (Exs. 171, 399)

²² The cards were worth \$10,000. The Local received a \$400 discount. (Ex. 28)

²³ Cards were purchased on two occasions in 2009. One purchase, on November 18, 2009, was of 250 \$25 cards worth \$6,250. (Ex. 29) The Local received a \$187.50 discount. (Ex. 29) The Executive Board did not specifically approve this purchase. (Ex. 70) The second purchase, on December 15, 2009, was for 500 gift cards for \$12,000. (Ex. 30) The Executive Board approved this purchase of cards for distribution at the December 2009 membership meeting. (Ex. 63) This is the purchase in the chart above.

²⁴ The cards were worth \$15,000. The Local received a \$500 discount. (Exs. 31-32)

²⁵ If the 250 cards purchased in November 2009 were included, the unexplained cards from the 2009 purchases totaled 359.

members. (Exs. 62, 64) In those years, Flynn purchased 400 in 2008 and 600 in 2010, despite the purchases of 500 in a year resulting in a surplus. (Exs. 28, 31, 32, 405) The Board did not require him to report back how many he bought or were used or how much of the Local's money he spent. (Ex. 197 at 62; Exs. 62, 64) In 2011, the Board members authorized the purchase of 1,000 gift cards. (Ex. 65) The Local's officers, who knew 1,000 members did not attend the meeting, never asked for an accounting of these cards after the distribution in November 2011 at the designated membership meeting. (Exs. 69, 177, 166, 212, 272) The Board members attended that meeting. (Ex. 69)²⁶ Indeed, the Local failed to keep such records from which that information could have been supplied as to any year. (Ex. 5 at 185-190, 192-197; Ex. 197 at 28-36, 38-40, 53-56, 65)

The Local consistently bought more \$25 cards than needed for the authorized purpose. After the \$25 cards were purchased they went into Flynn's control. (Ex. 197 at 53-55) Flynn continued to have custody and control of the surplus \$25 cards after the distribution at the meetings to members. (Ex. 5 at 180-182, 186; Ex. 100 at 44; Ex. 7 at 63-64; Ex. 8 at 43; Ex. 97 at 46; Ex. 197 at 54-56, 65; Ex. 199 at 27-28) Flynn kept the

²⁶ DeCola was not an officer at the time of the November 2011 membership meeting. (Ex. 402)

cards in his office in a safe or in a box but not in the Local's safe. (Ex. 5 at 181-182; Ex. 7 at 60)

There were no Local records documenting the number of surplus \$25 cards under Flynn's exclusive control at any time or that any were in Flynn's or the Local's possession. (Exs. 1-2; Ex. 197 at 56, 65) No Local records reflected at any point the value of the cards that remained under Flynn's control as a Local asset. (Ex. 197 at 56, 65; Ex. 198 at 12-16; Ex. 5 at 181-182, 185-186, 188, 192)

The cards can be used by whoever possessed them and function like cash, which is what the IRS and the IBT both indicated they should have been treated as. (Ex. 88; Ex. 95 at 29) The nature of the asset as a cash equivalent was a reason heightened Board scrutiny of purchases and dispositions was necessary since the assets could be easily disposed of without Board knowledge or approval. The Board exercised no scrutiny over the cards.

At a designated membership meeting each year from 2009 through 2011, \$25 cards were distributed to the members present. (Exs. 67-69; Ex. 5 at 178-179; Ex. 6 at 75-85; Ex. 100 at 39-44; Ex. 7 at 59-64)²⁷ At those meetings, Flynn gave "stacks" of cards to the business agents to distribute one card to each

²⁷ As discussed below, \$25 cards were also distributed at the March 25, 2007 membership meeting. (Ex. 400)

member as the members left the meeting. (Ex. 5 at 182, 184-185; Ex. 6 at 76-84; Ex. 100 at 39-44; Ex. 7 at 59-64; Ex. 8 at 42-44) No records were kept of how many each agent received or to whom the business agents gave the cards. (Ex. 5 at 182-186; Ex. 6 at 76-84) No records were kept of how many were returned to Flynn after the distribution to the attending members. (Ex. 197 at 55-56, 65; Ex. 198 at 22-23)

In 2008, the Local purchased 400 \$25 gift cards for distribution at the November and December membership meetings. (Ex. 62, 28)²⁸ These cards were never used for the authorized purpose. The November and December 2008 membership meeting minutes did not reflect any cards being given to members. (Exs. 62, 173, 176)²⁹ Indeed, the Local admitted that no minutes reflected cards being given away in 2008. (Exs. 1 and 2)³⁰

²⁸ The October 30, 2008 Executive Board minutes stated, "Trustee Larry Alexander made a motion after much discussion by the Board to purchase turkeys, wine baskets & Jewel gift cards for the November and December general membership meeting attendees". The motion was approved. (Ex. 62) Sweeney did not attend this meeting and DeCola and Wagoner were not Local officers at the time of this meeting. (Exs. 62, 402, 101)

On October 31, 2008, Local 710 issued a check for \$9,600 to Jewel-Osco for 400 \$25 gift cards. (Ex. 28) The Local received a \$400 discount. (Ex. 28) Flynn decided how many to buy. (Ex. 197 at 53-55, 62)

²⁹ Pauli did not attend the November 2008 membership meeting which was one of the meetings at which the cards purchased in October 2008 were to be distributed. (Ex. 176)

³⁰ In response to an August 16, 2013 request for all documents regarding the distribution or use of the \$25 cards, Flynn responded as follows:

all documentation that we could find, exclusive of Union Meeting attendance cards which you have already been copied on is enclosed. Specially find the minutes of March 2007, April 2007, September 2007, November 2007, February 2009, March 2009, April 2009, December 2009,

Trustees Alexander and Lamy, who attended the pertinent meetings in 2008, would have known this. (Exs. 62, 173, 176) What Flynn did with these cards was never explained at or inquired into at a Board meeting or explained in any Local record. (Exs. 74, 70; Ex. 197 at 56, 65)

As of September 5, 2013, the Local claimed it did not have any \$25 cards in its possession. (Ex. 2) Based upon authorized use and Local records, the Local should have had 1,115 \$25 cards (\$27,875) in its possession then or records reflecting their use. (Ex. 404) It had neither.

A chart of the \$25 cards purchased between 2007 and 2011 for distribution at membership meetings, the number of members who attended those meetings and the number of cards after those distributions is below:

<u>Date of Meeting</u>	<u>Number of Members Present</u>	<u>Number of Gift Cards Purchased for Meeting</u>	<u>Number of Gift Cards Not Distributed at Meeting</u>
3/25/07	319	500	181
2008	-0- ³¹	400	400

January 2010, April 2010, September 2010, November 2010, November 2011, February 2012, December 2012 and January 2013. In addition there is one request letter from the 710 Pioneers Club dated November 2007 with a follow-up thank you dated December 16, 2007.

(Exs. 1 and 2) He did not reference any 2008 minutes. (Ex. 2)

³¹ As discussed above, in 2008, there was no mention in any membership meeting minutes that cards were given to members. (Ex. 66)

12/20/09	391	500 ³²	109
11/21/10	408	600	192
11/20/11	<u>598</u>	<u>1,000</u>	<u>402</u>
Totals	1,716	3,000	1,284

(Exs. 405, 28, 30-33, 67, 164, 165, 69, 166, 68, 177, 399-401, 171) The Local also occasionally raffled \$25 cards at membership meetings as follows:

<u>Date of Meeting</u>	<u>Number of \$25 Gift Cards Raffled</u>
4/29/07	4
9/30/07	5
2/22/09	20
3/29/09	20
4/26/09	20 ³³
1/31/10	20
4/25/10	20
9/26/10	21 ³⁴
2/26/12	9
1/27/13	<u>10</u>
Total	149

(Exs. 117-119, 48, 60, 120-122, 406, 407)³⁵ These raffles in addition to the other evidence would have put the Board on notice of the extra cards and unauthorized use. For example,

³² In addition to the purchase of 500 \$25 cards on December 15, 2009 (Ex. 30), in November 2009, Flynn also caused the Local to purchase 250 \$25 cards without specific Executive Board approval the Bylaws required. (Exs. 29, 70; Ex. 27 at 8-9; Ex. 207 at 9)

³³ The 60 cards raffled in 2009 were subsequent to the October 2008 purchase. (Ex. 28)

³⁴ The 60 raffled cards in 2010 were subsequent to the December 2009 purchase. (Ex. 30)

³⁵ In addition, it appears that approximately 20 \$25 cards were given to the Local 710 Pioneers Club in 2009 and 2011. (Exs. 163, 65)

the use of over \$1,500 of cards in both 2010 and 2009 for raffles had not been approved as required. (Exs. 70-71)

4. November 2011 Approval to Purchase 1,000 \$25 Gift Cards

The November 8, 2011 Executive Board meeting minutes reported, "Secretary-Treasurer Pat Flynn made a motion to purchase Jewel/Walgreens gift cards to be given to the members in attendance at the November 2011 general membership meeting, 600 Jewel and 400 Walgreens gift cards". (Ex. 65)³⁶ Sweeney, who thought no more than 500 members could fit into the Local's meeting hall, seconded the motion. (Ex. 65; Ex. 6 at 79, 83) When the Executive Board approved Flynn's motion to purchase 1,000 cards, 500 more than the Board had approved in any previous year since 2007, the largest attendance at a November general membership meeting from 2007 on had been 570. (Exs. 165, 177, 182-184)³⁷ The Local's officers knew or should have known 1,000 cards far exceeded what was needed for the purported purpose. (Ex. 177) Despite in prior years purchases of 600 or fewer \$25 cards having resulted in excess cards, the Executive Board endorsed Flynn's funneling at least \$10,000 of Local money

³⁶ Pauli, who was the Recording Secretary at the time of this meeting, testified that when he kept the minutes he ensured they were as accurate and complete as possible. (Ex. 7 at 50-51)

³⁷ The Local was unable to provide attendance cards for the November 2009 membership meeting. (Ex. 250) The attendance for meetings before 2007 was not reviewed.

into surplus gift cards that would flow exclusively to Flynn, and which he would use without any documented union purpose. (Exs. 405 and 65) By their conduct, the Executive Board members breached their fiduciary duties to protect the Local's assets by failing to inquire into a suspicious transaction which aided Flynn in his scheme. The items being purchased were cash equivalents, easily transferrable and could be used without leaving a trace. The Board members essentially voted to give \$25,000 to distribute at a membership meeting in units of \$25 to each member knowing \$15,000 would have satisfied the purpose. (Exs. 65, 177) They knew Flynn would control without scrutiny the \$10,000 they authorized beyond that needed for the purpose. (Ex. 6 at 80-85; Ex. 8 at 43; Ex. 97 at 46; Ex. 7 at 63-64; Ex. 100 at 44)

On November 15, 2011, Local 710 issued a check for \$25,000 to St. Alexander Venture for Education. (Ex. 33) Through this institution, the Local purchased 600 \$25 Jewel cards and 400 \$25 Walgreens cards. (Ex. 33)

On November 20, 2011, according to the attendance cards, 598 members attended the membership meeting. (Exs. 69, 177, 166) The minutes stated, "Secretary-Treasurer Pat Flynn informed the members to turn in their sign in card to receive a \$25.00 Jewel or Walgreens gift card at the conclusion of the meeting". (Ex. 69) Sweeney, Pauli, Alexander, Lamy and Wagoner attended this

meeting. (Ex. 69) All had voted to approve Flynn's request to buy 1,000 cards. (Ex. 65) Since 598 attended, there were 402 extra \$25 cards after this meeting. Despite knowing there was a substantial number of unused cards after the meeting, the Board made no inquiry into their disposition. (Exs. 69, 177, 166, 72-73)

At the time they voted on the resolution, the officers knew or should have known there were surplus cards in the past when the Local had purchased many fewer than 1,000 cards. (Exs. 177, 405) For example, at the March 20, 2007 Executive Board meeting, the Board reaffirmed an earlier telephone poll to purchase 500 \$25 cards to give to the members at the March 25, 2007 membership meeting. (Ex. 399)³⁸ On March 22, 2007, the Local purchased 500 \$25 cards. (Ex. 171)³⁹ The minutes of the March 25, 2007 membership meeting reflected that members in attendance were to each receive one gift card. (Ex. 400) According to the Local, 319 members attended this meeting resulting in 181 surplus cards worth \$4,525. (Exs. 177, 405) Sweeney, Pauli, Alexander and Lamy attended the Executive Board meeting at which the purchase of the 500 gift cards was approved

³⁸ Sweeney, Pauli, Alexander and Lamy attended this meeting. (Ex. 399)

³⁹ The Local appears to have received a discount which they also received in December 2009. (Ex. 30) In 2007, the Local paid \$12,000 for gift cards which was the amount the Local paid in 2009 for 500 gift cards after a discount. (Exs. 171, 30)

and the membership meeting which 319 members attended. (Exs. 399, 400, 177)

Similarly, the December 8, 2009 Executive Board minutes stated, "Secretary-Treasurer Pat Flynn made a motion to purchase 500 \$25.00 Jewel gift cards to be issued to the members in attendance at the December 20, 2009 local 710 general membership meeting". (Ex. 63)⁴⁰ The motion was approved. (Ex. 63)

According to the attendance cards, 391 members attended the December 20, 2009 membership meeting. (Exs. 67, 164, 177) If each member who attended the meeting received a card, after the meeting there were 109 surplus cards (\$2,725). (Exs. 67, 164, 177) In 2010, 61 extra cards were raffled off whose purchase had not been authorized and therefore the Board would have known was part of the 2009 excess. (Exs. 48, 120, 60 and 71) Sweeney, Pauli, Alexander, Lamy and Wagoner attended both the Board and membership meetings. (Exs. 63, 67, 48, 120, 60)

After the purchases in 2008 and 2009, at least 60 of the excess cards had been raffled to members each year in 2009 and 2010 as the Board members knew. (Exs. 117-119, 120, 48, 60) Despite knowing there were hundreds of more excess cards from the 2011 purchase and only 9 were given out through raffles in 2012 (Ex. 121), the Board still did not question Flynn about the

⁴⁰ Sweeney, Pauli, Alexander, Lamy and Wagoner attended this meeting. (Ex. 63)

extra cards from the purchase of 1,000. (Exs. 72-73) That was another red flag the Board members ignored in addressing the issue of Flynn and excess cards.

5. Continuing to Breach Their Fiduciary Duties, the Officers Improperly Gave Flynn Blanket Authority to Dispose of "Surplus Items" the Value of Which Was Unknown

Continuing with their pattern of hiding from their responsibility to monitor the Local's assets and financial transactions, at the January 24, 2013 Executive Board meeting, DeCola made a motion which Pauli seconded, "to grant Secretary Treasurer Pat Flynn the authority to distribute to, or use for, the Membership, surplus items as he deems appropriate, which were previously purchased for specific occasions throughout the year, and approved for by the Executive Board." (Ex. 42)⁴¹ The motion passed. (Ex. 42)⁴² The resolution did not identify the value of the "surplus items" or that they were gift cards. (Ex. 42) It acknowledged that the initial purchases of the "surplus items" were for specific purposes only. (Ex. 42) These items were not authorized for any other use which was why Board

⁴¹ The vagueness of the resolution should have put the Board on notice it was not making adequate inquiry. As to the minutes, the Recording Secretary testified that the minutes he kept were as accurate as possible short of being verbatim. (Ex. 8 at 10-11)

⁴² Lamy was no longer a Local officer at this time and did not attend the meeting. (Ex. 102)

approval was then needed. (Ex. 42)⁴³ There had been no Board approvals for Flynn's intentional acquisition of the now surplus cards that were beyond what was necessary for the initial authorized purposes. (Exs. 70-73) There had been no approval prior to this for the disposal of surplus cards as required. (Exs. 70-73) The reasons for the surplus and the value of the surplus items were not known to the Executive Board. (Ex. 42) Nor did the Board inquire into it. (Ex. 42) That information was not available in Local records. (Ex. 197 at 35-36, 39-40, 56, 65; Ex. 5 at 185-188, 192) By not asking, the Board failed to learn that the Local was not recording transactions in its assets as required by federal law. The Board members knew the Local was in poor financial condition but did not determine the value of what assets they were allowing Flynn to dispose of. (Ex. 42; Ex. 7 at 54-55; Ex. 100 at 34-35; Ex. 8 at 39)

This resolution was only 14 months after the Board authorization to purchase 1,000 cards. (Exs. 42, 65) There were over 400 of those cards available after the November 2011 membership meeting. (Ex. 405) Only 9 were raffled to members during 2012 (Ex. 121), many fewer than in prior years when there had been fewer excess cards. (Exs. 404, 405) There had been no

⁴³ Flynn made intentional purchases of \$35,700 in unauthorized \$150 gift cards in 2009, 2010 and 2012 when he purchased 238 more cards than necessary for the distributions to the stewards. (Ex. 214; Ex. 197 at 30-31)

required Board approval to dispose of those cards. (Exs. 72-73) Despite knowing all of this, the Board made no inquiry into these missing cards. Shortly after the 2013 resolution, Flynn represented at a membership meeting there were only ten \$25 cards left. (Ex. 122) Again, despite all this knowledge, the Board members ignored their fiduciary obligation to inquire what happened to the missing Local property and to have Flynn provide an accounting of its use.

Further information came to the Board members' attention that required them to inquire into the surplus cards and their use by Flynn. When the use of nine surplus \$150 cards was approved during a Board telephone poll dated April 22, 2013, the document memorializing this telephone poll stated, "With numerous [sic] gift cards left from Steward's Holiday Gifts do you agree to issue three Gift Cards to each of the [three] stewards to help compensate for their time lost?" (Ex. 92) Even though the Executive Board was informed at that time that there were numerous \$150 gift cards left over after the 2012 distribution as Christmas gifts to the stewards, they caused no inventory of the surplus gift cards to be done and demanded no explanation from Flynn as to why there were "numerous" cards left over from gifts to stewards, whose number was known. (Ex. 92) The poll was then approved without question at the next Board meeting on April 25, 2013. (Ex. 144) The Board members

once again failed to act in a manner required of fiduciaries to protect the Local's assets.

Indeed, the Board members for years had continuously turned a blind eye to Flynn's misuse of \$150 cards allegedly purchased for gifts to stewards when information came to their attention. In 2009, 2010 and 2012, the Local purchased 1,325 \$150 cards for \$198,750. (Exs. 214, 22-26) The Executive Board authorized each year the purchases of Christmas gifts to the stewards. (Exs. 85, 64, 91; Ex. 5 at 181, 188-189, 192; Ex. 6 at 77-78; Ex. 7 at 64; Ex. 97 at 48-49) In 2009 and 2010 the Board authorized Flynn to purchase stewards' gifts without knowing what the gifts would be or the cost. (Exs. 85, 64) In either year, it did not instruct Flynn to report back on the cost to the Local and did not monitor his purchase of stewards' gifts. (Exs. 85, 64, 71, 72) In 2012, the Board specifically authorized the purchase of \$150 cards for gifts for stewards. (Ex. 91) In all years, Flynn bought more than needed for the authorized purpose. (Exs. 41, 214; Ex. 197 at 28, 30-31, 53-54; Ex. 6 at 77-78)⁴⁴

When the \$150 cards were received at the Local, the controller initially maintained control. (Ex. 5 at 181, 188-189;

⁴⁴ The procedure for purchasing the cards was that after the resolution, the controller informed Flynn of the number of stewards. (Ex. 197 at 28, 30-31) He then instructed her on how many to buy. (Ex. 197 at 28, 30-31)

Ex. 197 at 30-32) She then mailed each steward on the list one card. (Ex. 197 at 31-32; Ex. 5 at 181; Ex. 100 at 45-46; Ex. 7 at 65; Ex. 8 at 45-46; Ex. 103 at 41-42; Ex. 97 at 48-51; Exs. 19-21) She gave Flynn the extra cards that he caused to be purchased. (Ex. 5 at 181-182; Ex. 197 at 32-36, 39-40; Ex. 97 at 48-52) When Flynn took custody and control of the surplus cards, the existence and later disposition of the cards were not reflected in Local records. (Ex. 197 at 29-36, 38-40)⁴⁵ Flynn kept the cards in his office, either in a small safe or in a box. (Ex. 5 at 181-182)

Although he knew the number of stewards, each year Flynn caused at least 48 excess cards to be purchased. (Exs. 41, 213, 214) The \$150 cards Flynn caused the Local to purchase in 2009, 2010 and 2012, exceeded the number of stewards by 48 (\$7,200), 122 (\$18,300) and 68 (\$10,200) respectively, costing \$35,700 for those unauthorized purchases. (Ex. 41) In these years only 1,087 cards, the total number of stewards, were needed, 238 less than the number bought. (Exs. 22-26, 214) The extra \$150 gift cards went under Flynn's control. (Ex. 197 at 32-33; Ex. 5 at 181-182)⁴⁶ He could only do this because the Board totally failed in

⁴⁵ In 2013, after the IRB investigation had been ongoing, the use of some cards was documented. (Exs. 131-143, 211; Ex. 5 at 190-193)

⁴⁶ Pauli had been a Local officer for nine years at the time of the January 2013 resolution. (Ex. 7 at 8-9) He knew there were surplus \$25 and \$150 gift cards. (Ex. 7 at 63-66) Pauli knew there were unexplained surplus gift cards for stewards despite there having been no need to estimate the

its obligation to ensure Local assets were only used for a union benefit.

The Local provided documentation for the disposition of 42 of the unauthorized \$150 cards used after the January 2013 Executive Board authorization. (Exs. 211, 127, 131-143, 201, 219, 216) Besides these, there was an additional card sent to a steward in February 2013. (Ex. 247) Flynn also claimed that four cards expired unused in 2013. (Exs. 3 and 211) Accordingly, at the time of the January 24, 2013 Executive Board resolution, there were at least 47 \$150 gift cards in Flynn's possession worth \$7,050. In addition, Flynn had at least 10 \$25 cards in his possession at the time of this Executive Board resolution as evidenced by the raffling of 10 gift cards at the January 27, 2013 membership meeting. (Ex. 122) Accordingly, Flynn had at least \$7,300 in gift cards in his possession at the

number of stewards. (Ex. 197 at 28, 30-31; Ex. 7 at 65-66) The Local had records of the number of stewards. (Ex. 213) Pauli testified that in either December 2009 or 2010, Flynn gave him three \$150 gift cards,

. . . and he said I can't give you guys raises. I'm sorry. What I recall of the conversation was he handed me the envelope and said here's some cards in it. Use these up. They're going to be expiring soon. I'm sorry I can't give you guys a raise. It has been a couple of years. I know you guys have all agreed, and this is the best I can do.

(Ex. 7 at 69-70) When asked whether the cards Flynn gave him instead of a raise were a bonus, Pauli testified, "I don't know if it was a bonus or if it was a - I don't know how you characterize it. I don't know what you want to call it." (Ex. 7 at 71) Pauli knew the Local's Executive Board had not approved the purchase of \$150 cards to be given to officers. (Exs. 85, 64, 91) When he accepted the cards, he would have known it was not an authorized purpose.