

To: James P. Hoffa, IBT General President  
From: Independent Review Board Members  
Re: Trusteeship Recommendation Concerning Local 400, Cleveland, Ohio  
Date: November 24, 2015

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### **I. RECOMMENDATION**

The Independent Review Board refers the below report to the IBT General President recommending that a Trusteeship be imposed upon Local 400, Cleveland, Ohio, pursuant to Article VI, Section 5 (a) of the IBT Constitution because Local 400 is not being conducted in accordance with the International Constitution, and it is necessary to correct financial malpractice.

The Local has a principal officer ineligible to hold that office under the IBT Constitution. Both the Forms LM-2's and LM-3 it filed with the Department of Labor and the Trustee Reports it filed with the International Union understate its liabilities. Despite having current obligations owed to a fund that went unpaid, the Local made discretionary donations.

### **II. INTRODUCTION**

According to the IBT Roster, Local 400, located in Cleveland, Ohio, represents employees in the retail grocery, cold storage, cigarettes, candy, tobacco, notions, frozen food, butter, eggs and cheese salesmen, drivers and warehouse, scrap metal, miscellaneous, auto wrecking and smelting drivers and workers. (Ex. 1 at 9-10; Ex. 2) Local 422 merged

into Local 400 in 2009. (Ex. 3 at 5) In 2014, Local 400 had 395 members. (Ex. 4; Ex. 1 at 9, 49)<sup>1</sup>

### **III. Jurisdiction**

Pursuant to Article VI, Section 5 (a) of the IBT Constitution, this matter is within the jurisdiction of the IBT General President. Paragraph G of the March 14, 1989 Consent Decree in the United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I (6) of the court-approved Rules and Procedures for the Operation of the IRB (the "IRB Rules") require that within 90 days of the IRB's referral of this matter, written findings setting forth the specific action taken and the reasons for that action must be filed with 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.

### **IV. Investigative Findings**

#### **A. Current Officers**

Charles A. Cimino, Jr. ("Cimino") is Secretary Treasurer and Principal officer of Local 400 and was Secretary Treasurer of the Ohio Conference of Teamsters ("Conference"). (Ex. 1 at 5, 7-8, 23-24) He is the administrator and Trustee of the Local 400 Food Terminal Employees' Pension Fund and the Local 400 Food Terminal Employees' Health and Welfare Fund. He is also alternate Union Trustee of the Local Union 422

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<sup>1</sup> In 2006, the Local had 669 members, in 2007 445 members, in 2008 430 members, in 2009 after the merger 419 members, in 2010 397 members, in 2011 402 members, in 2012 400 members and in 2013 403 members. (Exs 5-12)

Pension Trust Fund and the Local Union 422 Health & Welfare Fund. (Ex. 13) In 2014, Cimino received \$34,490 from the Conference. (Ex. 14; Exs. 15-16) Local 400 paid him no salary. (Ex. 4; Ex. 1 at 24-25) He was not employed in any shop. He did not act as a business Agent. (Ex. 17) As described below, under the IBT Constitution, he appears to be ineligible to hold office at the Local and under Conference Bylaws at the Conference. (Ex. 18, Art II, Section 4 (a) (1))

John Lawson ("Lawson") is President of the Local. He is a Director of Joint Council 41 and Co-Chairman of the Ohio Conference of Teamsters Warehouse Division. (Exs. 13, 17) In 2014, the Local paid him \$26,500 and the Conference \$5,540, totaling \$32,040. (Exs. 15-16; Ex. 4)<sup>2</sup>

Anthony Sara ("Sara") is Vice President of the Local. (Ex. 13) Sara had been Secretary Treasurer and Principal officer of Local 422 before it merged in 2009 with Local 400. (Ex. 3) He is Chairman of the Local 422 Pension Trust Fund and the Local 422 Health & Welfare Fund. (Ex. 13) Sara is also Co-Chairman of the Conference's Waste Division. (Ex. 17; Exs. 15-16) In 2014, Local 400 paid him \$22,407 and the Conference \$2,740, totaling \$25,147. (Ex. 4; Exs. 15-16)<sup>3</sup>

Julie Rizzo ("Rizzo") is the Recording Secretary and bookkeeper. (Ex. 1 at 15-16; Ex. 13) Between 2010 and 2012, Rizzo had been the bookkeeper. (Exs. 9-11) In August 2013, she was appointed Recording Secretary. (Ex. 19) In November 2013, she was elected Recording Secretary. (Ex. 20) In 2014, the Local paid her \$33,280. (Ex. 4)<sup>4</sup>

<sup>2</sup> Lawson was paid \$53,000 in 2010 and \$52,000 in 2011, 2012 and 2013. (Exs. 9-12)

<sup>3</sup> Sara was paid \$44,814 in 2010, and \$43,968 in 2011, 2012 and 2013. (Exs. 9-12)

<sup>4</sup> As the bookkeeper, Rizzo was paid \$33,920 in 2010 and \$33,280 in 2011 and 2012. In 2013, she was paid \$33,280 as the Recording Secretary. (Exs. 9-12)

The current Trustees are Bryan Havran ("Havran"), Leotis Gibson ("Gibson") and Thomas Gawlik ("Gawlik"). (Ex. 4)<sup>5</sup> Gibson is also a Union Trustee of the Local Union 422 Pension Trust Fund and the Local Union 422 Health & Welfare Fund. (Ex. 13) Between 2010 and 2014, each Trustee was paid \$1,500 per year. (Exs. 4, 9-12)

**B. Secretary Treasurer Cimino is Ineligible to Hold Office in Local 400**

The IBT Constitution requires a member to have been working in his craft for a period of 24 months to be eligible for office. Art. II § 4 (a) (1). (Ex. 18 at 13-14) A salaried union officer working full time for the Local meets that requirement. An unsalaried Local officer does not. Art. II § 4 (e) provides in pertinent part:

However, officers who are not full-time employees of an affiliate, who are not otherwise employed at the craft, and who do not receive a salary for performing work for the affiliate in addition to their duties under the By-laws, shall not be considered to satisfy the working at the craft requirement by virtue of being an officer.

(Ex.18 at 17, Art. II §4 (a) (1), (e)

Cimino was not a salaried employee of the Local at the time of his election as Secretary Treasurer and Principal officer in December 2013. (Ex. 1 at 24-25; Exs. 11-12; Ex. 23) He also was not an employee of any Local employer. Under Federal law, he could not be a "full-time" volunteer employee. 29 U.S.C. §201, et seq. Under the Constitution, he was not eligible to be a Local officer. (Ex. 18 at 17, Art II, § 4 (a) (1) (e); Exs 4, 11-12) At the time of his election to be Secretary

<sup>5</sup> Gawlik was appointed a Trustee, effective February 1, 2015. He replaced John Avondet who retired in May 2014. (Exs. 21-22)

Treasurer in 2013 he had not received a salary as a full time employee from Local 400 since 2006. (Ex. 5; Ex. 1 at 24-25)<sup>6</sup> Under the Conference Bylaws, Cimino also was not eligible to be a Conference officer. (Ex. 25 at 4)

If he was a full time unpaid Local officer, his employment would have been illegal. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., ensures that employees are paid for work. For Cimino to be a full-time management employee of the Local Union exempt from the Act's minimum wage requirements, he must be paid a salary of at least \$455 per week. 29 U.S.C. §213 (a) (1); 29 C.F.R. §541. He did not meet the definition of an exempt management employee. If he was an unpaid full-time employee of the Local, he would be causing the Local, the representative of employees, to be violating the Federal Labor Standards Act. This would be a reproachful act. Between 2009 and 2014, Cimino did not receive a salary from the Local. (Exs. 4, 8-12; Ex. 1 at 24-25))

**C. Local 400 Was an Employer Participant in the Food Terminal Employees Pension Fund**

The 2009 Form 5500 Annual Return for the Local 400 Terminal Employees Pension Fund (fiscal year 9/1/09 - 8/31/10) stated the following:

At September 1, 2008, the Plan was certified as seriously endangered (Yellow Zone) under the Pension Protection Act of 2006 ("PPA"). The Plan was in seriously endangered status because its funded percentage was less than 80% and a funding deficiency was projected in seven years.

<sup>6</sup> In 2006, Cimino received a salary of \$58,702, in 2007 he received \$9,584 and in 2008 he received \$4,792. (Exs. 5-7)

In accordance with the PPA, the Plan was required to adopt a 'Funding Improvement Plan,' no later than July 2009, aimed at improving the funded status of the Plan over a funding improvement period of up to 15 Years.

In response to the seriously endangered status of the Plan under the PPA, the Local and employers party to the various collective bargaining agreements (the 'Employers') agreed on July 14, 2009 to a Memorandum of Understanding ('MOU'). Among other considerations in the MOU, the Local and the Employers agreed to the following, effective July 27, 2009:

- (i) All provisions in all collective bargaining agreements between the Local and Employers that require contributions of any kind to the Plan shall be considered null and void;
- (ii) No Employer shall have any further obligation under any collective bargaining agreement to make any contributions to the Plan;
- (iii) No further benefits will be accrued by Plan participants.

The MOU resulted in substantially all of the contributing Employers ceasing contributions to the Plan. As a result, the Board of Trustees declared a mass withdrawal under the provisions set forth in the Plan agreement and ERISA and terminated the Plan effective July 27, 2009.

...  
A net withdrawal liability (redetermination amount) for each Employer was calculated by the Plan's actuary. The Employers have the option to pay the net withdrawal liability in one lump sum, or they may amortize the amount owed and pay the Plan in minimum quarterly installments as set forth in ERISA. Because the Plan was terminated via a mass withdrawal, certain rules, such as the 20 year cap on Employer quarterly installment payments, do not apply. The net withdrawal liability (redetermination amount) owed to the Plan totaled \$22,987,865 at August 31, 2009. This amount is to be received from Employers in quarterly installment payments. However, since the quarterly payments do not fully cover the interest portion of the redetermination amount, the quarterly installment payments extend into perpetuity and the principal portion of the redetermination amount will never be repaid. Therefore, the redetermination amount has been fully reserved for in an allowance for doubtful accounts at August 31, 2010 and 2009, on the statement of net assets available for benefits. The future quarterly installment payments, expected not to exceed \$275,625 per quarter, are recognized as interest on employer withdrawal liability on the statement of changes in net assets available for benefits.

(Ex. 26)

On August 11, 2009, the Pension Fund sent a letter to the Local which stated that the Fund had been terminated. The letter further stated that the Local "may pay the entire amount" of \$644,103, it owed or "at its option, it may amortize the amount owed and pay the Fund quarterly installments" of \$4,458. (Ex. 27) If the Local elected to pay the entire amount no penalty would be charged if paid by October 13, 2009. (Ex. 27) The Pension Fund stated if the Local elected to make quarterly payments, the payments would be due on April 13, July 13, October 13 and January 13 of each year. (Ex. 28) The Local opted to make quarterly payments, thereby subjecting itself to amortization charges on the outstanding balance, delinquency charges on any late payments, and the potential acceleration of the outstanding balance and further delinquency charges dating back to the due date of the first payment not timely made. (Ex. 27)

**D. THE LOCAL HAS NOT MET ITS OBLIGATION TO THE FUND AND INNACURATE FORMS LM-2**

In 2009, each employer was assessed a withdrawal liability. Local 400's withdrawal liability was \$697,482.<sup>7</sup> (Exs. 27-29) This was listed

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<sup>7</sup> The original withdrawal liability as of December 31, 2009 was calculated to be \$644,103. (Exs. 27, 28, 32) It was subsequently determined one of the employers had withdrawn prior to the mass withdrawal and therefore that employer should not have been included in the calculation. (Ex. 29) The new withdrawal liability for Local 400 as of December 31, 2011 was determined to be \$697,482. (Ex. 29)

as a liability on the Local's Form LM-2's for 2011 through 2014. (Exs. 4, 10-12)<sup>8</sup> It was not included as a liability on the Form LM-3 for 2009 or the Form LM-2 for 2010. (Exs. 8-9) The first time the Local listed a pension withdrawal liability on the Trustees report was on the December 2010 report. (Exs. 30-31) It reported a liability of \$644,103. (Exs. 30-31) Local 400 was required to make quarterly interest expense payments with no reduction in the withdrawal liability. (Exs. 26,27) Local 400's quarterly interest expense payment was \$4,458 (\$17,832 per year). All of the payments represented interest only because of the open obligation the Local was required to make payments into perpetuity. (Ex. 26)

The Local failed to make all the required interest payments. As a result, it has had an increasing liability for the interest each year. As of December 2014, that liability was \$32,280.

The Local was required to make quarterly payments of \$4,458 (\$17,832 per year) starting in October 2009. A review of the Local's check vouchers determined the Local made the following payments:

<u>Year</u>	<u>Amount of Payments</u>
2009	\$ -0-
2010	\$ 13,374
2011	\$ 13,374
2012	\$ 8,916
2013	\$ 15,374
2014	\$ 10,300
Total	\$ 61,338

(Exs. 32-38)

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<sup>8</sup> In 2014, the Local filed a Form LM-3. (Ex. 4)

The Local, for these six years, was required to make payments which totaled \$93,618. The Local underpaid the interest owed each year as follows:

<u>Year</u>	<u>Underpayment</u>	<u>Cumulative Underpayment of Interest</u>
2009	\$ 4,458	\$ 4,458
2010	\$ 4,458	\$ 8,916
2011	\$ 4,458	\$ 13,374
2012	\$ 8,916	\$ 22,290
2013	\$ 2,458	\$ 24,748
2014	\$ 7,532	\$ 32,280
	<u>\$ 32,280</u>	

(Exs. 32-38)

The Local had an increasing liability each year, as of December 31, 2014 it was \$32,280.<sup>9</sup>

For example, in 2009 the Local was required to make one payment of \$4,458. (Exs. 27-28) The Local failed to make this payment. As of December 31, 2009, the Local owed \$4,458. This underpayment was not disclosed as a liability or as an account payable on the Form LM-3 filed for 2009 or on the Trustees report for December 2009. (Ex. 8; Exs. 27, 28; Ex. 39) In addition, the Local did not disclose the \$644,103 withdrawal liability on the 2009 Form LM-3. (Ex. 8)

In 2010, the Local made three payments which totaled \$13,374. (Ex. 33) The missed payment that year of \$4,458 increased the Local interest liability to \$8,916, which was not disclosed on the 2010 Form LM-2. (Ex. 9) In addition, the Local did not disclose the \$697,482 withdrawal liability on the 2010 Form LM-2. (Ex. 9)

<sup>9</sup> Between January 1 and October 30, 2015, the Local made seven withdrawal liability payments which totaled \$11,958. (Ex. 51) During 2015, the Local was required to make payments which totaled \$17,832.

In 2011, the Local missed another interest payment. (Exs. 33, 35) After the missed payment, the liability for interest at year end was \$13,374. The \$13,374 liability was not disclosed as required on the 2011 Form LM-2. (Ex. 10)<sup>10</sup>

In 2014, the Local failed to make \$7,532 in required interest payments. (Exs. 33, 38) The Local should have reported a liability of \$32,280 on the Form LM-3. (Ex. 38) It reported none. (Ex. 4)

#### **E. Inaccurate Trustees Reports**

From December 2009 through September 2015, the Local submitted inaccurate Trustee Reports to the IBT. (Exs. 39-43, 50) A review of the December Trustees Reports for December 2009 through December 2014 disclosed the following:

The December 2009 Trustees report reported total assets of \$308,876. (Ex. 39) The December 2009 Trustees report reported total liabilities of \$87,732. (Ex. 39) The liabilities consisted of a loan payable to Joint Council 41 of \$3,500, a loan payable to the Teamsters Credit Union of \$292 and a severance liability of \$83,940. (Ex. 39) The interest the Local owed to the pension fund of \$4,458 and the Pension withdrawal liability of \$644,103 were not disclosed on the December 2009 Trustees Report. (Ex. 39)

The December 2010 Trustees Report listed total assets of \$254,276. (Ex. 39) It reported total liabilities of \$730,843. This consisted of loans payable of \$2,800, a severance liability of \$83,940 and the pension

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<sup>10</sup> In 2012 and 2013, the Local reported accounts payable liabilities of \$13,374 and \$24,748, respectively (Exs. 11-12)

withdrawal liability of \$644,103. (Ex. 39) The interest the Local owed to the pension fund of \$8,916 was not disclosed on the December 2010 Trustees Report. (Ex. 39)

The December 2011 Trustees Report listed total assets of \$199,733. (Ex. 40) It reported total liabilities of \$721,227. (Ex. 40) This consisted of loans payable of \$2,100, a severance liability of \$83,940 and a pension withdrawal liability of \$635,187. (Ex. 40) The \$13,374 in cumulative interest the Local owed to the pension fund was not disclosed on the December 2011 Trustees Report. (Ex. 40)

The December 2012 Trustees Report reported total assets of \$175,166. (Ex. 41) It reported total liabilities of \$714,669. (Ex. 41) This consisted of a severance liability of \$83,940 and a pension withdrawal liability of \$630,729.<sup>11</sup> (Ex. 41) The Local did not disclose the \$22,290 interest liability as of year-end on the December 2012 Trustees report. (Ex. 41)

The December 2013 Trustees Report listed total assets of \$142,498. (Ex. 42) It reported total liabilities of \$781,422. (Ex. 42) This consisted of the severance liability of \$83,940 and the pension withdrawal liability of \$697,482. (Ex. 42) The Local did not disclose the \$24,748 liability for interest owed the Fund on that report. (Ex. 42)

The December 2014 Trustees Report reported total assets of \$148,947. (Ex. 43) It disclosed total liabilities of \$697,482. (Ex. 43)

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<sup>11</sup> This liability was owed to the Local's current employees Cimino and Lawson. (Ex. 44)

This consisted of a pension withdrawal liability of \$697,482. (Ex. 43)  
 The \$32,280 in cumulative interest the Local owed to the pension fund on the withdrawal liability was not disclosed. (Ex. 43)

**F. The Local's Deteriorating Financial Condition**

According to the 2009 Form LM-3 Local 400 filed, at the end of the year the Local had \$305,084 in net assets. (Ex. 8)<sup>12</sup> As of December 31, 2014, the Local reported negative net assets of \$548,536, a change of -\$853,620. (Ex. 4) In each of the years 2011 through 2014, the Local's liabilities exceeded its assets as follows:

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Assets	\$ 199,733	\$ 175,166	\$ 142,498	\$ 148,946
Liabilities	<u>\$(643,283)</u>	<u>\$(710,856)</u>	<u>\$(722,230)</u>	<u>\$(697,482)</u>
Net Assets	<u>\$(443,550)</u>	<u>\$(535,690)</u>	<u>\$(579,732)</u>	<u>\$(548,536)</u>

(Exs. 4, 10-12)

The Local did not include the \$13,374 of the interest owed on its withdrawal liability on the Form LM-2 for 2011 or the \$32,280 underpayment on the Form LM-3 for 2014 in the above figures. (Exs. 4, 10)<sup>13</sup>

The Local did not disclose the withdrawal liability of \$644,103 on the 2010 Form LM-2. Nor did it disclose the \$8,916 underpayment of the interest on the withdrawal liability for that year. (Ex. 9) If these

<sup>12</sup> In 2009, the Local's assets were composed of \$297,208 in cash, \$11,525 in fixed assets and \$143 in other assets for total assets of \$308,876. The Local's liabilities were a \$3,792 Joint Council 41 loan. The net assets were \$305,084. (Ex. 8)

<sup>13</sup> The Local took a loan from Joint Council 41. According to the IBT auditor, on September 24, 2012 Joint Council 41 forgave this loan. At the time of the forgiveness the balance was \$1,900. (Ex. 17)

liabilities had been disclosed, the Local's net assets would have been as follows:

	<u>2010</u>
Assets	\$ 254,276
Liabilities	<u>\$ 2,800</u>
Net Assets	\$ 251,476
Corrected	
Liabilities	<u>\$ (653,019)</u>
New Net Assets	\$ (401,543)

(Ex. 9; Exs. 33-34)

For 2014, the Local did not disclose the \$32,280 it owed in interest on the withdrawal liability as of year-end on the Form LM-3. (Ex. 4) If this liability had been disclosed, the Local's net assets would have been as follows:

	<u>2014</u>
Assets	\$ 148,946
Liabilities	<u>\$ (697,482)</u>
Net Assets	\$ (548,536)
Corrected	
Liabilities	<u>\$ (729,762)</u>
New Net Assets	\$ (580,816)

(Ex. 4; Exs. 33, 38)

A review of the Form LM-2's for 2010 through 2013, revealed that the Local's disbursements exceeded receipts by \$49,766 in 2010, \$46,860 in 2011, \$24,567 in 2012 and \$32,668 in 2013. (Exs. 9-12) In 2014, receipts exceeded expenditures by \$6,448. (Ex. 4)

**G. Spending Excesses, Contributions, Gifts, and Grants.**

During the period the Local was not paying what it owed to the Fund, it also spent money on discretionary contributions. A review of the Form LM-2's for 2011 through 2014 disclosed the Local made the following contributions:

<u>Year</u>	<u>Amount</u>
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2011	\$ 350
2012	\$ 600
2013	\$ 1,450
2014	\$ 1,550
Total	\$ 3,950

(Exs. 4, 11-13)

These amounts were inaccurate and understated. A review of the Local's check vouchers for the period from 2011 through 2014 determined the Local made donations<sup>14</sup> as follows:

<u>Year</u>	<u>Amount</u>
2011	\$ 1,350
2012	\$ 1,300
2013	\$ 1,450
2014	\$ 2,350
Total	\$ 6,450

(Exs. 45-48)

For example, in each year from 2011 through 2014, the Local donated \$1,000 to the James R. Hoffa Memorial Scholarship Fund. (Exs. 45-48) During the years 2011 through 2013 revenues were insufficient to cover obligations. (Exs. 10-12) In each of the years, the Local did not make the full required interest payment to the Fund.

The officers made additional unnecessary expenditures. For example, in each of the years 2011, 2012 and 2013, the Local donated \$100 to the Local 20 golf tournament. (Ex. 45-47) In 2013 and 2014, the Local donated \$200 each year to the Cleveland Produce Terminal golf tournament. (Exs. 47-48) In 2014, the Local donated \$1,000 to the Ohio Conference of Teamsters. (Ex. 48) The reason for the last contribution was not in its records.

#### **H. Reduction of Officer's Salaries**

<sup>14</sup> Donations made in memory of a former member were not included in these computations.

The Local took some steps to reduce expenses but they were not adequate. Expenses exceeded revenues for four of the last five years.

Because of decreasing revenues, the Local decreased salaries. (Exs. 10-11, 20) Lawson's salary was \$52,000 and Sara's was \$43,968 in 2013. (Exs. 9-12) At the November 18, 2013 executive board meeting, Cimino stated, "Brother Lawson and Brother Sara will be taking a cut in pay beginning January 1, 2014. The reason for the decision is because of the Unions current financial status". (Ex. 20) In 2014, Lawson's salary was reduced to \$26,500 and Sara's salary was reduced to \$22,407. (Ex. 4) The IBT Auditor had recommended that given the decline in membership the Local only have one Business Agent. (Ex. 17)

#### **I. Elimination of a Contingent Liability**

In 2003, the Executive Board of Local 400 approved a resolution entitling Cimino and Lawson to a payment equal to 30 weeks of vacation each upon their retirement. (Ex. 44) A review of the footnotes on the LM-2 Forms for 2010 through 2012 disclosed that the contingent liability for Cimino was \$44,940 and for Lawson \$39,000. (Exs. 9-11) This liability was not listed as a liability on the Forms LM-2 for 2010 through 2012. (Exs. 9-11)<sup>15</sup> On October 23, 2013, Cimino and Lawson each signed a Memorandum of Understanding that "waive[d] forever his right to the Vacation Payment".<sup>16</sup> (Ex. 49)

#### **J. IBT Audit**

In 2012, the IBT audited Local 400, covering the period from

<sup>15</sup> It was listed in the footnotes of the LM-2s. (Exs. 9-12)

<sup>16</sup> The Local had classified these waived vacation payments as "severance liability". (Exs. 9-12, 40-42)

August 1, 2008 through August 31, 2012. (Ex. 17) In the report, the auditor noted liquid assets had decreased from \$326,171.04 to \$170,032.16 and net assets had decreased from \$248,205.58 to (\$615,543.67) between December 31, 2008 and August 31, 2012. (Ex. 17) In his report, the auditor explained the decline resulted from a decertification at one employer and several other employers going out of business. (Ex. 17) He stated the Local needed only one business agent, not the two it had, Lawson and Sara, to service the 400 members. (Ex. 17) The auditor reported, "Principal Officer Cimino is not a BA and he voluntarily does not receive any pay from the Local". (Ex. 17) He explained the Local was part of a mass withdrawal from the Local 400 Pension Fund in 2009 which resulted in a liability of \$697,482.00. He noted that seven of the twelve required payments, which covered the period from October 31, 2009 through August 31, 2012, had not been made. He instructed the Local to disclose a liability of \$22,290 on the books for these missed payments until they were made. (Ex. 17) The Local reported the liability on the Form LM-2 for 2012. (Ex. 11) Despite the auditor's instructions, the Local never reported the liability on any Trustees report for the period from August 2012 through September 2015. (Exs. 41-43, 50)

The auditor recommended that the IBT should monitor the Local's financial situation. (Ex. 17) No evidence was found that the General Secretary Treasurer's Office did so or determined whether the Local had done as its auditor had instructed.

**K. UNION TRUSTEES' VIOLATIONS OF FIDUCIARY OBLIGATION TO THE PLAN**

IBT Constitution, Article II, § 2 (b) provides:

Any 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:

Article II, §2 (b) (6) states:

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. 18 at 8-9)

The Local was an employer to the Pension Fund. Cimino was a Trustee on it. He violated his fiduciary duty and the Constitution in not ensuring the Fund was paid what the Local owed it. Instead, he acquiesced in the Local making discretionary contributions to the golf tournaments, the Hoffa Memorial Scholarship Fund and the Ohio Conference. Indeed, Cimino approved the contribution expenditures, signed the checks and wrote the letters of transmittal of the contributions to the recipients.

(Exs 45-48)

### Conclusion

According to the Form LM-3 for 2014, the Local had 395 members. (Ex. 4) Cimino, the Secretary-Treasurer and principal officer, was not a salaried employee of the Local at the time of his election in December 2013. (Exs. 12, 23) He also was not an employee of any Local employer. Under the Constitution, he was not eligible to hold office.

In 2009, the Local withdrew from its pension fund. (Exs. 26-27) The pension fund assessed the Local \$697,482 as a pension withdrawal

liability. (Exs. 28-29) The Local was required to make quarterly interest payments of \$4,458 (\$17,832 per year) each year on the \$697,482 pension withdrawal liability. These would continue into perpetuity because it was not reducing the debt. (Exs. 27-29) The Local failed to make all of the interest payments due each year. The Local underpaid its interest obligation by \$4,458 in 2009, \$4,458 in 2010, \$4,458 in 2011, \$8,916 in 2012, \$2,458 in 2013 and \$7,532 in 2014. (Exs. 33-38) These unpaid interest obligations were not listed under liabilities on the Form LM-3 for 2009 or 2014. (Exs. 4, 8) Nor were they listed on the Form LM-2 for 2010 and 2011. (Exs. 9-10) The interest liability as of December 31, 2014 was \$32,280. The interest liability was not reported on the Trustees Reports for the period from December 2009 through September 2015. (Exs. 39-43, 50)

The Local's disbursements exceeded receipts by \$28,963 in 2010, \$46,860 in 2011, \$24,567 in 2012 and \$32,668 in 2013. In 2014, receipts exceeded disbursements by \$6,448. (Exs. 4, 9-12) This occurred despite Lawson and Sara that year cutting their salaries by approximately 50%. (Exs. 4, 12) In 2014, Lawson was paid \$26,500 and Sara \$22,407. (Ex. 4)

During these years, although not making the full interest payment due, the Local elected to make discretionary donations to the Hoffa Memorial Scholarship Fund, golf tournaments and the Ohio Conference of Teamsters. (Exs. 45-48)

In addition, the Union Trustee on the Fund had failed to meet his obligations under the IBT Constitution.

For all the reasons evidenced in this report, the Local should be placed in Trusteeship.

**Exhibits to Local 400 Trusteeship Report**

<b>Ex.</b>	<b>Description</b>
1	Sworn Examination of Charles A. Cimino, Jr. dated June 29, 2015
2	IBT Roster
3	Form LM-3 for 2009 for Local 422
4	Form LM-3 for 2014 for Local 400
5	Form LM-2 for 2006 for Local 400
6	Form LM-2 for 2007 for Local 400
7	Form LM-2 for 2008 for Local 400
8	Form LM-3 for 2009 for Local 400
9	Form LM-2 for 2010 for Local 400
10	Form LM-2 for 2011 for Local 400
11	Form LM-2 for 2012 for Local 400
12	Form LM-2 for 2013 for Local 400
13	IBT Alphabetical Roster of Members
14	Form LM-2 for 2014 for the Ohio Conference
15	Excerpt from Ohio Conference Payroll Summary Report for 2014
16	List of Officers Who Receive an Ohio Conference Salary
17	Excerpt from IBT Audit of Local 400
18	Excerpt from IBT Constitution
19	Executive Board Meeting Minutes for Local 400 for August 19, 2013
20	Executive Board Meeting Minutes for Local 400 for November 18, 2013
21	Executive Board Meeting Minutes for Local 400 for January 19, 2015
22	Dues Record for John Avondet
23	Nomination Meeting for Local 400 for November 4, 2013
24	Ohio Conference Annual Meeting Minutes for August 13, 2013
25	Ohio Conference Bylaws
26	Form 5500 for the Local 400 Food Terminal Employees Pension Plan for 2010
27	Letter from the Pension Fund dated August 11, 2009
28	Notice of Assessment of Reallocation Liability dated January 3, 2011
29	Letter from Mangano Law firm dated June 11, 2011
30	Trustees Report for November 2010
31	Trustees Report for December 2010
32	Transaction Detail Report Re: Withdrawal Liability Payments 2010 - 2015
33	Schedule of Pension Fund Withdrawal Payments for 2010 through 2014
34	Pension Fund Withdrawal Payments for 2010
35	Pension Fund Withdrawal Payments for 2011
36	Pension Fund Withdrawal Payments for 2012
37	Pension Fund Withdrawal Payments for 2013
38	Pension Fund Withdrawal Payments for 2014
39	Trustees Reports for 2010
40	Trustees Reports for 2011
41	Trustees Reports for 2012
42	Trustees Reports for 2013
43	Trustees Reports for 2014
44	Executive Board Meeting Minutes dated March 17, 2003 Re: Vacation Pay Resolution for Charles A. Cimino, Jr. and John Lawson
45	Schedule of Contributions for 2011 and check vouchers

Exhibits to Local 400 Trusteeship Report

46	Schedule of Contributions for 2012 and check vouchers
47	Schedule of Contributions for 2013 and check vouchers
48	Schedule of Contributions for 2014 and check vouchers
	Executive Board Meeting Minutes for Local 400 for October 21, 2013 and Copy of
49	Waivers from Charles A. Cimino, Jr. and John Lawson
50	Trustees Reports for January through September 2015
51	Schedule of Pension Fund Withdrawal Payments for 2015 and Check Vouchers