The Center on National Labor Policy, Inc.

5211 Port Royal Road, Suite 103
North Springfield, VA 22151
(703) 321-9180

July 29, 2019

Mr. Andrew R. Davis
Chief of the Division of Interpretations and Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue, N.W., Room N–5609,
Washington, DC 20210

Re: Comments Regarding Proposed Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization is Interested, Form T-1
(84 Fed. Reg. 25130 (May 30, 2019), RIN 1245–AA09.)

Dear Mr. Davis:

The following comment of the Center on National Labor Policy, Inc. supports the Department of Labor's Proposed Amendments to Regulations to add the Trust Form T-1 reporting form. This new regulation will require financial transaction reporting for trusts controlled by labor organizations to assist in preventing evasion of the reporting requirements in § 202 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 432.

The Center on National Labor Policy, Inc. is a public interest legal foundation chartered to assist individuals whose statutory and constitutional rights have been violated by privileges provided to powerful, organized interests such as labor unions and governmental entities.

As a public-interest organization, believes the individual rights of consumers, taxpayers, workers, and public citizens are paramount to the collective rights of private organizations such as labor unions. The Center has filed briefs amicus curiae advocating the validity of this public policy interest in numerous cases before the Supreme Court and also involving policies of the

U.S. Department of Labor, including *Chamber of Commerce of U.S. v. Reich*, 74 F.3d 1322 (D.C. Cir. 1996); *Master Printers of America v. Donovan*, 751 F.2d 700 (4th Cir. 1984); *International Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983). It has also commented on regulations involving the Department of Labor in "Amendments to the Regulations Interpreting the 'Advice' Exemption of Section 203 of the Labor Management Reporting and Disclosure Act," 76 Fed. Reg. 36,178 (June 21, 2011), RIN 1245–AA03, and "Proposed Class Exemption under ERISA for Pension Transactions Involving Certain Residential Mortgage Financing Arrangements," 47 Fed. Reg. 21331 and 48 Fed. Reg. 58773 on January 8, 1982.

As a nonprofit, charitable organization providing free legal aid to employees, employers, small business, and consumers, the Center has encountered first hand the violation of rights by abuses under the auspices of government regulation that form the bases for this Comment. The Center itself is not directly affected by the proposed rule, because it is not a labor organization or employer required to report under LMRDA § 202 or § 203.

The Center opposes extending exemptions from the proposed rule where Form 5500 's have been filed under ERISA for any eligible trust or audits have been undertaken as it will adversely affect employee rights and impair reporting of the very information Form T-1 should obtain. Specifically, the proposed rule with its broad exemptions will impair the ability of individual employees to educate themselves about the consequences of choosing unionization and ensure the financial honesty of labor union leadership, subverting the very purpose Congress deemed reporting necessary.

Section 208 of the LMRDA of 1959 provides:

> The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this subchapter and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome, but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.

After 60 years, the proposed rule provides a basis for OLMS and covered employees to finally scrutinize the actual and potential avenues for evasion of reporting requirements through controlled trust funds or separate fund sources. The proposed rule imposes a fair burden on labor organizations that voluntarily set up separate funds as schemes intended to evade LM reporting requirements or become vehicles to do so.

The result of information collection is the Department, union employees, non-union employees, and the public can finally piece together elements of self dealing and corruption which the history of cases filed by the Department in its quarterly reports and reported to Congress reveal have occurred with regularity year in and year out.

OLMS's criminal records show no trust fund is immune from pilfering simply because the element of control may come from association with union officials, such as an accountant

who facilitates the corruption,[1] or a union trustee where there is nonmajority support by the union.[2]

The Center would suggest the Department's definition of what might "fund" might amount to a "trust" not be limited to formal arrangements set up under the auspices of state or federal law, but include accounts set up by labor organizations or union officials they claim are "funds" or "trusts" unilaterally created by the labor organization or created through collective bargaining, but without the required formalities, such as "funds" set up as private bank accounts,

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[1] "On February 26, 2019, in the United States District Court for the Southern District of New York, Salvatore Armao, the managing partner of an accounting firm, was sentenced to two years supervised release to include six months of home confinement, and ordered to pay $9,592 in restitution, $18,700 in forfeiture, and a $3,000 fine. On August 2, 2018, Armao pleaded guilty to an information for false statements in employee benefit plan records and reports, in violation of 18 U.S.C. 1027. On May 31, 2018, Armao was charged by complaint with aiding and abetting an embezzlement of union funds (18 U.S.C. 2 and 29 U.S.C. 501c), false statements in employee benefit plan records and reports (18 U.S.C. 1027), and conspiracy (18 U.S.C. 371). Armao's clients included the International Brotherhood of Trade Unions Local 122, a small independent union located in Long Island, NY, and the affiliated United Health and Welfare Fund. Rocco Fazzolari, the former President and Fund Administrator of Local 122, previously pleaded guilty to, and was sentenced for, embezzlement of union funds, ***embezzlement of benefit plan funds***, and conspiracy to embezzle plan funds, in violation of 29 U.S.C. 501(c), 18 U.S.C. 664, and 18 U.S.C. 371, respectively." **https://www.dol.gov/olms/regs/compliance/enforce_2019.htm**

[2] "On February 26, 2019, in the United States District Court for the Southern District of New York, Salvatore Armao, the managing partner of an accounting firm, was sentenced to two years supervised release to include six months of home confinement, and ordered to pay $9,592 in restitution, $18,700 in forfeiture, and a $3,000 fine. On August 2, 2018, Armao pleaded guilty to an information for false statements in employee benefit plan records and reports, in violation of 18 U.S.C. 1027. On May 31, 2018, Armao was charged by complaint with aiding and abetting an embezzlement of union funds (18 U.S.C. 2 and 29 U.S.C. 501c), false statements in employee benefit plan records and reports (18 U.S.C. 1027), and conspiracy (18 U.S.C. 371). Armao's clients included the International Brotherhood of Trade Unions Local 122, a small independent union located in Long Island, NY, and the affiliated United Health and Welfare Fund. Rocco Fazzolari, the former President and Fund Administrator of Local 122, previously pleaded guilty to, and was sentenced for, embezzlement of union funds, embezzlement of benefit plan funds, and conspiracy to embezzle plan funds, in violation of 29 U.S.C. 501(c), 18 U.S.C. 664, and 18 U.S.C. 371, respectively." https://www.dol.gov/olms/regs/compliance/enforce_2019.htm

locked safes, or safety deposit boxes containing cash. Those sources compensate labor union bosses in ways that remain unreported under the proposed rule.

For this Comment, the Center refers the Department to investigations undertaken by OLMS, publicly accessible court documents, Presidential and Congressional findings and documents.

Regarding OLMS files, the proposed regulation highlights the recent Fiat/UAW apprenticeship fund fraud scheme. Yet that case is not unique. An investigation in the misuse of joint apprenticeship fund resources by a Local Union Business Manager for Operating Engineers Local 150 was uncovered by union employees in Chicago about a dozen years ago. They filed their own lawsuit alleging breach of fiduciary duty and seeking an accounting under the LMRDA for misuse of apprenticeship fund assets. They also claimed their local union instituted a "Christmas Fund" maintained by its President and Business Manager. That person collected $100 in cash every month from approximately 70 union salaried employees for his personal use. Complaint paragraphs 8-13. No transactions were ever reported on the Union's LM-2 or LM-30. See Waldron v. Dugan, No. 07 C 0286 (N.D. Ill.). A copy of the Second Amended Complaint is attached as Exhibit A.

That private lawsuit prompted an investigation by OLMS, EBSA (Employee Benefits Standards Administration), and the FBI. The effort resulted in the conviction of Local Union President Dugan. The U.S. Attorney's Press Release on the conviction states in part:

> The retired leader of a regional labor union local was sentenced today to three years of probation for violating federal labor law by demanding and accepting custom-made livestock feeders for his buffalo farm in Maryland from a company that employed the union

> local's workers, as well as other similar related conduct....In addition, Dugan admitted the following related conduct: in 2002, he accepted the rental and delivery at his Maryland farm of a front-end loader, with a value of $7,265, from a company unionized by Local 150 workers; in 2004, this same company provided Dugan with a skid steer (small four-wheel drive engine-powered machine with a lift arm capable of being fitted with various attachments) at a price several thousands of dollars below market value; between 2003 and 2005, he accepted two 400-bushel truckloads of feed corn each year that, together with cash payments to Local 150, comprised the "rent" that a farmer paid to cultivate land the union owned in Will County; in 2003, he converted a front-end loader belong to the union apprentice program for his own benefit at his Maryland farm, and between 2001 and 2006, he misused a semi-tractor and trailers belonging to the apprentice program, while serving as the program's board chairman; and in 2005, he filed false reports with the Labor Department failing to disclose the benefits he obtained from companies whose workers were represented by Local 150.

A full copy of the Press Report dated October 10, 2010, is attached as Exhibit B.

Another kickback scheme was alleged against the same local union in Pena v. Op. Engrs., Local 150, No. 08 C 4222 (N.D. Ill.), where grievance settlements were obtained through bribes to union officials to reduce the amount owing under the Union's alleged grievance. It was alleged the Union breached its fiduciary duty to members. Complaint attached as Exhibit C. Therefore, the net must be flung broadly to include the many creative sources of union official self-dealing.

Finally, the proposed regulation refers to reports issued during the intervening 60 years with evidence of mob control over labor unions and their trust funds. The President's Commission on Organized Crime in its Report to the President and the Attorney General titled "THE EDGE: Organized Crime, Business, and Labor Unions" (March 1986) is referred to. The

Report found organized crime control over four unions: "These four international unions -- the ILA, Hotel and Restaurant Workers, Teamsters and Laborers -- have each been found by the Federal Bureau of Investigation to be 'substantially influenced and/or controlled by organized crime.'" Page 2. The Commission determined these unions were controlled by organized crime sources.

> Control includes the ability to direct the day-to-day affairs of a labor organization -- such things as entitlement to benefits, resolution of jurisdictional disputes, whether to strike or not, who runs for office and who does not, who gets elected to union office, the expenditure of union trust funds, and the use of union power for corrupt purposes.

The "plunder" of ERISA funds did not abate with the enactment of ERISA. Page 38 Rather,

> Pension and welfare fund vulnerability to piracy has not changed appreciably since ERISA's passage, as the commission's investigation and analysis of the Department of Labor demonstrates. In November 1981 Jimmy Fratianno, at the time the highest Mafia executive to defect, testified before the House Select committee on Aging. He described the crime syndicate's techniques for pirating pension and welfare funds. "All you do is find out who controls the money. Then you see if you can work out a deal," declared Fratianno. His various "deals" included bribing the union officers or trustees, paying kickbacks on loans or contracts to provide medical or dental services or insurance, and pressuring them through "mobbed up" superiors. "If all else fails, you break the guy's leg, or worse," explained Fratianno.

Page 39.

Importantly, the Statement of Senator William V. Roth, Jr. as Chairman of the Permanent Subcommittee on investigations on August 27, 1984, reviewed the influence of organized crime on the Hotel Employees and Restaurant Employees International Union in

Atlantic City, Las Vegas, and San Diego. 167 Daily Labor Report E-1 (Aug. 28, 1984) (copy attached as Exhibit D). While reviewing the influence of organized crime, Senator Roth detailed the mismanagement of health plans. He specifically recognized DOL's reliance on ERISA reporting and stated:

> The Department of Labor has no effective system to monitor compliance with the Employee Retirement Income Security Act of 1974. **The basic reporting and disclosure forms required by ERISA are of little or no use because they omit significant information such as full disclosure of vendors and subcontractors, and they are not uniformly reviewed nor catalogued by DOL**.

E-3 (emphasis added).

Senator Roth's comments regarding welfare plans did not escape scrutiny. He not only stated those "Taft-Hartley" plans do not have "adequate oversight," but "[p]repaid welfare plans are a magnet for criminal schemes due to their methods of cash receipt and disbursement." E-4.

These concerns have not abated through the years. While electronic filing makes auditing easier, the sums amassed in the funds/plans and distributed are now daunting to evaluate. Therefore, the proposed regulation's effort to employ a limited ERISA Form 5500 reporting exemption for Section 3(l) trusts from T-1 reporting should be retracted. There is no rationale basis for believing that ERISA forms aid in securing a "means to maintain democratic control over [union members'] labor organizations and ensure a proper accounting of labor organization funds," the twin pillars for LMRDA reporting "designed to empower" union members. 84 Fed. Reg. at 25130. No reason is given for that exemption.

Partial reliance upon Form 5500 means most Taft-Hartley employee benefit plans will

continue to fail to report kickbacks and other compensation to union officials that should be filed in the LM series of reports because the trust funds file Form 5500. It is probable not a single Taft-Hartley fund might report on Form T-1—an observation that can be gleaned from the failure of such Funds to comment on the 2006 iteration of the proposed T-1 rule because of the exemption.

Evasion of reporting requirements by Taft-Hartley unions will become the means to evade reporting of corrupt financial transactions if the Secretary maintains the Form 5500 exemption when he is empowered to obtain valid cross-checked reports through regulations authorized under LMRDA Section 208.

In short, the proposed rule is supported by the language of Section 203. It is also supported by the LMRDA's legislative history. Exemption of Form 5500 reporting by trust funds is not grounded in any legislative purpose in the LMRDA. "The goal of the statute is "to stop all questionable financial practices." United States v. Budzanoski, 462 F.2d. 443, 452 (3d Cir. 1972). Stopping some questionable practices falls short and is an abdication of authority.

Application of the $10,000 transaction and $250,000 union reporting thresholds are also insupportable for the above reason. All unions and funds utilize electronic bookkeeping. The Department reports today labor organizations are "complex" and hire sophisticated financial professional advice. 84 Fed. Reg. at 25130. Exempting reporting based on size only encourages the multiplication of small funds and low threshold reporting.

Another reason trust size and contribution limitations should be discarded is they may have been appropriate when financial reporting and DOL audit controls were analogue. Today,

almost every private citizen, local and international unions, and employers utilize electronic digital filing, electronic billing, and maintain financial records in digital form. DOL's latest requirement in its Electronic Forms System (EFS) mandates all LM-2, LM-3, LM-4, LM-20, LM-21, and LM-30 reports be filed electronically. This proves reporting unions must be capable of communicating with the DOL using electronic data.

There is no reason to require a high dollar trust minimum for reporting to accommodate a nonexistent or di minimus burden on filers. Therefore, randomly selected reporting thresholds should not be allowed.

DOL is correct that it should not make the same mistake with Form T-1 it did with Form LM-2. Union receipts should not limit Form T-1 reporting. Like the LM-2, the T-1 proposal should only require reporting if the trust receives contributions from reporting labor organizations. Therefore, if a LM-4 filing union had no receipts totaling $5,000 or more, it would not need to disclose anything. In the same fashion, the T-1 for smaller union filers (as described by DOL) would not have much to report on a Form T-1.[3] But the DOL seems to forget that union members and forced-dues payers involved with these "smaller" unions also deserve LMRDA protection of their statutory rights.[4]

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[3]Small union filers are not immune from LMRDA violations. OLMS's 2019 criminal investigation reports an LM-2 filer falsified information:

> "On March 26, 2019, in the United States District Court for the Northern District of California, Jonathon Ortino, former President of National Treasury Employees Union (NTEU) Chapter 165 (located in San Francisco, Calif.), was charged in a three-count indictment with making false entries with respect to the filing of the union's LM-3 Report for fiscal years 2014, 2015, and 2016, all in violation of 18 U.S.C. 1001(a)(2) & 2 (False Statements to a Government Agency). The indictment follows an investigation by the OLMS San Francisco-Seattle District Office."

[4]"On February 26, 2019, in the United States District Court for the Southern District of New

(continued...)

Similarly, there is no reason to burden Form T-1 by limiting the reporting to labor organizations "contribut[ing] more than 50 percent of the trust's receipts." 84 Fed. Reg. at 25133. This artificial threshold is also unrelated to Section 208's authority to the Secretary. The Secretary only needs to find reporting may be "necessary to prevent the circumvention or evasion of reporting requirements." The goal of the statute is "to stop all questionable financial practices." *United States v. Budzanoski*, 462 F.2d. 443, 452 (3d Cir. 1972). "To determine the meaning of the word, it is appropriate to resort to the context in which it is used. Id. The LMRDA imposes serious fiduciary responsibilities on union leaders. They must take the utmost care in their stewardship of their members' funds. Section 501 of the LMRDA." Id.

Finally, the trust funds should not be able to present an audit instead of Form T-1 as an audit can be controlled and terms of the audit managed and manipulated. Not even an audit report consistent with Generally Accepted Accounting Principle (GAAP) is suggested. The purpose of the regulation should be to obtain uniform information that permits union members to compare uniform reporting requirements; apples to apples. Because, "[t]he searchlight of publicity is a strong deterrent," Sen. Rep. 187 at 16, 86th Cong. 1st Sess (1959), cited in I Leg.

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[4](...continued)
York, Salvatore Armao, the managing partner of an accounting firm, was sentenced to two years supervised release to include six months of home confinement, and ordered to pay $9,592 in restitution, $18,700 in forfeiture, and a $3,000 fine. On August 2, 2018, Armao pleaded guilty to an information for false statements in employee benefit plan records and reports, in violation of 18 U.S.C. 1027. On May 31, 2018, Armao was charged by complaint with aiding and abetting an embezzlement of union funds (18 U.S.C. 2 and 29 U.S.C. 501c), false statements in employee benefit plan records and reports (18 U.S.C. 1027), and conspiracy (18 U.S.C. 371). Armao's clients included the International Brotherhood of Trade Unions Local 122, a small independent union located in Long Island, NY, and the affiliated United Health and Welfare Fund. Rocco Fazzolari, the former President and Fund Administrator of Local 122, previously pleaded guilty to, and was sentenced for, embezzlement of union funds, embezzlement of benefit plan funds, and conspiracy to embezzle plan funds, in violation of 29 U.S.C. 501(c), 18 U.S.C. 664, and 18 U.S.C. 371, respectively." https://www.dol.gov/olms/regs/compliance/enforce_2019.htm

Hist. of the LMRDA 412 (1959), the substitution of an audit for a T-1 Report would cause the insupportable comparison of apples to oranges. That undermines the legislative purpose to prevent evasion of the reporting requirements. The proposed Form 5500 exemption is itself a mechanism to evade the reporting requirements of the LMRDA.

The Secretary and union members will welcome the outcome of the exposure as Congress intended. The proposed rule should be finalized and adjusted as this Comment suggests.

Respectfully submitted,

Brett McMahon
Chairman

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERRY WALDRON, RAY SUNDINE, JR., MARTIN J. MACK, WILLIAM VETTER, and RONALD CHIADO,	)	
Plaintiffs,	)	
	)	07 C 0286
v.	)	
	)	Judge Pallmeyer
WILLIAM E. DUGAN,	)	
Defendant.	)	

SECOND AMENDED COMPLAINT

The plaintiffs, by their attorney, Stephen B. Horwitz, bring this derivative action, in Counts I and II, for monetary and injunctive relief, due to the defendant's breaches of the fiduciary duties imposed on him by the Labor Management Reporting and Disclosure Act ("LMRDA"), and, in Count III and Count IIIA, for defendant's fiduciary breaches in violation of the Employee Retirement Income and Security Act (ERISA), in Count IV for defendant's breach of the bylaws of a labor organization in violation of the Labor Management Relations Act, and Count V for common law breach of fiduciary duties. In support hereof plaintiffs represent as follows:

COUNT I

1. Subject matter jurisdiction for Count I and Count II is conferred by LMRDA § 501(b), 29 U.S.C. § 501(b), as well as 28 U.S.C. §§ 1331 and 1337. Pursuant to LMRDA § 501(b), plaintiffs have obtained leave of court to bring this action.

2. During all times material to the allegations of this complaint, the plaintiffs, Terry

aldron, Ray Sundine, Jr., Martin J. Mack, William Vetter, and Ronald Chiado, are, and for many years have been, members in good standing of Local No. 150 of the International Union of Operation Engineers (hereinafter "IUOE 150" or the "Union").

3. On December 18, 2006, prior to the institution of this action, and in accordance with LMRDA § 501(b), a demand was made on behalf of plaintiffs and other Union members, that IUOE 150, or its Executive Board, take action against the defendant, William E. Dugan ("Dugan'), the Union's chief executive officer, for the monthly monetary kickbacks Dugan has compelled and exacted from the Union's salaried staff. (Attached hereto as Exhibit A is the 12/18/06 letter.) After being afforded a reasonable time to take action against Dugan, IUOE 150 has failed to hold Dugan to an accounting for the fiduciary duties Dugan has breached by requiring Union employees to make kickbacks to Dugan. And in light of the autocratic authority the IUOE 150 bylaws vest in Dugan – *see*, ¶¶ 6-7 of this Count I – it is futile to expect the Union to take any action against Dugan, as exemplified in another pending accusation implicating Dugan, and others, of fiduciary breaches, which Dugan referred for "investigation" by one or more attorneys of Dugan's choosing, and for nearly seven (7) months – as of mid-January, 2007 – those accusations have yet to be resolved.

4. Dugan has been a member of IUOE 150 for over 50 years, and he was first employed by the Union in 1962, serving as a business agent. Since in or about 1986, and during all times material to the allegations of this complaint, Dugan has been the Union's chief executive officer, holding the positions of president and business manager of IUOE 150. Consequently, during all times material to the allegations of this complaint, Dugan has been an "officer" as that term is defined by LMRDA § 3(n), 29 U.S.C. 402(n). On or about June 27,

2008, Dugan resigned as the president and business manager of IUOE 150.

5. IUOE 150 has approximately 22,000 members, most of whom reside in the States of Illinois, Indiana and Iowa, making it one of the largest local labor organizations within the United States. IUOE 150 represents collective bargaining units within portions of those three States, and IUOE 150's craft jurisdiction, for purposes of organizing and representing employees, extends, *inter alia*, to persons operating motorized equipment of employers engaged in interstate commerce in the construction, building trades and landscape industries. IUOE 150 is a "labor organization" as that term is defined by LMRDA § 3(I). IUOE 150 maintains its principal place of business at its headquarters in Countryside, Illinois, within this Court's jurisdiction. Dugan's LMRDA violations that are the subject of Counts I and II of this complaint occurred in or near the Union's headquarters in Countryside, Illinois, and in or near other properties and facilities owned by the Union in Cook, Will, DuPage and Lake Counties, Illinois.

6. Article X1 § 1 of the Union's bylaws, which were drafted and revised during Dugan's 20 year reign as the president and business manager of IUOE 150, confer on the president and business manager virtually all authority in the administration and operation of the Union, and that section provides in material part as follows:

> It shall be the duties of the President-Business Manager to direct and conduct all of the business and affairs of this Local Union and its subdivisions; *** to appoint all business representatives and other employees who shall be directly responsible to him, set salaries and have full power to lay off or terminate the employment of such employees, to employ such legal counsel, certified public accountants, and other technical personnel as he may deem necessary and advisable; *** to initiate legal or administrative proceedings, actions or suits . . . in any legal or administrative proceedings, actions or suits in which in his judgment may be necessary to protect . . . this Local Union; *** he shall incur such

> expenses as may be necessary, proper or advisable in the carrying out his duties [sic], and shall cause all salaries and other current expenses to be paid; he shall perform all actions authorized herein, or which . . . may be delegated to him and those normally incident to said office which he deems necessary, advisable or proper . . . (Pertinent excerpts from the IUOE 150 bylaws are attached hereto as Exhibit B.)

7. In contrast to the explicit, manifold, and near absolute powers and duties of Dugan, as president and business manager, the IUOE 150 Executive Board, which is presided over by Dugan, serves as the Union's "policy forming tribunal," but has no authority or say-so under the bylaws with respect to the Union's operations and administration, be it in matters related to finances, expenditures, personnel and investigations, all of which powers are the sole prerogatives of Dugan under the IUOE 150 bylaws. And when the Executive Board is not in session – and it meets but 10 times per year – its "powers . . . pass to and [are] vested in the President-Business Manager."

8. For approximately 15 of the last 20 years since Dugan's election as the president and business manager of IUOE 150 in or about 1986, and during times material to the allegations of this complaint, including 2006, Dugan, individually or through his subordinates, including Jim Sweeney and Steve Cisco, vice president and recording corresponding secretary, respectively, have made it known to salaried employees of IUOE 150 that as a condition of employment with the Union, each such salaried employee would be required to make a $100 monthly cash payment to Dugan. The Union's salaried employees, who number in excess of 125, have been required to tender these cash payments to one of Dugan's secretaries, including Doreen Bara, who would record the contributing employee's name and the amount of the cash exaction, and the cash would then be stored in the safe in Dugan's private office at IUOE 150's Countryside, Illinois

headquarters.

9. In the event that an IUOE 150 employee was in arrears in these mandatory $100 cash kickbacks to Dugan, other Union personnel, including Sweeney and Cisco, acting at Dugan's behest, would admonish and browbeat employees who were late, or otherwise fell behind, in their forced tributes to Dugan. If an IUOE 150 employee balked or otherwise protested the $100 monthly cash kickback to Dugan, that employee was made to understand that continued nonpayment could jeopardize that employee's position with the Union.

10A. Three of the five plaintiffs in this action, Terry Waldron, William Vetter, and Ronald Chiado, were, at various times material to the allegations of this complaint, hired by Dugan and employed as salaried business agents by IUOE 150. During the course of their employment as IUOE 150 business agents, Messrs. Waldron, Vetter, and Chiado were compelled to kickback cash payments to Dugan in the monthly amount of $100 in U.S. currency. None of these plaintiffs considered these $100 cash payments to be voluntary on their part; rather, these payments were compulsory exactions which they remitted in order to retain their jobs with IUOE 150. Dugan has informed employees of IUOE 150 that they could afford to make these $100 monthly cash payments he required of them because he took these mandatory assessments into account when he exercised his discretion to set employee salaries, a power conferred on Dugan by Article X1 § 1 of the IUOE 150 bylaws.

10B. For many years during his 20+ years as President and Business Manager of IUOE 150, Dugan regularly awarded year-end bonuses to employees of IUOE 150, including business agents, organizers and other staff members. These year-end bonuses would be paid by IUOE 150 check, and would be drawn against an IUOE 150 bank account. The bonuses would typically be

issued at a semiannual staff meeting that Dugan conducted each December. The monetary amount of the bonus that each employee would receive at these year end staff meetings would be determined solely by Dugan in exercise of the powers conferred on Dugan by Article X1 § 1 of the IUOE 150 bylaws, including the power "to appoint all business representatives and other employees who shall be directly responsible to him, set salaries and have full power to lay off or terminate the employment of such employees . . ."

10C. During the year end meetings where IUOE 150 employees were issued bonuses in amounts that Dugan determined, as alleged in ¶ 10B, Dugan would remind employees as a group that they had to get caught up in payments to Dugan's Christmas Fund. With the IUOE 150 credit union housed in the same office complex as IUOE 150 headquarters, IUOE 150 employees who were behind in Christmas Fund contributions could, and an untold number did, cause their IUOE 150 bonus checks to be cashed at the Local 150 credit union. Larry L. Sparks, who was employed as an IUOE 150 business agent/organizer for approximately 11 years, until his employment terminated in or about August 2007, was among those employees who, upon receipt of year end bonus checks, would heed defendant Dugan's urgings to employees to pay up their arrearages to Dugan's Christmas Fund. Like untold numbers of other employees, Mr. Sparks, after cashing that year's IUOE 150 bonus check at the IUOE 150 credit union, would then bring the cash proceeds to Dugan's secretary, Doreen Bara, who, among the duties she performed on behalf of Dugan, was to accept Christmas Fund contributions and record and report the amount of each employee's Christmas Fund remittance into ledgers that Ms. Bara maintained.

11. On or about September 21, 2006, at a meeting of an IUOE 150 branch, known as District 5, Dugan, who chaired the meeting, when questioned about how he used the $100

compelled monthly payments – which Dugan euphemistically referred to as contributions to his "Christmas Fund" – closed off any discussion of these kickbacks by stating: "boys we're going someplace we hadn't ought to be." Members who asked for copies of the minutes of this meeting were stonewalled, leading to a belief that any subsequent production of minutes of the District 5 meeting of September 21, 2006, will have been doctored.

12. LMRDA § 501(a), imposes a fiduciary duty on labor union officers like Dugan, and provides in that regard as follows:

> The officers . . . and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

13. The $100 monthly kickback scheme that Dugan, in his capacity as president and business manager of IUOE 150, has imposed upon and enforced against employees of IUOE 150, as more particularly described in ¶¶ 8-10 of Count I of this complaint, has been, and is, in violation of the fiduciary duties demanded of Dugan as a labor organization officer under LMRDA § 501(a), in one or more of the following respects:

> (a) The mandatory and compulsory cash payments were, in part, derived from and/or tied to the salaries of IUOE 150 employees, and by funneling the Union's assets *qua* salaries to employees,

from whom Dugan then exacted $100 per month, Dugan unlawfully converted and misappropriated Union funds for his own personal use and benefit;

(b) The mandatory and compulsory cash payments exacted from IUOE 150 employees constituted a *de facto* payroll tax and/or fee or assessment levied and collected by Dugan as a condition of continued employment with IUOE 150, making these monies the funds, assets and property of IUOE 150, which Dugan unlawfully converted and misappropriated for his own personal use and benefit;

(c) The mandatory and compulsory cash payments, which were exacted from IUOE 150 employees and kickbacked to Dugan, constitute *de facto* increases in Dugan's compensation, which, were not legitimate salary increases under the bylaws because IUOE 150 has failed to include the amounts kickbacked to Dugan in the Union's annual LM-2 report that IUOE 150 is required to file with the U.S. Department of Labor, pursuant to LMRDA § 201(b)(3), 29 U.S.C. § 431(b)(3). That section provides that a labor organization must "detail" and "accurately" disclose, *inter alia*, "salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer . . . during such fiscal year . . ." (Attached hereto as Exhibit C is an excerpt from the 2005 LM-2 filed by the Union, disclosing Dugan's gross salary and all disbursements to be $211,892, but this sum is exclusive of the kickbacks that were exacted from IUOE 150 employees and converted by Dugan for his own personal use and benefit.)

(d) the mandatory and compulsory cash payments, which were exacted from these employees and kickbacked to Dugan, were monies that Dugan was able to extract because of, *inter alia*, the autocratic powers wielded by Dugan as president and business manager, but since these exactions were neither authorized by the Union's bylaws nor approved by any governing body of IUOE 150, Dugan unlawfully converted and misappropriated monies, assets and funds of the Union for his own personal use and benefit;

(e) the mandatory and compulsory cash payments, which were exacted from IUOE 150 employees and kickbacked to Dugan, by one or more of the schemes described in ¶¶ 13a-13d herein, conflicted with Dugan's duty to refrain from dealing with the Union as an adverse party in connection with his duties as the

president and business manager of IUOE 150;

(f) the mandatory and compulsory cash payments, which were exacted from IUOE 150 employees and kickbacked to Dugan, by one or more of the schemes described in ¶¶ 13a-13d herein, conflicted with Dugan's duty to refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of the Union;

(g.) the mandatory and compulsory cash payments which were exacted from IUOE 150 employees and kickbacked to Dugan, by one or more of the schemes described in ¶¶ 13a-13d herein, were assets and property of the Union that Dugan unlawfully converted and misappropriated for his own personal use and benefit, and amounted to unaccounted for profits that Dugan received based on transactions conducted by him, or under his control and direction, by virtue of his position as the president and business manager of IUOE 150.

14. Dugan has caused great harm to IUOE 150 as a result of his egregious misuse of his office, and the multitude of fiduciary breaches he has committed as the president and business manager of IUOE 150, by being able to extract cash payments from IUOE 150 employees as if they were Dugan's own automatic teller machines awash with Union-derived cash. This has allowed Dugan to engage in the systematic conversion and misappropriation of Union funds, thereby depriving the Union of the use and benefit of its monies, assets, and funds, in violation of LMRDA § 501.

WHEREFORE, plaintiffs pray that the fiduciary breaches in violation of LMRDA § 501, that have been committed by the defendant, William E. Dugan, in his capacity as president and business manager of IUOE 150, as alleged in Count I be remedied as follows:

A. That Dugan be ordered to make a complete accounting of all monies which he has obtained by virtue of the mandatory and compulsory cash payments from IUOE 150 employees,

that they were required to kickback to Dugan, by one or more of the schemes described in ¶¶ 8-10 and ¶¶ 13a-f of this complaint;

B. That Dugan be ordered to make complete restitution to IUOE 150 of all monies that he unlawfully converted and all monies he otherwise unlawfully received by virtue of the mandatory and compulsory cash payments from IUOE 150 employees, that they were required to kickback to Dugan, by one or more of the schemes described in ¶¶ 8-10 and ¶¶ 13a-f of this complaint;

C. That Dugan be forever enjoined from taking, receiving, accepting or converting, whether in the form of cash payments or other properties or assets whatsoever, that, directly or indirectly, are tendered, given or derived from the funds or assets of any employee of IUOE 150;

D. That Dugan be forever enjoined in his capacity as an officer of IUOE 150, or otherwise, from exercising any authority in connection with (I) hiring, appointing, selecting terminating and laying off any prospective and/or incumbent employee of IUOE 150, and (ii) setting or determining wages, salaries, compensation and benefits of any prospective, incumbent and/or former employee of IUOE 150;

E. That Dugan be ordered to pay attorney's fees to plaintiffs' attorney, and all costs and expenses incurred in the prosecution of this action as provided for in LMRDA § 501(b); and

F. That the Court order such other and further relief against Dugan as would be just and equitable.

COUNT II

15. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 1 through 6 of Count I of this complaint.

16. During all times material to the allegations of Count II of the complaint, Dugan has been the owner of a farm in Hancock, Maryland, known as Dugan's Buffalo Farm, where he raises livestock. During Dugan's tenure as president and business manager of IUOE 150, the Union has acquired, as fee simple owner, many acres of Illinois farm land where crops, principally corn, are grown and harvested. Mike Foulk is, and during all times material to the allegation of Counts II and III of this complaint, a salaried employee of IUOE 150.

17. Accompanying the correspondence dated December 18, 2006 (Exhibit A, referenced in ¶ 3 of Count I), requesting the IUOE 150 Executive Board to take action against Dugan for his fiduciary breaches by exacting kickbacks, as alleged in Count I of this complaint, was a copy of the official minutes of the meeting held on October 19, 2006, of District 5 of IUOE 150. (Attached hereto as Exhibit D is a copy of the 10/19/06 minutes.) Those minutes, in addition to disclosing the kickbacks demanded by Dugan for his "Christmas Fund," also revealed the following: IUOE 150 member Mike Foulk admitted that he was required to transport, in a semi-tractor trailer that was the property of the IUOE 150 Apprenticeship Fund, loads of corn – grown on acreage owned by the Union – to Dugan's buffalo farm located in Hancock, Maryland.

18. Considering IUOE 150's failure to take action against Dugan on account of his fiduciary breaches in compelling IUOE 150 employees to pay him kickbacks – even though the Union's general counsel, Dale Pierson, knew about the compulsory cash payments to Dugan, due to, *inter alia,* Pierson's presence at IUOE 150 meetings, including the meeting of September 21, 2006, where Dugan cut off discussion of the kickbacks, as alleged in ¶ 11 of Count I – it would have been futile to have demanded action by IUOE 150 relating to Dugan's conversion of the assets and property belonging to the Union.

19. Dugan breached the fiduciary duties imposed and expected of him as a labor organization officer under LMRDA § 501(a), in one or more of the following respects:

> (a) Dugan has caused the Union's crops to be converted and misappropriated for use as fodder on Dugan's Maryland buffalo farm, with Dugan failing to pay the fair market value to IUOE 150 for the Union's corn crops;
>
> (b) Dugan has caused Mike Foulk to make 21 round trips, between the first quarter of 2001 through the first quarter of 2006, transporting, *inter alia*, loads of IUOE 150 crops to Dugan's farm in Maryland, and because these trips occurred during work time when Foulk was on the Union's payroll, Dugan converted and misappropriated the Union's resources, without Dugan reimbursing IUOE 150 for the salary (or benefits) paid to Foulk by the Union while Foulk devoted his time to the personal business and private commercial gain of Dugan;
>
> (c) Dugan caused Union resources to be converted and misappropriated because interstate highway tolls and miscellany expenses were paid by IUOE 150 when Foulk transported Union owned crops to Dugan's farm in Maryland, without Dugan reimbursing the Union for the costs and expenses that were incurred for Dugan's personal business and private commercial gain.

20. Dugan has exercised free reign over the Union and its wealth, and, as described in ¶¶ 19a-c, Dugan has treated the assets, property, and funds of the Union as his own personal property, and he has conscripted staff members of IUOE 150 to tend to his personal business and private commercial interests. By placing his own personal and pecuniary interests ahead of the interests of IUOE 150 and its members, Dugan has acted as an adverse party to the Union in violation of the fiduciary duties of a union officer under LMRDA § 501. As a result of the fiduciary breaches he has committed as the president and business manager of IUOE 150, Dugan has caused great harm to IUOE 150, and he has deprived the Union of the use and benefit of its assets, property, funds and staff.

WHEREFORE, plaintiffs pray that the fiduciary breaches in violation of LMRDA § 501, that have been committed by the defendant, William E. Dugan, in his capacity as president and business manager of IUOE 150, as alleged in Count II be remedied as follows:

A. That Dugan be ordered to make a complete accounting of all assets, funds, and property of the Union that he has converted and misappropriated for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests, as described in Count II;

B. That Dugan be ordered to make complete restitution to IUOE 150 of the full fair market value of the assets, property, funds and staff of the Union that he converted and misappropriated and misused for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

C. That Dugan be forever enjoined from converting, misappropriating, and misusing the assets, property, funds and staff of the Union;

D. That Dugan be ordered to pay attorney's fees to plaintiffs' attorney, and all costs and expenses incurred in the prosecution of this action as provided for in LMRDA § 501(b); and

E. That the Court order such other and further relief against Dugan as would be just and equitable.

COUNT III

21. Subject matter jurisdiction for Count III is conferred by ERISA § 502(e)(1) and (f), 29 U.S.C. § 1132(e)(1) and (f), as well as 28 U.S.C. §§ 1331 and 1337.

22. The plaintiffs, identified in ¶ 2 of Count I, are, or have been, employed in bargaining units represented by IUOE 150, and their respective employers are, or have been, signatory to

collective bargaining agreements with IUOE 150. Each of the IUOE 150 collective bargaining agreements covering the plaintiffs have contained a provision requiring their employers to make contributions to the Operating Engineers Local 150 Apprenticeship and Skill Improvement Fund (the "ASI Fund"). Between June 1, 2001 and through June 1, 2006, the rate of contribution to the ASI Fund under these IUOE 150 collective bargaining agreements has increased from forty-five cents per hour to seventy cents per hour for each hour a covered employee receives wages. During times material to the allegations of Count III, plaintiffs' signatory employers made contributions to the ASI Fund based on the hourly wages received by these plaintiffs. Plaintiffs, as employees of employers who are signatory to an IUOE 150 collective bargaining agreement, benefit and/or have benefitted from the ASI Fund apprenticeship program, and plaintiffs were eligible or are or may become eligible for the benefits of the skill improvement program of the ASI Fund. Consequently these plaintiffs are "participants" of the ASI Fund as that term is defined by ERISA § 3(7), 29 U.S.C. § 1002(7), and as that term is used in ERISA § 502(a)(2).

23. The ASI Fund is a § 302(c)(6) Taft-Hartley Trust Fund, 29 U.S.C. § 186(c)(6). The ASI Fund is also an "employee welfare benefit plan" as that term is defined by ERISA § 3(1). The ASI Fund maintains its principal place of business in Plainfield, Illinois, within this judicial district.

24. During times material to the allegations of this Second Amended Complaint, defendant Dugan, was the Chairman of the Board of Trustees of the ASI Fund, and as a trustee of the ASI Fund, Dugan is both a "party in interest" and a "fiduciary" as these terms are respectively defined and/or used in EISA §§ 3(14)(A) and 3(21)(A). As an ASI Fund trustee, and hence an ASI Fund fiduciary, Dugan must discharge his duties in accordance with the fiduciary duties

prescribed by EISA § 404(a), 29 U.S.C. § 1104(a), and the dealings of Dugan, as an ASI Fund trustee, are also governed by ERISA's "prohibited transactions" provisions, ERISA § 406(a) and (b), 29 U.S.C. § 1106(a) and (b). Upon information and belief, effective June 27, 2008, Dugan resigned as an ASI Fund Trustee.

25. As a fiduciary of the ASI Fund, Dugan is required by the positive injunction of ERISA § 404(a)(1)(A) to discharge his duties "solely in the interest of the participants and beneficiaries," and for the "exclusive purpose" of "providing benefits to participants and their beneficiaries." ERISA § 404(a)(1)(B) affirmatively obligates Dugan, as an ASI Fund fiduciary, to use "care, skill, prudence, and diligence" when he discharges those duties. And ERISA § 404(a)(1)(D) likewise contains the positive injunction that Dugan is to discharge his duties as a fiduciary of the ASI Fund "in accordance with the documents and instruments governing the plan . . ."

26. ERISA § 406(a)(1) contains a series of negative injunctions that prohibit Dugan from causing the ASI Fund "to engage in a transaction," if such fiduciary, like Dugan, "knows or should know that such transaction constitutes," *inter alia*, "a direct or indirect —

> (A) sale or exchange or leasing, of any property between the plan and a party in interest
>
> ***
>
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
>
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; ***"

ERISA § 406(b) goes on to provide that "[a] fiduciary with respect to a plan shall not —

> (1) deal with the assets of the plan in his own interest of for his own account,
> (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose

> interest are adverse to the interests of the plan or the interests of its participants or beneficiaries, ***"

27. In order to properly train apprentices and improve the skills of journeymen, the ASI Fund employs salaried personnel as instructors, and the ASI Fund has purchased, or otherwise owns, various assets, including heavy duty construction equipment, as well as a variety of tools, supplies and materiel, other motorized apparatus and vehicles, including a Peterbuilt tractor semitrailer (#T-1054), a 963 CAT Loader, diesel fuel to run its assorted equipment and vehicles, and fuel tanks, all of which are the sole and exclusive property of the ASI Fund.

28. Dugan breached the positive and negative commands, set forth and quoted in ¶¶ 25 and 26 of this Count III, that govern his conduct as a fiduciary of the ASI Fund in one or more of the following respects:

> (a) The 21 round trips taken between the first quarter of 2001 through the first quarter of 2006, when Foulk transported, *inter alia*, IUOE 150 crops originated, for the most part, in Plainfield, Illinois, the site of the ASI Fund's main training facility, and terminated at Dugan's Maryland farm, and the mode of transportation on each of these round trips was the Peterbuilt tractor semitrailer owned by the ASI Fund;
>
> (b) The Peterbuilt tractor semitrailer that transported the Union's crops on these 21 trips to Dugan's Maryland farm, were fueled-up by Foulk with diesel fuel taken from the ASI Fund's storage tanks in Plainfield.

29. Dugan breached the positive and negative commands, set forth and quoted in ¶¶ 25 and 26 of this Count III, that govern his conduct as a fiduciary of the ASI Fund – breaches that occurred whether or not Dugan reimbursed the ASI Fund (which he did not do) – in one or more of the following additional respects:

> (a) Dugan converted and misappropriated for his own personal use

or private commercial gain: (I) a new 963 CAT Loader costing more $250,000.00, (ii) two new 500 gallon fuel tanks, and (iii) a cyclone fence, all of which items ended up at Dugan's Maryland farm, where Foulk, doing Dugan's bidding, transported them via the ASI Fund's Peterbuilt tractor semitrailer;

(b) Dugan caused Frank Bodgen, while working as a salaried employee of the ASI Fund, to use and expend Fund resources, including supplies and materiel, to construct and/or fabricate a variety of items, including (I) metal buffalo feeders, (ii) metal storage racks, and (iii) a stainless steel flagpole, all of which Dugan converted and misappropriated for his personal use and private commercial gain, and transported by Foulk in the ASI Fund's tractor semitrailer to Dugan's Maryland farm;

(c) Dugan caused an ASI Fund mechanic, while working as a salaried employee of the ASI Fund, to use and expend Fund resources, including supplies and materiel: (i) to make repairs and service farm and other equipment that Dugan owned, including the repair of 580 K combination backhoe and the complete reconditioning of a 350 bulldozer, and (ii) Dugan caused the ASI Fund to reimburse IUOE 150 for the latter's purchase of an hydraulic valve for installation in a tractor owned by Dugan, and by causing these expenditures Dugan converted and misappropriated ASI Fund assets for his own personal use or private commercial gain.

WHEREFORE, plaintiffs pray that the fiduciary breaches in violation of ERISA that have been committed by the defendant, William E. Dugan, in his capacity as a trustee of the IUOE 150 Apprenticeship and Skill Improvement Fund, as alleged in Count III, be remedied as follows:

A. That Dugan be ordered to make a complete accounting of all assets, funds, and property of the ASI Fund that he has converted and misappropriated for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

B. That Dugan be ordered to make complete restitution to the ASI Fund of the full fair market value of the assets, property, funds and staff of the ASI Fund that he converted and

misappropriated for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

C. That Dugan be forever enjoined from converting, misappropriating, and misusing the assets, property, funds and staff of the ASI Fund, and of any other employee welfare benefit plan and employee pension benefit plan;

D. That Dugan be permanently removed, and forever banned, from holding a position as a trustee of the ASI Fund, and Dugan should also be permanently removed, and forever banned, from holding any other fiduciary positions, whether as a trustee or otherwise, for any employee welfare benefit plan and employee pension benefit plan;

E. That Dugan be ordered to pay attorney's fees to plaintiffs' attorney, and all costs and expenses incurred in the prosecution of this action as provided for in EISA § 502 (g); and

F. That the Court order such other and further relief against Dugan as would be just and equitable.

COUNT IIIA

30. Plaintiffs repeat and incorporate by reference the allegations of paragraphs 21 through 26 of Count III.

31. As in the case of salaried IUOE 150 employees, salaried ASI employees, were beholden to defendant Dugan, because defendant Dugan had the power, and exercised that power, to hire and fire ASI Fund employees, and defendant Dugan also determined the compensation of ASI Fund employees, including wages, salaries and bonuses.

32. As in the case of salaried IUOE 150 employees, Dugan required salaried ASI employees, as a condition of employment with the ASI Fund, to make a $100 monthly cash

payment to Dugan's Christmas Fund. ASI employees were required to tender these cash payments to Dugan's secretary, Doreen Bara.

33. The compensation of ASI employees, in the form of wages, salaries and bonuses, are derived from contributions that employers, who are parties to collective bargaining agreements with IUOE 150, are contractually required to make to the ASI Fund, which contributions are, and have been, determined using a contractual formula based on the hourly wages received by employees represented by IUOE 150, including one or more of the plaintiffs.

34. As in the case of IUOE 150 salaried employees, in the event that an ASI salaried employee was in arrears or late in these mandatory $100 cash payments such an employee would be informed, advised or reminded by Dugan, or two other IUOE 150 officers, *viz.*, James Sweeney or Steven Cicso, acting on Dugan's behalf, to make their cash payments into the Christmas Fund on time.

35. As in the case of IUOE 150 salaried employees, the $100 monthly cash payments that ASI Fund salaried employees made into the Christmas Fund were mandatory, and not voluntary, for one or more of the following reasons:

> (a) Dugan had complete control over the terms and conditions of employment of ASI Fund salaried employees, which, in addition to whether an employee continued his employment status with the ASI Fund, included the amount of wages, salaries and bonuses that ASI salaried employees received.
>
> (b) At staff meetings attended by salaried employees of the ASI Fund, as well as IUOE 150 salaries employees, Dugan on one or more occasions informed all such employees that they could afford to make cash payments into his Christmas Fund because of the pay increases Dugan has given to employees, with Dugan referring to, on one or more occasions, a $1,200 salary increase he authorized.

(c) At staff meetings attended by salaried employees of the ASI Fund, as well as IUOE 150 salarie employees, Dugan on one or more occasions informed all such employees that they could afford to make cash payments into his Christmas Fund because the money was his money, not their money.

(d) At year end staff meetings attended by salaried employees of the ASI Fund, as well as IUOE 150 salaried employees, Dugan regularly awarded year-end bonuses to ASI Fund salaried employees. Upon information and belief, these year-end bonuses would be paid by ASI Fund check, and would be drawn against an ASI Fund bank account. The bonuses would typically be issued at a semi-annual staff meeting that Dugan conducted each December. The monetary amount of the bonus that each ASI Fund salaried employee would receive would, upon information and belief, be determined solely by Dugan in connection with the authority he exercised to set compensation for ASI Fund employees.

(e) During the year end staff meetings where ASI Fund salaried employees were issued bonuses in amounts that Dugan determined, as alleged in ¶ 35(d), Dugan would remind employees as a group, including those ASI Fund salaried employees in attendance, that they had to get caught up in payments to the Christmas Fund. With the IUOE 150 credit union housed in the same office complex as IUOE 150 headquarters, ASI Fund salaried employees who were behind in Christmas Fund contributions could, and an untold number did, cause their ASI Fund bonus checks to be cashed at the Local 150 credit union. With cash in hand, an untold number of these ASI Fund salaried employees who were in arrears in their Christmas Fund contributions, would then seek out Dugan's secretary, Doreen Bara, who, among the duties she performed on behalf of Dugan, would accept Christmas Fund contributions, whether the payments were from IUOE 150 or ASI Fund employees, and Ms. Bara would record and report the amount of employee payments into the Christ mas Fund ledgers that Ms. Bara maintained.

36. The $100 monthly cash payments that ASI Fund salaried employees were required to make to Dugan's Christmas Fund, were monies that Dugan was able to extract because of, inter alia, the autocratic powers wielded over ASI Fund employees. Upon information and belief,

these $100 monthly cash payments required by Dugan of ASI Fund employees, were neither authorized, nor approved, nor ratified by the ASI Fund Board of Trustees, of which defendant Dugan was but one member.

37. The requirement that ASI Fund salaried employees make payments into defendant Dugan's Christmas Fund, constitutes the unlawful diversion, conversion and misappropriation by Dugan of ASI Fund assets, in violation of the fiduciary duties imposed upon Dugan by ERISA, including one or more of the following:

> [i] ERISA § 404(a)(1), pursuant to which Dugan, as an ASI Fund fiduciary, was obligated to "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 . . . ***
>
> [ii] ERISA § 406(b), which provides that "[a] fiduciary with respect to a plan shall not —
>
> (1) deal with the assets of the plan in his own interest of for his own account,
>
> (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interest are adverse to the interests of the plan or the interests of its participants or beneficiaries, ***"

38. Dugan, as a fiduciary of the ASI Fund, was, with respect to the ASI Fund, also a "party in interest" as that term is defined by ERISA § 3(14)(A). Hence, the requirement that ASI Fund salaried employees make payments into defendant Dugan's Christmas Fund, constitute the

unlawful diversion, conversion and misappropriation by Dugan of ASI Fund assets, in violation of the fiduciary duties imposed upon Dugan by ERISA, including one or more of the following:

(i) ERISA § 406(a)(1), pursuant to which Dugan, as an ASI Fund fiduciary, was prohibited from causing the ASI Fund "to engage in a transaction," if such fiduciary"knows or should know that such transaction constitutes," *inter alia*, "a direct or indirect —

(A) sale or exchange or leasing, of any property between the plan and a party in interest

***

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; ***"

39. Dugan's breach of his fiduciary duties as set forth above, by causing the unlawful diversion, conversion and misappropriation of ASI Fund assets, has caused harm and damage to the ASI Fund, and Fund participants, like the plaintiffs. The unlawfully diverted, converted, and misappropriated ASI Fund assets deprived the ASI Fund of monies that otherwise should have been available for the administration and operations of the ASI Fund.

WHEREFORE, plaintiffs pray that the fiduciary breaches in violation of ERISA that have been committed by the defendant, William E. Dugan, as alleged in Count IIIA be remedied as follows:

A. That Dugan be ordered to make a complete accounting to the ASI Fund of all monies which he has obtained by virtue of the mandatory and compulsory cash contributions that ASI Fund employees were required to pay to Dugan's Christmas Fund;

B. That Dugan be ordered to make complete restitution to the ASI Fund of all monies that he unlawfully converted and all monies he otherwise unlawfully received by virtue of the

mandatory and compulsory cash payments from ASI Fund employees, that they were required to pay to Dugan and his Christmas Fund;

C. That Dugan be ordered to pay attorney's fees to plaintiffs' attorney, and all costs and expenses incurred in the prosecution of this action as provided for in EISA § 502 (g); and

D. That the Court order such other and further relief against Dugan as would be just and equitable.

COUNT IV

40. Jurisdiction under Count IV is based on § 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. § 185.

41. Plaintiffs repeat and incorporate by reference the allegations of the LMRDA claims of Counts I and II, and subparagraphs a-b of ¶ 28, and subparagraphs a-c of ¶ 29 of Count III.

42. The bylaws of IUOE 150 is a "contract" as that term is used in LMRA § 301(a). Likewise, the AFL-CIO Ethical Practices pertaining to the handling of funds, as more particularly alleged in¶¶¶ 43 and 44 of this Count IV, are contractual terms and provisions binding on Dugan, and when Dugan holds and handles the funds and assets of the Union, he must exercise his duties and activities conforming to, and obeying, the terms of Article XVIII of the IUOE 150 bylaws. The IUOE bylaws and the AFL-CIO Ethical Practices constitute contracts between labor organizations within the meaning of LMRA § 301(a). (A copy of Article XVIII of the bylaws is attached hereto and incorporated herein as Exhibit E.).

43. Article XVIII of the IUOE 150 bylaws, provide, in material part, as follows:

Section 1. Purpose – The funds of the Union shall be utilized solely

> for the legitimate expenses required in the conduct of the Union's affairs and the maintenance thereof and shall not be diverted therefrom.
>
> Section 2. Loans – No loans shall be made from the monies of the Local Union for any purpose unless approved by the International President, and in no event shall loans on any type be made to any member, officer or Executive Board member of the Union.
>
> Section 3. Special Funds – Where monies are collected for specific purposes, such funds collected shall be kept in a separate fund and utilized for such purpose or purposes unless transferred to the general accounts of the Union with the consent of the membership.
>
> ***
>
> Section 5. Ethical Practices Committee - The standard practices suggested by the AFL-CIO Ethical Practices Codes shall be adopted as regards the handling of funds.

44. The AFL-CIO Ethical Practices pertaining to the handling of funds (pertinent excerpts of which are attached hereto and incorporated herein as Exhibit F), provide in material part as follows.

> **Ethical Practices Code II – Health and Welfare Funds**
>
> ***
>
> 1. No union official who already receives full-time pay from his union shall receive fees or salaries of any kind from a fund established for the provision of a health, welfare or retirement program.
>
> ***
>
> 5. The trustees . . . of welfare funds should make a full disclosure [of] . . . the receipts and expenses of the fund; all salaries and fees paid by the fund, with a statement of the persons to whom paid; the amount paid and the service or purpose for which paid . . .
>
> ***
>
> 7. Where . . . union trustees participate in the administration of the investment of welfare fund reserves, the union . . . should make every effort to prohibit the investment of welfare fund reserves . . . in any enterprise in which any trustee . . . of the fund has a personal financial interest . . .
>
> ***
>
> 8. Where any trustee . . . of a health or welfare program is found to

have received an unethical payment, the union should insist upon his removal and take appropriate legal steps . . .

Ethical Practices Code IV – Investment and Business Interests of Union Officials

***

No . . . union official should have a personal financial interest which conflicts with . . . his fiduciary duties . . .

***

Ethical Practices Code V – Financial Practices and Proprietary Activities of Unions

***

Since a union holds its funds for the benefit of its membership and to further their interests it should comply with standards generally applicable to fiduciaries or trustees with respect to the manner in which it keeps its records and accounts.

***

With respect to accounting and financial controls and the expenditure of its funds . . . should follow the strictest rules applicable to all well-run institutions. With respect to the policies governing its financial . . . decisions, a higher obligation rests upon [a] union . . .: to conduct its affairs and to expend and invest its funds . . . for the benefit of its membership . . .

***

Supplemental Code **– Minimum Accounting & Financial Controls**

***

A. Detailed and accurate records of accounts, in conformity with generally recognized and accepted principles of accounting, should be . . . maintained . . .These records should include . . . a cash receipt record, a cash disbursements record . . .

B. All receipts should be duly recorded and currently deposited. No disbursements of any nature should be made from undeposited cash receipts.

C. All expenditures should be approved by proper authority . . . and be recorded and supported by voucher, providing an adequate description of the nature and purpose of the expenditure sufficient for a reasonable audit . . . Disbursements should be made only by check . . .

D. Salaries of elected officials should be established only by

> constitutional provision. ***
>
> E. Reimbursement of expenses . . . should be made only where such expenses have been duly authorized . . .
>
> ***
>
> M. N[o] . . . union . . . should make personal loans to its officers . . . for the purpose of financing the private business or investment of such persons.
>
> N. No "kickbacks" or any other improper payment. should be accepted or made, directly or indirectly, by any officer, representative or employee of an affiliate in connection with any financial transaction of such affiliate.

45. As the Union's president and business manager and/or as chairman of the board of trustees of the ASI Fund, Dugan engaged in the conversion, misappropriation and/or conscription for his own use, pecuniary gain, personal business and/or private commercial interests: (a) Union funds by the exaction of compulsory cash payments from IUOE 150 employees, (b) Union assets, property, and personnel, and (c) ASI Fund assets, property, and personnel. Dugan's misconduct in these regards constitute breaches of one or more of the contractual provisions that have governed Dugan's duties as a fiduciary as set forth in ¶¶ 43 and 44 of this Count IV.

WHEREFORE, plaintiffs pray that the contractual breaches that have been committed by the defendant, William E. Dugan, in his capacity as president and business manager of IUOE 150, and as a trustee of the ASI Fund, as alleged in Count IV be remedied as follows:

A. That Dugan be ordered to make a complete accounting of all assets, funds (including the cash that IUOE 150 employees had to kickback to Dugan), property and personnel of the Union and/or ASI Fund, as the case may be, that he has converted and misappropriated for his own personal use, pecuniary gain and personal business and private commercial interests, as described in Count IV;

B. That Dugan be ordered to make complete restitution of the funds (including the cash that IUOE 150 employees had to kickback to Dugan), as well as full restitution of the full fair market value of the assets, property, staff of the Union and/or ASI Fund, as the case may be, that he converted and misappropriated for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

C. That Dugan be forever enjoined from converting, misappropriating, and misusing the assets, property, funds and staff of the Union and ASI Fund, as the case may be, for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

D. That Dugan be forever enjoined from taking, receiving, accepting, converting, misappropriating, or conscripting the assets, property, funds and staff of the Union and/or ASI Fund, as the case may be, for his own personal use, and/or to advance his own pecuniary gain and personal business and private commercial interests;

E. That Dugan be permanently removed from all fiduciary positions he holds with IUOE 150 and the ASI Fund;

F. That Dugan be ordered to pay attorney's fees to plaintiffs' attorney, and all costs and expenses incurred in the prosecution of this action; and

G. That the Court order such other and further relief against Dugan as would be just and equitable.

COUNT V

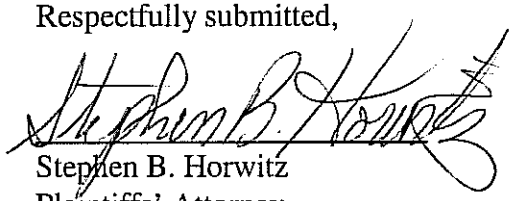
46. Plaintiffs invoke the court's ancillary jurisdiction for its Count V common law tort claims, as permitted by LMRDA § 603(a).

47. Plaintiffs repeat and incorporate by reference the allegations of Counts I and II.

48. By Dugan's conversion and misappropriation of the assets, property, funds and staff of IUOE 150, for his own personal use, private gain, or private commercial profit, the fiduciary obligations and the trust Dugan owes to the Union has been breached, causing the Union and its members to suffer harm and damages.

WHEREFORE, plaintiffs pray for judgment in favor of IUOE 150 and against Dugan, and for an award of both compensatory and punitive damages, attorneys fees and costs, and such other and further relief against Dugan as would be just and equitable.

Respectfully submitted,



Stephen B. Horwitz
Plaintiffs' Attorney

Sugarman & Horwitz
221 N. LaSalle Street, Suite 626
Chicago, Illinois 60601
312-629-2920

EXHIBIT B

Retired Head of Operating Engineers Local 150 Sentenced for Illegally Obtaining Equipment for His Maryland Buffalo Farm

U.S. Attorney's Office
October 14, 2010

Northern District of Illinois
(312) 353-5300

CHICAGO—The retired leader of a regional labor union local was sentenced today to three years of probation for violating federal labor law by demanding and accepting custom-made livestock feeders for his buffalo farm in Maryland from a company that employed the union local's workers, as well as other similar related conduct. The defendant, William E. Dugan, was president and business manager of the International Union of Operating Engineers Local 150, headquartered in Countryside, from 1988 through 2005. Dugan was also fined $30,000 and ordered to pay restitution and the costs of his supervision while on probation, announced Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois; James Vanderberg, Special Agent-in- Charge of the U.S. Department of Labor Office of Inspector General in Chicago; and Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation.

The sentence was imposed by Magistrate Judge Michael Mason in U.S. District Court. Dugan, 77, of Hancock, Md., and formerly of Mt. Prospect, Ill., has already paid restitution of $4,800 to Local 150 and $6,000 to the Apprenticeship Skills Improvement Program (AISP.) Dugan pleaded guilty to the misdemeanor charge of violating the U.S. Labor-Management Relations Act in March shortly after he was charged. Under federal law, Dugan's conviction bars him from participating in any union activities for 13 years. Local 150 represents approximately 23,000 members working in construction and a variety of other industries in Indiana, Illinois and Iowa.

In pleading guilty, Dugan admitted that in 2005 he demanded and accepted several concrete buffalo feeders valued at approximately $500 apiece from a company in Elgin, whose workers were represented by Local 150.

In addition, Dugan admitted the following related conduct: in 2002, he accepted the rental and delivery at his Maryland farm of a front-end loader, with a value of $7,265, from a company unionized by Local 150 workers; in 2004, this same company provided Dugan with a skid steer (small four-wheel drive engine-powered machine with a lift arm capable of being fitted with various attachments) at a price several thousands of dollars below market value; between 2003 and 2005, he accepted two 400-bushel truckloads of feed corn each year that, together with cash payments to Local 150, comprised the "rent" that a farmer paid to cultivate land the union owned in Will County; in 2003, he converted a front-end loader belong to the union apprentice program for his own benefit at his Maryland farm, and between 2001 and 2006, he misused a semi-tractor and trailers belonging to the apprentice program, while serving as the program's board chairman; and in 2005, he filed false reports with the Labor Department failing to disclose the benefits he obtained from companies whose workers were represented by Local 150.

The government was represented by Assistant U.S. Attorney Patrick King. Other Labor Department branches that participated in the investigation were the Employee Benefits Security Administration and the Office of Labor Management Standards.

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PETER PENA, JR. and DANIEL PENA,	)	
Plaintiffs,	)	
v.	)	**No.**
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO; MIDWEST OPERATING ENGINEERS PENSION TRUST FUND; MIDWEST OPERATING ENGINEERS WELFARE FUND; STEVEN CISCO; COLIN M. DARLING; CHARLES AUGUST; and OTHER UNIDENTIFIED BUT KNOWN PARTICIPANTS,	)	FILED: JULY 24, 2008 LI 08CV4222 JUDGE HART MAGISTRATE JUDGE SCHENKIER
Defendants.	)	**Plaintiffs demand trial by jury**

COMPLAINT

NOW COMES the Plaintiffs, Peter Pena, Jr. and Daniel Pena (hereinafter "Plaintiffs", or individually "Plaintiff Peter Pena, Jr." and "Plaintiff Daniel Pena"), by and through their attorneys, The Thollander Law Firm, Ltd. and complains against the Defendants, INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO (hereinafter "Defendant Local 150"), MIDWEST OPERATING ENGINEERS PENSION TRUST FUND (hereinafter "Defendant Local 150 Pension Fund"), MIDWEST OPERATING ENGINEERS WELFARE FUND (hereinafter "Defendant Local 150 Welfare Fund"), STEVEN CISCO (hereinafter "Defendant Cisco"), COLIN M. DARLING (hereinafter "Defendant Darling"), CHARLES A. AUGUST, a.k.a.

CHUCK AUGUST (hereinafter "Defendant August"), and OTHER UNIDENTIFIED BUT KNOWN PARTICIPANTS, as follows:

NATURE OF ACTION

1. This action is brought pursuant to the bribing and agreement to fix a grievance involving Plaintiffs and their then employer, A & C Landscaping, Inc. (hereinafter "A & C Landscaping") which is engaged in interstate commerce. Plaintiffs bring this action pursuant to the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, *et seq.*), and state pendent claim for breach of fiduciary duty.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is conferred and invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 18 U.S.C. 1962(c).

3. Venue is proper in this judicial district under 28 § 1391(b) and (c) because Plaintiffs and all of the Defendants either reside in this district or have their principal place of business in this district, and all events giving rise to Plaintiffs' claims occurred within this district.

THE PARTIES

4. Plaintiffs are Illinois residents, who resided at all relevant times, in the Northern District of Illinois.

5. Defendant Local 150 is a labor organization purporting to represent members throughout Illinois, Iowa and Indiana, including members working in the Illinois counties of Cook and DuPage, as well as other counties within the Northern District of Illinois. Defendant Local 150 has its principal place of business in Countryside, Illinois.

6. Defendant Local 150 Pension Fund is the pension fund of Defendant Local 150 of which its members and their employers, to and including Plaintiffs and A & C Landscaping, contribute toward the pensions of its members. Defendant Local 150 Pension Fund has its principal place of business in Countryside, Illinois.

7. Defendant Local 150 Welfare Fund is the welfare fund of Defendant Local 150 of which its members and their employers, to and including Plaintiffs and A & C Landscaping, contribute toward the welfare accounts and affairs of its members. Defendant Local 150 Welfare Fund has its principal place of business in Countryside, Illinois.

8. Defendant Cisco is an individual residing in Illinois and at all relevant times pertinent to the matters giving rise to this litigation, an agent and recording correspondence secretary for Defendant Local 150.

9. Defendant Darling is an individual residing in Illinois and at all relevant times pertinent to the matters giving rise to this litigation, a business agent for Defendant Local 150.

10. Defendant August is an individual residing in Illinois and at all relevant times pertinent to the matters giving rise to this litigation, a business agent for Defendant Local 150.

COUNT I

(CIVIL RACKETEER INFLUENCE AND CORRUPT ORGANIZATION "RICO" v. ALL DEFENDANTS)

11. Plaintiffs incorporate and reallege paragraphs 1 through 10 as if fully set forth herein.

12. Plaintiffs bring their claims under 18 U.S.C. § 1961, *et seq.*

Defendants engaged in the pattern of Racketeering Activity

13. On or about July 15, 1998, Plaintiff Peter Pena, Jr. began his employment with A & C Landscaping as a laborer.

14. On or about July 21, 2000, Plaintiff Daniel Pena began his employment with A & C Landscaping as laborer.

15. On or about May 14, 2003, Plaintiff Peter Pena, Jr. was admitted as member of Defendant Local 150.

16. On or about May 14, 2003, Plaintiff Daniel Pena was admitted as member of Defendant Local 150.

17. A & C Landscaping provides certain excavating services, using heavy machinery and equipment to perform the aforesaid services.

18. A & C Landscaping is a Local 150 signatory contractor, employing machine operators whom are union members of Defendant Local 150.

19. A & C Landscaping union employees are entitled to certain hourly wages, benefits and entitlements pursuant to certain Collective Bargaining Agreements with Defendant Local 150, including but not limited to Heavy and Highway and Underground Agreement and the Northern Illinois Material Producers' Association Agreement.

20. At all relevant times pertinent hereto, Plaintiffs were employed by A & C Landscaping as heavy machine operators. Plaintiffs were, and are, members of Defendant Local 150.

21. On or about April 11, 2005, representatives of Defendant Local 150, through an investigation into A & C Landscaping's business practices, uncovered that A

& C Landscaping had been mischaracterizing the activities of Plaintiffs so as to pay a lesser union scale. A & C Landscaping paid Plaintiffs, as union members less than the hourly union wage scale for the work and services actually performed by Plaintiffs.

22. As a result of Defendant Local 150 investigation into the business practices of A & C Landscaping, Defendant Local 150 did engage the accounting firm of Graff, Ballauer, Blanski & Friedman, P.C., to conduct a wage audit of A & C Landscaping to determine the amounts of past wages due and owing Plaintiffs.

23. As a result of Defendant Local 150 investigation into the business practices of A & C Landscaping, the fringe benefit arm of Defendant Local 150, Defendant Local 150 Pension Fund and Defendant Local 150 Welfare Fund, did similarly engage the accounting firm of Graff, Ballauer, Blanski & Friedman, P.C., to conduct a fringe benefit audit of A & C Landscaping to determine the amounts of past benefits (health and welfare, pension, apprenticeship and skill improvement, vacation savings, and construction research fund) which may be due and owing to these funds.

24. On or about September 21, 2005, the accounting firm of Graff, Ballauer, Blanski & Friedman, P.C., concluded its audit determining that Plaintiffs were owed wages of $110,546.46 by A & C Landscaping.

25. On or about September 26, 2005, the accounting firm of Graff, Ballauer, Blanski & Friedman, P.C., concluded its audit determining that A& C Landscaping owed $52,740.38 in fringe benefits to Defendant Local 150 Pension Fund and Defendant Local 150 Welfare Fund.

26. On or about July 12, 2005, and on October 5, 2005, Defendant Local 150 filed grievances pursuant to the Heavy and Highway and Underground Collective

Bargaining Agreement (hereinafter "Heavy Highway Agreement") against A & C Landscaping for failure to pay proper wages and fringe benefits.

27. Plaintiffs' work activities with A & C Landscaping were not such activities which would subject Plaintiffs to the terms and conditions of the Collective Bargaining Agreement between Northern Illinois Material Producers' Association and Defendant Local 150.

28. On or about late 2005, Plaintiffs' grievance was submitted to the Joint Grievance Committee.

29. Plaintiffs were unaware of, and were never informed by Defendant Local 150 or Defendant Cisco, that their grievance was submitted to the Joint Grievance Committee for a hearing on said grievances.

30. On or about late 2005 or early 2006, Plaintiffs' grievances were submitted to and went to hearing before the Joint Grievance Committee.

31. The voting participants of Joint Grievance Committee hearing plaintiffs' grievance comprised of, upon information and belief, eight individuals.

32. The Joint Grievance Committee voting members representing labor included, but not limited to, Defendant Cisco, Defendant Darling, and Defendant August.

33. Defendant Local 150, Defendant Cisco, Defendant Darling, Defendant August, and upon information and belief, other known but unidentified individuals, did engage in a scheme to defraud Plaintiffs by soliciting, requesting, demanding, insisting and then accepting a bribe to fix, change, alter the outcome of Plaintiffs' grievance.

34. Defendant Local 150, Defendant Cisco, Defendant Darling, Defendant August, and upon information and belief, other known but unidentified individuals, did

engage in a scheme to defraud Plaintiffs by agreeing to fix, change, and alter the outcome of Plaintiffs' grievance and thereby settle same for payment to Defendant Local 150, Defendant Cisco, Defendant Darling, Defendant August, and upon information and belief, other known but unidentified individuals, to resolve Plaintiffs' grievance.

35. At some point subsequent to Plaintiffs' grievance but prior to February 15, 2006, $25,000.00 was paid either directly or indirectly to Defendant Local 150 through an agent or representative, to fix, change or otherwise impact, to the detriment of Plaintiffs, the outcome of their grievance.

36. Upon information and belief, Dave Snelton acted as the bag man for the delivery of the bribe.

37. At some point subsequent to Plaintiffs' grievance but prior to February 15, 2006, $25,000.00 was paid either directly or indirectly to Defendant Local 150 through an agent or representative, to settle Plaintiffs grievance for a sum less than what was due and owing the Plaintiffs.

38. Defendant Cisco, Defendant Darling, and Defendant August, each agreed to accept and each did ultimately receive not less than $5,000.00 to fix, change or otherwise impact, to the detriment of the Plaintiffs, the outcome of their grievance.

39. Defendants agreed to accept and did ultimately receive monies by way of a bribe to settle Plaintiffs grievance for a sum less than what was due and owing the Plaintiffs.

40. Upon information and belief, there existed a pattern and practice by Defendant Local 150, through its agents and representatives, to and including Defendant Cisco, Defendant Darling, and Defendant August, to cause, steer, direct or otherwise

encourage grievances by members to enable, encourage and foster solicitation of bribes and offers to swing, change, fix or otherwise change the outcome of a grievance based upon a bribe or favor as opposed to an impartial resolution of a grievance based upon the facts.

41. On or about December 15, 2005, Defendant Local 150, through its official, Defendant Cisco, did cause the September 20, 2005, audit by Graff, Ballauer, Blanski & Friedman, P.C. to be changed to reflect Plaintiffs were owed $27,637.87.

42. On or about December 15, 2005, Defendant Local 150 Pension Fund and Defendant Local 150 Welfare Fund, through their official, Defendant Cisco, did cause the September 20, 2005, audit by Graff, Ballauer, Blanski & Friedman, P.C. to be changed to reflect that the funds were owed $8,865.29.

43. On or about late 2005 or early 2006, Plaintiffs grievance proceeded to hearing whereupon a purported deadlock occurred.

44. On or about February 15, 2006, Defendant Cisco, on behalf of Defendant Local 150, Defendant Local 150 Pension Fund and Defendant Local 150 Welfare Fund did settle Plaintiffs' grievance with A & C Landscaping for approximately 25% of monies and benefits owed to the Plaintiffs.

45. This settlement was based upon a $25,000.00 bribe received by Defendant Local 150, Defendant Cisco, Defendant Darling and Defendant August.

46. Plaintiffs became aware of the bribe on or about March 7, 2008.

47. Defendants conduct in engaging in a pattern and practice of RICO activity has resulted in Plaintiffs being defrauded of money and benefits and being subjected to materially false and fraudulent pretenses and representations, material omissions and

actions of concealment for the protection of the scheme to defraud Plaintiffs out of wages and benefits.

The Pattern of Racketeering Activity

48. Defendants fraudulent acts are not isolated, but rather are part of a fraudulent pattern of conduct through which the Defendants encouraged, supported and otherwise participated in a pattern and practice of soliciting, seeking, securing and otherwise accepting bribes to fix, change or otherwise unfairly impact grievances involving Local 150 members, to and including Plaintiffs.

49. The pattern of racketeering activity, as defined by 18 U.S.C. § 1961(1) and (5) consisted of the following acts:

(a) inflating, increasing or supporting the filing of grievances so that demands, requests and offers to fix, change or otherwise unfairly impact grievances involving Local 150 members, to and including Plaintiffs, would occur.

(b) extorted or attempted to extort monies from employers by threatening grievances which could monetarily injury said employers.

(e) accepting bribes to fix, change, alter or otherwise unfairly impact grievances involving Local 150 members, to and including Plaintiffs.

(f) agreeing to accept and accepting bribes to settle grievances, including Plaintiffs' grievance.

(g) utilized the United States mail to further their scheme to solicit, request, and accept a bribe to fix, change, alter or otherwise unfairly impact Plaintiffs' grievance.

Common Scheme to Defraud

50. All predicate acts are related and were committed with a common scheme in mind: to fix, change, alter, or otherwise unfairly impact grievances involving Local 150 members, to and including Plaintiffs, for a bribe.

51. Defendants' conduct was part of the scheme to fix, change, alter or otherwise unfairly render a determination of a grievance based upon receipt of money.

52. It was a further goal of the scheme to defraud and cheat Local 150 members from a fair and impartial determination of their grievance, by soliciting, accepting and encouraging bribes to fix, change, alter or otherwise unfairly determine a grievance, to and including Plaintiffs' grievance.

Enterprise

53. Defendants were an association, in fact an enterprise as defined by 18 U.S.C. § 1961(4), that was and is engaged in, and its activities affect, interstate commerce (hereinafter "Enterprise").

54. The structure of the Enterprise is comprised of all of the Defendants, of which Defendant Cisco, upon information and belief, was the final policymaker and to which he had command and control.

55. The Defendants were employed by and associated with the Enterprise, which was engaged in and the activities of which affected interstate commerce, unlawfully and knowingly conducted and participated, directly and indirectly, in the conduct of the affairs of that Enterprise through a pattern of racketeering activity through the commission of two or more racketeering acts set forth herein.

56. At all relevant times, Defendants knowingly and willingly associated with the association-in-fact Enterprise comprised of the Defendants and conducted and participated in the conduct of the Enterprise's affairs directly and indirectly by defrauding and extorting money to fix, change, alter or otherwise unfairly impact a grievance, to and including Plaintiffs' grievance for the benefit of the Defendants and the Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §1962.

57. The pattern of racketeering engaged in by the Defendants involved at least two separate but related schemes, carried out from at least 2005 to present and were directed at Plaintiffs and other victims.

58. Defendants' conduct is likely to continue into the present, as it has in the past, and constitute their regular course of business, separate and distinct from the lawful activities of Defendant Local 150.

59. As a direct and proximate cause of Defendants' racketeering activities and violations of 18 U.S.C. § 1962(c) Plaintiffs have suffered economic injury including but not limited to the following:

a) Lost wages;

b) Lost benefits;

c) Lost accrual in interest in benefit plans;

d) Forced to incur expenses as a result of the intentional conduct of the individual named Defendants;

e) Emotional anguish;

f) Humiliation; and

g) Embarrassment.

60. As set forth more fully above, in violation of 18 USC § 1962(d) the Defendants devised, participated in and conspired to engage in a scheme to defraud, attempted extortion and to operate an enterprise through a pattern of racketeering

61. Plaintiff requests a trial by jury.

WHEREFORE, Plaintiffs, Peter Pena, Jr. and Daniel Pena, respectfully requests that this Court grant them the following relief:

A. All wages and benefits Plaintiffs would have received but for Defendants' unlawful conduct, including prejudgment interest;

B. Compensatory damages in an amount to be determined at trial to compensate Plaintiffs for the humiliation, anguish, and emotional distress caused by the Defendants' conduct;

C. A permanent injunction enjoining Defendants from engaging in the unlawful conduct complained of herein;

D. Treble or punitive damages as allowed by law to be determined at trial;

E. An award of attorneys' fees, costs, and litigation expenses; and

F. Such other and further relief as this Court may deem just and equitable.

COUNT II
(Breach of Fiduciary Duty)

1-46. Plaintiff re-pleads and re-alleges paragraphs 1 through 46 of Count I as paragraphs 1 through 46 of Count II, as if fully set forth herein.

47. Defendants status as Plaintiffs' representative and advocate with respect to employer/employee matters and disputes created a fiduciary relationship between Plaintiffs and Defendants.

48. As a result of the aforementioned fiduciary relationship, Defendants had a duty of loyalty to Plaintiffs. Therefore, Defendants at all times, must refrain from engaging in conduct harmful to Plaintiffs or adverse to Plaintiffs' interest.

49. Defendants breached their fiduciary duty to Plaintiffs in one or more of the following:

a. soliciting money to fix, change, alter or otherwise unfairly prejudice Plaintiffs from a fair and impartial grievance.

b. accepting money to fix, change, alter or otherwise unfairly prejudice Plaintiffs from a fair and impartial grievance.

c. accepting money to fix, change, alter or influence the outcome of Plaintiffs' grievance.

d. settling Plaintiffs' grievance for less than the actual amount owed to Plaintiffs.

e. settling Plaintiffs' grievance for less than the actual amount owed to Plaintiffs based upon receipt of a bribe.

50. The acts and actions of Defendants have resulted in their respective breach of their duty of loyalty to Plaintiffs.

51. As a result of the Defendants' breach, Plaintiffs have suffered damage by way of lost wages and benefits.

52. Plaintiffs request a trial by jury.

WHEREFORE, Plaintiffs, Peter Pena, Jr. and Daniel Pena, respectfully requests that this Court grant them the following relief:

A. All wages and benefits Plaintiffs would have received but for Defendants' unlawful conduct, including prejudgment interest;

B. Compensatory damages in an amount to be determined at trial to compensate Plaintiffs for the humiliation, anguish, and emotional distress caused by the Defendants' conduct;

C. A permanent injunction enjoining Defendants from engaging in the unlawful conduct complained of herein;

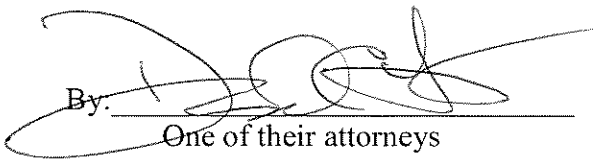
D. Punitive damages as allowed by law;

E. An award of attorneys' fees, costs, and litigation expenses; and

F. Such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

Peter Pena, Jr. and Daniel Pena



By: _____
One of their attorneys

The Thollander Law Firm, Ltd.
1048 Ogden Avenue
Suite 200
Downers Grove, Illinois 60515
Phone: (630) 971-9195
Facsimile: (630) 971-9240
A.R.D.C. 6202012

VERIFICATION

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that they verily believes the same to be true.

Peter Pena, Jr.

Daniel Pena

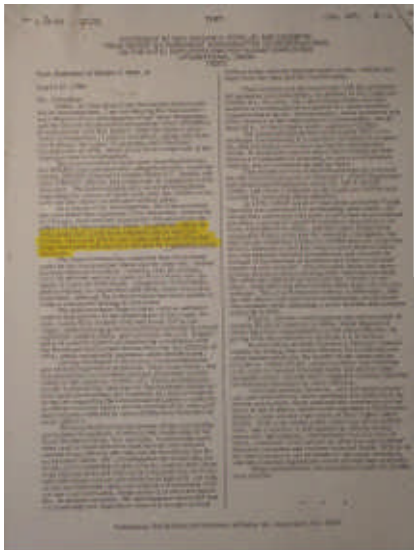
SUBSCRIBED AND SWORN before me
this 24th day of July, 2008

OFFICIAL SEAL
MARIA P GOSS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/27/12

Notary Public

The Thollander Law Firm, Ltd.
1048 Ogden Avenue
Suite 200
Downers Grove, Illinois 60515
Phone: (630) 971-9195
Facsimile: (630) 971-9240
A.R.D.C. 6202012

EXHIBIT D



Excerpts from report by Subcommittee

I. PREAMBLE

The Permanent Subcommittee on Investigations is mandated by the Senate to study and investigate whether improper practices are occurring in labor-management field and to determine whether statutory changes are required to protect against such practices.[1] The Subcommittee has embraced this responsibility over several decades and through a succession of Chairmen, including John McClellan, Henry Jackson, Sam Nunn and William Roth.

Investigations of labor-management issues tend to be inherently controversial, as they can be construed as attacks on institutions generally. When a particular union which comes under scrutiny happens to be one of the largest and most influential unions in the country, these concerns may be magnified to a greater degree. But the scheme of federal regulation for labor unions and labor-management relations delineates a strong role for all three branches of the federal government, and the Subcommittee has undertaken its review of the Hotel Employees and Restaurant Employees International Union (HEREIU) pursuant to its stated mandated and its traditional role,[2] with the objective of assuring the goals of fair and democratic unionism.[3]

The Report which follow is designed to summarize this investigation, point out the Subcommittee's findings, and alert the Congress and the country to serious problems within this labor organization.

II. CHRONOLOGY OF PSI INVESTIGATION

PSI's investigation of HEREIU, which began in mid-1981, has had a dual focus: (1) the alleged ties between the union and organized crime interests and the effect of any such ties upon the union's general assets and its pension and health and welfare funds; and (2) the possible diminution of members' rights by actions taken either at the International or local level.

Initially, the Subcommittee set out to gather as much information as possible concerning these issues from governmental agencies which had already examined various aspects of HEREIU operations. These agencies included the Department of Justice, the Department of Labor (especially its Inspector General's Office), and several state and local agencies, particularly in New Jersey.[4] In some instances access to information was restricted because agency investigations were pending.

The Subcommittee examined, in light of existing labor laws, many of the actions taken by International General President Edward T. Hanley and the HEREIU General Executive Board, particularly in the areas of mergers, trusteeships, elections, and legal fees. The performance of those agencies designated to enforce federal labor and criminal laws was also evaluated.

During the initial stages of its investigation, PSI learned of allegations involving the benefit funds of some of the larger HERE locals. The Subcommittee focused on several of these locals and subpoenaed records pertaining to their pension funds and health and welfare funds.

By pursuing these steps, the Subcommittee identified scores of individuals whom it desired to interview. As this list grew, the Subcommittee's requests for books, records, and other documents similarly escalated. Ultimately it became necessary to narrow the scope of the investigation to address specific locals which were found to be worthy of close scrutiny and eventual public examination.

The Subcommittee held a total of five sets of public hearings on HEREIU. Initial hearings focused on individual HERE locals. On June 22 and 23, 1982, Locals 54 (Atlantic City) and 5 (Honolulu) were reviewed. On September 28, 29, and 30, 1982, testimony was received pertaining to Locals 30 (San Diego), 28 (Oakland), 19 (San Jose), and 86 (Reno). On April 27 and 28, 1983. Locals 151 (Atlanta), 355 (Miami), and 2 (San Francisco) were examined.

The April 1983 hearing also drew attention to the conduct of the International officers. Joseph Hauser, a federally protected witness, appeared before the Subcommittee and related his direct knowledge of organized crime ties to HEREIU officials and of plans by HEREIU officials to misuse the union's benefit funds.

Continuing in that expanded vein in September 1983, the Subcommittee presented its evidence pertaining to two specific HERE local dental benefit plans, examined additional evidence of organized crime links to HEREIU, and received the testimony of HEREIU General Secretary-Treasurer Herman Leavitt. In November 1983, Anthony Accardo, alleged to be the former head of organized crime in Chicago, appeared before the Subcommittee. Accardo reappeared on June 21, 1984.

On May 15, 1984, Edward Hanley appeared before the Subcommittee after being served with a subpoena in Palm Springs. Hanley asserted his privilege against self-incrimination and refused to answer any questions regarding PSI's investigation.[5]

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[1] See, e.g., Senate Resolution 76, Section 13(c)(1)(B), March 2, 1983.

[2] Subcommittee Chairman William V. Roth, Jr., stated. "These hearings, in one sense, complement the Subcommittee's investigations in the late 1970's and early 1980's of three other large international unions — the Teamsters, the Laborers, and the Longshoremen." Hearings before the Senate Permanent Subcommitee on Investigations. "Hotel Employees and Restaurant Employees International Union," 97th & 98th Cong., Part 1, p. 2 (hereinafter referred to as HEREIU Hearings).

[3] Cf. 29 U.S.C. 411 (1959) ("Bill of Rights" for union members). The Subcommittee finds that the remarks of some HEREIU officers and employees reflect a misunderstanding of this objective, for instance the statement of HEREIU General Counsel John J. Reynolds to HEREIU's General Executive Board on April 22, 1983: "(The investigators from the Permanent Subcommittee on Investigations) are gathering data from all over the country with no clear idea of the purpose of their investigation except to smear the labor movement. . ." *Catering Industry Employee*. July 1983. p. 21. See also, statement of Local 6 president and International Vice President Vito Pitta, Hotel Voice, Volume 31, Number 36, December 12, 1983. (*Hotel Voice* is the Local 6 newspaper: an editorial headline in this issue sttated. "Pitta Tells Local 6 Board, Senate Investigators Smear Unions, Help Bosses".) Similar comments can be found in a resolution adopted by the General Executive Board on May 14, 1984, in conjunction with Edward Hanley's appearance before PSI.

[4] Beginning in 1977, the Department of Justice conducted an extensive grand jury investigation of actions taken by various HEREIU officials; DOJ was particularly interested in three major loans which were executed by the International Union shortly after Edward T. Hanley became its General President (in 1973). See pp. 25-32, infra. However, no criminal charges were brought pertaining to these loans. The DOJ investigation also reviewed other expenditures made by HEREIU: the eventual result was on indictment and subsequent conviction of the Union's General Secretary-Treasurer, John Gibson. See p. 44, infra.

[5] The Subcommittee convened one executive session (March 1983), which was unsealed and is reprinted with the record of the April 1983 hearing.