

**Statement of Reasons
Dismissing a Complaint
Concerning the Imposition of a Trusteeship
Over Local 333,
United Marine Division
International Longshoremen's Association, AFL-CIO
In Staten Island, NY**

A member in good standing of the International Longshoremen's Association, AFL-CIO ("ILA") Local 333 filed a complaint with the United States Department of Labor ("Department") on November 2, 2011, alleging that on October 19, 2011 the United Marine Division ("UMD") of the ILA violated Title III of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 401, et seq., by unjustifiably imposing a trusteeship upon Local 333. For the following reasons, the complaint is dismissed.

Section 304 of the LMRDA, 29 U.S.C. § 464, provides that a trusteeship imposed by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing is "presumed valid for a period of eighteen months from the date of establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302." 29 U.S.C. § 464(c). Section 302 allows trusteeships "for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization."

Local 333 has an unusual status because it is a local union of the UMD, which is affiliated with the ILA. During its investigation the Department learned that Local 333 is one of the three local unions comprising the UMD. Under the 1976 Agreement of Affiliation between the ILA and the UMD, the UMD is "a completely autonomous [body of the ILA]...function[ing] under its own Constitution and Bylaws but subject to the ILA Constitution." As a result of this unusual status, the Department considered the constitutions and bylaws of both the ILA and the UMD in determining whether the trusteeship was properly imposed.

The complainant alleged that the trusteeship was improper. He asserted that the ILA should not have passed responsibility for imposing the trusteeship to the UMD when the trusteeship hearing had been conducted by the ILA. The complainant also alleged that the UMD should have held its own independent hearing to consider whether a trusteeship should have been imposed. In addition to challenging the validity of the trusteeship on procedural grounds, the complainant alleged that the UMD imposed the trusteeship to

prevent Local 333 from disaffiliating with the UMD, which allowed two deposed Local 333 officers to regain power through undemocratic means. The Department conducted an investigation of the allegations. As a result of the investigation, the Department concluded that the trusteeship was established for a purpose allowable under the LMRDA and in accordance with the constitutions and bylaws of the UMD and the ILA.

The UMD Constitution only briefly discusses how a trusteeship should be created. There are no provisions specifying the sort of conditions under which a trusteeship should or could be imposed. The only provision of the UMD Constitution addressing the procedure to establish a trusteeship is Article 3, Section 1, which grants authority to the UMD president, upon direction of the UMD executive board, to appoint a trustee to administer the affairs of the local. Otherwise, the UMD Constitution is silent on the issue of trusteeships.

In contrast, the ILA Constitution provides a detailed set of rules which must be followed in order to create a trusteeship. Article XXI, Section 1 of the ILA Constitution provides in pertinent part: “Trusteeships over local unions, district councils, or district organizations shall be established and administered in accordance with this Article and for one or more of the following purposes...(2) to correct financial malpractice...”

Further, Article XXI, Section II permits the ILA Executive Council to appoint a committee to evaluate whether a trusteeship should be imposed on a member union; but, ultimately, it states that the ILA Executive Council alone has the power to make a final decision on trusteeships. Otherwise, the procedures set forth in the ILA Constitution for imposing a trusteeship do not contradict in any way the limited provisions set forth in the UMD Constitution for imposing a trusteeship.

In the instant case, due to several alleged incidents of financial mismanagement, a member of Local 333 requested that the ILA use its authority under Article XXI of its constitution to impose a trusteeship to oversee the financial activities of Local 333.

On May 10, 2011 two vice presidents of the ILA issued a notice that a trusteeship hearing would be held before appointed hearing officers (“the Committee”) on May 25, 2011. The hearing provided an opportunity for all interested parties to submit evidence and present testimony. The Local 333 officials alleged to be responsible for financial mismanagement were allowed to be represented by legal counsel, if they so chose, at their own expense. Members and officers attended and spoke at the hearing. The investigation found no evidence that any person sought to postpone this hearing.

On September 12, 2011, the Committee issued a “*Committee Report of Findings and Recommendations*” in the aforementioned proceeding. The Committee found that two of the charges, failure to collect dues and failure to safeguard the Local 333 UMD Annuity Fund for New York City Employees (“the Annuity Fund”), raised serious material concerns about the elected officers’ management of Local 333’s finances.

With respect to the Annuity Fund charge, the Committee found that there was a pattern of negligence and dereliction of the trustees' fiduciary duties for failing to follow the City of New York's Office of the Comptroller Directive 12, which provides competitive proposal procedures to be followed by fund trustees of all New York City employee benefit funds while administering such funds. Specifically, the Committee found that in November 2008 the Local 333 trustees hired a new third-party administrator, [REDACTED], without soliciting at least three bids as required by Directive 12. [REDACTED] persuaded the trustees to select CGC Advisors, LLC ("CGC") as their new financial advisor for the Annuity Fund. Once again, the trustees did not solicit bids prior to making this selection. At the time of this selection, CGC had only recently opened for business, and the Annuity Fund was one of its first clients and only institutional investor. Two years later in 2010, the SEC charged CGC's Chief Officer, [REDACTED] with securities fraud. Part of the fraud involved [REDACTED] \$1.2 million dollar embezzlement from the Annuity Fund. The Committee found that the embezzlement of the monies from the Annuity Fund should have been obvious to a reasonably prudent trustee who reviewed the Annuity Fund's financial records from 2008 to 2010. Upon review, the Committee determined that the trustees failed to meet their fiduciary duties by selecting [REDACTED] as the third-party administrator and CGC as the financial advisor of the Annuity Fund without performing due diligence. The Committee also noted that it had significant concerns about the Local 333 trustees and officers' ineffectuality in responding to the fraud, since they took no ameliorative steps, such as a filing a civil lawsuit.

In addition, the Committee noted that the officers failed to collect approximately \$130,000 in delinquent dues owed, including \$50,000 in delinquent dues owed by a single employer. It appears that the Committee viewed this failure to act as another indication that union officers lacked the will or the ability to manage the financial operations of Local 333.

Throughout the report, the Committee blatantly questioned the ability of the officers and trustees to manage Local 333's financial operations. In conclusion, it recommended that: "going forward, it is clear that Local 333, UMD, should make more of an effort to recoup the money stolen from the annuity fund and collect delinquent dues—and a trusteeship may be one way to ensure that these tasks are done properly."

Nonetheless, the Committee advised the ILA Executive Council to refrain from making a final decision on the trusteeship issue. After taking into consideration Local 333's unique status as an autonomous UMD affiliate member union, the Committee recommended that the matter should be referred to the UMD for a final decision. Ultimately, the ILA Executive Council voted to accept the Committee's recommendation, and the matter was deferred to UMD.

On October 18, 2011, the UMD Executive Board convened a meeting at which it voted to accept the recommendation of the Committee that a trusteeship be imposed. In accordance with Article V of the UMD Constitution, the UMD Executive Board

appointed former Assistant U.S. Attorney [REDACTED] as trustee effective October 19, 2011.

Despite the unorthodox nature of the trusteeship's establishment, these actions satisfied the requirements of Section 304(c) of the LMRDA which requires that a trusteeship can only be imposed after a "fair hearing before the Executive Board or before such other body as may be provided in accordance with its constitution or bylaws."

The Department determined that the ILA hearing constituted a "fair hearing" under Section 304(c), as the ILA adequately notified interested parties of the May 25, 2011 hearing and gave them the opportunity to submit evidence and present testimony on the trusteeship charge. Even though the hearing was not held before the UMD, which ultimately made the decision, the Department does not believe that fact invalidates the fair hearing provision of Section 304(c) of the LMRDA. Since a member of Local 333 filed trusteeship charges with the ILA, the ILA Executive Council properly followed its constitution and elected to hold a hearing. The Department does not regard this as being improper since Local 333 is an autonomous UMD affiliate member union subject to the ILA Constitution. Under Article XXI the ILA Executive Council has the sole power to make a final decision on trusteeships under the ILA Constitution; however, the ILA Constitution is silent about whether the ILA Executive Council may pass its authority to make a final decision to an affiliated autonomous body. Under these circumstances, the ILA acted in accordance with its constitution or bylaws under the provisions of §304(c) of the LMRDA.

Since the UMD Constitution does not address the process by which a trusteeship may be put in place, the UMD Constitution was not violated by this set of procedural events. Further, as a practical matter, it is clear that the UMD Executive Board considered the ILA hearing findings. The Minutes of October 18, 2011 UMD Executive Board Meeting clearly show that the UMD Executive Board discussed and evaluated the findings presented in the ILA Committee Report of Findings and Recommendations before voting to adopt the findings of this report and impose a trusteeship.

Additionally, the Department of Labor's investigation disclosed that the UMD had justifiable grounds for imposing the trusteeship:

- By failing to solicit bids for the selection of the third-party administrator and financial advisor to oversee the Annuity Fund, Local 333's trustees failed to safeguard the Annuity Fund and created a circumstance in which a third-party actor was able to embezzle \$1.2 million from the Annuity Fund.
- The officers of the Local 333 failed to take ameliorative action in response to the embezzlement of the Annuity Fund, such as a filing a civil lawsuit or replacing the trustees who had been in power when the money was embezzled from the Annuity Fund.

- In spite of the Local 333's financial problems, the officers neglected to collect approximately \$130,000 in delinquent dues.

The evidence establishes that the trusteeship was imposed to correct financial malpractice, i.e. *See Nat'l Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915, 923 (2d Cir.1971) (Only one legally permissible purpose is required for a valid trusteeship.). Further, the UMD followed its constitutional procedures for establishing the trusteeship, as well as the constitutional procedures of the ILA. *See* 29 C.F.R. 458.26. There was no violation of the LMRDA. Accordingly, we are closing our file on this matter.

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



July 19, 2012

[REDACTED]

Dear [REDACTED]

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging a violation of Title III of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) with regard to the imposition a trusteeship by the International Longshoremen's Association, United Marine Division (UMD), over UMD Local 333, located in Staten Island, New York.

Pursuant to Sections 304 and 601 of the LMRDA, the Office of Labor-Management Standards conducted an investigation. Following a review of the investigative findings by this office and the Office of the Solicitor, Division for Civil Rights and Labor Management, a decision has been made that those findings do not provide a basis for action by the Department.

The statement of reasons setting forth the basis for this decision is enclosed.

Sincerely,

Patricia Fox
Chief, Division of Enforcement

Enclosure

cc: Christopher Wilkinson, Associate Solicitor for
Civil Rights and Labor Management

U.S. Department of Labor

Office of Labor-Management Standards
Division of Enforcement
Washington, DC 20210
(202) 693-0143 Fax: (202) 693-1343



July 19, 2012

Harold J. Daggett, President
International Longshoremen's Association
5000 West Side Avenue
North Bergen, New Jersey 07047

Dear Mr. Daggett:

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Sincerely,

Patricia Fox
Chief, Division of Enforcement

Enclosure