

Statement of Reasons
For Dismissing a Complaint of a Member
Concerning the Trusteeship Imposed by
Sheet Metal, Air, Rail and Transportation Workers on
its Subordinate Local 28

A member in good standing of Sheet Metal Workers Local 28 filed a complaint on December 9, 2013, with the Department of Labor concerning the trusteeship imposed on Local 28 by Sheet Metal, Air, Rail and Transportation Workers (SMART). The complainant alleged that the imposed trusteeship is unlawful under Title III of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The complaint also alleged that SMART's period of supervision over Local 28, during which SMART directed and controlled all aspects of Local 28's affairs, was an unlawful continuation of a trusteeship under Title III of the LMRDA.

The Department conducted an investigation of these allegations. As a result of the investigation, the Department has concluded, with respect to each allegation, that there was no violation of Title III of the LMRDA.

The Department's investigation revealed that SMART first placed Local 28 under trusteeship on November 8, 2010 (First Trusteeship) following allegations of criminal activity by Local 28's then [REDACTED]. The complainant concedes that the First Trusteeship was necessary and lawful. Following SMART's removal of [REDACTED], new Local 28 officers were elected in a special election held on May 5, 2012.

By letter dated May 7, 2012, SMART General President Joseph J. Nigro notified newly-elected Local 28 [REDACTED] that SMART's trusteeship over Local 28 would formally end on May 8, 2012. However, Nigro further informed [REDACTED] that Local 28 would remain under SMART's supervision for an unspecified period of time. Nigro also appointed Robert DiOrio as Local 28's supervisor and provided him with the authority to take such actions as necessary to protect the interests and welfare of Local 28, its members, funds and property, and the interests and welfare of SMART. Nigro explained that DiOrio's primary responsibility would be to oversee and correct, if necessary, the operations of Local 28.

By letter dated November 13, 2013, Nigro informed [REDACTED] and Local 28 Financial Secretary-Treasurer [REDACTED] that Local 28 was again placed in trusteeship (Current Trusteeship) with DiOrio as the Trustee. Nigro also suspended [REDACTED], [REDACTED] and three Local 28 Business Agents. Nigro's letter outlined several deficiencies necessitating the trusteeship: (1) Local 28 officers engaged in financial malpractice by "double-dipping" (i.e., receiving multiple reimbursements of travel expenses), failed to maintain accurate and understandable books and records, failed to timely create budgets, and permitted the financial condition of the local to deteriorate; (2) Local 28 officers failed to enforce key provisions of the collective bargaining agreement by neglecting to require contractors to inform the local union when they hire and fire employees; (3) Local 28 officers delayed and obstructed the implementation of a computerized data system that would enable an accurate understanding of the distribution of work in the union's jurisdiction; (4) Local 28 membership meetings were out of control, reaching the point of physical disorder and violence; and (5) Local 28 officers administered the union in a haphazard, incompetent fashion, and ignored obvious means of improvement directed by Nigro and DiOrio. Nigro also explained that the lack of employment data frustrated the court-appointed officers in the pending EEOC case against Local 28 in their effort to determine

whether Local 28 was complying with court orders designed to eradicate discrimination in the sheet metal industry.

A subcommittee of SMART's General Executive Council held a hearing on November 25, 2013 to consider evidence on whether to ratify the trusteeship. By letter dated December 23, 2013, the subcommittee of the General Executive Council notified Local 28 members of their decision to ratify the trusteeship.

The complainant first alleged that SMART's supervision of Local 28 – from May 8, 2012 to November 13, 2013 – was a continuation of the trusteeship that was unlawful under Title III of the LMRDA. Under the LMRDA, a trusteeship results from any method of supervision or control whereby the international union suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws. *See* 29 U.S.C. § 402(h); 29 C.F.R. § 408.1(b). The LMRDA also provides that a trusteeship that extends beyond 18 months will be presumed invalid unless the labor organization shows by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under the LMRDA. 29 U.S.C. § 464(c); 29 C.F.R. § 458.28.

The Department finds that the above period of supervision was not a trusteeship for purposes of the LMRDA. The investigation revealed that, under the period of supervision, Nigro directed ██████ to complete a series of tasks for Local 28. For instance, shortly after the start of the supervision, Nigro began requiring ██████ to provide SMART with weekly reports detailing Local 28's activities, including executive board meetings, board of trustees meetings, meetings with attorneys, legal actions, Local 28 charges, and non-recurring expenditures. On May 23, 2013, Nigro directed ██████ and ██████ to refrain from sending official local union communication to members without the approval of Nigro's assistant Marc Norberg. ██████ and ██████ were also directed to email Norberg copies of every piece of campaign literature mailed by candidates. Moreover, by letter dated June 25, 2013, DiOrio informed Local 28 that SMART had appointed an IT Project Manager to handle the Local 28's IT needs and required Local 28 to pay his monthly salary.

Other directives and actions by SMART during the period of supervision included: directing ██████ to drop Local 28's lawsuit against ██████; terminate counsel for Local 28's Benefits Fund and employ Attorney Riccardo Iaccarino as the sole legal representative for Local 28 and the Benefits Fund; create Local 28 committees and provide specific instructions concerning participation by rank and file members; and amend the terms of a negotiated settlement agreement of an EEOC case against Local 28. Lastly, DiOrio removed ██████ authority to further negotiate a settlement on behalf of Local 28.

As noted above, for purposes of the LMRDA, a trusteeship results from any method of supervision or control whereby the international union suspends the autonomy *otherwise available* to a subordinate body under its constitution or bylaws. *See* 29 U.S.C. § 402(h); 29 C.F.R. § 408.1(b). The investigation revealed that Nigro's actions with regard to Local 28 were permissible under Local 28's Constitution and Bylaws. Specifically, Article III, Section 1 provides that the authority of Local 28 officers to conduct and manage the union's affairs is subject to the provisions and requirements of SMART's Constitution or the established policies and decisions of SMART officers. In turn, Article I, Section 10 of SMART's Constitution and Rituals provides that every officer, member, and local union must comply with the provisions of the SMART Constitution and the valid decisions of the officers of SMART and refrain from interfering with SMART's performance of its legal and contractual obligations or from any conduct which defeats or subverts SMART's policies and objectives. Furthermore, Article III, Section 2(a) of SMART's Constitution and Rituals provides that the General President shall have direction and supervision of all local unions. In addition, Article III, Section 5 of SMART's Constitution and Rituals authorizes the General President to employ an attorney or attorneys to represent and protect the interests of SMART.

These provisions provided Nigro broad authority to supervise and direct Local 28's affairs and to take such actions as he deemed necessary to protect the interest and welfare of Local 28. Furthermore, the investigation revealed that Local 28 officers retained sufficient control over various aspects of the union's affairs. For instance, while [REDACTED] complied with the request to employ Iaccarino as the attorney for Local 28, he did not seek to employ Iaccarino to represent the union funds because that action required a full vote of the fund trustees. Therefore, for purposes of the LMRDA, SMART's method of supervision did not suspend the autonomy otherwise available to Local 28 under its constitution or bylaws and cannot be considered a continuation of the First Trusteeship.

The complainant further alleged that the Current Trusteeship should be dissolved because it is unlawful, politically motivated, and without basis in fact. A trusteeship established pursuant to the international union's constitution and authorized or ratified by the international after a fair hearing is presumed valid for the first 18 months and will be set aside only upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under the LMRDA. *See* 29 U.S.C. § 464(c); 29 C.F.R. § 458.28. The purposes allowable under the LMRDA include: "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." 29 U.S.C. § 462; 29 C.F.R. § 458.26.

The Department's investigation established that the Current Trusteeship, which was imposed on November 13, 2013, is entitled to a presumption of validity. First, the Current Trusteeship has been in place for less than 18 months. Second, the Current Trusteeship was established pursuant to SMART's Constitution and after a fair hearing. Article III, Section 2(c) of SMART's Constitution explicitly authorizes the General President to place local unions under trusteeship. Furthermore, under Section 2(c), a trusteeship that is to be continued for a period of more than

60 days must be ratified by the General Executive Council or a subcommittee after a hearing. The investigation revealed that the Current Trusteeship was ratified on December 23, 2013 by a subcommittee of the General Executive Council after a full and fair hearing. Notice of the hearing was provided to members via letter dated November 13, 2013. The Department's investigation further revealed that Local 28 members had the opportunity to testify and present evidence at the November 25, 2013 hearing in favor of or against the trusteeship. Therefore, the Current Trusteeship can only be set aside if there is clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under the LMRDA. *See* 29 U.S.C. § 464(c); 29 C.F.R. § 458.28.

In this case, the Department's investigation found evidence that the Current Trusteeship was established and maintained in good faith for a purpose allowable under the LMRDA. On November 13, 2013, General President Nigro sent a letter to the officers and members of Local 28 informing them of the imposition of a trusteeship on Local 28.

The first reason listed in the letter was that local officers engaged in financial malfeasance. The letter claimed that they engaged in double dipping by receiving multiple reimbursements for expenses, failed to maintain accurate or understandable books and records, were delinquent in creating budgets, and permitted the financial condition of the local to deteriorate. Some of the other reasons listed for the imposition included the following: the local officers' failure to enforce key provisions of the collective bargaining agreement; local officers delayed and obstructed the implementation of a computerized data system; physical disorder and violence in local union meetings; and local officers administered the local in a haphazard, incompetent fashion and ignored improvements ordered by the General President. SMART's stated reasons for imposing the Current Trusteeship are consistent with the purposes allowable under the LMRDA, which include correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, and carrying out the legitimate objects of the labor organization. *See* 29 U.S.C. § 462; 29 C.F.R. § 458.26.

The Department's investigation revealed that SMART had ample evidence to support its charges of financial malfeasance. In support of the double dipping charge, DiOrio presented at the subcommittee hearing copies of expense vouchers submitted by Local 28 officers for reimbursement of hotel charges incurred while attending a New York State Council Meeting in Saratoga, New York for four days in July 2013. The vouchers indicated that the Local 28 officers were reimbursed for hotel charges even though they had already received lodging per diem. DiOrio also presented expense vouchers for two other occasions in July and August 2013 that also revealed double dipping. These expense vouchers were signed by [REDACTED] and the reimbursement checks were signed by both [REDACTED] and [REDACTED].

There was also evidence to support SMART's claim that Local 28 was delinquent in creating budgets. DiOrio testified during the subcommittee hearing that following a serious decline in the union's cash reserve in 2012, General President Nigro directed Local 28 to deliver a budget for 2013 by July 15, 2013. After Local 28 failed to meet this deadline, Norberg extended the deadline to August 1st. Local 28 did not respond until August 21st when it submitted an

incomplete budget. As the investigation provided evidence supporting the first rationale for the trusteeships imposition, among other evidence, there is no basis for the Department to challenge its presumed validity.

For the reasons set forth above, the Department has concluded that there was no violation of Title III of the LMRDA, and the complaint is dismissed.



May 14, 2015

[REDACTED]

Dear [REDACTED]:

This is to advise you of the disposition of your complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), occurred with respect to the imposed by the Sheet Metal, Air, Rail and Transportation Workers International Association (SMART) over Local 28 in New York, New York.

Pursuant to Sections 304 and 601 of the LMRDA, an investigation was conducted by the Office of Labor-Management Standards. After carefully reviewing the investigative findings, and after consulting with the Solicitor of Labor, 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. We are, therefore, closing our file as of this date.

A 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



May 14, 2015

Mr. Joseph J. Nigro, General President
Sheet Metal, Air, Rail and Transportation Workers International Association
1750 New York Avenue, NW
Washington, DC 20006

Dear Mr. Nigro:

This is to advise you of the disposition of a complaint filed with the Secretary of Labor alleging that violations of Title III of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), occurred with respect to the imposed by the Sheet Metal, Air, Rail and Transportation Workers International Association (SMART) over Local 28 in New York, New York.

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Patricia Fox
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U.S. Department of Labor

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



May 14, 2015

[REDACTED]

Sheet Metal Workers, Local 28
500 Greenwich Street, #502
New York, NY 10013

Dear [REDACTED]:

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