



**CONSTITUTIONAL FRAMEWORK**

This matter arises under the LIUNA constitution and involves an application for trusteeship, with respect, to Local 183 submitted by the International Union President. To put this matter into context, it is necessary to give some background about the governance of the union.

LIUNA and its Locals are governed by various constitutional documents. These are the International Union Constitution, the Uniform Local Union Constitution, and the Uniform District Council Constitution. In addition, in Canada, the parties are also bound by the provisions of the Canadian Ethical Practices Code (CEPC). For this application for trusteeship to succeed, violations of the provisions of one or more of these documents must be found by me, acting in my capacity as Canadian Independent Hearing Officer, within the context of the specific allegations put forward.

LIUNA has its headquarters in Washington D.C. In the 1990's, the International Union went through significant structural changes in the United States. These were brought about, primarily, because of various legal proceedings initiated by the United States Department of Justice against LIUNA. The restructuring of the union occurred by way of various agreements between LIUNA and the United States Department of Justice, and were aimed, primarily, at eliminating concerns about the influence of organized crime within the Union. Included, in these agreements, was the creation of the independent General Executive Board Counsel and Independent Hearings Officers, who are third party adjudicators appointed to hear and rule on internal disputes. In Canada, these are referred to as the General Executive Board Counsel - Canada (GEBCC), and the Canadian Independent Hearing Officer (CIHO).

The role of the GEBCC, as outlined in Art. 10 of the CEPC, is to act as an outside counsel, i.e. outside of the Union's officers, staff and membership, charged with investigating and prosecuting conduct in contravention of the standards set out in the constitutional documents. The GEBCC may prosecute a case after receiving a charge or a complaint, or after conducting his own investigation. The GEBCC has broad powers to question union members or employees, and to review the documents in the control of any local union.

### **THE FILING OF THE APPLICATION**

On March 4, 2004, GEBCC investigators entered the premises of Local 183 as part of an investigation into allegations of various improper activities by the Local. The investigators acquired access to Local 183 files, including its computer database records. On December 1, 2004, the GEBCC issued a report setting out 16 "Findings" or charges of alleged constitutional breaches against Local 183. (The Executive Summary of the Findings is attached to this decision as Appendix A.) On December 6, 2004, LIUNA General President, Mr. Terence O'Sullivan, issued a declaration of emergency trusteeship. At the same time, I was appointed as CIHO to determine whether grounds for the trusteeship existed, and LIUNA acknowledged that it would not take steps to enforce the emergency trusteeship order until after the CIHO hearings had been completed.

### **PROCEDURAL ISSUES**

At the outset of the hearings, the Local took the position that there was a question relating to the jurisdiction of the CIHO, as the matter had been styled by the General President as an Emergency Trusteeship. Subsequent to that, the General President issued a notice of application for trusteeship, effectively withdrawing the emergency trusteeship. The hearing proceeded as a matter

under Art.13 (b) of the CEPC and the parties attorned to my jurisdiction. The hearings were then continued in order to hear evidence with respect to the substantive issues.

As set out in Art. 14 of the CEPC, the procedure in trusteeship hearings is determined by the CIHO:

14 At any disciplinary hearing conducted before the Canadian Independent Hearings Officer, the following procedures shall apply:

- (j) for purposes of this Article, trusteeship/supervision proceedings and election/nomination protests are not deemed to be disciplinary and shall be subject to such other rules of procedure as a CIHO shall determine.

As the hearing progressed, it became evident that, unless something was done procedurally to expedite the matter, there would be no end in sight. I sought the views of the parties and asked for their suggestions as to how we could proceed more expeditiously. After receiving their comments I issued an order, on consent of the parties, dated November 10, 2005, and that order is attached as Appendix B. The hearing then proceeded under the procedure agreed to by the parties. At the same time I advised the parties that I did not require evidence on the following findings

- Finding 6 – Inadequate Financial Controls
- Finding 7 – Unapproved Donations
- Finding 10 – Fraudulent claim of Past Service Credits
- Finding 13 – Failure to Remit Pension Contributions
- Finding 15 – Misleading the LIUNA Auditor
- Finding 16 – Obstruction of the GEBCC Investigation

The hearing proceeded on the ten remaining findings.

## **LEGISLATIVE FRAMEWORK – JUST CAUSE**

It is useful, at this point, to note that the Ontario jurisdiction, unlike other jurisdictions in which LIUNA has locals, has a specific statutory provision dealing with trusteeship applications, s. 149 of the Ontario *Labour Relations Act*, which reads as follows:

### *Interference with the Local trade union*

**149.** (1) A parent trade union or a council of trade unions shall not, without just cause, assume supervision or control of or otherwise interfere with a Local trade union directly or indirectly in such a way that the autonomy of the Local trade union is affected.

### *Same, officials and members*

(2) A parent trade union or a council of trade unions shall not, without just cause, remove from office, change the duties of an elected or appointed official of a Local trade union or impose a penalty on such an official or on a member of a Local trade union.

### *Board powers*

(3) On an application relating to this section, when deciding whether there is just cause, the Board shall consider the trade union constitution but is not bound by it and shall consider such other factors as it considers appropriate.

### *Orders when just cause*

(4) If the Board determines that an action described in subsection (1) was taken with just cause, the Board may make such orders and give such directions as it considers appropriate, including orders respecting the continuation of supervision or control of the Local trade union. 1995, c. 1, Sched. A, s. 149.

Given this legislative scheme in Ontario, the parties agreed that, notwithstanding any test that may have been used by other IHO's or CIHO's, the test in this province is just cause. Thus, the GEBCC has the burden of proof that there exists just cause for the imposition of a trusteeship over Local 183, and there is no shifting of that burden to the Local. Accordingly, in my review of this matter, and in determining whether the application is to be successful or not, I accept that I am using the same test, as applied by the Ontario Labour Relations Board (OLRB) as if this was an application under s.149 of the Act. As a result, the jurisprudence of the OLRB is relevant to my process. The

seminal decision of the Board is *International Brotherhood of Electrical Workers*, (1996) OLRB Rep. Feb. 70.

¶ 82 Consequently, we reject the suggestion that under section 147, the Board should continue to avoid reviewing internal trade union matters. It is apparent that all of Bill 80, including section 147, evidences a legislative intent that the Board exercise a supervisory jurisdiction over internal trade union affairs which the Board did not previously have. It is also apparent that section 147 REQUIRES the Board to review and adjudicate upon internal union matters when they concern an alteration of a Local trade union's jurisdiction by its parent trade union.

¶ 83 Section 147 provides that a parent trade union SHALL NOT alter the jurisdiction of a Local trade union without just cause. In an application relating to section 147, the Board is directed to consider the union's constitution (although it is not bound by that constitution either generally or as a matter of law, and specifically by the provisions of section 147 itself), the ability of the trade union to carry out its duties under the Act, the wishes of the members of the Local union, and whether the alteration of jurisdiction would facilitate viable and stable collective bargaining without causing serious labour relations problems.

¶ 84 We also reject the suggestion that the Board's approach to section 147 should mimic the approach it takes to fair representation/referral cases, or that a parent trade union has some sort of "right to be wrong" when it alters a Local union's jurisdiction. The fair representation/referral provisions prohibit a trade union from acting in a manner which is arbitrary, discriminatory or in bad faith in representation/referral matters. A trade union could act in a manner which is neither arbitrary, discriminatory nor in bad faith and still make a decision in such matters which someone else, like the Board, might consider to be "wrong". This explains the development of the "right to be wrong" part of the Board's fair representation/referral jurisprudence.

¶ 88 We are satisfied that "just cause" in section 147 of the Act creates an objective standard which requires something other than that a parent trade union act in a manner which is not arbitrary, discriminatory or in bad faith. While that may be part of the question which is properly asked in any given case, the question to be asked under section 147 is this: "Was the parent union's decision a fair and reasonable one having regard to all of the circumstances?"

¶ 89 The nature of section 147 and the factors which the Board is directed to consider under it requires that the Board not limit itself to an examination of the parent union's conduct in the decision-making process, and the factors which it considered. It may be that a parent union can do everything wrong in that respect and still end up with a decision which is fair and reasonable in the circumstances. That is, the question is not: "Could a parent trade union, acting honestly and looking at the situation and circumstances as a whole, and weighing the interests of all concerned, have reached the conclusion and made the jurisdictional decision it did?" Instead, the question is: "Having regard to the evidence before the Board, does that parent union's decision yield a result which is fair and reasonable."

Although this decision was cast in the context of the application of s.147, which deals with just

cause related to an alteration of the jurisdiction of a local union by the parent, the test was subsequently applied in a decision of Vice-Chair Bloch with respect to an application for trusteeship in *International Brotherhood of Electrical Workers Local 1788*, [1997] OLRB Rep. November/December 1022. In that same decision, Vice-Chair Bloch also wrote, at para 39:

“In my view, the Local can reasonably dissent, so long as its dissent does not irreparably affect the core values of the parent union.”

Since that decision, his interpretation of just cause has been consistently applied by the OLRB.

Additionally, as I indicated to the parties, on February 11, 2005, the approach I would take in this matter involves two steps, and I stated specifically:

“Step one is to determine whether the charges are proved or not. If they are not, the proposed trusteeship fails. If one or more is proved, step two will be a decision as to whether the charge, as proved, warrants trusteeship.”

In other words, whether just cause exists.

### **LIUNA and LIUNA Local 183**

LIUNA, headquartered in Washington, is a union representing construction workers throughout North America. The union celebrated its 100<sup>th</sup> anniversary in 2003 and has approximately 100,000 members.

Local 183 was founded in 1952 and has grown exponentially, particularly in the last eight years or so. It describes itself, on its website, as follows:

“Local 183, represents over 34,000 workers in a virtually every aspect of the construction industry. Our members come from all parts of the globe to be part of the best workforce in North America. Like Canada itself, Local 183 draws on the talents and skills of this multicultural workforce to help build and maintain much of southern Ontario's infrastructure and housing.

On the typical housing subdivision, Local 183's members are there from start to finish. As soon as a site is chosen our members arrive with the sewer and watermain and utility companies to begin preparation. With site servicing complete the housing workforce begins to arrive.

Low rise formers arrive to erect the forms that will be filled with cement, then stripped, leaving behind the new home's foundation. Concrete and drain specialists dig the trench and lay the pipe that will connect the main sewer and water lines with the home's lines long before our plumbers arrive to complete the interior plumbing.

House framing carpenters are on the scene before long to begin erecting the skeleton of the house. Walls, partitions, and the roof go up within weeks. Roofers then arrive to lay shingles while the bricklayers erect scaffolding and quickly clad the house in brick.

Inside the house, tile setters lay the flooring and electricians wire the home top to bottom. Outside, landscapers prepare lawns and garden while curbs, sidewalks and roads are being finished. All of this work is done by our members.

If there is a condominium on the site, our high rise concrete formers employ the flying form system to quickly erect the tallest of structures, while our members working for the builder directly ensure every suite is up to standard.

Bridges and tunnels are built by our members in the heavy construction sector and anyone who has ridden the subway or driven on virtually any road in the GTA will be familiar with their work.

Venture east to Oshawa and beyond to find our members not just building the residential houses, but industrial, commercial and institutional buildings too. As well our members work for Ontario Hydro.

Then there are our members in the non-construction sectors. Most downtown office buildings, and Pearson International Airport, are cleaned and maintained by Local 183 members. Building superintendents and factory workers comprise the balance of this sector.

And that's not all. Every year 183 grows bigger as it organizes more.”

As the economy, in and around the Toronto area, has experienced hyper-expansion since the late 1990's, so too has the membership of the Local.

**DETERMINATION OF THE ISSUES**

When one looks at many of the findings of the GEBCC, it is evident that there is some degree of overlap among them. Therefore, there will be similar overlap in the discussion that follows.

**FINDING 11 - FAILURE TO PAY PER CAPITA**

There is no doubt that there has been a failure to make per capita payments. This was acknowledged by the Local. The two issues that have to be determined with respect to this finding are (a), whether the failure was deliberate, and (b), whether trusteeship is warranted, given the failure to pay per capita. In dealing with the second point, in the past local's have been placed into trusteeship for a failure to pay, regardless of the reason or the amount. However, given the statutory requirement of just cause, more is needed than simply proving that the per capita has not been paid.

The review of the evidence, with respect to this finding, leads to the conclusion that trusteeship is not warranted under this Finding.

The report entitled "Report of Combined Membership and Fee Per Capita Tax", (which has become colloquially known in this hearing as the "Beck Report") even though argued by the GEBCO to be clear on its face, is less than clear when looked at in the context of the competing constitutional provisions of the International and Local Union Constitutions as well as from the Canadian perspective. The explanatory portion of the form reads as follows:

Laborer's International Union of North America  
 Combined membership & Fee Per Capita Tax  
 Local Union No. \_\_\_\_\_  
**(Revised February 28, 1997)**

PCT Summary for the Month of \_\_\_\_\_

This form **must** be used when reporting on workers who are not members, but who pay fees to the Local Union. Workers in this category include fair share, agency, and financial core fee payers, and "Beck" objectors – and other bargaining unit members who pay fees to the Local Union even if they do not become union members. Collectively we refer to these individuals

as Fee Per Capita Tax Individuals.

A Local Union is required to pay Per Capita Tax on these individuals.

For the purpose of reporting on Fee Per Capita Tax individuals, this form must be attached to the corresponding monthly PCT Summary form. Please include a complete list of the individuals for whom Fee PCT is being reported with this form. A copy of this list and form must be maintained as a permanent record at the Local Union. This will enable an accurate audit of the Fee PCT offered on this form. These lists should include the person's name and Social Security/Social Insurance Number whenever possible. The list should also indicate whether a particular Fee Per Capita Tax individual is a fair share fee payer, an agency fee payer, a financial core fee payer or a Beck objector or other.

Enter the total number of Fee Per Capita Tax individuals for this PCT reporting month. Please attach a listing of these individuals.

Multiply the total on line 1 by the current PCT rate and enter the Fee Per Capita Tax here.

Enter monthly PCT remittance from line 23, Part II of the attached PCT summary form.

Total remittance. Add lines 2 and 3 then enter total here.

(Membership PCT plus Fee PCT)

**NOTE:** If a listing of the non-member Fee Per Capita Tax individuals is not attached, please include an explanation. Thank you.

The specific examples listed on the form are related only to concepts in U.S. labour law.

Therefore in spite of the fact that the explanation refers to the Canadian Social Insurance Number, it is reasonable that the final general descriptive phrase in the list of examples, i.e., "*...other bargaining unit members who pay fees to the Local Union even if they do not become union members...*", could be viewed as not applicable in the Canadian context.

The Local engaged the services of Ken Froese, a forensic accountant, to conduct a thorough review of the Local's financial operations. The work of Mr. Froese started prior to the Local becoming aware that the GEBCC was investigating its operations. Also, prior to that date, Mr. Froese raised this same issue of per capita payments with the Local. Clarification was sought from

the International, and it is fair to say that the response of the International was less than illuminating. Further, auditors from the International conducted audits of the Local. On the GEBCC's own evidence, this is an issue that would have been within the ambit of the audit, but no mention of the Beck Report, or its applicability to the Local, was ever made.

On the recommendation of Mr. Froese, and on its own accord, the Local began to make contributions as of April 2004, in accordance with the Beck Report, and has continued to make contributions since that date. There is no evidence that, at any time since that date, the International has suggested that the Local owes any money for failure to pay per capita prior to that date. Lastly, the GEBCC did not offer any evidence that the Beck Report has ever been filed by another Canadian local, nor has any action been taken against any other local for failing to file such a report.

With respect to the issue of delays in the forwarding of per capita payments, I am satisfied that, whereas there is likely some improvement that can be made in this area, the delays flow from the operations of the various collective agreements. The speed and timeliness with which reporting is done, in order to allow the initiation of workers into membership, is also a factor.

Finally, I accept that, given that the SORTÉ computer system never deletes a name from its records, the Local, necessarily, had to create various categories to deal with individuals who were given new SIN's, changed names, or had temporary SIN's, etc.

The overall conclusion, therefore, is that there was no deliberate violation of any constitutional provision, and there is not just cause, under this Finding, to impose trusteeship.

**FINDING 12 – FAILURE TO REMIT TO OPDC**

There was no evidence led by the GEBCC specifically with reference to this issue, and therefore no conclusion can be reached that there was a violation by the Local.

**FINDING 14 – DISCRIMINATION AGAINST CONTRACTORS**

The GEBCC acknowledged in his final submission that he does not rely upon this Finding as a separate ground for trusteeship.

**FINDING 3 – DENIAL OF BENEFITS**

The GEBCC summarizes his allegations as follows, at paragraph 551 of his final submission:

551. The GEBCC has alleged Local 183 denies members access to Union benefits for reasons that are arbitrary and discriminatory. Evidence adduced before the CIHO has shown that until the summer of 2005, undocumented workers who were members of Local 183 were, as a matter of policy, refused access to the Local's benefit funds regardless of whether employers were remitting money to the funds on their behalf. Undocumented workers are still treated differently than other members of the Local. They may only use benefit services available at Local 183's offices. They are not allowed to claim vacation pay which is sent to the Local on their behalf. Evidence adduced at the hearing shows that all members of Local 183 are subject to having their benefit entitlements "frozen" regardless of the credits they have earned, if they owe money to the Union or one of the benefit services offered at the offices of the Union.

The essence of the Local's response is: "Local 183 does not provide health and welfare benefits to any individual and does not, and cannot, deny health and welfare benefits to any individual."

To understand this issue, it is necessary to explain how Local 183 members receive health and welfare benefits. Employers submit regular remittances to the Local on behalf of Local 183 members. These remittances are paid into the Members Benefit Trust Fund (MBTF) on behalf of

each member. In essence, each member has an 'account' with the fund, and any money, collected on behalf of a member, is credited to his or her account. The account is drawn down to pay for ongoing benefit coverage.

The uncontradicted evidence, with regard to benefits for undocumented workers, is that, prior to late 2002 or early 2003, such workers did not have access to any benefits. The Local was of the view that it could not admit into membership any person who was not legally working in Canada, and more specifically, any person who did not have a valid Social Insurance Number (SIN). Around that time, the decision was made, within the Local, to commence signing into membership these undocumented workers. The Local suggested that the reason was because the number of undocumented workers was increasing and it was becoming a larger issue. The GEBCC suggested it was because, during the raiding season, the Carpenters Union was signing up these persons, forcing the Local to do the same. The result of becoming members was that they were allowed limited *ad hoc* benefit coverage. These members could approach a business representative seeking dental, optometry or pharmaceutical benefits. They would then be walked by the representative to the appropriate service within the union hall and the appropriate service would be provided. (These health care services are available in the union facility as part of the services provided by the Local to its members.) The cost of these on-site benefits was borne entirely by the Local, and there was no reduction of the benefit credits attributed to the member under the Benefit Fund as would be the case for members who are legally working in Canada, and access these same benefits.

In the summer of 2005, during the course of the hearings in this matter, the decision was taken by the trustees of the MBTF, to formalize those *ad hoc* benefits. That is, the same individuals are now entitled to access dental, optometry or pharmaceutical benefits at the Local hall. In return for the access to such facilities, there is now a debit of half of the credit in comparison to other members of the MBTF, presumably because other members are not limited to the locations where they can access benefits. It is apparent, therefore, that there is a separate and inferior régime established for this group of members.

If the issue was left there, it would appear that the allegation of the GEBCC would have been proved and, arguably, at least, trusteeship would be warranted for such a failure on the part of the Local. However, the control of benefits, at least legally, does not lie with the Local. As alluded to above, there has been a specific trust established, and it is the responsibility of that trust to determine the rules of eligibility for, and the scope of, benefits provided to members of Local 183. The Local's trustees on the MBTF include many of the most senior elected officials and staff of Local 183. Throughout the course of this hearing, witnesses who were either trustees of the trust or employees of the trust, took the position that they were unable to, and in fact had been instructed by counsel to the trust, not to give evidence with respect to any deliberations or decisions made by the trustees.

The GEBCC suggested that, although, unquestionably, there is a legal dichotomy between the Local and the MBTF, in fact, Local 183 exercises significant influence over the trustees and the trust. The GEBCC cites, as an example, that the Local uses the fund as a "collection agency", in that members are denied benefits when dues are in arrears. He suggests that the timing of the

extension of benefits in 2005 is suspicious given these ongoing proceedings. He also suggests that, had it wanted to, Local 183 could have brought its influence to bear to extend benefits to undocumented workers sooner, and to extend to the undocumented workers the same level of benefits available to other workers.

That may be the case. However, the evidence before me, in this case, is that control of the trust fund remains with the trustees. I have no direct evidence, before me, that Local 183 controls the manner in which the fund operates, to whom benefits may be offered, or the level of benefits that may be offered. Although evidence could have been introduced by the Local which might have been more helpful in this area, the onus rests with the GEBCC, and there is no shifting of that onus.

I am unable to conclude that the denial of benefits alleged by the GEBCC can be attributed to the Local.

This finding has not been proved.

**FINDING 1 – UNDOCUMENTED WORKERS**

This Finding consists of three issues. The benefits issue has been dealt with above. The second issue is that the Local has denied undocumented workers membership. The third issue is that the undocumented workers have been left off invoices allowing other members to profit from their labour. This latter issue will be dealt with under the heading of enforcing collective agreements.

In dealing with the issue of denial of membership, and whether undocumented workers were systematically denied membership in the Local, the evidence before me does not lead me to conclude that trusteeship is warranted.

As indicated earlier in this decision, there were undocumented workers working within the jurisdiction of the Local and the Local was aware of them. What is equally undeniable is that the Local took positive steps to try to improve the undocumented workers' situation. The evidence before me was that the Local was of the view that, absent valid social insurance numbers, these individuals could not be admitted to membership (a view shared by other Locals who have yet to introduce undocumented workers without SIN's into membership). As discussed earlier, under Finding 3 - Denial of Benefits, the Local was of the view that these persons could not be admitted to membership because their status in Canada was not regularized.

The Local provided evidence that it has lobbied and continues to lobby strenuously on behalf of these workers. The Local has dealt with issues raised by undocumented workers, when such issues have been brought to their attention. They have reached out to the undocumented workers to try to assist them.

Whereas it may be said that there has been a breach as suggested by the GEBCC, given the Local's efforts to assist and regularize the status of these workers, I am unable to conclude that there is just cause for the imposition of trusteeship under this Finding.

**FINDING 2 - ENFORCEMENT OF THE COLLECTIVE AGREEMENT****- and -****FINDING 5 – FAILURE TO CREDIT BENEFIT ENTITLEMENTS**

It must be said that, generally speaking, the Local has taken and continues to take significant steps in enforcing the many collective agreements it has covering its many thousands of members. I have no hesitation in stating, on the basis of the evidence before me that, as a whole, the business representatives of the Local take their jobs seriously and do what they can, given the complexity of the construction industry, to ensure that the members receive what they are entitled to under the various collective agreements. Similarly, the Legal Department of the Local performs its job diligently in providing legal advice and strategies and in litigating matters, when required to do so, to ensure that collective agreement obligations are lived up to by the employers.

However, there is an area of enforcement which is particularly troubling. This matter is alleged in the second paragraph of Finding 2 of the GEBCC (see Appendix A.) It will be remembered, from what was stated earlier in these reasons, that the Local engaged Mr. Ken Froese on February 16, 2004. The engagement letter stated on page 1 that,

“\_the purpose of the Special Review is to independently evaluate whether the business practices of Local 183 and its governance are appropriate and able to withstand third party scrutiny, based on expectations for an entity the size and complexity of Local 183.”

It is to be further recalled that, at that time, the Local had no knowledge that the GEBCC was reviewing the operations of the Local as the prelude to the filing of charges.

One of the areas reviewed by Mr. Froese was the issue with respect to pieceworkers. This was

discussed in detail in Mr. Froese's evidence, and is dealt with in paragraphs 136 to 153 of his report prepared for these hearings (the Second Froese Report). Although Mr. Froese appears to have undertaken his review of this area because of issues related to pension credits, his review had broader implications.

To understand this issue, it should be noted that the pieceworker sector is pyramidal in shape. At the apex is the main contractor. That is the person/company under whose aegis the construction is carried out. For example, a person looking to purchase a house would deal with the person/company at this level. The next level is the pieceworker. This is a person/company that contracts with the main contractor to frame the house. The pieceworkers, themselves, generally perform the work, and also may hire workers to assist them. Those persons whom they hire are at the base of the pyramid, and are paid by the hour by the pieceworker. In this working relationship, the money flows from the main contractor, to the pieceworker and ultimately to the hourly employee.

Over the years, the Local has negotiated extensive provisions, in their various collective agreements, that deal with how, and how much, the pieceworker and the hourly employees are to be paid for the work performed. In addition, as a function of the work performed, the main contractor pays remittances on behalf of the pieceworker and the hourly employees, covering such things as working dues and the various benefits, including pension benefits, to which they are entitled. Again, these are formulae that have been shaped and adapted by the Local and the various employer organizations, over the years, for the benefit of the pieceworkers and hourly employees.

What is important, for the purposes of this discussion, is that the pay and benefits received, ultimately, by the workers, are based on invoices submitted to the contractors. Those contractors, when making remittances, submit the invoices which indicate to whom the remittances should be allocated and the actual percentage allocation. That is, what remittances should be allocated to those individuals listed on the invoice. As can be appreciated, therefore, these invoices are important for two reasons. First, if the name of an hourly worker does not appear on an invoice that worker, notwithstanding that he actually worked on a house, will receive no credit for the work he performed. Second, the hourly worker will not receive full benefit credits if the invoice does not accurately record the actual time worked. In either case, this will have a direct effect on the hourly worker's right to the appropriate credits for pension and benefits. Put another way, if hourly employees are not on an invoice, they receive no pension or benefit credits for their work. If the amount of time that they worked is understated, they receive fewer pension or benefit credits than they would properly be entitled to. In either case, others on the invoices (usually pieceworkers) would receive more credits for pension and benefits than they should be entitled to because the amount of time they worked is overstated.

The Local has not historically policed these invoices themselves. Rather, the main contractor remits its benefit payments directly to Benefit Plan Administrators (BPA). BPA is an entity that, on behalf of Local 183, receives benefit payments and allocates them to the persons listed on the invoices on the basis of the established formulae.

As part of his ongoing review, Mr. Froese submitted recommendations to the Local on December 3, 2004. One of his recommendations, Recommendation 4 under “Governance”, dealt specifically with this area.

“Our overall recommendation related to this area, included in the First Froese Report at page 11, was as follows:

*‘Accounting for carpentry pieceworker remittances is currently performed by BPA, an independent accounting group (a supervisor and two clerks) whose sole responsibility relates to the carpentry pieceworkers. To improve oversight of this accounting group and coordination with Local 183 and its grievance process, we recommend that either:*

- i) The responsibility for the pieceworkers accounting group be transferred to Local 183; or*
- ii) Local 183 renegotiate its arrangement with BPA so that Local 183 has a clearly defined role in overseeing the accounting work being performed by the pieceworkers accounting group, including a role for Local 183’s internal audit function.’”*

As part of his work on behalf of the Local, Mr. Froese met with Mr. John Alves, whom he described as, “\_the senior person in BPA’s pieceworker accounting group”. Mr. Alves identified various problems to Mr. Froese. When advised by Mr. Froese that some of the issues had already been addressed, Mr. Alves expressed surprise. This led Mr. Froese to conclude that there may not always have been adequate communication about, or understanding of, some of the initiatives taken by the Local. Mr. Froese also concluded that, whereas the process of enforcement has been “maturing” it, “\_still requires further improvement.”

This takes us back to the recommendations in the December 2004 Froese report referred to above. According to the evidence, the Local decided not to implement the first of Mr. Froese’s two

recommendations, the one which, by his evidence, was the one he preferred. Rather, the Local chose recommendation #2. However, it was Mr. Froese's evidence that the Local has not yet entered into a written agreement with BPA that includes a clearly defined role for Local 183 in overseeing the accounting work being performed by the pieceworkers accounting group, including a role for Local 183's internal audit function, as proposed in the second recommendation. In other words, it does not appear that Local 183 has implemented the recommendation they say they were adopting.

Mr. Froese, in his two reports, has recognized the importance of the piecework remittance process. It is why he made the recommendations he did that Local 183 either bring the work in-house or establish a more clearly defined role with an internal audit. On one of the last days of the hearings, evidence was introduced that Mr. John Alves was not, in fact, an employee of BPA, but was an employee of the MBTF. This appears to have come as a surprise to all involved, and does not appear to have been part of Mr. Froese's understanding when he made his recommendations. Although the Local attempted to downplay that evidence, it is, in my view, very important.

There is an acknowledgement, by the Local's own expert, that the work that is done by Mr. Alves and the correct apportioning of credits is, (a) important and, (b) should be more closely monitored and audited by the Local. Aside from the fact that the Local has yet to do anything with respect to either of Mr. Froese's recommendations, the evidence is that the individual currently responsible for performing this critical function is even further removed from the Local than Mr. Froese understood.

I find this significant for two reasons. The first is that, as was evident throughout these

proceedings, the Local takes the position that it has neither authority nor control over the MBTF, (and presumably, therefore, its employees). Thus, in this most critical of areas, where its own expert recommends closer ties, there appear to be no ties at all, and no line of authority or control by the Local. The Local has abrogated its entire responsibility to a third party over which it says it has no authority or control, and which is, in addition, an organization that is at least partially controlled by employers.

The second reason this is important is because workers are entitled to the fruit of their labours. Aside from wages, what could be more important to an employee than access to benefits and the right to an earned pension? Such employees are entitled to be accurately and adequately recompensed for the work they perform and to be credited properly, in terms of pension and benefit credits, for that work. Nothing could be more fundamental to the obligation of the Local than to ensure that this is the case. The negotiation of benefits under a collective agreement is a hollow promise if there is no follow up to ensure that individuals get everything to which they are entitled. That was why Mr. Froese's recommendation was so important. Mr. Froese's recommendations with respect to pieceworker invoices have not been implemented, and, in fact, the only conclusion that can be reached, is that the ability of the Local to enforce the rights of its members in this area has been diminished.

As a result, I find that the Local has failed in its obligation to enforce the collective agreement in this critical area, contrary to the Uniform Local Constitution Art. II, sec. 2 (a) (c) (d) and (e), as well as Art. III, sec. 2 (a), which provide as follows:

Section 2. POWERS:

In order to effectuate these objects a Local Union shall have the authority:

(a) To establish proper rules, regulations, policies and practices as it deems necessary or appropriate to fulfill the purposes for which the Local Union was chartered, provided such rules, regulations, policies and practices are not in conflict with the International Union Constitution, its rules, regulations, policies, practices and lawful orders and decisions and not in conflict with the Uniform Local Union Constitution or the Uniform District Council Constitution, and rules, regulations, policies and practices, where same apply; such rules, regulations, policies or practices shall be subject to review by the General President; if, after such review, it is the General President's judgment that such rules, regulations, policies or practices are neither proper nor in conformity with the intent, objects or purposes of the Constitutions, regulations, practices, policies and lawful orders and decisions of the International Union, the General President may modify or annul same;

...

(c) To conduct its affairs in a manner which would most tend to enhance, conserve and protect the welfare and interest of the International Union, its affiliates and members;

(d) To establish proper wages, conditions and hours of employment through the process of collective bargaining with employers and to fulfill and require observance thereof. Except as otherwise specifically provided in the Constitutions of the Union, each Local Union shall be autonomous in the exercise of its right to negotiate and consummate agreements with employers and to police and enforce the terms and conditions thereof;

(e) To provide for the well-being and security of members, officers and employees of the Local Union, including but not limited to the establishment of insurance, health and welfare, pension, severance and other employee benefit plans.

#### Section 2. RIGHTS OF MEMBERS:

In accordance with and subject to all the provisions of the International Union Constitution and the Uniform District Council Constitution and this Constitution, all persons having lawfully acquired membership in the Union, shall be entitled to the following rights:

(a) To be represented by the Union for the purpose of collective bargaining and to work as a member of the Union and enjoy all of the benefits that flow therefrom, in accordance with agreements, understandings or conditions properly established by the Local Union;

Is there just cause for trusteeship for failure to enforce this critical aspect of the collective agreements of the Local? It is acknowledged, and cannot be contradicted, that members have a right to all of the benefits negotiated on their behalf, by their Local union. The difficulties, in this area, were identified by Mr. Froese, who was specifically hired by the Local to look into issues of this nature. Mr. Froese made recommendations. Although the Local says it has adopted one of the

two recommendations, there is no evidence that it has done so, and there is evidence that the person responsible for enforcement is no longer under its control.

Mr. Froese recommended Local 183 assume greater control over this area and be able to audit the work and results. But we now know that Mr. Alves works for MBTF, not BPA and certainly not the Local. It is not the Local, therefore, that directly controls Mr. Alves. It is not the Local that can dictate or, arguably, even influence what he should or must do to protect the interests of the members of the Local in this very critical area. Because of the legal situation, as explained above, Mr. Alves and this function are even further removed from the control and direction of the Local, directly contrary to the views and recommendations of Mr. Froese. The importance of this is simple.

Mr. Froese's recommendations were designed to increase the role the Local plays in this area. The recommendations were predicated, at least in part, on Mr. Froese's understanding that Mr. Alves was employed by BPA.

During the course of the hearing I was told repeatedly by the Local, their counsel, counsel for the MBTF and trustees of the MBTF, that I could have no information with respect to any decisions taken by the trustees of MBTF. This was based on the legal position that the Local and MBTF, a jointly trusteed (union and employer) organization, are separate and distinct legal entities. The Local continually took the legal position that, not only did it not control MBTF, but also that it was unlawful for the Local to attempt to influence the trustees in the course of their fulfilling their fiduciary responsibilities as trustees of MBTF. The conclusion I was urged by the Local to reach, and which I have reached in these reasons, about the issue relating to matters dealt with by MBTF, is that I am without jurisdiction to question decisions made by trustees of the MBTF.

The Local could reasonably have taken steps to adopt and implement either of Mr. Froese's recommendations. There was no reason put before me why they have not. On the evidence, this situation has not improved, and appears to have worsened. One can only speculate about what Mr. Froese might have recommended had he known that Mr. Alves was working not for BPA but for MBTF, but I believe it is fair to suggest that, given the importance of this area, he would have expressed his recommendation(s) even more strongly. The union was aware of the problem, was made aware of the solution, and had the means to implement the solution. They have not done so.

Given the evidence and the circumstances, I am of the view that the Local has violated articles of the Local Union Constitution cited above and that just cause for the imposition of trusteeship exists under these Findings.

**FINDING 8 – IMPROPER EXPENDITURES**

Under this finding there are four distinct allegations:

- 1) It has spent large sums of money on surveillance of employees and members perceived as a threat to the Executive Board;
- 2) It has spent over \$100,000 to fund an investigation into the personal financial affairs of the Canadian International Vice-President of LIUNA;
- 3) It has used Union resources in the form of the paid time of Business Representatives to convey personal benefits to a member of the Executive;
- 4) It made a substantial donation to a business operated by a contractor who has a collective bargaining relationship with Local 183.

Dealing first with allegation 4, I find the allegation is not proved. The money spent by the Local, that is \$8000 to sponsor a photographer and reporter in Portugal to cover a festival, gave the Local beneficial publicity, which easily can be seen as serving the interests of the Local in that it raised the profile of the Local in the Portuguese community.

Dealing with allegation 3, there was conflicting evidence about how the business representatives became involved in the work at Mr. Dionisio's house. It was also acknowledged that business representatives and members of the Local help each other with work. The evidence does not support this allegation.

Allegations 1 and 2 will be addressed together.

It is not disputed that the Local spent in excess of \$340,000 between March 2004 and April 2005 to conduct surveillance on various individuals, including business representatives of the Local. Of that amount, approximately \$130,000 was spent to conduct surveillance on Gaetano Strazzanti, Durval

Terceira, Danny Averro, Al Bremner and Jaime Melo. Additional money was spent on surveillance of Cosmo Manella, who, at the time of the surveillance, was the Administrator of the Canadian Tri-Fund, Frank Cassano, who is a member of the Local, and Rocco Lotito, who is the Assistant Business Manager of the Local.

For some time, the Local has been involved in various litigations. One of them was with respect to an action that the Tri-Fund had taken against the Trustees of the MBTF for unpaid contributions. It was, initially, to support its position at litigation, that Keith Cooper, Director of Legal Services of the Local, with the knowledge of Mr. Dionisio, decided to surveil Mr. Manella. Mr. Cooper testified there were two purposes for the surveillance. The first was the Local's "overriding concern" that it did not know what Mr. Manella did on a day to day basis for the money sent to the Tri-Fund by the Local. The second reason was stated by Mr. Cooper as follows:

"And I guess the secondary consideration was, you know, the long-standing rumours about Mr. Manella and involvements with various, I guess, shady characters."

When the surveillance started, it was "opened ended" and Mr. Cooper stated he did not know how much it would cost. The arrangements for the surveillance were made through an intermediary, the law firm of Hicks, Block, Adams. During the course of the period of surveillance, Mr. Cooper did not receive any written reports from the investigators. He would meet or talk on a daily basis with a representative of the company conducting the surveillance, who would provide a verbal report. The surveillance reports, filed at the hearing, appear to have been compiled for the purposes of the hearing and were not seen by Mr. Cooper until he was preparing to testify.

During his surveillance, Mr. Manella was observed having one or more meetings with persons identified by the investigators as having organized crime connections. As could be expected, the reports of meetings with organized crime figures raised a flag for Mr. Cooper. Given the historical background in the United States, where LIUNA had been linked with organized crime in the past, the concern of Mr. Cooper was not surprising and was fully understandable.

Mr. Cooper ordered the surveillance of Mr. Cassano because he had been seen at one point with Mr. Manella. The investigators, according to Mr. Cooper, told him that they were informed by 'sources' that Mr. Cassano was involved in some form of illicit behaviour. Mr. Cooper was also told, at about this same time, by the investigators, that their sources had learned that, " \_ there were people inside 183 trying to work to bring it down." Mr. Cassano is a member of the Local. Mr. Cassano had a long history with Mr. Manella. It was acknowledged by Mr. Cooper that Mr. Cassano has, in the past, filed complaints to the GEBCC about the Local and the operations of the Executive Board and, in turn, the Local had filed complaints about Mr. Cassano. The surveillance of Mr. Cassano started on April 5, 2004 and terminated at the end of April 27, 2004. The termination of the surveillance coincided with the close of nominations for the Local elections. Nothing suspicious about Mr. Cassano's behaviour was ever reported to the Local.

Some time in the beginning of June, Mr. Cooper was informed by the investigators that Mr. Lotito's name had come up in the inquiries they were making on behalf of the Local. According to those sources, Mr. Lotito was to meet with, "someone big." Mr. Lotito was followed on June 24 and 25. Nothing suspicious was found and the surveillance was discontinued.

On April 20, 2004, it was reported to Mr. Cooper that four business representatives, Messers

Strazzante, Tercera, Bremner and Avero, were seen meeting Mr. Manella in a cemetery. After receiving the report, Messers Cooper, Dionisio and Mark Lewis, Chief Counsel to the Local, had numerous discussions about the cemetery meetings. A decision was made to interview each of the business representatives separately, except for Mr. Bremner, and those meetings took place on May 28. In addition to the three who were seen at the cemetery, a decision was also made to interview Mr. Melo, apparently, because it was known that he had a close relationship with the other business representatives who were to be interviewed. Each of the representatives interviewed was asked one question: had they ever met with representatives of the International? Each responded, "No". None of the representatives were told that they had been observed meeting Mr. Manella at the cemetery.

It was acknowledged by each witness, who testified on behalf of the Local, that there was nothing wrong with members of the Local, including business representatives, meeting with representatives of the International.

On June 20, at a meeting of the Executive Board, members of the Board were informed of the question put to the four representatives at the initial meeting, and their responses. On that same day, seven representatives, including the four at the initial meeting and Mr. Bremner, were called in to meet with the Board, to discuss their status and assignments. (Two other representatives were called in on unrelated matters.) They were each asked if they had ever met with the International. Each one denied it. At no time were any of the representatives informed about the knowledge the Local had of the meeting with Mr. Manella in the cemetery. Mr. Bremner, Mr. Avero and Mr. Melo were placed on probation. Mr. Strazzante and Mr. Terceira were terminated. According to Mr.

Cooper, the reason Mr. Melo was put on probation, even though he was not at the meeting in the cemetery, was:

“But he wasn't forthcoming on the meetings with those fellows as well and so we just thought that there was an apprehension there and again we thought by placing him on probation we could see where it led.”

Mr. Cooper gave as another reason:

“Ostensibly the -- the -- I guess the reason is that we didn't -- we didn't have, I guess, faith, I guess for lack of a better word, that he was being completely up front and honest with us. When he was brought in to -- I mean, you also have to realize that in the context of this there's -- I mean, talk in the office going on as well amongst people and there's no question that the -- Mr. Melo had made it clear that he hadn't met with the international, but a lot of people around the offices and that ---”

It should be recalled that, at this point, the Local had no information of Mr. Melo meeting with members of the International. At no time was the Executive Board informed that Mr. Melo had been truthful when responding to the question of whether he had met with representatives of the International. In addition, Mr. Cooper testified that the decision of what to do with each of the business representatives had been considered in advance, and that it was up to Mr. Dionisio to make the final decision, based on the answers given by the representatives. Arrangements were made by Mr. Cooper to have each of the five representatives followed to see what they did or with whom they met after the Executive Board meeting.

Following the initial meeting on May 28, where each of the business representatives denied meeting with anyone from the International, a decision was made by Mr. Cooper, with the

knowledge of Mr. Dionisio, that each of the representatives should become the subject of surveillance. The surveillance commenced around May 25<sup>th</sup>, and was conducted intermittently on each of the five, except for Mr. Bremner, until approximately June 18. Intensive surveillance commenced on all of them, including Mr. Bremner, on June 18<sup>th</sup> and terminated on August 4<sup>th</sup>. The report of the investigation company states the purpose was:

“\_to conduct surveillance on these individuals to see if they would be meeting with individuals that may be associated with LIUNA or other individuals of interest that may assist your cause.”

When Mr. Cooper was asked in cross-examination whether those were his instructions, he replied, “Not specifically but, I mean, that's the gist of it.” During the course of the surveillance, the five in question were followed virtually on a daily basis from the time each left his place of residence until his return. At no time were any of the other local members or representatives with whom they met during the course of business or otherwise subject to specific surveillance.

In addition to the surveillance of the five representatives that was being conducted in and around Toronto, on two occasions Mr. Bremner was followed and watched at his cottage near Ottawa. Mr. Bremner was followed there because it was reported to Mr. Cooper by the investigators that Mr. Bremner had a Bed and Breakfast. Mr. Cooper said, in his evidence, that he was concerned about reports that Mr. Bremner was operating a business on the side. When asked, in cross-examination, if there was anything wrong with operating a business on the side, he replied there was not. After the first surveillance of the cottage, it was reported back to Mr. Cooper by the investigators that they did not believe it was a Bed and Breakfast but that they thought it was a cottage. That Mr. Bremner

owned a cottage was confirmed to Mr. Cooper by other office staff, who told Mr. Cooper that Mr. Bremner had been working on his cottage for some time. Notwithstanding this, Mr. Cooper ordered a second surveillance of Mr. Bremner at the cottage. When asked what the purpose of the second visit to Mr. Bremner's cottage was, he said his concern was that the cottage was a Bed and Breakfast.

On June 30<sup>th</sup> 2004, the GEBCC wrote to the Local, indicating that Mr. Terceira and Mr. Strazzante were involved in assisting him concerning his investigations of Local 183 and demanded that their terminations be rescinded. A series of correspondence took place, resulting in the Executive Board, in emergency session, reinstating the two representatives. Notwithstanding the decision to reinstate, Mr. Cooper ordered that Mr. Terceira and Mr. Strazzante be surveilled again to ensure that, “\_there were no, I guess, meetings that would compromise them.” This period of surveillance of the representatives ceased as of August 4.

On July 12, the investigators were instructed to discontinue further surveillance of Mr. Manella because the GEBCC had advised the Local that Mr. Manella was his agent. In addition, the investigators had concluded that the surveillance was not useful in that Mr. Manella's, “\_recent activities up until this date were not considered to be developing any pertinent information to assist in this cause.”

On February 8, 2005, a letter was issued to all business representatives, indicating to them that there was some concern about the manner in which their weekly reports were being filled out, and requiring them to be more diligent in completing their reports. In order to determine if all the

representatives were properly filling out their weekly reports, Mr. Cooper reviewed the reports of each of them some time later. He testified that most had improved significantly but that there were a couple that were not up to the expected level. Those of Mr. Terceira and Mr. Strazzante stood out as providing virtually no information. The Local determined that it would conduct a limited surveillance of the two men so that it would be able to compare the weekly reports, of the two, with what they were actually doing. After the period of review and surveillance, the Local determined that neither Mr. Strazzante nor Mr. Terceira was properly completing his reports, and that discipline was warranted. After some discussion with the GEBCC, it was agreed that a suspension was appropriate.

In dealing first with the latter series of surveillance, relating to the weekly reports, I do not find that the Local did anything that would warrant the imposition of trusteeship. I am satisfied that, by this time, the Local was aware of the relationship between Mr. Strazzante and Mr. Terceira and the GEBCC, and that in order to convince the GEBCC that discipline was warranted, they had to present a full and complete rationale to the GEBCC. The results of the surveillance allowed them to do so.

In dealing with whether the Local was justified in expending more than \$340,000 on surveillance, with respect to the surveillance of Mr. Manella, I accept that one of the original reasons for the surveillance was the Local's concern about organized crime. It definitely falls within the discretion of the Local to decide how it is going to satisfy itself that organized crime has not infiltrated or is not trying to infiltrate the Local. I also accept that the Local had the right, in this case, to follow Mr. Manella, given the nature of the ongoing litigation involving the Tri-Fund.

The question that must be determined is whether the funds expended on the initial series of surveillance of the business representatives constituted a proper expenditure of the members' money. Based on the evidence the answer is 'No'.

Although the ostensible reason given for the surveillance is that the Local was concerned about organized crime based on the meeting in the cemetery, it certainly was not the only reason, and in my view, as time progressed, was not even one of the reasons for the continuation of the surveillance. As indicated above, the Local and LIUNA were involved in multiple legal actions. As well, it is and was no secret that there have been difficulties between the International and the Local for some time. To say that the Local was suspicious of the International is an understatement. That suspicion would naturally carry over to anyone from the Local who was seen meeting someone from the International. This is confirmed by the stated purpose of the investigation, as noted by the investigating firm who conducted the surveillance, “\_to see if they would be meeting with individuals that may be associated with LIUNA, or other individuals of interest that may assist you in your cause.”

The Local says that it became concerned with the representatives as a result of the cemetery meeting. It is to be remembered that the cemetery meeting took place approximately six weeks after the GEBCC and the Inkster group made known publicly that they were investigating the conduct of the Local. The course of action that was followed by the Local was to invite three of the four who were in the cemetery to a meeting. The invitation was also extended to Mr. Melo who was not at the cemetery meeting. The question put to each of them was whether or not they had met

with anyone from the International. They were given no context, and were not told that the Local knew that at least three of them had met Mr. Manella.

The Local argues that much of its subsequent actions flow from the failure of the three to be truthful and its continued concern about organized crime. However, I believe that, in the circumstances of the ongoing conflict between the Local and the International, it was unrealistic of the Local to believe that the representatives would have felt secure enough to answer that bare question in a direct manner. I also question how this whole matter could be characterized as an issue of trust when the Local acknowledges that even if the business representatives were meeting with representatives of the International, they were only exercising a constitutional right. It really wasn't, in my view, a matter of trust that was being tested by the Local, so much as a matter of loyalty.

If the real concerns were about organized crime, there is no reason why they did not deal with that subject in the meeting. Of equal importance, if organized crime was a real concern, one would have thought that it was important to deal with the issue head on. It is possible, if not likely, that if the representatives were meeting people who were involved with organized crime, they might not know that the persons with whom they were meeting were involved with organized crime. To confront them with it would have ensured that any such involvement would be terminated, thus protecting the representatives as well as the Local.

Another concern to me is the stated rationale of the Local for interviewing Mr. Melo. Mr. Melo was interviewed, and asked the same question. Mr. Cooper testified that Mr. Melo was interviewed because of concerns that he had about one of Mr. Melo's relatives who was said to have been

connected with organized crime. If that was the issue of concern to him, why was this not put to Mr. Melo, particularly in view of Mr. Cooper's further evidence that he had never had any prior concerns about Mr. Melo and organized crime? What was the purpose of asking him about meeting with someone from the International if the real concern was organized crime, particularly when the Local knew he had not taken part in the cemetery meeting?

There is, as well, the issue with Mr. Bremner. Mr. Cooper testified that Mr. Bremner was not interviewed the first time because the Local felt that Mr. Lewis would be "soft" on him. If that was the case, and the concerns about organized crime were such a major issue, why not have someone else interview him?

There are also questions about the meeting of the representatives with the Executive Board. The representatives, again, were only asked about meeting with a member of the International – the issue of organized crime was never raised with them. It is hard to understand what the Executive Board expected of the representatives. Each of the four previously interviewed had already indicated they were not involved with the International. It is not likely they would give a contrary response to the Executive Board. Could there have been a real expectation that they would respond differently in front of the Executive Board?

The two meetings focused entirely on whether the representatives had met with people from the International. How then can it be said that the real reason they were followed was because of organized crime. I accept that there may have been an initial fleeting concern flowing from the

meeting in the cemetery, but I am not of the view that it was a real concern in the long term. The focus of the meetings with the representatives do not bear this out.

A further example that shows, in my view, that the purpose of the surveillance was not related to organized crime, are the two surveillances of Mr. Bremner at his cottage. The reason given was to see if he owned a Bed and Breakfast because Mr. Cooper said he was concerned that Mr. Bremner was operating a business on the side. Yet he acknowledged in cross-examination that there was nothing wrong with operating a business on the side, and it is in evidence before me that other representatives have side businesses. Mr. Cooper said his concern was to see if Mr. Bremner was living beyond his means. To the extent that may be the case, there is no reason why Mr. Cooper ordered the second surveillance of Mr. Bremner at his cottage.

The only conclusion that I can draw from the evidence is that the real purpose of conducting or at least continuing the surveillance of the business representatives was to see if they would be meeting with representatives of the International. Thus the question comes down to the following: If the real reason for the surveillance was the concern of the Local that the representatives were meeting with the International, was the expenditure of the funds to accomplish this purpose appropriate, in the context of what was happening at the time? I believe it was not.

The expenditure of the funds was directed to the preservation of the leadership of the Local, and not to the direct benefit of any member of the Local. The Local may not have been happy that some of its members were meeting with representatives of the International but those members had the constitutional right to do so, regardless of their reasons.

The surveillance of Mr. Cassano raises some concerns as to the legitimacy of expending Local funds to have him followed. The reports given to Mr. Cooper were vague and ambiguous. Although there may have been some initial legitimacy in the decision to follow Mr. Cassano, I believe that was not the only reason either to start, or to continue the surveillance for the length of time it took place. Mr. Cooper was concerned about "mischief" with respect to the Local elections. As noted above, Mr. Cassano had a relationship with Mr. Manella. Mr. Manella was part of the ongoing Tri-Fund litigation. Mr. Cassano and the Local had filed charges against one another in the past. Mr. Cassano was a known opponent of the Executive of the Local. I believe one can safely infer from the above, and the fact that nominations were upcoming, that, even if Mr. Cooper's initial decision to have Mr. Cassano followed was legitimate, he was of the view that he should continue the surveillance right up to the nomination meeting, or shortly before, to keep tabs on him and see if he would be meeting anyone from the International in order to somehow upset the election process.

The length of the time that Mr. Cassano was followed is to be contrasted with the length of time that Mr. Lotito was followed. Concerns were expressed by the investigators to Mr. Cooper about Mr. Lotito meeting with "Mr. Big" and surveillance was ordered terminated after two days. The question that has to be asked is why Mr. Cassano's surveillance went on as long as it did when nothing of substance was given to Mr. Cooper day after day, but the surveillance of Mr. Lotito was terminated after two days when nothing of substance turned up. I believe the answer is because, as indicated above, the rationale for continuing the surveillance of Mr. Cassano changed after the initial decision to do so.

In sum, with respect to the surveillance of Mr. Cassano, I find that the initial expenditure of funds based on the information received might have been appropriate, but the expenditure of funds to continue the surveillance as long as it did was not.

The expenditures to follow the five business representatives were also not appropriate. The explanation (organized crime) for the continued and long surveillance of them is not borne out by the evidence. There was the acknowledgement of Mr. Cooper, the instructions as noted in the surveillance reports, and the questions put to the business representatives at the initial meetings with Mr. Cooper and subsequent Executive Board meetings. There was the ordered surveillance after the Executive Board meeting to see with whom they would meet. I conclude that the only concern of the Local had to be that they would meet with someone from the International. There could not have been a concern that they would meet someone involved in organized crime, as that issue never arose at the Executive Board meeting. There was also the fact that Mr. Bremner was not initially interviewed, although he had been at the cemetery, and Mr. Melo was interviewed, although he had not been there. The evidence, therefore, leads to the conclusion that the real rationale to expend the large sums on the surveillance of the five representatives was to see if they were meeting with the International and, if so, with whom.

Was the expenditure to continue the surveillance of the representatives and Mr. Cassano appropriate? In my view it was not. Mr. Cassano had the right to be in opposition to the current regime at the Local. LIUNA is a democratic organization and any of its members may legitimately oppose the Executive. The continued expenditure after the initial few days, tied, as it was, to seeing who might be in opposition to the Executive, was to serve the purposes of the Executive and

not the best interests of the members of the Local generally.

The continued expenditures on the surveillance of the business representatives was contrary to the basic right of any Local member to meet with anyone from the International, if he so pleased. It is to be recalled that no witness testifying on behalf of the Local said there was anything wrong with any member of the Local meeting someone from the International. To the contrary, each agreed that it was a right of any member to do so.

Even the context - conflict between the International and the Local - does not allow the Local to breach such an acknowledged, basic, constitutional right.

As was stated above, in these reasons, the OLRB held that, "In my view, the Local can reasonably dissent, so long as its dissent does not irreparably affect the core values of the parent union". The Board also dealt with dissension between the parent union and a Local in Coelho, [2001] O.L.R.B., No. 174:

"The parent union may have just cause to impose a trusteeship when the actions of the local union go beyond 'legitimate dissent' and constitute a threat to the values of a union or to its ultimate institutional integrity, or to the financial or institutional stability or survival of the local union, provided that none of these factors would unduly prevent the local union from exercising its rights, duties and privileges under the Act. Much will depend on an assessment of the facts in each case."

The instant situation falls four square within what was expressed by the Board in the above two quotes. A core value of the parent union, as expressed in the various constitutional documents but most clearly in section 1(a) of the CEPC, is:

### **Democratic Practices**

- 1 The Constitution of LIUNA and applicable Canadian law protect the democratic rights of the members of LIUNA to participate fully without fear, abuse, intimidation in all Union affairs. To that end the following principles shall be respected.
  - (a) Each member shall be entitled to a full share in Union self-government. Each member shall have the full freedom of expression and the right to participate in the democratic decisions of the Union. Subject to reasonable rules, regulations and qualifications, each member shall have the right to run for office, to nominate through duly established constitutional procedures and to vote in free, fair and honest elections. In a democratic union, as in a democratic society, every member has certain rights but she or he also must accept certain corresponding obligations. Each member shall have the right to criticize the policies, actions and personalities of the Union and its officials however this does not include the right to undermine the Union as an institution to vilify other members of the Union or its elected officers or carry on activities with complete disregard of the rights of other members and the interests of the Union, to subvert the Union in collective bargaining which may include dual unionism, except as permitted by the Local Union or to abuse the processes or obstruct the operations of the Union by bringing repetitive, frivolous complaints or charges.

The expenditure to see if the business representatives were meeting with the International was for a purpose directly contrary to section 1(a).

The expenditure of the funds went beyond legitimate dissent. It was an expenditure of funds to spy on members who were only exercising their constitutional rights.

I accept, therefore, the Finding of the GEBCC.

Is there just cause for trusteeship? The answer is "Yes". The expenditure was for a purpose directly contrary to the basic fundamental tenets of the Union as expressed in Article 1(a) above.

The expenditure was neither necessary nor proper to carry out the objects and purposes of the Union and, in particular, of the Local Union Constitution which requires the Local to “conduct its affairs in a manner which would most tend to enhance, conserve and protect the welfare and interest of the International Union, its affiliates and members.”

Its actions were directly contrary to the interests of the International Union and its members.

Constitutionally the Local is subordinate to the International. The Local has the right to expend its funds to defend itself in various legal proceedings as it has done. It does not, however, have the right to expend funds when the sole purpose of the expenditure is fundamentally flawed - that is the purpose is to determine which of its members may be meeting with the parent organization, a right that any member has and must continue to have. No member of this Local, or any other local, should need to wonder whether their activities, in meeting with a representative of the International, will attract discipline, up to, and including, discharge in the case of its staff, or any other type of reprisal in the case of its members. Yet this was precisely the purpose of the expenditure and it is the gravity of the offence and its implications that warrant trusteeship.

The Local has argued that the expenditure of funds on the surveillance of Mr. Cassano and the business representatives is not a significant sum. It also argues that, even if it is found to have breached a constitutional provision, no trusteeship should be imposed because the expenditure on the surveillance is not sizeable and has not led to a dissipation of the funds of the Local.

When the above proposition is analyzed, it is clear that what the Local is asking for is dispensation from having to adhere to the Constitution solely based on the Local's size and wealth. This argument is totally unacceptable. First, the amount (said to be approximately \$130,000) is sizeable. Just ask any member of the Local for whom \$130,000 could represent three or more years of earnings. Second, it would mean that any local would have the right to violate the constitution provided the sum expended in doing so was not "sizeable" based on the Local's size and wealth. Further, although the GEBCC's Finding makes reference to a large sum of money, I am of the view that it would be inappropriate for any local to expend its member's money for a purpose contrary to a constitutional provision.

To summarize, I find that large sums of money were expended for other than appropriate purposes that would benefit the membership as a whole. The expenditure was motivated in large part by the singular purpose of determining which of the members of the Local were exercising their rights of meeting with the International in the case of the five representatives. In the case of Mr. Cassano, the expenditure was motivated by concerns related to the impending nomination process. The ultimate purpose in both cases was contrary to the objects of the Constitution and the CEBC.

By its actions the Local violated Article II, Section 1 (c) and (d), Article II, Section 2 (c), Article II, Section 3 (b) of the Uniform Local Constitution, Article 1 (a) and (d) of the CEPC.

There is just cause to impose trusteeship under this Finding.

**FINDING 9 - FORGERY OF COLLECTIVE AGREEMENTS**

The GEBCC has alleged that senior representatives of the Local directed the forgery of collective agreements between the Local and companies, working in the high-rise trim part of the Residential Construction Industry, to support a claim for exclusive subcontracting rights in that part of the industry.

A provision in the 2001-2004 Collective Agreement with the Metropolitan Toronto Apartment Builders Association (“MTABA”) allowed the Local to assert exclusive subcontracting rights within parts of the high-rise residential sector if it could prove contractual relations with 75% of the companies employing 75% of the employees working in that sector. In early 2003, the Local made a claim to the MTABA for exclusive subcontracting rights for high-rise trim carpentry based on this provision. The MTABA did not agree that the Local had met the 75% employee threshold. Arbitrator Rob Herman was scheduled to hear the matter initially on July 30, 2003, but employer counsel could not attend on that day, and the hearing was rescheduled for August 11, 2003.

The main witness for the Local, at the arbitration hearing, was to be the Sector Coordinator for the high-rise residential sector, Rocco Lotito. Mr. Lotito is also an Assistant Business Manager of the Local. Mr. Lotito’s evidence was to consist of testimony concerning his knowledge of the Local companies that were performing high rise trim work as well as his knowledge of various documents consistent with the existence of contractual relations between the Local and the companies. After the hearing was adjourned, the General Counsel for the Local asked Mr. Lotito to obtain signed collective agreements for the companies with which it was asserting contractual relations to provide further support for its position at the forthcoming hearing.

It became apparent, during discussions between the parties, that there was substantial agreement on the companies with which the Local had contractual relations, and those with which it did not. However, the Local claimed contractual relations with five additional companies which were not on the list prepared by the MTABA.

The Local does not dispute that Jaime Melo, a Local Business Representative, forged collective agreements purporting to be signed by certain trim carpentry contractors. Mr. Melo testified that he and another business agent, Sergio Lopes, had been attempting to collect the signed contracts under instructions from Mr. Lotito. They were not finding much success. On the Friday prior to the reconvening of the Herman arbitration, Mr. Melo and Mr. Lopes were together at a restaurant, when Mr. Melo received a call from Mr. Lotito. According to Mr. Melo's testimony, Mr. Lotito was somewhat agitated:

"And Rocco Lotito called me on the phone. He was very, very frustrated and he asked me how the agreements are going. And I says, 'We've only got one signed.' We didn't sign anything else. And he tells me on the phone, 'I need these agreements signed. I don't care if you have to fuckin' sign them yourself. These agreements have to be signed. We need those members for the sub-contracting clause.' He was frustrated."

Although Mr. Lopes was not able to hear Mr. Lotito's end of the conversation, he testified that the call took place and that, afterwards, Mr. Melo advised him Mr. Lotito did not care what they did but he wanted the agreements signed and on his desk by Monday morning.

I note, at this point, that Mr. Melo was cross examined very closely, by the Local, on all of his evidence about this matter. In particular, he was cross examined, at some length, about the date

on which he said the call took place. Mr. Melo was adamant that the telephone conversation with Mr. Lotito took place on a Friday, that he forged the agreements over the weekend, and that the hearing was scheduled for the following Monday. This did not, at first, appear to agree with the award that was issued by Mr. Herman, on which the hearing date is indicated as being Friday, August 8, 2003. Mr. Melo maintained his testimony. As it turned out, the date on the award was incorrect, and the parties stipulated the fact that the hearing had taken place on Monday, August 11, 2003.

After the conversation with Mr. Lotito, Mr. Melo and Mr. Lopes parted ways. (Mr. Lopes resigned his position as business representative with the Local a few days later. He now works for the rival Carpenters Union.) Mr. Melo stated that he left the restaurant and met Durval Terceira and Gaetano Strazzante at a coffee shop. He testified that he discussed the situation with both men, including the fact that Mr. Lotito had instructed him to forge the contracts, and that Mr. Strazzante urged him not to do so. It should be noted that both Mr. Terceira and Mr. Strazzante testified in these hearings, but neither was questioned about this aspect of Mr. Melo's evidence.

Mr. Melo testified that he returned to the office to speak to Mr. Dionisio, who he identified as someone he trusted. He met Mr. Dionisio and Mr. Lotito in Mr. Dionisio's office. They discussed the signing of the contracts. Mr. Melo testified that Mr. Lotito was talking about how they did not have enough contracts signed, describing the meeting as follows:

"[Mr. Lotito] was just reiterating over the same thing that we don't have the numbers. And Tony just -- Tony didn't say anything. He just looked over at me, give me a little nod. I just -- Sergio's name came up somewhere in the conversation and, at that point, Tony Dionisio was walking around his desk and he just looked at me and he

said, 'Sergio cannot know about this. He can't know about this.' And I said, 'Okay.' And in the back of my mind, I was thinking to myself, I was saying, 'Sergio knows everything. He wants these agreements signed no matter what.' So I've got to get back to Sergio and correct that."

He testified that when Mr. Dionisio said "Sergio cannot know about this," Mr. Dionisio was referring to the fact that he, Melo, was going to forge the contracts. Mr. Melo testified he was concerned that Mr. Lopes might have gained some understanding of what was going to happen as a result of their conversation after Mr. Lotito's phone call at the restaurant. He testified that he met with Mr. Lopes and told him not to take Mr. Lotito's phone call seriously. Mr. Lopes confirmed this conversation, although he recalled receiving a phone call from Mr. Melo, not a face-to-face meeting.

Mr. Melo forged the collective agreements over that weekend. He described how he used the internet to come up with the names of some owners, and simply fabricated others. He forged the signatures of the owners, and then added his own signature on behalf of the Local, although he deliberately misspelled his last name. The forged agreements were brought to the Herman arbitration hearing, but they were not submitted to the arbitrator. One of the contracts was introduced at an unrelated hearing, and the owner of the company identified it as a forgery. When confronted with this information by Mr. Moszynski, counsel for the Local, Mr. Melo said Mr. Lopes had been responsible for arranging the meeting at which the agreement was signed.

As can be seen, Mr. Melo provided most of the evidence about how the contracts came to be forged. Mr. Lopes corroborated Mr. Melo's evidence, with respect to what Mr. Melo reported immediately after the phone call from Mr. Lotito, and the subsequent contact to reassure him. Mr. Strazzante and Mr. Terceira were not asked, and therefore, could not corroborate Mr. Melo's story

about meeting them before he met with Mr. Dionisio and Mr. Lotito. Mr. Lotito did not testify, but on agreement between the parties, I am not to draw any adverse inference from his failure to do so. In addition, Mr. Dionisio did not testify.

The question is simple. Did Mr. Melo forge the collective agreements on his own initiative or did he do so at the instigation of Mr. Lotito and/or Mr. Dionisio? With respect to this matter, I have the benefit only of the testimony of Mr. Melo and Mr. Lopes. As indicated above, their evidence is mutually corroborative on important points. Mr. Melo testified that Mr. Lotito told him that he needed the agreements signed and he did not care how that happened. Mr. Melo testified that he told Mr. Lopes immediately after the phone call what Mr. Lotito had said. Mr. Lopes corroborated this evidence. Mr. Melo testified that Mr. Dionisio had told him that Mr. Lopes was not to know what was going to happen. Mr. Lopes testified that he had a conversation with Mr. Melo either directly after or shortly thereafter where he was told by Mr. Melo that he no longer had to worry about getting the collective agreements signed. Mr. Melo's evidence about when he forged the collective agreements was accurate, notwithstanding the attempts of the Local to show that his timeline was not accurate and could not bear out his story.

Thus, the only evidence that I have in front of me, with respect to this matter, is the uncontradicted evidence of Mr. Melo and the corroborating testimony from Mr. Lopes. I cannot, on agreement of the parties, draw any adverse inference from the fact that Mr. Lotito did not testify. The Local was, of course, not obliged to call Mr. Dionisio, or anyone else about this, and they did not. That left me with the evidence of Mr. Melo and Mr. Lopes.

Despite vigorous cross-examination, their evidence on critical points was not shaken and was consistent with the allegation of the GEBCC. Given that neither Mr. Dionisio, nor anyone else from the Local, testified on this matter, I have only the uncontradicted evidence of Mr. Melo and Mr. Lopes to deal with. That evidence leads to the conclusion, uncontradicted as it was, that the forgeries took place at the instigation of Mr. Lotito with the knowledge of Mr. Dionisio.

This finding has been proved by the GEBCC, and is a violation of the Uniform Local Constitution Article II, Sec. 1(b) (c) and (d).

I do not believe that one needs to belabour the point about whether there is just cause for trusteeship under this finding. Nothing could be more egregious than a breach of this type. It fundamentally upsets the trust that is inherent in any labour management relationship, the trust that is required if the Local is to successfully represent its members, advocate on their behalf and sign and enter into advantageous collective agreements. It is not hard to imagine the damage that has been caused by this act, and how difficult it will be for the Local to regain the trust and cooperation it needs with the employers with whom it does business. There is just cause for trusteeship under this Finding.

**Conclusion**

The application for trusteeship is hereby granted as requested by the General President for the above stated reasons.

Ottawa, the 20th day of April, 2006.

A handwritten signature in black ink, appearing to be 'M.B. Keller', written in a cursive style.

M.B. Keller, CIHO

## APPENDIX A

### **Finding 1 - Exploitation of Undocumented Workers**

Local 183, its leadership and senior employees conduct the affairs of the Local Union in a manner which permits the exploitation of persons who are not legally authorized to work in Canada. Undocumented workers working in the jurisdiction of Local 183 are denied the benefit of Union collective agreements while other members of the Union profit unfairly from the labour of these workers. Undocumented workers are left off Union invoices that would entitle them to benefits. They are paid below collective agreement rates. Other members receive benefit credits for their work. Local 183 knows this exploitation is taking place. As a matter of policy, Local 183 has denied undocumented workers coverage under Union benefit plans even though they were paying dues to the Union. It has denied many of them the opportunity to be Union members and participate in Union affairs.

The exploitation of these undocumented workers by Local 183 is contrary to the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

### **Finding 2 - Failure to Enforce its Collective Agreement**

Local 183 has failed to take adequate measures to enforce the terms of its collective agreements, particularly agreements covering work in the low-rise, residential sector of the construction industry.

Local 183 permits large numbers of individuals who are not members of the Union to work in the jurisdiction of the Union, notwithstanding that its collective agreements require Union membership.

It does not enforce rates of pay in its collective agreements. It allows unionized subcontractors to avoid the obligation to pay vacation pay. The Local Union knows, or ought to know, that unionized contractors often require their subcontractors to work non-union.

The failure of Local 183 to take adequate measures to enforce the terms of its collective agreements deprives members and employees working in covered employment of the pay and benefits to which they are entitled and is contrary to the International Union Constitution and the Uniform Local Union Constitution of the LIUNA.

### **Finding 3 - Denial of Benefits**

Local 183 denies members access to the Union benefit plans and to their earned vacation pay for reasons that are arbitrary and discriminatory. Union members who paid union dues and for whom contributions were made into Union benefit funds are not allowed to claim benefits if they do not have a valid social insurance number. Members who fall behind in the payment of their dues are cut off from benefits even if they have accumulated a "bank" of benefits in the fund. Members are denied access to health benefits they have already purchased with their labour until their dues are paid. The Union withholds vacation pay from members if they are behind in their dues.

The refusal to allow members access to benefits for which they have paid through their work is a violation of the Uniform Local Union Constitution of LIUNA.

### **Find 4 - Excessive Pension Credits**

Some members of Local 183 are acquiring excessive pension service credits in the Labourers' Pension Fund of Central and Eastern Canada, often by claiming the benefit of work performed by others. Local 183 has created a system for crediting pension hours in the piecework sector of the

construction industry that bases service credits on the value of a construction invoice, rather than the hours worked by the member. Members accumulate excessive hours by leaving workers off invoices and getting credit for their work or by placing their own names on invoices for work performed by others. Some members also obtain pension credits for materials they purchase and include on their invoices. As a result, they can acquire several years worth of pension credits in a single year. According to the rules of the pension plan, members may only acquire pension credits for the hours they actually work.

By creating a system which allows some members to accumulate excessive pension credits for hours they have not worked, Local 183 has created an unequal system and has breached the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

#### **Finding 5 - Failing to Credit Benefit Entitlements**

The system which Local 183 has implemented to allocate benefit credits for persons working in the piecework, carpentry sector of the residential construction industry does not give hourly paid employees the benefits to which they are entitled under their collective agreement. The collective agreement requires employers to contribute certain sums of money into the benefit funds for each hour earned or each hour worked by the hourly paid employee. The system used by Local 183 to allocate benefits is not based on hours of work. As a result, hourly employees in the piecework sector generally receive fewer benefit credits than their collective agreement says they should receive.

By failing to credit members with the benefits they should have earned under their collective agreement, Local 183 has breached the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

#### **Finding 6 - Inadequate Financial Controls**

Local 183 does not exercise an adequate degree of control over the funds of the Local Union, particularly the receipt and distribution of benefit remittances made by employers in the piecework, carpentry sector. Local 183 had delegated the responsibility for handling this money to an employee of a third party retained to administer the benefit funds of the Local Union. Millions of dollars paid by employers for the benefit of Union members flows through the account administered by this person. The senior officers and employees of Local 183 do not oversee his work. They do not check the allocations made for members and normally do not review the source documents on which the allocations are based.

By failing to exercise an adequate level of control over the funds of the Local Union, Local 183 has breached the Uniform Local Union Constitution of LIUNA and the Canadian Ethical Practices Code.

#### **Finding 7 - Unapproved Donations**

Local 183 has donated large amounts of money from the funds of the Local Union to various charities without first seeking the required approval for the donations. In April of 2004, Local 183 gave away \$600,000 of Union money to a number of charities. The Executive of the Local Union has been reminded in the past that any donation that exceeds \$10,000 must first be approved by the GEBCC. They have ignored that requirement. The money that was donated to charity represented damages obtained through Union grievances and should have been spent for the

benefit of members.

By donating Union funds contrary to the LIUNA policy on financial practices, Local 183 has violated the Uniform Local Union Constitution of LIUNA and the Canadian Ethical Practices Code.

**Finding 8 - Improper Expenditures**

Local 183 has made significant expenditures of the funds of the Local Union on projects which are not connected with the objects and purposes of the Union. Local 183 is spending large amounts of Union money in a manner that is contrary to LIUNA's policy on the payment of legal fees with Union funds. It has created a potential conflict of interest by making a substantial donation to a business owned by the principal of a construction company which has a collective bargaining relationship with Local 183.

Local 183 has dissipated the funds of the Local Union by making expenditures that were not necessary to carry out the objects and purposes of the Local Union. This is contrary to the Uniform Local Union Constitution of LIUNA and the Canadian Ethical Practices Code.

**Finding 9 - Forgery of Collective Bargaining Agreements**

Local 183 has obtained significant bargaining rights in the high-rise sector of the residential construction industry by submitting forged collective agreements to an arbitrator. The forged collective agreements were used to trigger a subcontracting clause that required members of the Metropolitan Toronto Apartment Builders' Association to subcontract high-rise trim work to companies that had a collective bargaining relationship with Local 183. The forgeries were committed by an employee of Local 183 at the instigation of his superior. The forged collective agreements were deliberately submitted to an arbitrator in order to obtain the benefit of this subcontracting clause.

These actions of Local 183, in forging collective agreements and obtaining a benefit from those forgeries, constitute a violation of the Canadian Ethical Practices Code, the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

**Finding 10 - Fraudulent Claim of Past Service Credits**

Senior officers and employees of Local 183 attempted to acquire additional service credits in the Labourers' Pension Fund of Central and Eastern Canada by making false claims of past employment. The claims, which were made in letters submitted to the pension fund, concerned employment alleged to have taken place between the mid-1960s and the mid-1970s. The alleged employment did not occur.

Recently, the administrators of the pension fund formally requested authorization to verify these claims. When the officers and employees of Local 183 involved failed to give that authorization, the pension credits were revoked.

The attempt to obtain pension credits on the basis of false claims of past employment is a violation of the Canadian Ethical Practices Code and the Uniform Local Union Constitution of LIUNA.

**Finding 11 - Failing to Make Per Capita Payments**

Local 183 has systematically failed to make required per capita tax payments to LIUNA for individuals who were paying dues to the Local Union but who have not been initiated into

membership in the Union. Local 183 deliberately delays initiating dues paying workers into membership. Its membership records disclose large numbers of individuals who are paying dues to the Local Union but for whom no per capita tax payment has been made. The amount of money wrongly retained by Local 183 is substantial.

By not making the required per capita tax payments to LIUNA, Local 183 has breached the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

**Finding 12 - Failing to Remit to the OPDC**

Local 183 is failing to make required contributions to the Ontario Provincial District Council of LIUNA. This is another consequence of the failure of Local 183 to initiate into membership persons who are working in the jurisdiction of the Local Union and paying dues to the Local Union.

The failure to remit per capita contributions to the Ontario Provincial District Council of LIUNA is a violation of the Uniform Local Union Constitution of LIUNA.

**Finding 13 - Failure to Remit Pension Contributions**

Local 183 recently adopted a practice of withholding pension contributions it was required to make on behalf of newly hired, full time employees of the Local Union. No contributions were made into the International Union Pension Fund on behalf of these employees during a period of probationary employment established by Local 183. This practice was corrected after complaints by some employees of Local 183.

The failure to make pension contributions on behalf of full time employees of a Local Union is a violation of the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

**Finding 14 - Discrimination Against Contractors**

Local 183 appears to discriminate against contractors in the construction industry for reasons that have nothing to do with protecting the jurisdiction of the Local Union or advancing collective bargaining rights. In one case, Local 183 refused to allow a company to become a unionized contractor because it was owned by a person who had given evidence in an earlier criminal prosecution of the Business Manager. In another case, a contractor fell out of favour with Local 183 when he objected to being repeatedly solicited to buy tables at fundraising events sponsored by the Local Union.

By discriminating against contractors for reasons that have nothing to do with the exercise of its bargaining rights, Local 183 deprived members of the opportunity to work in covered employment and has breached the International Union Constitution and the Uniform Local Union Constitution of LIUNA.

**Finding 15 - Misleading the LIUNA Auditor**

Local 183 deliberately withheld important membership information from a LIUNA auditor who visited the Local Union in April of 2002. Local 183 removed information from the computer terminal used by the auditor in order to conceal the existence of employees working in the roofing sector. The Local Union failed to disclose large numbers of individuals who were paying dues to the Local Union but who had not been initiated into membership. This concealed the fact that no per capita tax payments were being made for these individuals.

By misleading and deceiving the LIUNA auditor, Local 183 has breached the Uniform Local Union Constitution of LIUNA.

**Finding 16 - Obstruction of the GEBCC Investigation**

Local 183 has engaged in a concerted course of conduct to obstruct and frustrate the investigation of its affairs. Employees of Local 183 who are believed to have cooperated with the investigation have been subjected to harassment and intimidation. Two Business Representatives who met with the GEBCC were fired by the Executive Board of the Local Union. They were only reinstated on the direction of the GEBCC and the General President of LIUNA but not to their previous assignments. Employees are being closely watched. they have been followed. They have been secretly photographed.

Local 183 has purported to cooperate with the investigation by allowing access to representatives of the GEBCC, by providing documentation on request and by marking officers available for examination. However, this cooperation has been illusory. No attendance at local 183's offices has been permitted without advance notice and without the presence of counsel from Local 183. Direct contact between investigators and employees of Local 183 has been discouraged. Access to the audited financial statements of Union trust funds has been denied and the Union member who administers benefit payments in the piecework, carpentry sector was directed not to answer questions about his employment.

Knowingly obstructing or interfering with the GEBCC is a violation of the Canadian Ethical Practices Code.

**APPENDIX B****HEARING PROCESS CONSENT ORDER****DATED November 10, 2005**

On October 16, 2005 I asked the parties for suggestions as to how we could complete this matter expeditiously. After receiving and discussing those suggestions with the parties, and considering the interests of all in resolving this matter as soon as possible, on consent of the parties I make the following orders:

1. Based on what I have heard, I no longer require evidence on the following Findings set out in the General Allegations of the Complaint for Trusteeship dated December 6, 2004:
  - Finding 6 – Inadequate Financial Controls
  - Finding 7 – Unapproved Donations
  - Finding 10 – Fraudulent claim of Past Service Credits
  - Finding 13 – Failure to Remit Pension Contributions
  - Finding 15 – Misleading the LIUNA Auditor
  - Finding 16 – Obstruction of the GEBCC Investigation
2. The GEBCC is to specify the witnesses he intends to call to deal with the other findings only. He may not add or substitute witnesses unless a matter is raised that could not have been reasonably anticipated. The GEBCC is not obliged to call all witnesses on the list.
3. The GEBCC will provide will-says or affidavits for all witnesses at least five clear days prior to the date on which the witness is called to testify. ‘Clear days’ means working days on which no hearings in this matter are held. ‘Will-say’ statements will set out in detail the evidence areas to be covered by the witness but are not a substitute for *viva voce* evidence. The GEBCC will provide all relevant material and will-say statement with respect to Jackie Davies as far in advance as reasonably possible in order to allow for preparation of cross-examination. Time allotted for the examination and cross-examination of Ms. Davies will be extended following consultation with the parties.
4. The GEBCC will be allotted three hours to examine each witness. If more time is required, a request must be made prior to the witness being called. Local 183 Counsel will be limited to six hours to cross-examine each witness. If more time is required, Local 183 Counsel will request an extension prior to commencing the cross-examination.
5. Local 183 Counsel will provide a list of witnesses to the GEBCC prior to the calling of the GEBCC’s last witness. The GEBCC will provide Local 183 Counsel with at least 2 clear days notice of the date he expects to call his last witness. Local 183 Counsel may not add or substitute witnesses unless a matter is raised that could not have been reasonably anticipated. Local 183 Counsel is not obliged to call all witnesses on the list.

6. Local 183 Counsel will be permitted to call an 'overview' witness who will not be restricted to dealing with the specific remaining findings. Local 183 Counsel will have two days (at least 12 hearing hours) to examine this witness, and the GEBCC will have eight hours to cross-examine. A will-say statement may be provided for this witness, but will not be required. It is understood that this witness may also provide evidence with respect to the remaining findings, and that a will-say statement will be provided for such evidence. In addition, the Local will not be restricted from presenting an 'expert report' subject to the normal rules of relevance and probative value.
7. Local 183 Counsel will provide will-says or affidavits for all witnesses at least five clear days prior to the date on which the witness is called to testify. Local 183 Counsel will be allotted three hours to examine each witness. If more time is required, a request must be made prior to the witness being called. The GEBCC will be limited to six hours to cross-examine each witness. If more time is required, the GEBCC will request an extension prior to commencing the cross-examination.
8. The issue of reply evidence, if any, will be considered at the appropriate time.
9. Once all witnesses have been heard, each party will have five days to make submissions in writing on the remaining findings only, and will have two days to reply. In addition, each party will have three hours for oral argument.
10. The GEBCC will provide translation services through a professional witness translation agency, preferably one with court experience. The translator cannot have had prior contact with the witnesses. Examination and cross-examination times will be adjusted accordingly.