

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

99-CV-915-A

LABORERS' LOCAL 210 OF THE
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO, BUFFALO, NEW YORK,

Defendant.

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Affidavit of Charles B. Wydysh, Assistant United States Attorney for the Western District of New York, by and through Michael A. Battle, United States Attorney for the Western District of New York, and Bruce G. Ohr, Chief, Organized Crime and Racketeering Section, United States Department of Justice, and Laborers' Local 210, by and through William Hoffman, Business Manager for Laborers' Local 210, will move this Court at a motion term of the United States District Court for the Western District of New York, United States Courthouse, 68 Court Street, Buffalo, New York, on the ____ day of January, 2005, at ____ o'clock in the ____ .m. or as soon thereafter as counsel can be heard for an order authorizing the continuation

of the appointment of John J. McDonnell, court-appointed Liaison Officer for Local 210.

DATED: Buffalo, New York, January 21, 2005.

Respectfully submitted,

MICHAEL A. BATTLE
United States Attorney

BY:

s/CHARLES B. WYDYSH
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5870
Charles.Wydysh2@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

99-CV-915-A

LABORERS' LOCAL 210 OF THE
LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, AFL-CIO, BUFFALO, NEW YORK,

Defendant.

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

CHARLES B. WYDYSH, being duly sworn, deposes and states:

I am an Assistant United States Attorney for the Western District of New York ("WDNY") who is assigned to this case. This affidavit is submitted in support of a motion by the United States of America through Michael A. Battle, United States Attorney, WDNY, and Bruce G. Ohr, Chief, Organized Crime and Racketeering Section, United States Department of Justice, William Hoffman, Business Manager for Laborers' Local 210 of the Laborers' International Union of North America ("LIUNA"), AFL-CIO, Buffalo, New York ("Local 210"), and John J. McDonnell, court-appointed Liaison Officer for Local 210, for an order by this Court extending the

appointment of John J. McDonnell, Liaison Officer for Laborers' Local 210 to January 24, 2006.

1. In February, 1995, the United States and LIUNA entered into an agreement whereby LIUNA agreed to engage in internal reforms designed to eliminate corruption and the influence of organized crime under the oversight of the Department of Justice. As part of this internal reform program, LIUNA adopted an Ethics and Disciplinary Code and hired a team of former Federal prosecutors and investigators to administer the internal reform process which consists in part of the General Executive Board ("GEB") Attorney who prosecutes charges and the Inspector General who investigates charges; and

2. On December 13, 1995, LIUNA, by and through the GEB Attorney, made a determination that grounds existed to place Local 210 in trusteeship and, consequently, commenced proceedings to determine whether a trusteeship would be imposed; and

3. On February 22, 1996, in order to resolve those trusteeship proceedings, LIUNA, by and through the GEB Attorney, and Local 210 entered into an agreement, under the terms of which all the officers of Local 210 were required to resign, and Local

210 was to undergo a period of supervision lasting up to two years commencing on March 31, 1996; and

4. Local 210's period of supervision did not commence until on or about April 22, 1996, after the United States District Court, WDNY, through Honorable Richard J. Arcara, Chief United States District Judge, entered a temporary restraining order recognizing the legality of the supervision and ordering that members of the Local who had unlawfully taken over and held control of Local 210's offices cease their activities obstructing the implementation of the supervision. Leaders of the insurgents who attempted to run Local 210 were found to have violated the LIUNA International Union Constitution and EDP and their membership in LIUNA was revoked; and

5. Upon taking office in April, 1996, the supervisor initiated a series of much needed reforms. He implemented referral hiring hall practices. In addition, the Supervisor attempted to decrease the expenses of the Local by discontinuing payments on an unauthorized staff profit sharing pension, freed the Local of exorbitant auto leases for officers, and attempted to reduce the amount of monies paid by the union on its property lease. The Supervisor also instituted uniform bookkeeping procedures which included the identification of stewards, contractors and employees and the location and duration of jobs. A skills sheet was

implemented for the first time whereby skills of employees were identified and computerized. Also, contributions made to employees were systematically monitored, recorded and computerized.

6. With regard to the Affiliated Funds, the Supervisor equitably revised a system of ratability for the disbursement of funds to pensioners, implemented an annuity fund which increased benefits based on contributions, and implemented procedures for the removal of the LCN member training fund administrator.

7. The Supervisor also assisted the GEB attorney in bringing disciplinary hearings against 28 individuals who were alleged to have played a part in subjecting the Local and its members to the influence of organized crime. As a result of the hearing, 19 individuals were permanently barred from employment or holding office. Five other individuals executed agreements severing their ties to the union and/or agreeing to never again serve in a leadership capacity.

8. In 1998, prior to the expiration of the 2-year period of supervision over Local 210 described above, LIUNA, by and through the GEB Attorney, initiated proceedings to place the Local under trusteeship, based on evidence that grounds for such action existed as a result of the continuing threat of organized crime influence

over Local 210 and the unfinished state of the internal reforms necessary to protect the Local and its members from such corruption; and

9. Subsequently, on or about April 22, 1998, LIUNA's Independent Hearing Officer rendered a decision and entered an order imposing a trusteeship over the Local; and

10. Steven Hammond was appointed to serve as Trustee for Local 210 and thereby acquired the lawful authority to act for and on behalf of the Local, as set forth in Article IX, Section 7 of the LIUNA International Union Constitution; and

11. Since 1996, during the periods of supervision and trusteeship described above, LIUNA's Inspector General and GEB Attorney have conducted internal investigations and disciplinary proceedings that have resulted in a number of individuals being removed from Local 210, and otherwise subjected to disciplinary penalties, for committing violations of rules and standards of conduct that LIUNA adopted to protect itself from all kinds of corrupting influences, including and especially the influence of organized crime; and

12. During the same period of time, the Supervisor and Trustee of Local 210, and others assisting in LIUNA's efforts to achieve reform have implemented various measures to review and monitor Local 210's affairs, to establish educational and training programs, to resolve problems with Local 210's management procedures, job referral practices, and bargaining agreements, and to undertake various other initiatives in order to create the conditions necessary to return Local 210 to autonomous democratic governance free from the influence of organized crime; and

13. Those efforts resulted in substantial progress toward reform but had not achieved their ultimate goal of eliminating the threat of LCN influence and LCN in the conduct of the affairs of Local 210; and

14. On November 18, 1999, the United States of America commenced an action in Buffalo, New York, WDNY, by filing a complaint against defendant Laborers' Local 210 of the Laborers International Union of North America, AFL-CIO, Buffalo, New York so that the United States could obtain equitable and injunctive relief under the civil remedies provisions of the Racketeer Influenced & Corrupt Organizations Act, 18 U.S.C. § 1964, including the appointment of a court Liaison Officer to oversee the operations of Local 210; and

15. The United States alleged in its complaint that throughout the history of Local 210, until LIUNA, by and through the GEB Attorney, placed Local 210 under supervision and removed the Local's officers in 1996, the affairs of Local 210 were influenced and controlled by organized crime; that officers, employees, and certain members of Local 210 were members of, associated with, and influenced by organized crime figures; and that organized crime has continued its efforts to exert control and influence over Local 210 up to November 18, 1999; and

16. On December 8, 1999, the parties, that is, Denise E. O'Donnell, United States Attorney, WDNY, and Bruce G. Ohr, Chief, Organized Crime and Racketeering Section, United States Department of Justice, Local 210, by and through Steven Hammond, Trustee for Local 210, and John J. McDonnell, court-appointed Liaison Officer for Local 210, entered into a consent decree in settlement of the action filed on November 18, 1999, wherein it was agreed that while the efforts of the Supervisor and Trustee had resulted in substantial progress toward reform of Laborers Local 210, they had not achieved their substantial goal of eliminating the threat of LCN influence and LCN in the conduct of the affairs of Local 210. Accordingly, the parties agreed that the Trustee of Local 210 should remain in place and continue the implementation of programs

to advance the interests of the Local 210 rank and file. Further, the parties agreed that the unusual and historical conditions at Local 210 required extraordinary measures, including the assistance of a Court-appointed officer with powers and resources not available to a supervisor or a trustee, to work with the United States and Local 210; and

17. On January 24, 2000, Honorable Richard J. Arcara, United States District Judge, WDNY, approved the consent decree. Also on that date, the Court appointed John J. McDonnell Liaison Officer for Laborers' Local 210; and

18. It was agreed that the Liaison Officer would have powers, rights and responsibilities relating to review of expenditures, contracts, litigation and appointment of officers and employees. The Liaison Officer also was provided access to information regarding Local 210 and its funds, to issue subpoenas and to refer disciplinary proceedings to the LIUNA Inspector General or the GEB. With regard to elections, the Liaison Officer determined when to hold elections, the fitness of candidates, the procedures for holding elections and the review of results of elections including its certification or, with the Court's approval, its setting aside. The Liaison Officer also was obligated to file reports with the Court on a biannual basis. The Liaison Officer's term extended for

a period of sixty (60) months from the date of his appointment, January 24, 2000. Notwithstanding the expiration of the 5 year term, the Court Liaison's term could not expire prior to 1 year following certification of an election. A copy of the consent decree containing the Liaison Officer's responsibilities, duties and powers is attached hereto as Exhibit A.

19. After assuming office, the Liaison Officer continued the salutary practices and procedures established by the Supervisor and Trustee to reform the Local and implemented additional reforms. His actions are detailed in his reports submitted to this Court. By way of illustration, the Court Liaison Officer undertook the following:

20. After meeting with the general membership upon assuming his post, the Court Liaison Officer (hereinafter "CLO") established an open-door policy including a private "hot line" for member concerns. The training center increased all phases of training including shop steward certification training. Numerous additional training courses were also made available to the members. An operating budget was developed with financial matters routinely discussed at weekly staff meetings. A local certified public accounting firm was hired to conduct accounting, auditing and record-keeping procedures. The CLO replaced all vendors working

for the union before 1996. The CLO also hired a local law firm to handle normal union matters. An employee manual was established covering virtually all aspects of employment. Telephone and computers were updated and functional office space and furniture were added. The CLO also re-organized office records with new policies adopted in documenting communications with various business-related contacts. New employee job descriptions were written defining the duties and responsibilities of all employees. Efforts were initiated to educate political and community leaders as to the improvements at the union. Upon taking office, the CLO disciplined three employees for unprofessional conduct or lack of due diligence. Two other union members were disciplined by the CLO for a violation of the union picket line guidelines.

21. Within a year of taking office, the CLO authorized the election of Local 210 officers. These elections, which the CLO certified, were the first contested elections since 1973. As part of the election process, the CLO instituted a candidate questionnaire, a nominations meeting, a candidates' debate and the monitoring of the polling process. Following certification of the election, the Trusteeship of Local 210 terminated.

22. After the election, the CLO continued to implement procedures designed to improve all aspects of union activity. An

aggressive contract enforcement program was instituted. Training for newly elected union officers and executive board members was provided concerning the LIUNA Constitution, union administration, as well as issues relating to the Department of Labor, National Labor Relations Board, contract negotiation and the administration of grievance procedures. Weekly staff meetings were scheduled and membership committees were formed to deal with political, financial, organizing and community issues. An employee expense voucher system and regulations were developed. The CLO also spearheaded a more aggressive approach to eliminating delinquent contractor contributions. The Court Liaison Officer also assisted in collective bargaining activities which resulted in one of the highest wage increases in union history.

23. On June 12, 2004, Laborers' Local 210 conducted an election of officers. On September 16, 2004, the Liaison Officer certified to the United States District Court the results of the June 12, 2004 election. This was the second election conducted under the supervision of the Court Liaison Officer with the first election having occurred on January 12, 2001.

24. Following the election of June 12, 2004, and most recently, the Court Liaison Officer, John J. McDonnell, William Hoffman, Business Manager, and members of the Executive Board for

Local 210 met to discuss the results of the elections, as well as the progress made to rid Local 210 on LCN influence. As a result of those discussions, it was agreed that the term of the Court Liaison Officer should be extended in order to afford the Court Liaison Officer an opportunity to complete matters initiated before the termination of the Court Liaison Officer's term.

25. The decision to request that the Court Liaison Officer's term be extended was based, in part, on the need to assist the newly elected officers in their duties to achieve a smoothly running union. While many of the officers who were elected in this most recent election held officer positions as a result of the previous January 12, 2000 election, many of the officers' positions changed and it was determined that in order for the officers to function at the highest level of efficiency and responsibility, guidance, training and oversight would be needed from the Court Liaison Officer in order for the new officers to succeed without interference from organized crime. Moreover, it was noted that there are three new members on the executive board without experience who will need assistance from the Court Liaison Officer to make themselves self-sustaining and not susceptible to organized crime influence. Additionally, it was determined that because there was spirited opposition during the election by those loyal to the former insurgents who organized opposition to the supervisor's

assumption of control over Local 210 in March, 1996, which resulted in the insurgents being enjoined by Honorable Richard J. Arcara, Chief United States District Judge, WDNY, on April 22, 1996, oversight by the Court Liaison Officer, who is knowledgeable and familiar with the identity and methods of the insurgents and their associates, would be indispensable in securing 210 from the reaches of organized crime influence.

26. As noted, the CLO has instituted widespread financial reform impacting on all aspects of the union and its related funds bringing accountability and responsibility to the fiscal operations. He has endeavored through a series of programs to remove nepotism and patronage from the hiring and officer selection process. Through his efforts at promoting fairness and reward based on merit the CLO enabled the union, consistent with its constitution, to pursue the principles of democracy and a free flow of ideas. Equally as important, the CLO has initiated programs to educate, improve, and expand the laborers' skills to make the union more competitive and sought after in the construction market. Most important, through his efforts to promote and publicize the union's accomplishments and achievements to the public he has dispelled negative connotations formerly associated with the union and has set the union on a course of gaining a reputation for honesty, responsibility and possessing an efficient, hard-working and highly

competent workforce. In order to continue these advancements, it is submitted that the CLO's participation in oversight of the union is critical and essential to its ongoing improvement.

Based on the foregoing, it is respectfully requested that this Court extend the appointment of the Court Liaison Officer, John J. McDonnell to January 24, 2006.

s/CHARLES B. WYDYSH
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
716/843-5870
Charles.Wydysh2@usdoj.gov

Subscribed and sworn to before me
this 21st day of January, 2005.

s/Kea D. Strate
NOTARY PUBLIC/COMMISSIONER OF DEEDS
COMMISSIONER OF DEEDS
In And For The City Of Buffalo, New York.
My Commission Expires Dec. 31, 2006.

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Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2005, I electronically filed the foregoing **NOTICE OF MOTION** with the Clerk of the District Court using its CM/ECF system, and I mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participants:

John J. McDonnell
Court Liaison Officer
Laborers' Local 210
2750 Harlem Road
Buffalo, New York 14225

William Hoffman
Business Manager
Laborers' Local 210
2750 Harlem Road
Buffalo, New York 14225

Executive Board
Laborers' Local 210
2750 Harlem Road
Buffalo, New York 14225

s/KEA D. STRATE