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**Report and Recommendation of IEC Subcommittee
Regarding Trusteeship of TWU Local 541**

This constitutes the Report and Recommendation of the Subcommittee of the International Executive Council (“IEC”) regarding the emergency trusteeship implemented on July 25, 2014 at TWU Local 541 (“Local 541” or the “Local”).

This matter came before this Subcommittee pursuant to Article V, Section 4 and Article XVIII, Section 3 of the TWU Constitution. The hearing on this matter was held on August 13, 2014 (the transcript of the hearing incorrectly provides the hearing date as August 12). This Report and Recommendation is hereby submitted to the International Executive Council (“IEC”) which is empowered to decide among other things whether to continue, modify or discontinue the trusteeship instituted at Local 541. *See* Article V, Section 4 of the TWU Constitution.

I. Procedural Background

Local 541 handles representation for American Airlines and American Eagle flight simulator technicians and engineers and for American Airlines instructors, Tr. 18-19; TWU is the collective bargaining representative for these AA employees. Ex. 5; Tr. 18-19.¹

In mid-July, 2014, John O’Donnell, TWU Chief of Staff and Director of Accounting, reviewed the June 2014 financial report of Local 541. Tr. 183. The Local had had a treasury for the past five years or so of approximately \$300,000 and was that amount in the Local’s May report. Tr. 191-95; Ex. 53. O’Donnell’s review revealed that the treasury of the Local had dramatically shrunk by over half -- from \$292,000 to \$139,000 – in one month; the report failed to identify the reason for this dramatic financial drop. Tr. 191-95; Ex. 53.

International President Harry Lombardo and Secretary-Treasurer Alex Garcia thereafter designated Gary Shults – a TWU International Representative and member of the IEC – as representative for TWU to examine and inspect the Local’s books. Tr. 26-28, 69; Ex. 7. Shults was assisted in this examination and inspection by Jose Galarza, an International Representative. Tr. 168-77.

Following the initial investigation by Shults and Galarza, the International Administrative Committee (“IAC”) voted unanimously on July 25, 2014 to adopt a resolution to place Local 541 under trusteeship protection on an emergency basis and appoint Shults as Administrator for Local 541. Ex. 12; Tr. 30. That same day, a majority of the IEC members voted to approve this IAC resolution. Ex. 11; Tr. 30-33. *See* Article XVIII, Section 3 of the TWU Constitution.

A notice of the emergency trusteeship and immediate appointment of an Administrator for Local 541 along with Trusteeship Charges (and information on the hearing regarding these Charges) were provided to Local 541 Executive Board members on or about July 25, 2014. Tr.

¹ Transcript pages of this hearing are cited as “Tr.” followed by the appropriate page number; exhibits admitted during the hearing are cited as “Ex.” followed by the appropriate exhibit number or “HO” (for Hearing Officer) and then the exhibit number

22-23, 38-39; Exs. HO 1, 2; Ex. 15. A special notice of the trusteeship and the Trusteeship Charges (and information on the hearing regarding these Charges) were also provided to Local 541 members, including through website postings. Tr. 22-23, 41-42; Ex. HO 3, Ex. 19; *see also* Exs. 16-18 & Tr. 39-41. International President Harry Lombardo brought the Trusteeship Charges against the Local. *See* Ex. HO 1.

The Trusteeship Charges of President Lombardo set forth several allegations of ongoing and serious misconduct and problems at the Local, including that Local 541, its officers, and other Local Executive Board members² engaged in and are continuing to engage in financial malpractice -- which included by depleting over one-half of the treasury in breach of fiduciary duties (reviewed in more detail below) -- and that this ongoing conduct threatened to continue in the future. The Charges contend that this conduct violated Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and, Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution, as well as through reference, TWU Policy Regarding Expenses and the LMRDA . Ex. HO 1. These assertions of Local misconduct were more fully described in four Charges. *See* HO Ex. 1, paragraphs 2-5, which are addressed below.

Pursuant to the procedures set forth in Article V, Section 4 of the TWU Constitution, this Subcommittee -- consisting of John R. Feltz (Chairman), Tony Utano, and Kevin P. Smith -- was constituted and a hearing was held on August 13, 2014 in Hurst, Texas. The hearing was to obtain evidence regarding the Trusteeship Charges brought against Local 541. A court reporter transcribed the entire hearing.

At the hearing, Gary Maslanka (International Administrative Vice President and Rail Division Director) presented the case in favor of the Charges. *See* Tr. 9-10, 24. Local officers and executive board members who had not resigned were invited to participate in the hearing (present evidence, question witnesses, including the proponent's witnesses, and to make statements). Tr. 9-11. No such Local representative was present, Tr. 11, 21-22; *see also* Tr. 12-15; Exs. 1-4 (resignations of elected Local representatives). A Local member in attendance was invited to submit a statement. Tr. 65-66.

Brother Maslanka offered the testimony of five witnesses at the hearing and 60 exhibits were introduced and admitted. *See* Tr. 3--7. These witnesses were Gary Drummond, Dan Pursuit, Gary Shults, Jose Galarza and John O'Donnell. Tr. 3.

II. Findings and Conclusions

The Subcommittee heard the testimony and reviewed the evidence presented, and sets forth below its findings of fact and conclusions regarding the alleged violations of the TWU Constitution and TWU Policy.

A. First Charge: Financial Malpractice by Issuing "Cashier Checks."

² This Report and Recommendation sets forth positions of Local 541 representatives at the time of trusteeship implementation.

The First Charge, set forth in paragraph 2 of the Charges, states:

The Local 541 Executive Board approved providing each simulator engineer and pilots instructor within Local 541 with \$500.00. Cashier checks for this amount have been sent to each such employee in Local 541 pursuant to this Local Executive Board action.

a. There was no limit on how the money may be used. Nor was there any proper justification for providing this money to employees in this manner.

b. The Local Executive Board approved this excessively large expenditure even though it represents a large part of the Local treasury, leaving it with considerably less resources to effectively confront an ongoing raid by the National Association of Airline Professionals (NAAP) which is seeking to displace TWU as the bargaining representative for the American Airlines simulator engineers and pilots instructors. Local President James Fudge recently resigned from his position as Local 541 President and emerged as NAAP president.

c. This conduct . . . violates of Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and, Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution.

Evidence:

1. There is no question that the Local Executive Board in June 2014 approved providing cashiers checks of \$500.00. Tr. 75, 77, 79-81, 84-90, 103-04; Ex 38-41. The money, however, was provided only to its members employed at American, not those at American Eagle (now Envoy). Tr. 103-04. Those receiving the gift cards included the Local officers and executive board members. Tr. 111-12; Ex 41.

2. The evidence further showed that:

a. This expenditure amounted to over \$127,000 for a Local with \$292,000 in its treasury. Tr. 75, 103-04. This expenditure along with others discussed below drain over half of the Local's money in one month. Tr. 190-91; *supra* at 1.

b. The Local in its minutes of the Executive Board that approved this expenditure stated that the money was for purchasing computers for enhancing communication with members for the American members for purposes related to seniority integration (related to the AA-U.S. Airways merger). Tr. 90; Ex. 38. This assertion just doesn't fly. In this regard:

a. There is no indication that the Local at any time identified any "Local-member communication problem" that existed. Tr. 102-03.

- b. The checks could only be converted to cash and could not be endorsed over to a seller of computers for purchase of a computer. Tr. 186-87.
 - c. No limit was placed on how the \$500 in cash could be used, and no evidence exists that the Local even informed its members that it hoped they would use the money to purchase a computer. Tr. 80-81, 97, 112.
 - d. To obtain a \$500 check the member had to sign his name and provide an email address; that the member had an email address is a good indication that he or she already had a computer (or access to one), Tr. 91-93, and thus did not need another. The member also did not have to verify that he or she used the money to purchase a computer, Tr. 91-93.
 - e. The Local provided no means for overseeing, tracking or verifying how the money was spent by its members, and the Local implemented no system for verifying that the money was used for communication devices, Tr. 80-81, 91-93, 97.
 - f. The counterpart simulator and instructor employee crafts and classes at U.S. Airways are also represented by TWU. Tr. 126-28. A seniority list integration of these groups – between the American and U.S. Airways groups – would be under TWU Merger Policy which basically provides for dovetailing of lists. Tr. 127-28. Given this, the Local’s justification to provide \$500 for its American members (and not its other members) and a large Local cost – for computers to enhance communications related to seniority integration – simply does not compute. Tr. 127-28.
 - g. If the Local truly had a communication problem and truly believed (based on a proper review for union purposes) that it was critical to solve a union issue through purchasing of communication devices, it could have purchased communication devices in bulk and handed them out – and to all members not just those at American; but it instead chose to hand out cash without any limits. *See* above evidence.
- c. During this time period, the Local was under a threatened raid from NAAP (to displace TWU as the bargaining representative for simulator engineer and pilots instructor at American Airlines); instead, of using the money on behalf of the Local, including to combat the NAAP raid, the Local frittered away the money on cashier checks, Tr. 20-21, 49-57; Ex. 33; *See* above evidence.
 - d. The Local made this expenditure without issuing vouchers (vouchers are required under the TWU Constitution), even though the Local was well aware of the need for proper documentation for Local expenditure. Tr. 80, 93, 192-94;
 - e. The Local’s financial report for June 2014 to the International Secretary-Treasurer failed to properly identify the expenditure of over \$127,000 for these checks, Tr. 183-

88; Ex.37.

- f. *See also* below at 6 (Third Charge) regarding evidence of explanation for this expenditure.

Conclusions: The TWU Constitution sets forth that a local with regard to its assets – to protect member dues money: (a) not be wasteful in its expenditure or control of its assets, (b) not gratuitously divide its assets among its members, and (c) use its funds for the legitimate purposes of the local. The Constitution further requires Local Executive Board members to act in this circumstance as trustees and that expenditure be made with proper documentation, i.e., vouchers. *See* Article VIII, Section 9; Article XIV, Sections 3 and 14; Article XVI, Section 4, 5; and, Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution. Here, the hearing evidence demonstrates that these Constitutional requirements were violated and that the Local officers and Executive Board members damaged the interest of the Local. *See* Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution. As a result, the assertions of financial malpractice contained in this Charge should be sustained.

B. Second Charge: Improper Provision of Money to Local Counsel.

The Second Charge, set forth in paragraph 3 of the Charges, states:

The Local 541 has the law firm of Seham, Seham, Meltz and Peterson, LLP – a firm that represents AMFA, a union that has over the years and currently is seeking to displace TWU as the bargaining representative for the American mechanics. The Local 541 Executive Board approved payment of \$40,000 to the Seham firm – which has been provided – but no documentation supporting the payment (bills or retainer) have been provided.

- a. This improper payment and improper creation of a Local fund distinct from regular Local treasury funds . . . violates Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and, Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution.

Evidence: The hearing evidence shows that: (a) the Executive Board in late spring 2014 retained the Seham firm, Tr. 113; (b) the agreement between the Local and the Seham firm called for a retainer of \$10,000, Tr. 137; and (c) the Local instead paid considerably more in retainer amounts to the Seham firm – two \$20,000 payments and an additional amount of over \$7,000 (without reducing the retainer amount), Tr. 74, 132-33, 137, 147, 165-66 – and, without justification, the Local claimed that the money to Seham was for (i) research on seniority integration issues, though again, this integration issue is covered by TWU Merger Policy and no expenditures regarding it was needed, Tr. 126-28; Ex. 44; *supra* at 6 re evidence on Charge 1, or (ii) drug and alcohol abuse work, though there is no indication that there was such an issue or program, or that the Seham firm performed any work on this issue, Tr. 118-119, 124, 140-41. In addition, the Local spent these amounts (payments to the Seham firm) without vouchers. Tr. 119, 128.

Conclusions: The TWU Constitution bars improper payments and the creation of a Local fund distinct from regular Local treasury funds, *see* Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; and, Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution. The evidence shows that the assertions contained in the Third Charge should be upheld.³

C. Third Charge: Failure to Uphold Pledge to Union.

The Third Charge, set forth in paragraph 5 of the Charges, states:

The raid by NAAP at American obviously represents an attack on TWU.

- a. By providing funds to [its] American [members] . . . , the Local 541 leadership (the officers and other Executive Board members) are seeking to build political support for themselves by using Local money.
- b. The Local 541 Executive Board have taken no measures to battle this raid and demonstrate their allegiance to TWU in the face of such a raid.
- c. This conduct in paragraph 4 (and its subparagraphs a. and b.) violates of Article VIII, Section 9; Article 14, Sections 3 and 14; Article XVI, Section 5; Article XVI, Section 4; Article XIX, Sections 5(a), 5(h) and 5(n) of the TWU Constitution, and the Oath of Office in the TWU Constitution for International and Local Officers.

Evidence: The evidence (including that referenced in the review of other Charges) showed that: (1) the Local Executive Board did not take steps to battle NAAP which is raiding its members, and instead of using its resources to battle this raid, the Local wasted its assets – as shown in the evidence to the first two charges; and (2) in fact, during the time period NAAP was collecting authorization cards to replace TWU, Locals 541 and 542 (which share office space) acted in the same way, in (a) providing \$500 to their members, (b) retaining and proving large amounts of Local funds to the Seham firm, and (c) failing to fight NAAP, and indeed, by soon joining NAAP's side – with Local 541 President James Fudge announcing he was NAAP President in its application to replace TWU as representative of American dispatchers, simulator engineers and instructors. Tr. 62-63, 70-76, 103-112, 134-37; Ex.5; *see also* Evidence reviewed above and Report and Recommendation Regarding Trusteeship of Local 542.

Conclusions: This evidence shows that allegations in this Charge should be sustained.⁴

³ That the Seham firm represents AMFA played no role in this conclusion.

⁴ A further investigation is needed (interviews of Local representatives or members) to determine if the Local in effect paid its American members to induce them in any way to sign NAAP authorization cards; the NMB is in a better position than TWU to conduct such an investigation. On this issue, we note that inducement is strongly suggestive in that the cashier checks were provided only to the American members, not those employed by American Eagle (Envoy).

D. Paragraph 4 of Charges: Threat of Further Improper Disbursements From Local Treasury.

Paragraph 4 of the Charges states: Unless halted immediately, further improper disbursements from the Local treasury will occur or are threatened to occur. The improper payments described in paragraphs 2 and 3 above demonstrate a recent wrongdoing that is designed to quickly drain the Local treasury of funds. This significant risk of ongoing risk members' dues money cannot be countenanced.

Evidence: The evidence reviewed above shows that there was an ongoing effort to spend the Local's money and that these expenditures were contrary to the TWU Constitution's terms. *E.g.* Tr. 191-95 (in one month, the Local's treasury contracted to less than half of what it had been--from \$292,000 to \$139,000).

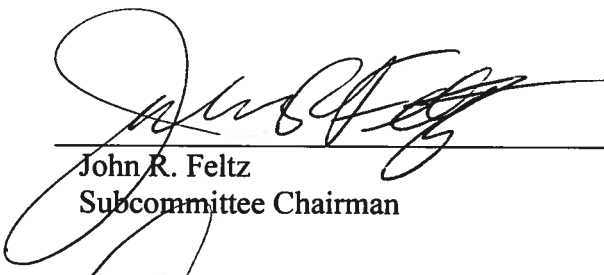
Conclusions: The evidence shows that (a) the actions of the Local representatives presented a threat of ongoing improper activity – of continued wrongful disbursements of Local treasury money, and (b) upon emergence of this evidence, the International properly acted to block further similar misconduct through institution of the emergency trusteeship.

III. Conclusion and Recommendations

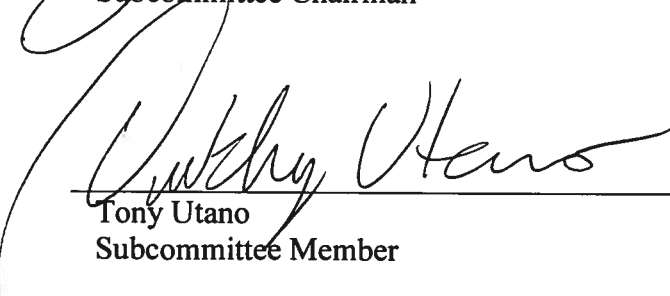
Based on the evidence presented at the hearing, the Subcommittee concludes that the IAC/IEC had ample grounds for imposition of the emergency trusteeship at Local 541 and that the Local violated the TWU Constitution as described in the Trusteeship Charges and reviewed above. The Subcommittee therefore recommends -- to ensure re-establishment of appropriate Local financial controls and governance -- that the Local 541 trusteeship be continued.

Finally, the Subcommittee further notes that this Report and Recommendation concerns the Trusteeship Charges against Local 541, not the separate charges brought against Local 542. However, the two Reports and Recommendations regarding the two Locals should be read together to the extent each Report and Recommendation addresses coordinated activity between the two Locals.

Subcommittee of the International Executive Council



John R. Feltz
Subcommittee Chairman



Tony Utano
Subcommittee Member



Kevin P. Smith
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