

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MIKE McCANN, et al.,</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>NO. 04-3328</b>
	:	
<b>UNITED UNION OF ROOFERS,</b>	:	
<b>WATERPROOFERS, AND</b>	:	
<b>ALLIED WORKERS,</b>	:	
<b>Defendant</b>	:	

**MEMORANDUM**

**STENGEL, J.** **December** , **2004**

A group of named members of Composition Roofers Union, Local 30 (“Local 30”), seeks preliminary injunctive relief in the form of a court order dissolving the Trusteeship imposed upon it by the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO (the “International”). For the reasons explained in this memorandum, I will deny Local 30’s request for injunctive relief.

**BACKGROUND**

Judicial intervention in the affairs of Local 30 is nothing new. Beginning in the 1960’s, Local 30 began a campaign of violence, fear, sabotage, vandalism, bribery, and terrorism sponsored and carried out by its leadership to coerce contractors into dealing with the union. United States of America v. Local 30, et al., 686 F.Supp. 1139 (E.D. Pa. 1988). In 1972, eleven members of Local 30 were convicted and imprisoned for the unlawful intrusion and physical destruction of a non-union job site at Valley Forge. Problems of violence and financial mismanagement continued and resulted in the criminal conviction of many of Local 30’s leaders under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et*

*seq.* United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO v. Composition Roofers Union, Local 30, United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, 2003 U.S. Dist. LEXIS 6575, \*7 (E.D. Pa. March 38, 2003). In November 1987, a federal jury found that thirteen officers and business agents of Local 30 had conspired to conduct and did conduct the affairs of Local 30 through a pattern of racketeering activity. United States of America v. Local 30, et al., 686 F.Supp. at 1164. This pattern consisted of extortion, bribery of judges and other public officials, embezzlement from a union employee benefit plan, soliciting kickbacks from a provider to a union employee benefit plan, and mail fraud. Id.

Following these convictions, the government sought to impose a Trusteeship upon Local 30 under RICO. Judge Bechtle denied the motion, and instead created a “Decreeship,” under which newly-elected union leaders would be subject to the supervision of the court. United States v. Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Ass’n, 686 F.Supp. 1139 (E.D.Pa. 1988). The Decree also provided that the court would retain jurisdiction. Id. at 1174.

In 1999, after over a decade of oversight, Judge Bechtle suspended the Decreeship upon the belief that activities and conditions at Local 30 had improved. Judge Bechtle noted that the court could revoke its suspension and revisit the Decree upon cause shown. United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO v. Composition Roofers Union, Local 30, United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, 2003 U.S. Dist. LEXIS 6575 at \*8. At that time, Local 30 was financially sound, and was determined to be in compliance with all aspects of federal law in relation to the earlier serious problems which had advanced the imposition of the Decreeship.

In 2000, Mr. Thomas Pedrick, Local 30's Business Manager, resigned his position to become a Vice President/International Representative for the International. (Tr. of October 5, 2004 Hearing, 132). New leadership of Local 30 was installed.

Under this leadership, the financial stability of Local 30, its attempts to restore integrity, and its benefit funds suffered significant damage within three years. Pursuant to his authority under the union's constitution, the President of the International retained Lawrence R. Beebe, a certified public accountant with the Bond Beebe accounting firm, to conduct an investigation of the operations of Local 30. Mr. Beebe's report, dated March 17, 2003, revealed numerous problems of financial malpractice and mismanagement, unauthorized reductions in Local 30's initiation fees, and the failure of Local 30's board to fulfill its duties. *See* Pl.'s Ex. 15. Based on the results of this investigation, the International's President appointed Mr. Pedrick as Trustee of Local 30 and by Order dated March 21, 2003, directed him to take control of the organization.

Later that day, Mr. Pedrick appeared at the premises of Local 30 in Philadelphia for the purpose of serving the International's Order imposing the Trusteeship and taking charge of Local 30's affairs. Mr. Pedrick was met by a group of members of Local 30, many of whom are plaintiffs in this case, who refused to turn over the property to Mr. Pedrick. That refusal led to the International's petition for a temporary restraining order which Judge VanAntwerpen granted after a hearing. A few days later, Judge VanAntwerpen conducted a preliminary injunction hearing. At the hearing, Mr. Beebe testified that he had conducted the examination of Local 30's records on February 26 and 27, 2003; and that the examination led him to conclude that Local 30 was insolvent. He also testified that Local 30 was substantially behind in paying bills that were due, that reports were often filed late, and that the minutes of the board were inadequate.

In his memorandum and order dated March 28, 2003, Judge Van Antwerpen found that Mr. Beebe's testimony at the preliminary injunction hearing provided credible evidence of financial malpractice at Local 30; and that the Trusteeship was installed for a permissible purpose.<sup>1</sup> Judge VanAntwerpen granted the International's motion for a preliminary injunction enforcing the Trusteeship imposed upon Local 30. United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO v. Composition Roofers Union, Local 30, United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO, 2003 U.S. Dist. LEXIS 6575 at \*16. The Judge further found that the Trusteeship in this case was established in accordance with the provisions of the International's constitution. Id.

On August 16, 2003, the International conducted the hearing required by Article X § 3 of its by-laws to determine whether the Trusteeship should be continued. *See* Def.'s Ex. 22. At the conclusion of that hearing, the three person panel appointed by the International's President recommended that the Trusteeship be continued. The panel concluded that: "the evidence supported International President Kruse's reasonable belief that an emergency situation existed within Local 30 warranting the imposition of an emergency Trusteeship...The panel, therefore, recommends that the Trusteeship be continued until such time, consistent with the International Constitution and applicable federal law, the International Executive Board determines that self-government shall be restored to Local 30." *See* Pl.'s Ex. 1 at 32-33.

In June 2004, the International President requested that Mr. Michael Stiens, a representative of the International and Deputy Trustee of Local 30, prepare a report on the current

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<sup>1</sup>Correcting corruption or financial malpractice are valid purposes for the establishment of a Trusteeship under 29 U.S.C. § 462.

status of Local 30, and a recommendation as to whether the Trusteeship should be extended. (Tr. of October 5, 2004 Hearing, 40, 58). Mr. Stiens, with the assistance of counsel for the International, prepared the report dated August 24, 2004 and presented it to the President and Executive Board of the International. Id. at 58-59; *see* Pl.’s Ex. 3. In this report, Mr. Stiens recommended that the Trusteeship be extended. Id.

In a letter to Local 30’s membership dated September 2, 2004, the International announced that it had approved Mr. Stiens’s report, and that it would extend the Trusteeship beyond the eighteen months.<sup>2</sup> *See* Pl.’s Ex. 13. The International noted a number of reasons for this decision: 1) to complete the vitally important task of correcting the financial malpractice that occurred before the imposition of the Trusteeship; 2) to correct serious problems that were created due to the prior officers’ failure to enforce collective bargaining agreements; 3) to restructure and revitalize collective bargaining relationships with area employers; 4) to continue the International’s efforts to try to protect the benefit funds; 5) to study ways to secure plan benefits and to implement a program, already in place, to improve the financial status of the benefit funds; 6) to audit the records of contractors who reported zero or few hours to the benefit funds, and to develop a program to collect any monies that these contractors may owe Local 30 and the funds; and 7) to consider disciplinary charges that may be brought against the former officers of Local 30. Id.

On September 14, 2004, Local 30 filed a motion for a preliminary injunction seeking

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<sup>2</sup>Article X, Section 4 of the union’s constitution provides: “The International Executive Board may decide to continue or discontinue any existing trusteeship or suspension and may restore any officers, representatives or members to their original status if such suspension has been found to be unwarranted.” Section 4 further provides that: “the International Executive Board shall have the right at any time and from time to time to review trusteeships and take such action as may be indicated.” *See* Def.’s Ex. 22 at 61-62.

dissolution of the Trusteeship, arguing that all of the International's reasons for extending the Trusteeship are flawed pretexts. In October 2004, I began a four-day hearing on the motion.

## **FINDINGS OF FACT**

The testimony taken at the hearing and the exhibits offered into evidence have established the following facts. One of the major reasons for the imposition of the Trusteeship was to correct the financial malpractice and mismanagement of Local 30. Local 30 was running out of money quickly. (Tr. of October 5, 2004 Hearing, 46). The International ordered comprehensive audits of Local 30's records to determine its financial integrity, including Local 30's welfare, pension, and vacation funds up to the year 2002.

In 2000, Local 30's receipts exceeded its disbursements by \$216,891. (Tr. of October 6, 2004 Hearing, 50; *see* Def.'s Ex. 1 at 2). In 2001, expenses exceeded receipts by \$177,155. (Tr. of October 6, 2004 Hearing, 50; *see* Def.'s Ex. 1 at 2). As of December 31, 2002, Local 30's assets totaled \$530,905, and its liabilities totaled \$905,706. (Tr. of October 6, 2004 Hearing, 27; *see* Def.'s Ex. 37 at 2). Disbursements exceeded cash by \$332,330. Id. Revenue declined during the three year period from 2000 to 2002, whereas disbursements grew from \$1,984,000 in 2000 to \$2,502,000 in 2002. (Tr. of October 6, 2004 Hearing, 51).

As of January 31, 2003, Local 30's bank accounts showed a balance of \$94,831 with obligations of \$415,948. (Tr. of October 5, 2004 Hearing, 47; Tr. of October 6, 2004 Hearing, 50; *see also* Pl.'s Ex. 1 at 8). Creditors had been complaining about Local 30's failure to pay its obligations in a timely fashion. (Tr. of October 5, 2004 Hearing, 47). This situation caused growing concern that Local 30 might be forced into involuntary bankruptcy. Id. at 48.

Over the months of the Trusteeship, the financial picture of Local 30 improved to some

extent. (Tr. of October 5, 2004 Hearing, 47). A schedule of net liquid amounts available as of June 30, 2004 revealed a cash balance of \$325,000, and an accounts receivable of \$244,000. *See* Pl.'s Ex. 2. Local 30's benefit funds were owed \$17,518, as opposed to approximately \$151,000 at the time of the imposition of the Trusteeship. (Tr. of October 5, 2004 Hearing, 50). The amount owed by Local 30 to the International in dues known as *per capita* taxes had been as high as \$142,000 in August 2003, but were reduced to \$105,389 by June 2004. *Id.* at 51. Also as of June 30, 2004, Local 30 owed \$351,226 to the International for salaries, legal fees, reimbursements, accounting fees, *per diem* expenses, and other expenses incurred during the Trusteeship. The costs and fees are the legal responsibility of the Local. *See* Pl.'s Ex. 2 and Pl.'s Ex. 10 at 20. Until that obligation is satisfied, Local 30 remains technically insolvent. *See* Pl.'s Ex. 2 at 2; Tr. of October 5, 2004 Hearing, 68; Tr. of October 6, 2004 Hearing, 39. If all of Local 30's bills were presented, it would not be able to pay them with the cash balance that existed as of June 30, 2004. *Id.* at 39.

A local union can be considered insolvent unless it has at least six months of cash on hand in reserve to pay its bills. (*See* Testimony of Michael Stiens; Tr. of October 5, 2004 Hearing, 118; *see also* Testimony of Lawrence Beebe; Tr. of October 6, 2004 Hearing, 40). Without such reserve, a local is vulnerable to financial ruin. *Id.* at 41. Currently, Local 30 has approximately \$300,000 cash on hand which equates to having no reserve. *Id.* at 118. Local 30 was able to amass this money in large part due to the Trusteeship's decreasing the number of business agents to seven. To function properly, Local 30 should have an additional two or three agents, but sufficient money for their salaries still does not exist. *Id.* at 120. Local 30 has also been able to save money by not employing a Business Manager/Secretary Treasurer during the

Trusteeship, a position which would normally command a salary in excess of \$100,000 per year. Id. at 120-121.

Local 30's Health & Welfare fund was functionally insolvent as of December 31, 2002. (Tr. of October 7, 2004 Hearing, 55). However, during the months of the Trusteeship, the potential financial collapse of Local 30's Health & Welfare fund was averted for the short term. Substantial studies were completed and a program was adopted to return the fund to financial health. (Tr. of October 5, 2004 Hearing, 77-79; *see* Pl.'s Ex. 3 at 2). The collective bargaining agreement provides for a one dollar an hour increase in compensation in 2004. *See* Def.'s Ex. 23. At a meeting in May 2004, the trustees of the fund decided that eighty-five cents of this pay increase was to be contributed to the fund; that no changes would be made to the basic medical and hospitalization coverage; that no change would be made to the prescription drug plan; that a slight modification would be made in the dental plan; that there would be a reduction in the fund's legal services; and that there would be adjustments made to the retiree's contribution rates. (Tr. of October 7, 2004, 72-75). The ultimate effect of these changes is a projected operating surplus of \$426,000 for 2004, and a projected operating surplus of \$596,100 for 2005. It is necessary for any benefit fund to maintain adequate reserves. (*See* Testimony of Ronald Merritt; Tr. of October 7, 2004 Hearing, 63-64). This Health & Welfare fund should have six to nine months of unallocated reserves in liquid assets. Id. at 64-65. These projected surpluses will help to increase those reserves. Id. at 75; *see* Def.'s Ex 21.

Local 30's pension fund is still in financial trouble. Its liabilities overwhelm its assets. (Tr. of October 5, 2004 Hearing, 86). This under-funding is a result of a lack of consistent contributing. In 1999, the pension fund was one hundred four percent funded; in 2003, it had

declined to be sixty-three percent funded. Id. at 87;*see* Def.'s Ex. 1 at 6. There were various factors which contributed to this situation, including the decline of the stock market, and the failure of some of the contractors to pay into the fund. (Tr. of October 5, 2004 Hearing, 88). Nevertheless, without appropriate steps taken, the pension fund will be insolvent by the year 2007. *See* Pl.'s Ex. 10 at 24-25. The long term cost of the pension fund is considerably in excess of its anticipated contributions. Thus, it is expected that there will be a negative funding standard account<sup>3</sup> balance by the end of 2007. (Tr. of October 6, 2004 Hearing, 193).

The Internal Revenue Service requires that a pension fund's year-end funding standard account balance be positive, i.e., that it have more credits than charges. Id. at 201. If that balance is not a positive one, the employers must immediately contribute to the fund to make up the shortfall. The funding standard account must be brought to at least zero. This is an obligation of the employers, in this case the various roofing contractors who are signatories of the collective bargaining agreement. The Internal Revenue Service also levies an additional five percent excise tax on the shortfall payable to the IRS. Id. at 201. If that contribution is not made within thirty days of the date of the demand letter, then the excise tax penalty increases to one hundred percent of the deficit. This excise penalty is the burden of the employers, i.e., roofing contractors, not of the Local and not of the fund. Id. at 202. Signatory contractors could be forced into bankruptcy if they are not able to pay their share of the minimum funding deficiency. Over recent years, the pension fund has had a positive funding standard account balance, but it

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<sup>3</sup>Title 26 U.S.C. § 412 (Internal Revenue Code) imposes minimum funding requirements with respect to pension funds. As an administrative aid in the application of the funding requirements, the pension fund is required to maintain a special account called a 'funding standard account' to which specified charges and credits (including credits for contributions to the plan), plus interest, are made for each plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is generally treated as meeting the minimum funding standard for the year.

has declined from \$12 million in 1999 to \$8 million in 2004. A continued decline is projected for the next several years. Id. at 205; *see* Def.'s Ex. 15 at 12. The burden of a yearly excise tax on the shortfall levied against contractors would drive them quickly out of business and deprive Local 30's members of jobs.

The Local's declining cash balance and dramatic rise in its unpaid obligations were warning signs which Local 30's officers ignored. There is no indication that the serious financial condition of Local 30 was discussed at the meetings of the membership, the executive committee, or the executive board. In fact, an internal investigation revealed that spending continued to increase substantially in 2002. (Tr. of October 6, 2004 Hearing, 51). While the financial condition of Local 30 worsened, its officers approved the attendance of nine people at a convention in Fort Lauderdale in 2002, and eleven people at a convention in New Orleans in 2003. Id. at 69-72. At the end of 2002 and the beginning of 2003, these officers entered into a sixty-month lease on behalf of Local 30 for five new SUV's (one Ford Expedition and four Ford Explorers) for a total amount of \$156,475, with no indication that new vehicles were needed. Id. at 73-74. For the period November 2001 through March 2003, there were one hundred twelve charges on Local 30's credit card but only twenty-four supporting receipts for those charges. Id. at 74-75; *see* Def.'s Ex. 1 at 8. Two paid employees of Local 30 were also found to be full-time employees of signatory employers of the collective bargaining agreement. (Tr. of October 6, 2004 Hearing, 76-77; *see* Def.'s Ex. 1 at 9). As of the date of the imposition of the Trusteeship, Local 30's four benefit funds had only been paid through July 2002. (Tr. of October 6, 2004 Hearing, 78).

The investigation also revealed that Local 30 had an "organizing fund" which was not on

the books, but should have been. (Tr. of October 6, 2004 Hearing, 80-82). This fund was used to pay for \$5,690 worth of donations, including \$1,000 in political expenditures, \$2,600 in golf and bowling outings, an advertising grant of \$2,500 to a signatory contractor, and the payment of speeding tickets for two of Local 30's officers. Id. at 83-84.

Another major reason for the imposition of the Trusteeship was to repair relationships between the Roofing Contractors Association ("RCA") and Local 30. (Tr. of October 7, 2004 Hearing, 69). Sixteen contractors in the Philadelphia area belong to the RCA. Seventy percent of the work performed under the collective bargaining agreement is performed by these sixteen contractors. Id. at 99-100. Approximately sixty other contractors have signed the same collective bargaining agreement but do not belong to the RCA. Id. at 98-99.

It is imperative that all of the area roofing contractors sign the same collective bargaining agreement to ensure standardization of wages, working conditions, hours of work, overtime provisions, and contributions to the benefit funds. (*See* Testimony of Richard H. Harvey; Tr. of October 7, 2004 Hearing, 100). If not, the RCA contractors would be at a significant disadvantage, and their ability to compete for work would be negatively impacted. Id. at 100-101. It is also imperative that every contractor abide by that agreement and pay into the benefit funds. (Tr. of October 5, 2004 Hearing, 70). During the three year period immediately preceding the imposition of the Trusteeship, Local 30 signed collective bargaining agreements with an additional fifty-three contractors. Yet during that period, ninety percent of those contractors did not report any significant "union work." *See* Def.'s Ex. 1 at 3. Thirty-seven of the contractors reported no union work on average. Of the remaining sixteen contractors, five reported one union journeyman a year, and another five reported an average of two or three union journeymen

per year. (Tr. of October 6, 2004 Hearing, 56; *see* Def.'s Ex. 1 at 3). Only six of these contractors were employing four or more union journeymen a year. *Id.* at 56-58. These statistics are more than curious given that commercial roofing contractors generally employ at least a five-person crew on any roofing job.<sup>4</sup> (Tr. of October 7, 2004 Hearing, 115-116; *see* Def.'s Ex. 23 at 37). The question arose whether every roofer was being reported that should have been reported. (Tr. of October 6, 2004 Hearing, 58). The only reasonable explanation is that Local 30's prior officers deliberately failed to enforce the collective bargaining agreements, and allowed contractors to forego reporting work hours and paying into the benefit funds. *Id.* at 70; *see* Pl.'s Ex. 3 at 3. Moreover, the contractors' failure to comply with the provisions of the collective bargaining agreement was concealed from the International, the RCA, and the trustees of the benefit funds.

The failure of the contractors to pay into these funds is particularly serious because the collective bargaining agreement contains a "most favored nations" clause, which was designed to ensure a level playing field among the contractors. *Id.* at 102; *see* Def.'s Ex. 23, Article II, Section 2, Page 2. The clause provides that the union would not permit any signatory to the collective bargaining agreement to work under more favorable terms than are contained in the agreement. If such a thing were to occur, the RCA members would automatically be able to adopt those same more favorable terms. *Id.* at 103. Thus, if a contractor or a group of contractors were permitted to stop contributing to Local 30's benefit funds, then the RCA's contractors could invoke the "most favored nations" clause, and also stop contributing. *Id.* at

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<sup>4</sup>The collective bargaining agreement requires each of the signatory contractors to utilize the services of the union hiring hall exclusively in order to secure manpower for roofing jobs. *See* Def.'s Ex. 23, Article VI, 13-21.

104. This would spell disaster for Local 30's benefit funds which would lose seventy percent of their funding.

## **DISCUSSION**

The International is an unincorporated association and a labor organization as defined by Section 3(i) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 402(i)(5). Local 30 is also an unincorporated association and a labor organization within the meaning of Sections 3(i) and (j)(5) of the LMRDA, 29 U.S.C. § 402(i), (j)(5). Local 30 is chartered by the International and has its principal place of business in Philadelphia. The International and all of its subordinate bodies are governed by the provisions of the constitution and by-laws of the United Union of Roofers, Waterproofers and Allied Workers, AFL-CIO. *See* Def.'s Ex. 22.

The LMRDA was enacted in 1959 in response to the perceived abuses that plagued labor relations and undermined public confidence in the labor movement. Morris, et al. v. Hoffa, et al., 361 F.3d 177, 186 (3d Cir. 2004)(citing Becker v. Industrial Union of Marine & Shipbuilding Workers of America, AFL-CIO, 900 F.2d 761, 766 (4<sup>th</sup> Cir. 1990)). This legislation was an attempt to respond to abuses within the organized labor movement while minimizing governmental interference with the internal affairs of labor organizations. Id. Thus, while substantive abuses were to be addressed, the McClellan Committee recommended that any corrective legislation insure union democracy.<sup>5</sup> Id.

A Trusteeship is defined as "any receivership, Trusteeship, or other method of

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<sup>5</sup>The Select Committee on Improper Activities in the Labor Management Field that was responsible for investigating abuses in organized labor and recommending remedial legislation is often referred to as the "McClellan Committee," after Senator McClellan, the Committee's chair. Morris, et al. v. Hoffa, et al., 361 F.3d at 186, n. 12.

supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.” 29 U.S.C. § 402(h). Congress enacted Title III of the LMRDA to address problems related to the imposition of Trusteeships over local unions. Morris, et al. v. Hoffa, et al., 361 F.3d at 186. In doing so, Congress was concerned with past abuses related to the imposition of Trusteeships, but it was also aware that Trusteeships are effective devices for maintaining order within labor organizations. Id. Thus, the goals of the LMRDA were to be accomplished without emasculating the Trusteeship as a control device. Id.

The LMRDA provides that a parent union may impose a Trusteeship over a local only in accordance with the constitution and bylaws of the parent organization for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization. 29 U.S.C. § 462.

Section 464(c) provides:

In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws **shall be presumed valid for a period of eighteen months from the date of its establishment** and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 462 of this title.

29 U.S.C. § 464(c)(emphasis added).

Thus, the LMRDA grants international unions the power to impose Trusteeships in accordance with the union’s constitution and bylaws for a purpose allowable under the Act and, in most instances, shields such Trusteeships from attack for a period of eighteen months.

However, the LMRDA further provides that after exercising supervisory control over a local union for eighteen months a Trusteeship imposed by an international union is presumed invalid and its “discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the Trusteeship is necessary for a purpose allowable under § 462.” Id.

The Report of the Congressional Committee accompanying the LMRDA stressed that “labor history and the hearings of the McClellan committee demonstrate that in some instances Trusteeships have been used as a means of consolidating the power of corrupt union officers, plundering and dissipating the resources of local unions, and preventing the growth of competing political elements within the organization. Sheet Metal Workers’ Int’l Ass’n v. Lynn, 488 U.S. 347, 357 (1989). The basic objective of the LMRDA, including the limits imposed on Trusteeships, is to ensure that unions are democratically governed and responsive to the will of their memberships. Id. at 352.

Congress did not intend to render unlawful trusteeships imposed by international unions after the passage of eighteen months. The language set forth in 29 U.S.C. § 464 establishes a burden of proof that must be satisfied by an international union when, upon challenge, an issue is raised concerning whether a Trusteeship should be continued after the eighteen month period of presumed validity. Therefore, the issue here is whether the International proved by clear and convincing evidence a permissible purpose for extending the Trusteeship beyond an eighteen month period as required by LMRDA.

As Judge VanAntwerpen found, one of the purposes of the imposition of this Trusteeship was to correct the effects of the mismanagement and financial malpractice that had occurred at

Local 30. Upon a more thorough investigation after the imposition of the Trusteeship, other severe abnormalities surfaced as discussed above, and revealed an even bleaker scenario than was presented when the Trusteeship was first imposed.

Nevertheless, the experience and expertise of the Trusteeship have played a prominent role in the ongoing rehabilitation of Local 30. Mr. Beebe's firm is preparing the certified financial condition of Local 30 as of December 31, 2003. Id. at 29. This report has not yet been completed because: 1) the prior auditors released the financial statements of Local 30 for the year ending December 31, 2002 during the week before the commencement of this preliminary injunction hearing, and the rules for certified public accountants prohibit a CPA firm from issuing an opinion on a set of financial statements where the prior year is still outstanding and has not been issued; and 2) the CPA firm has yet to receive the information gathered from the actuarial firm regarding the pension fund which creates a great deal of the long-term liability; this information is necessary to ascertain the minimum pension liability. Id. at 30-31. It is impossible to predict the financial position of Local 30 without a thorough consideration of the current financial statement and the actuarial report. Id. at 32.

Moreover, a professional auditing firm will continue to analyze the financial condition of the benefit funds and to make long-term recommendations to the trustees of those funds. (Tr. of October 5, 2004 Hearing, 83; Tr. of October 7, 2004 Hearing, 77). Restoring the funds is a long term process. Id. One of the missions that faces Local 30 is to get the funds to balance their budgets, and to build up sufficient funds to cover six to nine months of unallocated money to handle continually increasing and unexpected costs. Id. at 66. If the problems are not cured, the funds could collapse resulting in Local 30's members losing substantial accumulated pension

benefits. No future benefits would accrue for Local 30's members, retirees, or widowed spouses.

The failure of the contractors to report the union journeymen work hours resulted in incalculable losses in contribution dollars to the benefit funds, and in revenue for Local 30 in the form of union dues. It also risked the financial collapse of the benefit funds should the RCA have opted to invoke the "most favored nations" clause of the collective bargaining agreement. The benefits enjoyed by Local 30's members and their families, including their rights to a pension, would have been extinguished. (Tr. of October 7, 2004 Hearing, 108). Since the discovery of this prohibited activity, the joint action by the International and the RCA to enforce the agreement between the parties has averted those potentially disastrous implications. (Tr. of October 5, 2004 Hearing, 75; Tr. of October 7, 2004, 166-168). During the Trusteeship, significant effort has been spent in attempting to re-gain the contractors' trust, to ensure that what happened before the imposition of the Trusteeship would not happen again. (Tr. of October 5, 2004 Hearing, 69; *see also* Pl.'s Ex. 2 at 2). Premature termination of the Trusteeship would greatly impede all the progress made during the Trusteeship. (Tr. of October 7, 2004 Hearing, 196-199; Tr. of October 19, 2004 Hearing, 148).

The continued existence of the Trusteeship is also necessary to avoid the destruction of collective bargaining relationships with the RCA. It is essential that a healthy collective bargaining relationship exist between Local 30 and the RCA. At present, Local 30 would not easily be able to negotiate higher wages or benefits with the RCA, when members of the RCA face potential bankruptcy due to the pension fund's problems discussed above. Finding the appropriate solution to the pension fund problems may require modifying the existing collective bargaining agreement, set to expire in 2009. (Tr. of October 7, 2004, 140, 190). However, the

RCA has indicated that it would not agree to reopen the contract in the absence of the Trusteeship. (*See* Testimony of Richard Henry Harvey; Tr. October 7, 2004, 199; *see also* Testimony of Kinsey Robinson; Tr. of October 19, 2004 Hearing, 152-154). In fact, the continuing presence of the International in repairing the damaged relationship between Local 30 and the RCA is essential to the future cooperation of the RCA. (Tr. of October 7, 2004, 143-144, 196-199). Local 30 cannot be returned to autonomy until all of these concerns are addressed and the program to enforce the collective bargaining agreement against all contractors has been substantially concluded. *Id.* at 143-144; Tr. of October 19, 2004 Hearing, 163-165.

After a careful review of all of the evidence in this case, I find that Local 30 has failed to prove that it is likely to experience irreparable harm without the injunctive relief it seeks, or that it would be reasonably likely to succeed on the merits of this case. Adams v. Freedom Forge Corp., 204 F.3d 475, 484 (3d Cir. 2000). On the contrary, extension of the Trusteeship is beneficial to Local 30's membership and their families.

I find that the International has proven by clear and convincing evidence that it is essential that the Trusteeship continue until the financial problems facing Local 30 are resolved; and that Local 30 could not at this time sustain itself financially in the absence of the Trusteeship. (Tr. of October 19, 2004 Hearing, 164-165). If Local 30 were returned to autonomy at this time, it would not be able to financially sustain its operation. *Id.* at 162-163. Continuation of the Trusteeship is necessary to allow completion of the International's program of correcting the financial mismanagement and malpractice which plagued the union at the imposition of the Trusteeship.

Further, I am satisfied that the testimony and documentary evidence proffered

demonstrates that the International has proven by clear and convincing evidence that the continuation of the Trusteeship is for purposes allowable under 29 U.S.C. § 462, i.e., correcting financial malpractice and assuring the performance of collective bargaining agreements. I find that an eighteen month extension of the Trusteeship is necessary to protect the vital interests of the membership of Local 30 and their families.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**MIKE McCANN, et al.,** : **CIVIL ACTION**  
**Plaintiffs** :  
 :  
**v.** : **NO. 04-3328**  
 :  
**UNITED UNION OF ROOFERS,** :  
**WATERPROOFERS, AND** :  
**ALLIED WORKERS,** :  
**Defendant** :

**ORDER**

**STENGEL, J.**

**AND NOW**, this            day of December, 2004, upon consideration of Plaintiffs' Motion for Preliminary Injunction Dissolving Trusteeship (Document #8), Defendant's Response thereto (Document #10), the testimony received at the hearing on the motion, and all exhibits offered into evidence, it is hereby **ORDERED** that the motion is **DENIED**. The Trusteeship imposed upon Local 30 by the International on March 21, 2003, is presumptively valid for an additional eighteen months.

BY THE COURT:

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LAWRENCE F. STENGEL, J.