To: James P. Hoffa, IBT General President

From: Independent Review Board Members

Re: Trusteeship Recommendation concerning Local 710, Mokena, Illinois

Date: July 18, 2014

I. RECOMMENDATION

The Independent Review Board recommends that, pursuant to Article VI, Section 5(a) of the IBT Constitution, Local 710 be placed in Trusteeship because, as detailed below, it is necessary to correct financial malpractices and corruption and the Local is not being run for the benefit of the members.[1]

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[1] Pursuant to Article VI, Section 5(a) of the IBT Constitution,

> If the General President has or receives information which leads him to believe that any of the officers of a Local Union or other subordinate body are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union or its subordinate bodies, or if the General President believes that such action is necessary 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 preventing any action which is disruptive of, or interferes with the performance of obligations of other members or Local Unions under collective bargaining agreements, or otherwise carrying out legitimate objects of the subordinate body, he may appoint a temporary Trustee to take charge and control of the affairs of such Local Union or other subordinate body . . .

II. SUMMARY

Local 710, located in Mokena, Illinois has approximately 13,693 members who are employed in various industries in Illinois. (Exs. 315, 363; Ex. 197 at 10)[2]

The Local has serious financial control issues which enabled the Secretary Treasurer to embezzle over $58,000. It cannot account for the expenditure of over $58,000 in gift cards that were under his exclusive control and which he disposed of without required Executive Board approval. Whoever possessed the cards could use them. Over several years the principal officer also caused the unauthorized purchase of tens of thousands of dollars of these cards. In addition, with respect to the cards he disposed of, the Local had no records for the expenditures in violation of federal law and IBT rules and policies. 29 U.S.C. §§431, 436, 439.

Over a period of several years, the Local did not accurately report its financial condition to the International in Trustees Reports and through these and misleading public Department of Labor ("DOL") Forms LM-2 to Local members. (Exs. 281-283, 12-13, 385-386, 39, 40, 59, 77-78) The Local officers

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(Ex. 388 at 44)

[2] The Local's 2013 Form LM-2 inaccurately reported the Local had 18,990 members. (Ex. 59) As of December 31, 2013, the Local actually had 13,693 members, 5,297 less than reported on the Form LM-2. (Ex. 315)

read the misleading Trustees Reports at membership meetings. (Exs. 385-386, 12-13, 39, 212, 272, 168) The Local omitted large liabilities in reporting its financial information. As described below, the Local filed misleading Forms LM-2 with the DOL for, at least, 2011, 2012 and 2013. (Exs. 281-283, 40, 59, 78) The Forms LM-2 did not include the Local's liabilities for unpaid commissions owed to its officers, business agents and organizers and also omitted obligations for contributions owed to the Employees' Pension Plan of Local Union 710 ("Employees' Plan"), a single employer plan for Local employees. (Exs. 40, 59, 78, 281-283)[3] For a long period, these liabilities were also omitted on Trustees Reports submitted to the IBT. (Exs. 385-386, 39) In some years a half million dollars in liabilities were not disclosed, making the Local's financial condition appear significantly better than it was. (Exs. 385-386, 39, 281-283) For example, the 2013 Form LM-2 the Local filed did not reflect either a liability of $468,376 for unpaid commissions owed to employees or a liability of $120,101 for Employees' Plan contributions owed. (Exs. 59, 283; Ex. 278 at 8-9) If these omitted liabilities had been included on the 2013 Form LM-2 as

[3] As discussed below, the Local's full-time officers, business agents and organizers are paid commissions based upon the dues and initiation fees. (Exs. 101-102) As of January 2013, approximately 12.5% of the dues paid into the Local were owed as commissions to the Local's full-time officers, business agents and organizers. (Ex. 344)

required, the Local would have reported net assets of negative $31,693. (Ex. 283)[4] Instead on the Form LM-2 filed, the Local's net assets were represented as $556,784. (Ex. 59)

At the end of 2012, a Local election was held as well as a vote of the members on the officers' and employees' commission rates. (Ex. 102) On the Form LM-2 filed in March 2012 for the year 2011, the last publicly available financial information to the members before the election and vote on compensation, the Local's net assets were reported as $265,506. (Ex. 78) The total improperly omitted liabilities that year were $494,468. (Exs. 281, 17, 18, 78, 332, 333, 339)[5] If the omitted liabilities had been included as required, the Local would have reported on the Form LM-2 net assets of negative $228,962. (Exs. 281, 78, 332, 339) At the time of the votes, through the misleading Form LM-2 and otherwise, the officers had presented a falsely positive representation to the members of the Local's financial condition. The members being asked to vote on a commission formula to pay the Secretary-Treasurer, President, Vice President and other employees did not know that in 2011 and 2012 the Local's financial condition had prevented the Local from

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[4] The December 2013 Trustees Report reported negative net assets of $14,415.42. (Ex. 39) This Trustees Report omitted a $120,101 liability to the Employees' Plan. (Ex. 278 at 9; Ex. 39)

[5] This was $201,777 owed to the Employees' Plan and unpaid commissions of $292,691. (Ex. 281)

paying the officers and employees what they were owed. Instead, the Local had a liability for what was owed those employees as well as a liability to the Employees' Plan. (Exs. 331, 332, 333, 339; Ex. 18 at 8, 12)

In addition to the Local's records being false because of both the unpaid commissions regarding the over $58,000 in embezzled gift cards and the commission and fund liabilities, the Local also made affirmatively false entries over several years in its books and records. Apparently believing a transaction between the Local and its Pension Fund was prohibited under ERISA, the Local's outside auditors, Legacy Professionals, LLP, after a DOL investigation began, conspired with the Secretary Treasurer and President to falsely report on the 2011 and 2012 Forms LM-2 the transaction as a loan from the Fund that the Local was repaying with interest. (Exs. 40, 78)[6] The two officers, who were also Trustees of the Fund, attested to the truthfulness of the Forms LM-2. (Exs. 40, 78) To support the reporting of the alleged loan on the Form LM-2, beginning in August 2012, entries were made in the Local's books and records that falsely reflected phony payments toward the non-existent

[6] On the 2013 Form LM-2 this transaction was described as a "Deferred Lease Incentive" and the amount noted was wrong as was the amount for assets which were inflated on the Form to wash out the liability. (Exs. 59, 328, 345)

loan identified as "monthly building loan payment". (Exs. 385, 296)

In addition, in violation of the Bylaws, the principal officer and the President entered into a lease and lease amendments on the Local's behalf without required Executive Board authorization. (Exs. 276-277, 289, 70, 74) The officers also purchased furniture and cars and secured a car loan without required Board approval. (Exs. 305, 70, 74) In addition, the Board gave approval beyond its authority to the Secretary-Treasurer to spend Local funds. In one instance, in November 2011 the Board voted to purchase 1,000 $25 gift cards for the purpose of distributing to members at a meeting when not even 600 members had attended a membership meeting since at least January 2007. (Exs. 65, 177) In 2011, six hundred members still did not attend the meeting at which some of the 1,000 gift cards were distributed. (Ex. 69, 177) As the Board should have known, the surplus cards disappeared from Local records into the Secretary-Treasurer's possession. He spent them for undocumented purposes. At a later Executive Board meeting, after the IRB inquired into the use of the gift cards the Local had purchased over several years (Ex. 126), the Executive Board voted to give the Secretary-Treasurer discretion to use undescribed "surplus items" not knowing the amount involved, which amount was not reflected in any contemporaneous Local record. (Ex. 42)

In addition, the Trustees did not fulfill their obligations under the IBT Constitution and the Local 710 Bylaws. In 2011 and 2012, the Local submitted misleading monthly Trustees Reports to the IBT by either failing to report or underreporting the deferred commission and Employees' Plan liabilities. (Exs. 385-386, 12-13) From 2009 through 2013, the gift cards under the principal officer's sole control were not reported on the monthly Trustees Reports as Local assets as required. (Exs. 10-13, 39, 385-386) In addition, despite instructions from an IBT auditor, the Trustees continued to fail to review records necessary to meet their obligations. (Ex. 49 at Sch. C6; Ex. 103 at 18, 31; Ex. 117; Ex. 97 at 18, 25)

Based upon all the above, it appears that Patrick W. Flynn ("Flynn"), the Local's principal officer, must make restitution to the Local for, at least, what he stole. In addition, through his embezzlement and other breaches of fiduciary duties to further his self-interest detailed below, Flynn under Illinois law would be liable not only for what he embezzled but to return to the Local all his compensation earned during the years he was breaching his duties. E.g. <u>The Vendo Co. v. Stoner</u>, 321 N.E. 2d 1, 14 (Il. Sup. Ct. 1974) (forfeiture of the fiduciary's salary for the period of breach of fiduciary duties is acceptable damage measure); Dowd & Dowd Ltd. v. Gleason, 816 N.E. 2d 754, 771 (Il Ap Ct 1st Dist. 2004) ("Illinois law permits a complete forfeiture of any salary paid by a corporation to its fiduciary during a time when the fiduciary was breaching his duty to the corporation.").

III. INVESTIGATIVE FINDINGS

A. Current Officers

1. Patrick W. Flynn

Flynn has been Local 710's Secretary-Treasurer and principal officer since 2004. (Ex. 5 at 8-9) He majored in accounting in college. (Ex. 47) Flynn also acted as a Business Agent. He has been a member of Local 710's Executive Board since November 2, 1991. (Ex. 46) He is also a Trustee on the Teamsters Union Local 710 Pension Fund ("Pension Fund"), the Teamsters Union Local 710 Health and Welfare Fund ("Health & Welfare Fund"), the Local 744 Beverage Division Pension Fund, the Employees' Plan and the Local 710 DRIVE Fund. (Ex. 5 at 9-10; Ex. 49; Ex. 60)[7]

Flynn was an International Vice-President from March 1997 until his resignation in January 2010. (Ex. 5 at 9-10; Ex. 48; Ex. 49) He was also an officer of Joint Council 25 from 2004 to 2009. (Ex. 5 at 9; Exs. 50-55)

[7] Flynn was also the administrator of the Employees' Plan. (Ex. 314)

In 2013, Local 710 paid Flynn a salary of $90,480 and commissions of $392,063.93, totaling $482,543.93. (Ex. 59)[8] As of December 31, 2013, the Local owed Flynn an additional $44,900.46 in unpaid commissions. (Ex. 335; Ex. 339 at 3-4)[9]

2. Michael Sweeney

Since October 2011, Michael Sweeney ("Sweeney") has been the Local President. (Ex. 6 at 11; Ex. 40; Ex. 272)[10] He was Vice-President from 2003 until 2011. (Ex. 6 at 10-11; Ex. 78) Sweeney has been a full-time officer and business agent since December 1996 when he was appointed Recording Secretary. (Ex. 6 at 10) He was elected a full-time business agent in 1994. (Ex. 6 at 9) He has been a member of the IBT since 1984. (Ex. 6 at 9) Since March 2012, Sweeney has also been a Trustee of the Local 710 Pension Fund, the Local 710 Health & Welfare Fund, the Employees' Plan and the Local 744 Beverage Division Pension Fund. (Ex. 6 at 11-12; Ex. 60; Ex. 49)

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[8] His gross income received from the Local for 2013 was $485,051.93. (Ex. 56, 58) Flynn also received $414.00 in taxable per diem and taxable income of $2,094.00 for personal use of a union automobile. The total gross income reported on Form W-2 for 2013 was $485,051.93. (Ex. 56, 58) The LM-2 for 2013 listed Flynn's gross salary as $482,958.00. (Ex. 59)

[9] A portion of his commissions were deferred from 2012. (Ex. 326; Ex. 5 at 160-161)

[10] On September 30, 2011, the former President of Local 710, James Dawes, retired. (Ex. 272) The Executive Board appointed Vice-President Sweeney to be President. (Ex. 78; Ex. 72)

In 2013, the Local paid Sweeney $90,480 in salary and commissions of $283,602.67, totaling $374,082.67. (Ex. 284)[11] At the end of 2013, the Local owed Sweeney an additional $33,675.19 in unpaid commissions. (Ex. 335; Ex. 339 at 3-4)

3. Gerald Pauli

Gerald Pauli ("Pauli") is currently the Local's Vice-President. (Ex. 7 at 8-9; Ex. 40) He has been a member of the IBT since 1987. (Ex. 352) He was elected a full-time business agent in 1994, taking office in January 1995. (Ex. 7 at 9) In 2004 he became the Recording Secretary. (Ex. 7 at 8-9; Ex. 78) Pauli has been Vice-President since December 2011. (Ex. 72) While an officer, Pauli has also been a business agent. Pauli is a Trustee of the Local 710 Soft Drink Pension Fund. (Ex. 7 at 18-19; Ex. 49)

In 2013, the Local paid Pauli $97,680 in salary and $181,252.82 in commissions, totaling $278,932.82. (Ex. 346)[12] Pauli was owed $14,208.16 in unpaid commissions as of December 31, 2013. (Exs. 335, 339)

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[11] His gross income from the Local was $376,218.67 in 2013. (Ex. 284) Sweeney also received taxable per diem of $345.00, taxable income of $291.00 for the personal use of a union automobile and a phone allowance of $1,500.00. Sweeney's total income as reported on form W-2 was $376,218.67. (Ex. 284) Sweeney was also reimbursed $11,421 for expenses that year. (Ex. 59)

[12] His gross income from the Local for 2013 was $279,278. (Ex. 59; Ex. 157) Pauli also received taxable per diem of $345.00. (Ex. 346) Pauli was reimbursed $46,592 for expenses that year. (Ex. 59)

4. Charles DeCola

Charles DeCola ("DeCola") became the Local's Recording Secretary in October 2011. (Ex. 8 at 8; Ex. 40) He is also a business agent. He has been a member of the IBT since 1970. (Ex. 316) DeCola was an organizer for Local 710 from 1998 until 2002 when he became a business agent. (Ex. 8 at 8) In October 2011, he was appointed Recording Secretary. (Ex. 8 at 8) In September 2012, he was elected Recording Secretary. (Ex. 102) In 2013, the Local paid DeCola $85,416 in salary and commissions of $29,167.77, totaling $114,583.77. (Ex. 347)[13] As of December 31, 2013, the Local owed DeCola $41,482.61 in unpaid commissions. (Exs. 335, 339)

5. Trustees

The current Trustees are Kevin Wagoner ("Wagoner"), Larry Alexander ("Alexander") and Keith Kazluski ("Kazluski"). (Ex. 103 at 8; Ex. 100 at 8, 59) They are not full time Local employees but work for employers with collective bargaining agreements with the Local. Their 2013 compensation from the Local ranged from $19,952 to $24,091. (Ex. 59)

Wagoner has been a member of the IBT since 1987. (Ex. 352) He was appointed a Trustee in 2008. (Ex. 103 at 8) He was

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[13] His gross income in 2013 from the Local was $117,637.77. (Ex. 347) DeCola was reimbursed $10,100 for expenses that year. (Ex. 59)

elected in September 2009. (Ex. 101) In 2013, the Local paid Wagoner $24,091. (Ex. 59)[14]

Alexander has been a member of the IBT since 1978 and a steward since 1989. (Ex. 316; Ex. 100 at 8) He has been a Trustee since approximately 2003. (Ex. 100 at 8) In 2013, the Local paid Alexander $22,387. (Ex. 59)[15]

Kazluski was elected a Trustee for a term beginning January 1, 2013. (Ex. 102) He joined Local 710 on December 4, 1989. (Ex. 316) In 2013, the Local paid Kazluski $19,952. (Ex. 59)[16]

B. Retired President and Pension Fund Trustee James Dawes

On September 30, 2011, James Dawes ("Dawes"), the Local's then President, retired. (Ex. 72) In 2011, he was paid $67,860.00 in salary and $214,522.51 in commissions, totaling $282,382.51. (Ex. 317)[17]

On February 25, 2010, the Local's Executive Board appointed Dawes to a five year term as a Pension Fund Trustee. (Ex. 71)

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[14] Wagoner was paid $10,548 in salary, $6,250 for attending meetings, $345 for per diem, $5,698 for lost wages and a bonus of $1,250 for a total of $24,091. (Ex.285)

[15] Alexander was paid $10,548 in salary, $6,250 for attending meetings, $819 per diem, $3,520.40 for lost wages and a bonus of $1,250 for a total of $22,387.40. (Ex. 285)

[16] Kazluski was paid $10,548 in salary, $6,561.78 for attending meetings, $345 for per diem, $1,246.72 for lost wages and a bonus of $1,250 for a total of $19,951.50. (Ex. 285)

[17] He also received a telephone allowance of $1,125.00. (Ex. 78) On October 6, 2011 he received his final check for commissions of $22,767.51. (Ex. 317)

After Dawes' retirement, he continued as a Trustee and Chairman of the Local 710 Pension Fund. (Ex. 72) He also was co-manager of Mokena, 191/88, LLC ("Mokena"), a building holding company the Pension Fund owned. (Exs. 276, 277, 289) In 2012, the Fund paid Dawes $50,000. (Ex. 318)

C. Other Local Employees

At the end of 2013, the Local employed eight elected business agents and four Local organizers. (Ex. 319; Ex. 59) Under Article 16 of the Bylaws, business agents were elected. (Ex. 27 at 13) The eight business agents and three of the organizers had a base salary of at least $85,416. (Exs. 319 and 59) Matthew Flynn, who Flynn hired in January 2011 as a representative/organizer, was paid a salary of $72,000 in 2013. (Ex. 272)[18] The business agents and the organizers were also paid commissions in various amounts. (Ex. 319) Commissions paid in 2013, which had been earned in 2011 and 2012, to the eight business agents and two of the organizers ranged from $9,900.76 to $30,125.69. (Exs. 319-320)[19] Their gross amounts for salary and commissions ranged from $95,316.76 to $115,541.69. (Exs.

[18] In addition, seven of the business agents and the four organizers were paid $1,500.00 as a phone allowance. (Ex. 319) Only business agent William Hendrix did not receive a phone allowance. (Ex. 319)

[19] As discussed below, these were not commissions earned in 2013; they were commissions earned in 2011 and 2012, the payment of which had been deferred. (Exs. 335, 339) Organizers Anthony Lamy and Matthew Flynn did not earn any commissions in 2011 and 2012. (Ex. 57, 332)

319-320) At the end of 2013, the Local owed the business agents and organizers $331,080.02 in earned but unpaid commissions. (Ex. 335, Ex. 339 at 4)[20]

In 2013, the Local paid Robin Mingilino ("Mingilino"), its controller, $133,722.92 and Cathy Heckla ("Heckla"), its office manager, $128,037.79. (Exs. 59, 321) In addition, assistant controller Annette Campos ("Campos") was paid $61,418 in 2013. (Exs. 59, 321)

D. Officers' Relatives Employed at the Local and Funds

From January 2011 to the present, Flynn's son, Matthew Flynn, has been a Local representative/organizer. (Ex. 5 at 149; Exs. 272)[21] In 2013, his salary was $72,000. (Exs. 319-320)[22] In addition, that year he earned $9,355.99 in commissions, the payment of which was deferred. (Ex. 335; Ex. 339 at 4) Flynn's daughter, Jennifer Flynn, is a receptionist for the Pension Fund which paid her $38,126 in 2010. (Ex. 5 at 150; Ex. 322)

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[20] This figure excludes the commissions owed at that time to the Local's officers Flynn and Sweeney. (Exs. 335, 339)

[21] At the January 30, 2011 General Membership meeting, "Secretary-Treasurer Pat Flynn introduced the newest Local 710 staff member representative/Organizer Matthew Flynn". (Ex. 272) In the year Flynn hired his son, Flynn said he was forced to defer commissions owed to Local employees to avoid layoffs of employees. (Ex. 5 at 158, 161-162, 210-211)

[22] Matthew Flynn also received a telephone allowance of $1,500.00 and expenses of $8,464. (Exs. 59 and 319)

Sweeney's sister, Maureen Sweeney, is a maintenance employee of Local 710 which paid her $58,195.37 in 2013. (Ex. 5 at 151-153; Ex. 59)

E. The Local's Principal Officer Embezzled and Breached his Fiduciary Duties

1. Summary

Between October 2008 and December 2012, Local 710 purchased $267,500 worth of gift cards in denominations of either $150 or $25. (Exs. 22-26, 28-33, 251, 252, 214) The Local Executive Board authorized the purchase of gifts for stewards each year. (Exs. 64-65, 85, 91, 114) In some years, those gifts were gift cards with a face value of $150 ("$150 cards") to be given to the Local's stewards as Christmas gifts. It also authorized the purchase in several years of gift cards with a face value of $25 ("$25 cards") to be distributed at a membership meeting to attending members. (Exs. 62-64)[23] Flynn caused on several occasions the purchase of substantially more cards than necessary for the authorized purpose. (Ex. 41) After the cards had been distributed for the authorized purposes, the remaining cards went under Flynn's exclusive control. (Ex. 5 at 180-186;

[23] Each year, the Executive Board meeting minutes which authorized the purchase of the $25 gift cards specified the membership meeting at which the cards would be distributed to the members. (Exs. 62-65) As discussed below, in 2008, there was no mention in any membership meeting that gift cards were distributed to members. (Ex. 66) In the years 2009 through 2011, the distribution of the $25 holiday gift cards were reflected in the minutes. (Exs. 67-69) In November 2009, there was a purchase of 250 $25 gift cards without required Executive Board approval. (Exs. 29, 70)

Ex. 197 at 29-34, 38; Ex. 199 at 10-12; Ex. 6 at 84-85; Ex. 7 at 63; Ex. 8 at 43) No one but Flynn at the Local knew the amount of the cards he controlled or was informed of their use. (Ex. 5 at 180-188; Ex. 6 at 84-86; Ex. 7 at 60-66; Ex. 8 at 43, 46; Ex. 197 at 29-36, 38; Ex. 198 at 13-14, 23) These surplus cards were Local property. The cards were not kept in the Local's safe with petty cash, but kept in Flynn's office. (Ex. 5 at 180-182; Ex. 199 at 23; Ex. 49 at B-2) The surplus cards in Flynn's possession were never included in statements of the Local's assets or reflected in expenditures. (Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 197 at 28-29, 32-36, 39-40, 53-56, 65; Ex. 198 at 12, 15-16, 23; Exs. 9-18) Flynn alone disbursed the over $58,000 in surplus cards. (Ex. 41; Ex. 5 at 180-186; Ex. 197 at 29-34, 38; Ex. 199 at 10-12, 22; Ex. 6 at 84-85; Ex. 7 at 63; Ex. 8 at 43) From 2008 through 2012, there were 190 surplus $150 cards and 1,193 surplus $25 cards worth $58,325, that went under Flynn's control that he either could not produce or document their use. (Ex. 41; Ex. 5 at 180-182, 185-188, 192-194; Exs. 216, 245)

The Local knew the number of stewards when it purchased the $150 cards. (Exs. 213, 19-21; Ex. 197 at 28, 30-31) After learning from the Local's controller that number, Flynn told her how many $150 cards to purchase. (Ex. 197 at 28, 30-31) Each year $150 cards were bought, Flynn caused the Local to purchase at least 48 more cards, worth $7,200 or greater, than the number of stewards. (Exs. 19-26, 41) There was no Executive Board approval for Flynn's excess $150 cards purchased in any year. (Exs. 70-74) Article 13, Section 1(h) of the Local's Bylaws required such approval. (Ex. 27 at 8-9; Ex. 207 at 9) No union purpose for the purchase of the excess cards was reflected in any Local document. In contrast to when it purchased the untraceable liquid cards, in 2011 and 2013 when the Local purchased steak packages instead of cards for stewards, no surplus packages were ordered. (Exs. 34-38)

In addition, Article 13, Section 1(i) of the Local Bylaws required Executive Board approval to dispose of Local property. (Ex. 27 at 9; Ex. 207 at 9) There was no Executive Board approval for the disposal of $58,325 of surplus cards. (Exs. 70-74)[24] The surplus cards in Flynn's possession were not shown as assets on the Local's monthly Trustee Reports at any time. (Exs. 9-13, 39; Ex. 197 at 39-40) The surplus cards were also not reflected as assets or expenditures of the Local on the Local's Forms LM-2. (Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 197 at 28-29,32-36, 38-40, 53-56, 65; Ex. 198 at 12-16;

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[24] Subsequent to the IRB's investigation and inquiries regarding the gift cards, in 2013 the Local documented the use or claimed expiration of 46 $150 gift cards. (Exs. 1, 2, 125-128, 201-202) In addition, one gift card was given to a steward in February 2013 because he had been inadvertently left off the 2012 stewards list. (Ex. 247) Such $150 cards were excluded from the 1,383 unaccounted for surplus gift cards in Flynn's possession at issue in this report.

Exs. 40, 75-78, 180, 203-206) Nor were they included in the assets in the year end Financial Statements the Local's outside auditing firm certified. (Exs. 14-18, 156, 208-210) After the cards' transfer to Flynn, they vanished from Local records.

For example, as of year end 2012, Flynn had, at least, 47 surplus $150 cards and 10 surplus $25 cards valued at $7,300 under his control as evidenced by their subsequent documented use or claimed expiration in 2013. (Exs. 211, 122, 247) These were not reflected as a Local asset on that year's Form LM-2, the December Trustees Report and the certified Financial Statements. (Exs. 40, 206, 211, 13, 18; Ex. 197 at 39-40; Ex. 210)[25] Flynn signed the Form LM-2 under oath. (Ex. 40) At the time Flynn possessed the $7,300 of cards at year end 2012, no Local record reflected the existence of this Local property. (Ex. 197 at 29, 30-36, 38-40; Ex. 130) Federal law required the Local to maintain documents sufficient to explain expenditures and to record assets. 29 U.S.C. §§431, 436, 439. (Ex. 265) The IBT auditor who was at the Local in 2012 performing an audit was not aware of the cards' existence, although Flynn had a duty under the Bylaws to ensure the auditor had access to all necessary Local records. (Ex. 95 at 27-30; Ex. 27 at 6)

[25] There is no evidence showing surplus gift cards in Flynn's possession were ever listed as Local assets in required reports. (Exs. 14-18)

As an explanation for the use of some cards, without any documentation such as receipts or contemporaneous entries in the Local's records, Flynn claimed he "might" have distributed 40 $150 cards to Local staff each year between 2009 and 2012. (Ex. 5 at 195-198; Exs. 44, 146) In response to an IRB request for a sworn written response regarding this alleged distribution (Ex. 246), Flynn subsequently claimed that his "best guess" was that between 2009 and 2012, he distributed 152 $150 cards to Local staff for Christmas. (Ex. 245)[26] Flynn acknowledged that he had no records to establish this alleged distribution and hedged his claim by stating it "may not be absolutely accurate." (Ex. 245)[27] Thus, Flynn's "best guess" was that he gave $22,800 of Local money to employees without memorializing it in any way. (Ex. 245)[28] In fact, given the expiration dates of the $150 cards and the number of cards still in his possession in 2013, for the years 2011 and 2012 Flynn's undocumented claims were not possible. (Exs. 41, 83) In 2011, there would have been an insufficient number of unexpired cards to give out 40 that year as he claimed. (Exs. 41, 245, 79, 82-83) In 2012, Flynn would

[26] In a June 6, 2014 letter, Flynn claimed to have distributed 38 $150 gift cards in 2009, 40 in 2010, 40 in 2011 and 34 in 2012. (Ex. 245)

[27] Moreover, the testimony of four Local officers contradicted Flynn's claimed Christmas distribution to them all four years between 2009 and 2012. (Ex. 6 at 85-86; Ex. 8 at 46-48; Ex. 97 at 48-50; Ex. 7 at 69-71)

[28] In addition, the Local's controller, assistant controller and office manager were unaware of any distribution of gift cards each year to staff. (Ex. 197 at 35-36; Ex. 199 at 21-22; Ex. 198 at 13-14)

have had the 34 cards available he claimed to distribute to staff that year. (Exs. 41, 83, 245) However, that he did not give that number out was evidenced by the number of cards used in 2013 when none were bought. (Exs. 41, 83) Moreover, testimony of alleged recipients contradicted Flynn on this point for all years. (Ex. 6 at 85-86; Ex. 7 at 69; Ex. 8 at 47; Ex. 97 at 49)

Flynn's intent to embezzle was evidenced by the totality of the circumstances. He intentionally purchased surplus gift cards without authority for an unstated purpose. The existence of the surplus gift cards was not noted in Local records. (Ex. 197 at 22-23, 27-28, 34-36, 38-41; Ex. 198 at 12-16, 23) He kept them in his office and not with other Local property in the Local's safe. (Ex. 5 at 180-182; Ex. 199 at 22-23) Flynn, an experienced Secretary Treasurer, a long-time union employee who majored in accounting in college, was also an IBT Vice President. Yet despite his sophisticated experience and high office he failed to document to whom he transferred the union assets, how much was transferred, when they were transferred and for what purpose. (Ex. 5 at 8-10, 180-182; Ex. 197 at 29-36, 38; Ex. 47; Exs. 1 and 2) He incredibly claimed he believed he only had to document his use of Local assets if he were seeking reimbursement. (Ex. 216) He failed to follow the minimum required record keeping for Local expenditures under federal law, 29 U.S.C. §436, and IBT rules and policies. (Exs. 193, 265) Moreover, while in his personal possession the surplus cards were not disclosed as assets of the Local in Trustees Reports, Forms LM-2 or the annual certified Financial Statements. (Exs. 9-18, 40, 75-78, 204-206, 208-211, 257-264, 385-386) Indeed, their existence was not reflected in the records of the Local. (Exs. 9-13, 385-386; Ex. 197 at 39-40; Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 199 at 23; Ex. 49 at B-2) Flynn violated Article 9, Section 16 of the Local Bylaws by not making available to the IBT auditor all records necessary for him to complete the audit by withholding from the auditor the cards in his possession. (Ex. 27 at 4, 6) In sum, Flynn treated the $58,325 not as Local property but as his own.

2. Local Bylaw Provisions Required Executive Board Approval for the Purchase and Disposal of Local Property

Pursuant to Article 13, Sections 1(h) and (i) of the Local's Bylaws, the Executive Board has the authority to purchase and dispose of, among other things, ". . . property, rights and privileges". (Ex. 27 at 8-9; Ex. 207 at 9)[29] As

[29] Article 13, Sections 1(h) and (i) of the Local's Bylaws provides that the Executive Board has the authority to:

> (h) lease, purchase or otherwise acquire in any lawful manner for and on behalf of the organization, any and all real estate and other property, rights and privileges whatsoever deemed necessary or convenient for the prosecution of its affairs, and which the organization is authorized to acquire . . .

discussed below, Flynn violated these Bylaw provisions in his purchase and disposition of the unauthorized cards. Prior to the IRB's investigation, there was no Executive Board approval for the disposal of the surplus cards Flynn controlled.[30] Indeed, there were no Local records tracking either the cards in Flynn's sole possession or his use of those cards. (Ex. 5 at 180-182, 185-186, 188-190, 192-193, 195-197; Ex. 197 at 28-36, 38-40, 53-56, 65; Ex. 198 at 12-16, 23; Ex. 199 at 22-23, 27-28; Ex. 6 at 80-81, 99; Ex. 8 at 45-46, 48; Ex. 97 at 46-47; Ex. 7 at 62-64; Ex. 100 at 45-46)

3. Principal Officer's Embezzlement

a. Overview

Each year, the Local purchased significantly more gift cards than were necessary for the authorized purposes of Christmas gifts for both the stewards and for the members attending the meeting. (Ex. 41) Flynn, and not the Board, decided how many cards to purchase and instructed the staff on

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(i) Sell or dispose of any real or personal estate, property, rights or privileges belonging to the organization whenever in their opinion its interests would thereby be promoted;

(Ex. 27 at 8-9; Ex. 207 at 9)

[30] Only in 2013, after the IRB's investigation began, did the Executive Board give ". . . Flynn the authority to distribute to, or use for, the Membership, surplus items as he deems appropriate. . .." (Exs. 42, 125, 126) There was no such approval prior to this for the disposal of surplus gift cards. As discussed below, for the $25 gift cards, some surplus cards were raffled at membership meetings prior to the IRB's investigation. (Exs. 48, 60, 117-122) These distributions are discussed below and those cards are not included in the 1,383 surplus gift cards at issue in this report.

the number to buy. (Ex. 6 at 77-78; Ex. 197 at 28, 30-31; Exs. 22-26, 28-33) Eighteen percent (239) of the 1,325 $150 cards ($35,850) Flynn caused to be purchased were unauthorized. (Exs. 214, 213) After the distribution to the stewards, the raffling of two more cards at a January 2010 membership meeting and crediting the documented use and claimed expiration of 47 $150 cards in 2013 after the IRB's investigation began, there were 190 $150 cards ($28,500) that were under Flynn's control for which there was no documented use for a union purpose. (Exs. 211, 41, 247)[31] With respect to the $25 cards, Flynn caused an unauthorized purchase of 250 cards ($6,250) in November 2009. (Exs. 29, 70)[32] In November 2011, he had the Executive Board vote to purchase several hundred more $25 cards to distribute at a membership meeting than the Local needed, as he and the Board knew at the time approval was sought. (Exs. 65, 177) No union purpose was given for this approximately $10,000 purchase of at least 400 extra cards. (Exs. 65, 177) The $25 cards available after the distribution to the members at the designated meetings, raffles at other membership meetings and donations to

[31] As discussed below, the Local provided documentation for 42 cards used in 2013 and in a different document the distribution of another gift card to a steward in February 2013. (Exs. 211, 247) This was accounted for in the distribution to stewards in 2012 and not again as a documented use in 2013. There were also four cards the Local claimed had expired unused in June 2013. (Exs. 3 and 211)

[32] The Local received a discount and the cost of the 250 cards worth $6,250 was $6,062.50. (Ex. 29)

the Local 710 Pioneers Club in 2009 and 2011, totaled 1,193 cards ($29,825) which Flynn controlled. (Ex. 41)[33]

As of September 5, 2013, the Local had no cards in its possession. (Exs. 2 and 4) The combined value of the unaccounted for $150 and $25 cards that had been under Flynn's sole control was $58,325. (Ex. 41)[34] This was 22% of the value of all the gift cards purchased between 2008 and 2012. (Ex. 251)

The cards functioned like cash. Whoever possessed one could use it. The IRS has recognized gift cards are a cash equivalent. (Ex. 88) The IBT auditor for Local 710 also observed that gift cards should be treated as cash. (Ex. 95 at 29) At a minimum, because these were Local assets, information as to their expenditure, including to whom, when, where used, the amount and the union purpose for any use should have been documented. (Exs. 193, 265) See, 29 U.S.C. §§431, 436, 439. Hodgson v. United Mine Workers, 1971 WL 705 at *1 (D.D.C. April 13, 1971) (union's failure ". . . to maintain and keep supporting documents reflecting the date, purpose and specific amount of the disbursement, frequently in cash, and in many instances failed to obtain receipts from the ultimate recipients of funds disbursed" violated 29 U.S.C. §436). Since the gift

33 The Local 710 Pioneers Club is a retirees club. (Ex. 94)

34 As detailed below, there were 190 unaccounted for $150 gift cards in Flynn's control worth $28,500 and 1,193 unaccounted for $25 gift cards worth $29,825. (Ex. 41)

cards were a cash equivalent, Flynn, the Secretary-Treasurer, should have followed the IBT rules regarding the treatment of petty cash in dealing with the cards. (Ex. 95 at 54)

The cards became an off-the-books slush fund for Flynn's use and for which the Board did not hold him accountable. By not maintaining records, he deliberately concealed his use of the cards. He would add to and refresh the slush fund on each occasion he caused the Local to buy substantially more cards than needed for the authorized purpose. That this was intentional is evidenced by his pattern of buying more than needed and never adjusting how many he purchased despite prior surpluses.

b. $150 Cards

In 2009, 2010 and 2012, the Local purchased 1,325 $150 cards for $198,750. (Exs. 214, 22-26)[35] Whoever possessed these cards could use the cards at any store for any item without restriction. The Executive Board authorized each year the purchases of Christmas gifts to the stewards. (Exs. 85, 64, 91; Ex. 5 at 181, 188-189, 192; Ex. 6 at 77-78; Ex. 7 at 64; Ex. 100 at 44-45; Ex. 97 at 48-49) In 2009 and 2010 the Board authorized the purchase of stewards' gifts by Flynn without dictating what the gifts would be or an amount. (Exs. 85, 64)

[35] In 2009 and 2012, there were officer elections at the Local. (Exs. 101-102)

It did not instruct Flynn to report back on the cost to the Local. (Exs. 85, 64) In 2012, the Board specifically authorized the purchase of $150 gift cards. (Ex. 91) In all years, Flynn decided to buy more than needed for the stewards. (Ex. 197 at 28, 30-31, 53-54; Ex. 6 at 77-78) In these years only 1,087 cards, the total number of stewards, were needed, 238 less than the number bought. (Exs. 22-26, 214)

The procedure for purchasing the cards was that after the resolution, the controller informed Flynn of the number of stewards. (Ex. 197 at 28, 30-31) He then instructed her on how many to buy. (Ex. 197 at 28, 30-31) Flynn testified, ". . . we would approximate the number of gift cards we needed always buying a sufficient number". (Ex. 5 at 190) That was not the case. Although he knew the number of stewards, each year Flynn caused at least 48 excess cards to be purchased. (Exs. 41, 213, 214) The $150 cards Flynn caused the Local to purchase in 2009, 2010 and 2012, exceeded the number of stewards by 48 ($7,200), 122 ($18,300) and 68 ($10,200) respectively, costing $35,700 for those unauthorized purchases. (Ex. 41)

When the $150 cards were received at the Local, the controller initially maintained control. (Ex. 5 at 181, 188-189; Ex. 197 at 30-32) She then mailed each steward on the list one card. (Ex. 197 at 31-32; Ex. 5 at 181; Ex. 100 at 45-46; Ex. 7 at 65; Ex. 8 at 45-46; Ex. 103 at 41-42; Ex. 97 at 48-51; Exs.

19-21) The extra cards she gave to Flynn. (Ex. 5 at 181-182; Ex. 197 at 32-36, 39-40; Ex. 97 at 48-52) When Flynn took custody and control of the surplus cards, the existence and later disposition of the cards were not reflected in Local records. (Ex. 197 at 29-36, 38-40)[36] Flynn kept the cards in his office, either in a small safe or in a box. (Ex. 5 at 181-182)[37] Even the Local's President did not know where Flynn kept the surplus cards. (Ex. 6 at 78)

The Local's stewards lists for 2009 through 2013 reported the number of stewards known when the cards were mailed. The following displays the pattern of Flynn causing the Local to purchase more than necessary for the authorized need:

Year	Number of Stewards	Gift Cards Purchased	Value of Excess Cards	Percentage Purchased Not Needed
2009	352	400	$ 7,200	12%
2010	378	500	$18,300	24%
2011	369	0	-	
2012	357[38]	425	$10,200	16%

36 In 2013, after the IRB investigation had been ongoing, the use of some cards was documented. (Exs. 125-126, 211; Ex. 5 at 181-182, 190-191)

37 Local 710 had a safe in its offices. (Ex. 49) IBT auditor Edward Pratt testified that in general when he conducted audits, he observed what is in the Local's safe and noted that in his audit. (Ex. 95 at 29-30) In his audit report for Local 710 for the period from June 2009 to July 2012, Pratt noted that the following was in the Local's safe: "Blank checks; petty cash; important papers etc." (Ex. 49 at Schedule B-2) The absence of cards in the Local's safe was consistent with Flynn's testimony that he kept the cards in his office.

38 As discussed below, there were 356 stewards on the controller's 2012 list. (Ex. 213) The Local also provided a copy of a February 8, 2013 letter

2013	349	0	-

(Exs. 213, 214, 41, 38)

c. The Purchase of Steak Packages

The Local purchased steaks for gifts for the stewards in 2011 and 2013. (Exs. 110, 34-38)[39] Flynn determined how many steak packages were bought. (Ex. 197 at 52-53) No excess packages were purchased. (Exs. 110, 34-38)

According to the Local's records, 368 packages were purchased in 2011 when there were 369 stewards. (Exs. 34, 35)[40] The vendor mailed these directly to the stewards. (Ex. 34) In 2013, the Local also purchased steak for stewards' gifts. (Ex. 36) According to the minutes of the November 22, 2013 Executive Board meeting, "Brother Flynn made a motion to purchase a combo steak gift package for the Stewards from a Union Purveyor consistent with our past practices". (Ex. 124) On December 30, 2013, the Local issued a check to Chicago Gourmet Steaks for

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to a steward enclosing a gift card. (Ex. 247) Accordingly, 357 gift cards were distributed to stewards for 2012.

[39] These cost $130 for each package in 2011 and $142.82 each in 2013. (Exs. 110, 34-38)

[40] According to the minutes of the November 8, 2011 Executive Board meeting, "President Sweeney made a motion in long standing practice that a payment of a Christmas bonus or gift to the non-elected staff, office employees, and stewards of Local 710 be left to the discretion of Secretary-Treasurer Pat Flynn to be commensurate with prior years." The motion passed. (Ex. 65) On January 16, 2012, the Local issued a check in the amount of $53,516.40 to Chicago Gourmet Steaks for 368 boxes of steaks. (Ex. 34) The notation on the check voucher stated "replaces ck 14089 dated 12-28-2011 stewards Christmas gifts". (Ex. 34)