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DISCUSSION OF THE CHARGES

Rivera submitted a total of twenty-five charges against numerous Union officers and Board members. The charges assert that there has been a violation of the Constitution and conduct “unbecoming” of a Union member, and challenge this Board’s decision to suspend and remove Rivera from the Office of the Secretary-Treasurer. Each charge has been set forth below and then analyzed to determine if it constitutes a charge under the TWU’s Constitution.

(A) September 24, 2010 Charges

Charge 1: On August 25, 2010, John Samuelsen deliberately violated TWU Constitution, Article XVI, Section 2 by illegally appointing Angel Giboyeaux,² Administrative Vice President as acting-President as referenced in internal Local 100 memo.

This charge should be dismissed because it fails to allege conduct violating Article XVI, Section 2. Factually, while on vacation in August, Samuelsen assigned Angel Giboyeaux to perform his duties during his absence. Section 2 provides that a vice president of the local assists the president and “during his/her absence shall perform the duties of the President.” As such, President Samuelsen has the Constitutional right to direct people to deal with the Administrative Vice President. Moreover, since an “acting president” comes into existence according to the Section only when there is a vacancy in the office of president (e.g., death) the allegation that Samuelsen “illegally appointed” Giboyeaux as “acting president” cannot be true. Samuelsen’s assignment of Giboyeaux to perform his duties during the president’s absence does not violate the constitution. In fact, it is supported by the Constitution. In addition, Rivera’s contention that this so-called appointment is “referenced in internal Local 100 memoranda” does not provide any factual support for his allegation and the charge should be dismissed for failing to provide the “exact nature” of the offense.

² Properly spelled, “Giboyeaux.”

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Charge 2: *During the week of August 25th, John Samuelson violated Article XVI, Section 2 by deliberately not participating in a scheduled Executive Board Meeting he had previously scheduled.*

This charge fails to state a violation of the Constitution. Section 2 of Article XVI governs the duties of the Vice President. There is no requirement under this section that the President participate in scheduled Executive Board meetings.

Section 1 of Article XVI, on the other hand, which governs the duties of the President, provides that “[t]he President shall preside at all meetings of the Local Union, the Local Executive Board, and the Joint Executive Committee.” Here, Rivera has submitted no evidence that Samuelson “deliberately” failed to participate in an Executive Board meeting the week of August 25. In any event, a single absence from an Executive Board meeting does not rise to the level of a constitutional violation or warrant a trial. Further, it has been commonplace for the president of the union to assign another member to chair executive board meetings in the event of an absence. Accordingly, this charge should be dismissed as improper.

Charge 3: *On September 21, 2010, John Samuelson willfully and purposely violated Article XXI of the constitution by locking me, Israel Rivera Jr., Secretary Treasurer out of my office and restricting access to same thereby, impeding the discharge of the Office of the Secretary Treasurer. Upon advisement of the contents of Article XXI, John Samuelson willfully and purposefully disregarded the advisement and the terms of article XXI and refused to either restore access to me or extend charges against me under Article XXI. My access continues to be restricted as referenced by Attachment B.*

Article XXI sets forth the procedures for suspending a Union officer pending trial. As this Board knows, Rivera was suspended from his duties as Secretary Treasurer on October 8, 2010 on four charges of misconduct. However, at no point prior to his suspension was Rivera barred from his office.

The evidence offered at Rivera’s trial established that Rivera was if anything locked out of his office for only a few minutes and that he continued to have and did gain access to his office even during this short period of time that his electronic key was not working. Furthermore, Rivera’s allegation that “[m]y access continues to be restricted as referenced by Attachment B” is unsupported by any such addendum. In light of these facts, this charge should be dismissed. It should also be noted that Rivera refused to take the stand at his trial and testify about these matters when they became an issue in his case.

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Charge 4: *The above referenced lockout was premeditated and orchestrated solely for the purpose of interfering with the duties of the Office of the Treasurer as evidenced on September 22, 2010 when John Samuelsen violated Article XVI, Section 4 by electronically approving Payroll without my consent.*

Rivera was found guilty by the Executive Board of violating his responsibilities as the Treasurer when he refused to process the Union's September 22, 2010 payroll. As the Executive Board knows, Rivera's unjustified refusal to process the payroll required Samuelsen to order the processing of the payroll. As the Board also knows, Rivera had full access to his office on September 21, 2010 despite the fact that his electronic key was not working for a few minutes. Rivera's charge that the "lockout was premeditated and orchestrated solely for the purpose of interfering with the duties of the Office of the Treasurer" is belied by the facts known to the Executive Board.

Moreover, Rivera's claim that Samuelsen approved the payroll without his consent fails to state a constitutional violation. Section 4 of Article XVI of the Constitution sets forth the duties of the Secretary-Treasurer, which include, among other things, receiving, paying and keeping track of monies. Nothing under Article XVI prohibits the President from approving the payroll when the Secretary-Treasurer is refusing to perform his responsibilities. Accordingly, this claim should be dismissed in its entirety.

Charge 5: *On numerous occasions John Samuelsen has interfered and co-signed checks for the Local signed by Administrative Vice President, Angel Giboyeax [sic] in direct violation of Article XVI, sections 1 and 2 respectively.*

This charge should be dismissed because (1) "on numerous occasions" fails to state the time frame for the alleged offense as required by the Constitution; (2) it fails to state the exact nature of the alleged offense (who or what was "interfered" with) as required by the Constitution and (3) nothing in Sections 1 and 2 of Article XVI prohibits the President from co-signing checks. Rivera knew as long ago as December 2009 when it was explained to him as part of the transition by Ed Watt, the outgoing Secretary-Treasurer from the previous administration, that the Local has had a long standing practice of having a third officer as a signatory on the Union's checks in order to enable the Local to continue to pay its bills during the absence of either the Treasurer or the President. Since Rivera complains about a practice that he knew about and approved long before he filed this charge, it is clearly time barred.

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Charge 6: *John Samuelsen has willfully been negligent and wasteful in the execution of his fiduciary responsibility by overwhelming the Local's budget with excessive salaries causing payroll to exceed the ADP threshold of \$400,000 in several pay periods causing ADP to restrict and or suspend payroll. Conduct unbecoming an officer XIX, section 5k.*

Section 5k of Article XIX governs distribution of Union membership lists. The conduct complained about cannot violate this section of the Constitution. In addition, Rivera's generalized criticism of Samuelsen lacks the specificity required under the Constitution to constitute a charge and it lacks any reference to a time frame from which it can be determined that it is a timely charge. Further, there is nothing in the Constitution which sets a limit to the biweekly payroll. The payroll fluctuates due to special projects such as Family Day and the Mass Membership Meeting, when additional staff are needed. Accordingly, this charge should be dismissed.

Charge 7: *John Samuelsen has deliberately violated Article XXXII in the attempt to coerce the Office of the Secretary Treasurer to issue political contributions to candidates running for Federal Office in the state of New Jersey. This coercion was reinforced by the interferences of members of MOW members Duane Mcmenamie,³ John Chiarello and MOW Vice President, Tony Utano. As clearly stated in the above referenced Article, all Federal contributions require written authorization from Transport Workers Union International-COPE Article XXXII, Section 2.*

Rivera's vague and unsupported allegation that Samuelsen violated Article XXXII governing political contributions fails to provide any facts from which it can be determined that there is a charge. He alleges nothing specific about the nature or timing of this alleged "attempt to coerce the Office of Secretary Treasurer." While citing that Article XXXII requires written authorization by the National Union to make a federal contribution, Rivera fails to allege that any contribution was made in violation of this prohibition. The fact is that TWU Local 100 did not make any political contributions to candidates running for federal office in New Jersey. Moreover, while the allegation mentions that MacMenamie, Chiarello and Utano reinforced the supposed improper conduct by their "interferences" this is too vague. Since this charge fails to set forth the specific nature of the offense as required under Section 1 of Article XIX, it should be dismissed.

³ Properly spelled, "MacMenamie."

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Charge 8: *John Samuelsen willfully violated Article XIX, Section 5(K) in collaboration with MOW Vice President, Tony Utano by turning over a list of Local 100 Members and contact information to M3 Technologies Insurance Company in return for donations and the purchase of 200 tickets to family day.*

Section 5(K) of Article XIX prohibits the furnishing of "a complete or partial list of the membership of the International Union or of any Local Union to any person or persons other than those whose official position entitles them to have such a list." M3 Technologies Insurance Company is a broker currently providing insurance services to members of Local 100. In fact, M3's principal was the original principal of the previous broker when former President Tousaint authorized it to perform these services for our members. Local 100 has had this type of relationship with an insurance broker for many years. Providing M3 with information needed to mail and advise members about the availability of insurance is not prohibited by the cited section of the Constitution because its position entitles them to have such a list. The previous broker was provided with the same information by the previous Union administration for mailing the same type of communications to Union members. Making a donation to Local 100 by purchasing tickets for Family Day- many of which were then given to charity - is not be a violation of the Constitution; it was a generous act by a Union vendor. To the degree that Tony Utano "collaborated" (whatever that means) with Samuelsen, nothing is alleged against Utano that violates the Constitution.

Charge 9: *Article XIII, section 4 where as President Samuelsen whom has been in direct contact with the Department of Labor has purposely not disclosed the names and officers and Executive Board members known or identified by the DOL of being in bad standing and has not revealed those names.*

Section 4 of Article XIII provides in full, "any member in bad standing shall be ineligible to attend Union meetings, to be a candidate for or hold any Union Office or position, or to vote in any Union election or referendum, or otherwise to participate in Union affairs. He/she shall not be restored to good standing until he/she has met all his/her financial obligations to the Union." From the language of the allegation, it is impossible to discern exactly what misconduct Samuelsen is accused of engaging in which violates the section. This section does not require the President to disclose the names of members in bad standing to the Department of Labor. In addition, there is no reference as to when this alleged failure by Samuelsen to disclose took place. The allegation is too vague to determine what is being charged or whether the alleged misconduct is timely complained of. If Rivera has information showing that Executive Board members are not presently in good standing, he should make that complaint and show the basis of his information. For these reasons it should be dismissed.

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Charge 10: *Article XIII, Section 4, where as President Samuelson has knowingly not revealed the name of an Executive Board member cited and charged by the DOL as having broken Federal campaign Law's [sic] and preventing said member from being charged with conduct unbecoming under Article XIX, section 5.*

The Department of Labor does not enforce federal campaign financing laws – those laws are enforced by the Federal Election Commission. The Department of Labor does not “charge” union members with violating federal campaign financing laws – and indeed, so such charge could be made. The allegation fails to identify the Executive Board member purportedly charged by the DOL with this infraction or provide any specific facts or dates surrounding this alleged incident. Its vague nature is insufficient to charge Samuelson with conduct unbecoming a Union member. Therefore, this charge should be dismissed.

September 24, 2010 Charge Against Benita Johnson

Charge 1: *Benita Johnson has failed in her responsibilities as Recording Secretary of Local 100 to bring forth charges submitted to her and her office by members and or officers of this Union, article XIX, Section 2. See also Article XIX, section 5. Remedy should be immediate suspension and removal from office and barred from ever holding office.*

This charge fails to state a constitutional violation because it fails to allege which charge or charges Recording Secretary Johnson has failed to properly handle as part of her responsibilities in that office. We cannot tell from the charge whether the allegation is timely or not. Moreover, Article XIX, Section 2, insofar as it relates to the Recording Secretary only requires that charges be filed with her office; it does not specify anything else to be done by the Recording Secretary with respect to a charge. Because the charge does not allege that Johnson is refusing to accept charges filed with her, nothing is alleged against her in the charge that violates the Section. Also as the Board knows, the fact is Recording Secretary Johnson has previously brought charges delivered to her office before the Executive Board. The Board previously established a committee to investigate several charges brought to the Board by the Recording Secretary to determine whether they were election challenges or allegations of constitution/bylaw charges not related to elections. Because the Local Executive Board, and not the Recording Secretary, determines whether a charge warrants a trial, see Article XIX, Section 3, the alleged and vague failure of Johnson to “bring forth charges” cannot be a violation of the TWU Constitution. Also see Article XX. Accordingly, this charge should be dismissed.

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(C) October 14, 2010 Charges

Charge 1: *It has come to my attention monies sent to or received by Local 100 have been sent to and or received by John Samuelsen's office as evidenced by the attached document. The attached document references "TWU Fraud \$62,500". This document came into my possession on the evening of Oct[ober] 6, 2010 immediately after the emergency executive board meeting. The date stamp indicates the referenced check was submitted to and or processed by your office in direct violation of Article XVI, section 4. Immediate disclosure is warranted on all monies pertaining to this event. Immediate emergency E-Board is needed for full accounting. Suspension from office is demanded until all referenced monies pertaining to this event are accounted for under Article XIX, section 4.*

The charge claims a violation of Article XVI, Section 4, which concerns the responsibilities of the office of Secretary-Treasurer, because a check intended for the Union was delivered to the President's office. Because nothing was attached to the charge, no other evidence in support of the charge was submitted. In any event, the simple fact that a check for the Union was delivered to the President's office from an outside entity cannot constitute a violation of the Union's Constitution. In this case the check was immediately forwarded by the President's office to the Secretary-Treasurer's office for deposit into the Union's account. Moreover, this check was delivered to the Secretary-Treasurer's office and deposited into Local 100's account while Rivera was still the Secretary-Treasurer. The check, which was sent by former General Counsel Terry Meginniss to the President's office, represented a payment owed the Union in settlement of a confidential litigation matter concluded years ago, during the prior administration. This charge should be dismissed because nothing is alleged to have occurred which violates the Union's Constitution or constitutes conduct unbecoming a Union member.

Charge 2: *I charge Board Member Steve Downs and President Samuelsen conspired to bring forth illegitimate charges against me Israel Rivera Jr. Said charges were and are fatally flawed as follows. Charges submitted in my name were not signed according to Article XIX, section 1[.]*

As the Board knows, on October 7, 2010, Rivera was charged with four counts of violating his fiduciary duties under the Union's Constitution. The charges against Rivera were signed by President Samuelsen as required by Article XIX, Section 1. Following his trial, Rivera was removed as the Secretary-Treasurer by an Executive Board vote of 37-1, the only vote against removal being from Rivera's advocate during the trial. While Rivera accuses Steve Downs of "conspiring" with Samuelsen to bring forth illegitimate charges against him, the

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charges were neither "illegitimate" nor "fatally flawed" as alleged by Rivera. Clearly, this charge should be dismissed as nothing constituting a charge is being alleged.

Charge 3: *I also charge every executive Board member in attendance with illegal suspension of my duties as treasurer of Local 100 by citing and enforcing the wrong charge on the first page of charges, the cover page rendered. Quoted charges against me are "Article XVII, section 5" quoted "The officers of the Local union shall be the trustees of the property of the local union..." When compared against the current constitution, Article XVII section 5 reads in reference to "initiation fees and dues and international assessments". See attached[.]*

As the Board knows, there was a typographical error in the charges filed against Rivera. This typographical error was of no significance because the charges set forth the actual language of the constitution alleged to be violated by Rivera. When the Executive Board found Rivera guilty of violating the quoted language there was nothing "illegal" about Rivera's subsequent removal from office. Accordingly, this charge should be dismissed.

Charge 4: *I charge every board member present and or in attendance with violation of Article XVI, section 4, by endorsing and or approval by vote of Angel Giboyeaux [sic] to act as Financial Secretary Treasurer of Local 100 in my stead without first providing bond acceptable to the international Secretary Treasurer as specified under Article XVI and applicable Laws. Financial records will show Angel Giboyeaux [sic] signatures on checks throughout this year and predating this document in direct violation of TWU constitution concerning Administrative Vice President Angel Giboyeaux [sic] as stated in charges filed and submitted previously on Sept[ember] 25th 2010 to Benita Johnson, recording secretary local 100.*

This charge fails to allege a violation of the Constitution. Under Article IX of the By-Laws of the Transport Workers Union of Greater New York Local 100, vacancies in an office are filled by appointment of the Executive Board. In this case, the Executive Board never appointed Giboyeaux to be Acting Financial Secretary-Treasurer. However, as explained to the Executive Board at the meeting where Rivera was suspended from office, Giboyeaux is the 3rd signatory and has been properly signing checks during the period of Rivera's suspension and removal. Rivera knows - because it was explained to him by Ed Watt during the transition - that the Local has always had a third signatory on the checking accounts in order to permit the Local to conduct its business in the absence of either the President or Secretary-Treasurer. Accordingly, Rivera's charge that the entire Board violated the Constitution by appointing Giboyeaux as Acting Financial Secretary Treasurer is factually incorrect, without merit, and should be dismissed.

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(D and E) November 16, 2010 Charges

Charge 1: It has come to my attention the recent Local 100 Executive Board meeting of October 29, 2010, has appointed a Judiciary Panel. Local 100 By-Law amendment VIII, Section C states: "Union staff shall not serve on the Judicial panel" President Samuelsen is in clear violation of By-Law amendment VIII, section C by appointing Vice President Tony Utano who is on Union paid staff and has also been appointed by President Samuelsen to the Local 100 Judiciary panel[.]

Presumably, Rivera purports to state a violation of one of the amendments made in 2009 to the Local's Bylaws. However, there is no "amendment VIII, Section C" as alleged in the charge. Presumably Rivera is alleging a violation of Proposed By-Law Amendment 13, Section D, which provides that "[u]nion paid staff shall not serve on the Judicial Panel." However, Tony Utano is not staff; he is an elected Officer of the Union and is eligible to serve on the Judicial Panel. Accordingly, this charge should be dismissed.

Charge 2: President Samuelsen has allowed the appointment of Non Executive Board member Richard Holley to the Local 100 Judiciary panel. This appointment violates past practice.

This charge fails to state a violation of the Constitution or TWU By-Laws. There is no constitutional or by-law provision prohibiting the appointment of a Non-Executive Board member to the Local 100 Judicial Panel. Additionally, Rivera fails to explain what "past practice" has been violated or present any tenable argument for filing a charge against Samuelsen. Furthermore, the question regarding whether a non-Executive Board member could serve on the Judicial Panel was answered affirmatively by the International TWU. Accordingly, this charge should be dismissed.

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Charge 3: *I charge John Samuelsen with conspiracy and extortion of a known TWU Local 100 Vendor. John Samuelsen has abused his position as President of Local 100 in a clear and written attempt at intimidating vendor Steven Gerszberg,⁴ President of Johnson Business Products and Xerox sales agent into forcibly contributing monies to the Boy Scouts of America on John [S]amuelsens behalf and in the name of John Samuelsen as evidence by attached document. John Samuelsen writes Mr. Gerszberg on November 8, 2010 and on TWU Local 100 letterhead "specifically I ask that you consider sponsoring a table at the luncheon. Of course, we would appreciate any contribution that you can make to this important cause[.]" Extortion will never be any clearer than this. No Local 100 vendor would risk future TWU Union business by openly denying John Samuelsens demand for money in his own honor.⁵*

This charge fails to allege neither a violation of the Constitution nor conduct unbecoming of a Union member. Samuelsen's letter requesting that Mr. Gerzberg "consider sponsoring a table" at a luncheon dedicated to raising money for the Boy Scout of America is not a chargeable offense. This is not conspiracy nor extortion as it is lawful in all respects. Moreover, it is common place for unions to support organizations like the Boy Scouts and help raise money for them by approaching vendors to ask them to buy tickets for such events. Accordingly, this charge should be dismissed.

(F – L) November 16, 2010 Charges Against Frank Austin, Tony Utano, Terry Adams, Paul Piazza, Pete Foley, Christopher Magwood and Tom Lenane

On November 16, 2010, Rivera filed identical charges against Austin, Utano, Adams, Piazza, Foley, Magwood and Lenane alleging the following:

Charge: *It has come to my attention during the recent trial of October 25, 2010 which concluded in my illegal removal from office as Secretary Treasurer of Local 100 by the present Local 100 Executive Board that some members of the Local 100 Executive Board were in fact in office illegally and not eligible to vote in the above mentioned trial by reason of having been in bad standing during the recent Local 100 elections held during 2009. TWU Constitution Article XV, Section 3 Local Unions Elections: "No member shall be eligible for nomination or election to any office unless he/she shal[l] have been in continuous good standing in his/her Local Union for a period of (12) months immediately preceding nomination" this member should be immediately removed from and barred from holding office as described under TWU Constitution Article VIII, Section 3.*

⁴ Properly spelled, "Gerzberg."

⁵ This charge was filed by separate letter dated November 16, 2010.

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Rivera's allegation that his removal from office by the Executive Board was "illegal" is not true. His complaint about members of the Board having been in bad standing in last year's election is untimely and improper under the Constitution. Pursuant to the election rules approved by the Executive Board in 2009, any complaint regarding the eligibility of a candidate running for office had to be filed with the Neutral Monitor within 48 hours of May 4, 2009, the date the Elections Committee issued its report on eligibility. Frank Austin, Tony Utano, Terry Adams, Paul Piazza, Pete Foley, Christopher Magwood and Tom Lenane were all determined by the Elections Committee in May 2009 to be eligible to run for office. No complaint was timely filed with the Neutral Monitor after the Elections Committee's determination of their eligibility and it is too late to do so now. To the extent the charge is intended to constitute an election protest it is untimely and cannot be considered by the Executive Board because the subject matter of the allegation was committed by the Executive Board in 2009 to the discretion of the Neutral Monitor.

To the extent that Rivera's allegations are intended to be a charge under the Constitution they are untimely in as much as charges must be filed within 60 days of when they are known or reasonably should have become known to the charging party. Rivera, who ran in that election for his position as Secretary-Treasurer, had every opportunity to timely file such a charge or an election protest. Clearly since the nominations were over a year and a half ago the alleged misconduct is too old to constitute a charge. As Rivera fails to set forth the time frame in which he first became aware of evidence substantiating his charges it cannot be determined that his charge is timely. Moreover, as Rivera was the Secretary-Treasurer responsible for cooperating with the Department of Labor's investigation of Ainsley Stewart's complaint about the election of National Officers at the 2009 convention, Rivera is basing his allegation upon information known to him that was provided by his office in March 2010 to the Department of Labor. It therefore cannot be timely filed under the 60 day rule.

More significantly, these Executive Board members were determined by the former Union Administration's Election Committee to be eligible to run; they were elected, and the results were certified in December 2009 without a protest being filed. The 2009 election is over and a charge cannot be used to revive an election protest at this late date.

Lastly, as the Executive Board was nearly unanimous in finding Rivera guilty of violating the Union's Constitution and removing him from office, the results for Rivera would not be changed by subtracting the seven votes cast by the named Executive Board members. Whether Frank Austin, Tony Utano, Terry Adams, Paul Piazza, Pete Foley, Christopher Magwood and Tom Lenane should or shouldn't have been elected it would not have changed the outcome of Rivera's trial.