



SMART



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MICHAEL J. SULLIVAN
GENERAL PRESIDENT

March 25, 2010

Sent via Overnight Mail

Martin B. Futhy, Jr.
International President
UTU
14600 Detroit Avenue
Cleveland, OH 44107-4207

Re: SMART and Your Fiduciary Duties

Dear Mr. Futhy,

Now that the efforts to stop the formation of SMART through litigation have failed, and the Sixth Circuit has reversed the injunction against the merger, SMART is now in existence. By the terms of the merger agreement, you are "President, Transportation Division" and a General Vice President of SMART.

You now have the responsibility to conduct yourself in accordance with the SMART Constitution. This applies most acutely in the field of financial affairs.

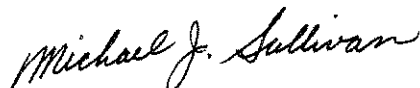
Section 501(a) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501(a), imposes a duty on the officers of a labor organization "to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws. . . ." LMRDA § 501(b) gives union members a private right of action to sue officers for breach of fiduciary duty, for good cause and after presenting a demand to the union to take action. The union itself may sue its officers for breach of their duties under § 501. *International Union of Operating Engineers, Local 150 v. Ward*, 563 F.3d 276 (7th Cir.), *certiorari den.* 130 S.Ct. 442, 175 L.Ed.2d 271 (2009); *International Union of Electronics, etc. Workers v. Statham*, 97 F.3d 1416 (11th Cir. 1996). A union officer is personally liable for violations of § 501. Once it is established that there is reason to believe that the officer has spent the union's money in ways not authorized by the union's constitution, the burden shifts to the officer to prove that the expenditures were authorized by the union's governing law. *Noble v. Sombrotto*, 525 F.3d 1230, 1236-1237 (D.C. Cir. 2008).

The SMART Constitution is the SMWIA Constitution amended to implement the provisions of the Merger Agreement. Merger Agreement, Article III. The UTU Constitution is Article Twenty-One (21)B of the SMART Constitution to the extent that it is not in conflict with the SMWIA Constitution or the terms of the Merger Agreement. Merger Agreement, Article XI. Article Three (3), Section 1 of the SMART Constitution mandates that the General President shall have general supervision over the union. It also requires him to submit monthly itemized accounts of all expenditures he makes on behalf of the union, and that the General Secretary-Treasurer shall pay the accounts thus rendered. Article Five (5), Section 1(a) provides that all expenditures of the union (authorized in accordance with the Constitution) are to be made by instruments drawn on the accounts of the union by authority of the General President and the General Secretary-Treasurer. The General Secretary-Treasurer is also required to receive and account for all money due the union. Furthermore, Article Four (4), Section 1 prohibits any General Vice President from assuming authority to represent or acting for or in the name of, or incurring or assuming any liability, obligation or expense in the name of the union except upon the express direction of and only to the extent authorized by the General President.

These obligations apply to the entire union, including the Transportation Division. Therefore, you may not make any expenditures either by yourself or in combination with other officers of the union. Instead, any expenditure you propose to make must be approved by the General President and paid by him and the General Secretary-Treasurer. You will be personally liable for any expenditures you make that do not conform to this process.

You also may not, either alone, or in combination with others, enter into any obligation in the name of the union. This authority is reserved by the SMART Constitution to the General President as noted above. This includes contracts of any sort, including collective bargaining agreements, purchase orders, installment purchases, leases or any other form of agreement obligating the union in any way, including financially. Any such obligation that you incur is void and any liability flowing from it shall be yours personally. I realize that UTU had existing obligations as an entity before the merger became effective. Even though these obligations should not have been undertaken after January 1, 2008 without my approval while the consummation of the merger was restrained, we do not want to injure any innocent third parties who may have relied in good faith upon your apparent authority. I will not authorize SMART to sue you for entering into these obligations, but only on the conditions (1) that you supply me immediately with the complete listing and description of all such obligations and (2) undertake to comply with your responsibility not to incur any further obligations except through the process authorized by the SMART Constitution as outlined above.

Sincerely,



Michael J. Sullivan
General President
SMART