

HHD CV18-6101218-S : SUPERIOR COURT FOR THE
INTERNATIONAL ASSOCIATION OF : HARTFORD JD
FIRE FIGHTERS LOCAL 825 :
v. : AT HARTFORD
UNIFORMED PROFESSIONAL :
FIRE FIGHTERS ASSOCIATION : DECEMBER 6, 2018
OF CONNECTICUT

B E F O R E

THE HONORABLE THOMAS MOUKAWSHER, JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF:

FISHBEIN LAW FIRM
100 SOUTH MAIN ST
WALLINGFORD, CT

BY: CRAIG FISHBEIN, ESQ.

FOR THE PLAINTIFF:

THE FAIRNESS CENTER
500 NORTH THIRD ST
HARRISBURG, PA

BY: NATHAN McGRATH, PHV
JOSHUA NONTAGNINI, PHV

FOR THE DEFENDANTS:

GESMONDE PIETROSIMONE & SGRIGNARI
3127 WHITNEY AVE
HAMDEN, CT

BY: NANCY VALENTINO, ESQ.
SHELIA HALL, ESQ.

JOHN McILHONEY

COURT MONITOR

1 **(December 6, 2018.)**

2 THE COURT: Good afternoon. Please be seated.

3 Anything to take up before we resume evidence?

4 ATTY. FISHBEIN: No, your Honor.

5 ATTY. VALENTINO: No, your Honor.

6 THE COURT: All right. Then we were on
7 cross-examination, as I recall.

8 ATTY. FISHBEIN: Yes, sir.

9 THE COURT: You may -- you may proceed.

10 ATTY. FISHBEIN: Thank you.

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1 **P e t e r C a r o z z a**, of West Hartford,
2 Connecticut, having been previously sworn by the
3 court officer, testifies as follows:

4 CONTINUED CROSS-EXAMINATION BY ATTY. FISHBEIN:

5 Q Mr. Carozza, when we ended yesterday, we were talking
6 about the \$26,000 situation with the PAC.

7 Do you recall that discussion?

8 A I do.

9 Q And I had read a portion of your transcript, your
10 deposition transcript to the Court.

11 Do you remember that?

12 A Yes.

13 Q And your deposition happened on October 11th of
14 2018?

15 A I believe it was October 11 and 12th, if I'm not
16 mistaken.

17 Q Okay. So --

18 A It was over two days.

19 Q Sure. And prior to your deposition, did you know
20 there was an issue with the \$26,000 or thereabouts with the
21 PAC account?

22 A I did not, no.

23 Q Okay. And as a result of you learning that during your
24 deposition, what did you do?

25 A Contacted the treasurer.

26 Q Okay. And when did you contact the treasurer?

27 A I'm not sure. It was sometime after the deposition.

1 Q Okay. Well, as we sit here, we're approximately two
2 months after that.

3 Is it fair to say a week later?

4 A I don't believe that is fair to say, no.

5 Q Okay. Is it more than a week?

6 A I believe it may have been less than a week.

7 Q Okay. And how did you contact the treasurer?

8 A I'm not sure. Either through a phone call or maybe in
9 our offices.

10 Q Okay. Well, did you -- did you meet with the
11 treasurer with regard to this issue?

12 A We -- as I said, it was either a phone call or could
13 have been a meeting with him in -- in our offices. I'm not
14 sure.

15 Q Okay. So I'm just trying -- because this is only
16 about two months ago.

17 And you have no recollection as to whether or not
18 you talked on the phone or you met in person?

19 A Well, I didn't say I didn't have any recollection. I
20 said I may have talked to him on the phone or I may have
21 talked to him in our office. I'm not sure.

22 Q Okay. You just -- okay.

23 And did Mr. Anthony show you any documents as a
24 result of your inquiry about this \$26,000 issue with the
25 PAC?

26 A He did not.

27 Q Okay. And did he -- what did he tell you?

1 A I inquired about the -- the discrepancy. And he
2 explained that it was a mistake that was corrected.

3 Q Okay. And when you say "it was mistake," that "it was
4 corrected," was it a mistake in that a -- the money was never
5 deposited to the PAC account or is it a mistake in that --
6 what was your understanding of the mistake?

7 A It was a mistake on his part that was corrected. He
8 explained it. I have no reason to doubt his explanation.
9 I've worked with him for 30-some-odd years. He's the most
10 honest individual that I know, hardworking, very little
11 compensation. And I believed him and took him as his word.

12 Q And did you ask to see any of the bank statements for
13 the PAC as a result of this \$26,000 issue coming to your
14 attention?

15 A I did not, no.

16 Q And how many signatures are required on the PAC
17 checking account?

18 A Checking account for PAC and all of our other checks
19 are one signature backed up by -- on a monthly basis by two
20 signatures on all reports, all submissions, all expense
21 reports that have attached to those the documentation for the
22 approvals.

23 Q Okay. And are you required to sign off on all bank
24 reconciliations?

25 A I do not, no.

26 Q Well, you're not required to do that?

27 A Am I required?

1 Q Yes.

2 A I'm not sure if I'm required.

3 Q Okay. Have you reviewed the policy, the treasurer's
4 policy book?

5 A Not recently, no.

6 Q Okay. When you say "not recently," when was the last
7 time you did?

8 A I believe you asked me this in a deposition. And I'm
9 not -- I'm not sure if I reviewed it recently.

10 Q Okay. Well, when you say recently, is it fair to say
11 that haven't reviewed it in at least ten years?

12 A That is not fair to say.

13 Q Okay. So within the last five years?

14 A I'm not sure when I reviewed it.

15 Q Okay. What about the audit that you get on a annual
16 basis from Mr. Moletta, do you review those?

17 A I review those with Mr. Moletta and with our principal
18 officers. Mr. Moletta usually brings that report to our
19 office. We review it with him and his assistant along our
20 officers. And then we review it -- the next step would be to
21 review that with our state executive board and our
22 delegates.

23 Q Okay. And just to go back, just so that I'm clear:
24 You have not reviewed any documents with regard to the
25 \$26,000 issue with the SEEC filing?

26 A I have not, no.

27 Q You have not looked at any of the filings themselves

1 or any bank records?

2 A I have not, no.

3 Q Do you recall going to the Connecticut state fire
4 fighters 13th annual memorial service on September 27, 2015?

5 Do you recall that, sir?

6 A I do not recall that, no.

7 Q Okay.

8 ATTY. FISHBEIN: Your Honor, I have a -- well,
9 let me -- let me just tender to the witness; if I
10 may approach the witness to get a little bit on the
11 record with regard to a document I intend to put
12 into evidence?

13 THE COURT: All right. Has it been marked?
14 It's got a number?

15 ATTY. FISHBEIN: It has, your Honor. This is
16 Exhibit 29.

17 THE COURT: All right. And I assume, Ms.
18 Valentino, you have a copy of 29?

19 ATTY. VALENTINO: I do. And we have objection
20 to it, your Honor.

21 THE COURT: All right. Well, you may attempt
22 to lay a foundation for it. You may approach the
23 witness.

24 ATTY. FISHBEIN: Thank you, your Honor.

25 BY ATTY. FISHBEIN:

26 Q Sir, you have a copy of 29 in the book.

27 Do you see that there?

1 A I do.

2 Q And do you recall seeing that flyer?

3 A I do not recall seeing this flyer, no.

4 Q Okay. Do you recall attending the event?

5 A I don't recall, no.

6 Q Okay. Well, is it possible you didn't attend the
7 event?

8 A I'm not sure. It's September of 2015. And I'm not
9 sure.

10 Q Okay.

11 ATTY. FISHBEIN: We're going to hold off on
12 this exhibit, your Honor, for a moment.

13 BY ATTY. FISHBEIN:

14 Q Sir, if you'd turn to Tab 31, please.

15 Do you recognize what's marked as number 31 for
16 identification to be your activity and expense report for
17 September of 2015?

18 A Yes.

19 ATTY. FISHBEIN: Your Honor, I offer it.

20 THE COURT: Is there objection? And which --

21 ATTY. FISHBEIN: Thirty-one, your Honor.

22 THE COURT: This is 31. All right. So is
23 there objection to 31?

24 ATTY. VALENTINO: No, your Honor.

25 THE COURT: Thirty-one's is full exhibit.

26 ATTY. FISHBEIN: Your Honor, while I'm going
27 to the clerk, I'm also going to give 29 to the

1 clerk. It'll stay at ID. I won't need it as a
2 full exhibit.

3 THE COURT: All right. And if you have a
4 bench copy of 31, that would be useful.

5 ATTY. FISHBEIN: Yes, your Honor. You're
6 going to get it. Thank you.

7 BY ATTY. FISHBEIN:

8 Q Sir, pointing your attention to what is now full
9 Exhibit 31, your activity and expense report for September of
10 2015, if you'd turn to the section that has to do with
11 September 27th, which I believe is on the third page.

12 You see the entry that says O?

13 A Yes.

14 Q Okay. And, as we discussed yesterday, under the codes
15 you're supposed to specify, which you would agree with me
16 there's no specification there. But the next entry in that
17 date is --

18 ATTY. VALENTINO: I'm sorry, your Honor. It
19 sounded like he asked a question but he didn't wait
20 for a response to, Would you agree with me? I just
21 would like the record to be clear.

22 ATTY. FISHBEIN: That's fair.

23 BY ATTY. FISHBEIN:

24 Q Do you agree with me that there's no specification
25 there to the O?

26 A On line -- what line was that?

27 Q It's the 27th of September.

1 A And the question? I'm sorry.

2 Q That there's no specification as to what the O
3 means?

4 A Yes.

5 Q You would agree with me there's nothing there?

6 A It's --

7 Q And similarly with all of the other Os on that page,
8 there's no specification?

9 A I have not looked at the other Os on the page.

10 Q Okay. Well, you're looking at the page, sir. Right?
11 And that's the one that's Bates stamped 29425?

12 A Okay.

13 Q And there are one, two, three, four, five, six Os on
14 that page as far as the activities.

15 Do you see those?

16 A I do.

17 Q And none of them have specification as to what the O
18 means. Correct?

19 A Correct.

20 Q So then, centering on September 27, 2015, it indicates
21 that you were at the CTFF memorial service.

22 And what was that?

23 A Connecticut fire fighters -- fallen fire fighters'
24 memorial service.

25 Q Okay. And do you recall where that memorial service
26 took place?

27 A I believe that's held at the Connecticut Fire

1 Academy.

2 Q Okay. And it indicates that you charged \$90 -- 90
3 miles for that trip.

4 Where would you have been starting from and
5 ending? What town?

6 A I'm not sure.

7 Q Okay. Well --

8 THE COURT: Where is the fire academy?

9 THE WITNESS: The fire academy, your Honor, is
10 at the Bradley International -- on the grounds of
11 Bradley International Airport.

12 THE COURT: All right. Thank you.

13 BY ATTY. FISHBEIN:

14 Q Okay. So you -- is it fair to say that you either
15 started the clocking of the mileage from your home in Wolcott
16 or the West Hartford headquarters?

17 A Is it -- did you say is it fair to say?

18 Q Yes.

19 A I don't think it's fair to say.

20 Q Okay. Well, where else -- considering that on that
21 particular day there's no other entry, where else possibly
22 could you have been starting to clock your mileage?

23 A I'm not sure.

24 Q Okay. And based upon that activity and expense
25 report, is it fair to say that you were in Connecticut at
26 that time?

27 A I'm not sure.

1 Q Okay.

2 ATTY. FISHBEIN: Your Honor, I have Exhibit
3 30. My understanding is there's no objection to
4 Exhibit 30.

5 THE COURT: Thirty is being offered. Is there
6 objection?

7 ATTY. VALENTINO: There's no objection, your
8 Honor.

9 THE COURT: Thirty's a full exhibit.

10 BY ATTY. FISHBEIN:

11 Q Sir, if you'd turn to -- before we get there,
12 withdrawn.

13 The fire fighter memorial is on your activity and
14 expense report. How is it not possible -- well, bad
15 question.

16 Why do you say that your activity and expense
17 report does not reflect that you would be in Connecticut for
18 that event?

19 A I'm not sure. You know, counselor, you'd ask me a
20 number of these questions in a deposition and from going back
21 to seven or eight years ago. And I'm just -- I just can't
22 recall this specific date of 2015. That's three years ago.
23 I'm just -- I'll not -- I'm not sure.

24 Q Well, are you of the practice of putting things in
25 your activity and expense report that you don't attend?

26 A No, I'm not of that practice.

27 Q Okay. So is it reasonable to assume that because you

1 put it on your activity and expense report that you were
2 present in Connecticut on December 27th of 2015?

3 A I'm not sure.

4 Q Okay.

5 A That could -- I'm not sure.

6 Q Sure. So now if you turn to Tab 32, sir -- and I
7 think I asked you at your deposition: Have you ever let
8 anybody use your UPFFA credit card? And you answered in the
9 negative.

10 Is it fair to say?

11 A I don't have a Tab 32.

12 Q Okay. You don't have a 32. Yes. Let's go to that
13 last exhibit. Thirty. Yes. Thirty.

14 ATTY. FISHBEIN: Well, your Honor, I'll --
15 well, let me get the answer to the question.

16 BY ATTY. FISHBEIN:

17 Q Sir, have you ever let anybody use your UPFFA credit
18 card?

19 A I believe so, no.

20 ATTY. FISHBEIN: Okay. Your Honor, I bring to
21 your attention on Exhibit 30 that there's a receipt
22 in the center of the page from San Marino
23 restaurant in Waterbury in the amount of 72.70.

24 THE COURT: It's noted.

25 ATTY. FISHBEIN: It's on Mr. Carozza's credit
26 card.

27 THE COURT: Right. Noted. It's 7:18 p.m. I

1 also note the Airport Mobil station at 10:11 a.m.

2 ATTY. FISHBEIN: A.m., yes. So that being
3 said, you know, the Court will take that as what it
4 is.

5 BY ATTY. FISHBEIN:

6 Q Sir, yesterday, you presented Exhibit C through your
7 lawyer, which were documents that you claimed were for
8 reimbursements for things that you did.

9 Do you remember that? You went through those
10 documents?

11 A I don't remember the specific document, but I remember
12 we went over a number of documents.

13 Q And you testified that all of these documents were
14 incident to you doing activities that you were reimbursed for
15 through some entity?

16 A Yes.

17 Q Okay. And --

18 ATTY. VALENTINO: Your Honor, I --

19 ATTY. FISHBEIN: Your Honor, may I approach to
20 tender the original? Then I'll have a copy for the
21 witness.

22 THE COURT: Yes, you may, unless -- is there
23 some --

24 ATTY. VALENTINO: There's -- I just wanted to
25 let you know, your Honor, that we provided a bench
26 copy this afternoon. I'm not sure if you had
27 received it yet.

1 THE COURT: C?

2 ATTY. VALENTINO: Yes.

3 THE COURT: Yes, I have it. Thank you.

4 BY ATTY. FISHBEIN:

5 Q Sir, in Exhibit C, there's a document --

6 ATTY. FISHBEIN: Well, your Honor, it's a full
7 exhibit, so --

8 THE COURT: C is. So is there something that
9 you want to call to my attention? Yes.

10 ATTY. FISHBEIN: Point out? Yes, your Honor.
11 I believe that -- I'm going to count from the back
12 of the exhibit because that's closest: one, two,
13 three, four, five, six, seven, eight pages from the
14 back.

15 THE COURT: It would say -- I see a check
16 1/4/16. Is that the one?

17 ATTY. FISHBEIN: No, your Honor. Maybe if I
18 took your copy and --

19 THE COURT: Well, what is -- what is the
20 document? Maybe that'll help --

21 ATTY. FISHBEIN: It's --

22 THE COURT: In other words, what is it you
23 want me to find?

24 ATTY. FISHBEIN: It's an Amex.

25 THE COURT: Amex.

26 ATTY. FISHBEIN: Antlers Hilton, Colorado. It
27 indicates that the --

1 THE COURT: Is it a -- in other words, a --

2 ATTY. FISHBEIN: It's an invoice of some
3 sort.

4 THE COURT: Is it an invoice from Amex or is
5 it an imprint, in other words, the receipt from
6 the -- oh, you say Antlers Hilton or something?

7 ATTY. FISHBEIN: Yes, your Honor.

8 THE COURT: All right. I see the Antlers
9 Hilton, September 18, 2015.

10 ATTY. FISHBEIN: That's one of them. I'm
11 looking for the one, your Honor --

12 THE COURT: All right.

13 ATTY. FISHBEIN: -- there's a document here
14 that says.

15 THE COURT: September.

16 ATTY. FISHBEIN: -- that the arrival was
17 9/27.

18 THE COURT: I see. I see.

19 ATTY. FISHBEIN: And the departure was 9/28.

20 THE COURT: Yes, I have a page that says
21 that.

22 ATTY. FISHBEIN: Yes, your Honor.

23 THE COURT: Okay. So --

24 ATTY. FISHBEIN: Which would be the time
25 period that --

26 THE COURT: I put together what you're -- what
27 you're suggesting.

1 ATTY. FISHBEIN: Thank you, your Honor.

2 BY ATTY. FISHBEIN:

3 Q Sir, isn't it true that in the budget, the UPFFA's
4 budget for reimbursement?

5 A Yes.

6 Q And on an annual basis that reimbursement amount is
7 about \$6000 at the beginning of the year?

8 A I'm not sure.

9 Q Okay.

10 ATTY. FISHBEIN: Your Honor, I'm tendering
11 Exhibit 32. My understanding is there's no
12 objection.

13 THE COURT: Thirty-two's being offered. So --
14 as evidence.

15 Do you object to 32?

16 ATTY. VALENTINO: No objection, your Honor.

17 THE COURT: Thirty-two is a full exhibit.

18 BY ATTY. FISHBEIN:

19 Q Now, sir, pointing your attention to -- well, the
20 first page of 32, of Exhibit 32 there's an entry in the enter
21 reimbursed expense, other, \$6000.

22 Do you see that?

23 A I don't have a 32.

24 Q You don't have a 32. That's fair.

25 Okay, sir, now that you see Exhibit 32 in the
26 book, in the center it indicates, Reimbursed expense, other,
27 \$6000.

1 Do you see that?

2 A Can you give me a line item?

3 Q 4100-053.

4 A Okay.

5 Q And you see the reimbursed expense \$6000?

6 A Yes.

7 Q And that's the kind of reimbursements?

8 A I'm not sure if they are.

9 Q Okay. And similarly, sir, the 2015 budget is attached
10 here. If you look at page -- and they aren't numbered, so
11 I'm going to count down. I believe it's the sixth page. It
12 says up top, Budget, 2015.

13 Do you see that, sir?

14 A I do.

15 Q And then it says, Reimbursed expense \$6000 under
16 other?

17 A Yes.

18 Q Okay. Sir, have the auditors made any recommendations
19 to the UPFFA over the last few years as to its business
20 practices and compliance with the policy book?

21 A I believe they have, yes.

22 Q Okay. And has the UPFFA adopted all of those
23 recommendations?

24 A I believe we have worked on them over the years,
25 yes.

26 Q Okay. When you say "over the years," when did you
27 start to work on them?

1 A Probably after the initial recommendations.

2 Q Okay. And when were the initial recommendations?

3 A It all depends what year we're talking about.

4 Q Okay. Well, we're talking since you've been the
5 president of the UPFFA. And you say you've been working on
6 them for years.

7 Have you completed all of the recommendations that
8 have been made by the auditors since you've been the
9 president of the UPFFA?

10 A I'm not sure if we have completed them.

11 Q Okay. And --

12 ATTY. FISHBEIN: Well, your Honor, pointing
13 you to Exhibit 25, instead of belaboring through
14 the witness, with all due respect, I'd just like to
15 publish certain portions of the audit.

16 THE COURT: It's usually the best way to do
17 it, if you can.

18 ATTY. FISHBEIN: Yes, your Honor.

19 THE COURT: I have 25 in front of me. It's
20 from Moletta and Company.

21 Is there some recommendation you want me to
22 take note of there?

23 ATTY. FISHBEIN: Yes. Before you we get to
24 the actual recommendation in the -- on the first
25 page, there's a section that says, Current year
26 recommendations -- well, then it says, Operating
27 deficits. In the center of that paragraph -- well,

1 we'll start with the whole paragraph: The union
2 has operated at a deficit on -- off and on over
3 those past several years, the result being the year
4 ending December 31, 2014, the net asset balance is
5 a net deficit of \$75. This means the union has a
6 book value of negative \$75. The actual deficit for
7 the year ending December 31 was a negative 69,947.

8 And it goes on to talk about the history of
9 the -- during the relative time period that we've
10 been centering our evidence on.

11 At the end of that paragraph, it says, Until
12 net assets and working capital are replenished to
13 safe operating levels, a six-month interim
14 financial statement should be required in addition
15 to annual audit.

16 BY ATTY. FISHBEIN:

17 Q Sir, if you as the president of the UPFFA instituted a
18 six-month interim financial statement practice?

19 A This -- I have -- I have not. But this was
20 referred -- I believe our treasurer went through this. And
21 he works more closely to our accountants Moletta and
22 Associates than I do.

23 Q And when you have meetings of the executive board, do
24 you run those meetings?

25 A I do.

26 Q And you create the agenda for those meetings?

27 A At times.

1 Q When wouldn't you?

2 A Depending on possibly my absence.

3 Q Okay. Over the last year, how many agendas for the
4 executive board have you not created?

5 A I'm not sure.

6 ATTY. FISHBEIN: Your Honor, going on to bank
7 reconciliations, it says, The union checking
8 account was marked in the QuickBooks accounting
9 system as reconciled through December 31, 2014.
10 However the bank reconciliations were completed by
11 using the reconcile now adjustments. And then it
12 goes on further in the paragraph, it says, We
13 recommend the union discontinue the use of this
14 feature.

15 And at the end of that paragraph, it says, We
16 recommend reconciliation of the bank accounts on a
17 monthly basis, an implementation of a controlled
18 reporting system, which requires sign off on bank
19 reconciliations by the president.

20 BY ATTY. FISHBEIN:

21 Q Sir, have you instituted that policy? Do you sign off
22 on bank reconciliations?

23 A I would have to, I guess, check with our accountant.
24 I'm not sure if I have or not.

25 Q Okay. And these recommendations were made in June of
26 2015, at the very least?

27 A Some time ago, yes.

1 Q Yes. So that's in the document. It's dated --

2 A -- June 16, 2015. Yes.

3 Q Yes.

4 ATTY. FISHBEIN: Your Honor, moving on to
5 source documentation. The auditor says, While
6 significant improvement has been made in the last
7 year, the union did not have proper supporting
8 documentation, including original invoices and
9 sales receipts, for all cash disbursements, credit
10 card transactions, and officer reimbursement.

11 Moving down, your Honor, to the middle of the
12 page where it says, Receipts for meeting expenses,
13 the auditor says, We recommend the union implement
14 the procedure of noting on all meeting receipts who
15 attended and the purpose of the meeting to insure
16 compliance with Department of Labor and IRS
17 guidelines, which are part of the annual regulatory
18 filing.

19 Last but not least, your Honor, with regard to
20 this document, the section that says, Entry of
21 budget into QuickBooks accounting system:
22 Currently the UPFFA's budget is not entered into
23 the QuickBooks accounting system.

24 Moving on, your Honor --

25 ATTY. FISHBEIN:

26 Q Sir, you have filed charges with the IAAF against
27 President Ricci and then-Vice President Vendetto.

1 You recognize that. Correct?

2 A I along with the -- our entire executive board, yes.

3 Q And who drafted --

4 A And I believe Mr. Vendetto is still the current
5 secretary --

6 Q That's why I said "then."

7 A You --

8 Q Who drafted the charges?

9 A The executive board.

10 Q Okay. So they all took a key stroke? Who actually
11 sat at the computer and put this document together, that is
12 the charges?

13 A As I recall, I believe we all -- there were -- it was
14 several meetings. And we all offered suggestions. And I
15 would assume that the secretary of the organization actually
16 did the typing up of the charges --

17 Q Okay.

18 A -- from a draft.

19 Q And what is that assumption based on? So you were at
20 these meetings. Somebody didn't say, Yeah, I got that. I'm
21 going to take care of it. I'm going to put it together. You
22 don't know who actually put this document together?

23 A No. What I said was there was several meetings. The
24 executive board put together the charges referring to the
25 international constitution and bylaws directly from the
26 provisions set forth in those -- in that constitution.

27 In our opinion, there was direct violation of

1 those constitution and bylaws --

2 Q And the question was --

3 A -- DIRECT -- well, I'm answering --

4 Q -- who actually put the document together?

5 A I'm answering the question.

6 Q The question is who actually put the document
7 together?

8 A Okay. I'm trying to answer that. You're not --

9 Q Okay. Well, why -- can you give us a name?

10 A I'm explaining and answering -- I'm trying to answer
11 your question.

12 THE COURT: I assume the point is that you're
13 not sure and you're trying to say as best you can
14 who it is or --

15 THE WITNESS: Your Honor, I'm trying to recall
16 the process.

17 And the process was that the executive board
18 got together on a number of occasions; came up with
19 some draft language in -- in using the constitution
20 of the international -- of ours. And eventually, I
21 would assume, that the secretary of our
22 organization typed the charges up, which he's
23 required -- he handles all communications.

24 BY ATTY. FISHBEIN:

25 Q When you say you "assume," though, who at this meeting
26 presented the document and said, This is the current version
27 of it. Can we review it?

1 A I think it was -- I think it was all of us, the entire
2 executive board. And, again, according to the
3 constitution --

4 Q How could --

5 A -- our secretary -- our secretary -- our secretary --

6 Q How is it physically possible --

7 A -- types -- handles all communication.

8 Q So are you testifying that Secretary Demici would come
9 to the meeting with a draft version of the document and say,
10 This is where we are. Do you have any comments?

11 Is that your testimony?

12 A That's not my testimony. My testimony was we sat at
13 several meetings with the executive board, drafted the
14 charges in compliance with the international constitution,
15 and drafted up the charges.

16 And I'm sure Mr. Demici put that together and
17 typed it up.

18 Q Okay. And at the time of you putting together the
19 charges, whomever did that, you were of the position that
20 certain provisions of somebody's rules had not been
21 followed?

22 A I was -- I was along with the executive -- entire
23 executive board under the opinion --

24 Q I'm talking about you, sir.

25 A That --

26 Q You were of the opinion that certain rules of some --
27 some body were not followed.

1 A We all were.

2 Q Okay.

3 A The entire executive board.

4 Q Well, they're not here to testify. So was that --
5 that was your opinion?

6 A It was our entire executive board.

7 Q Okay. And when did that alleged event occur?

8 A I'm not sure.

9 Q Okay. Well, was it more than six months before May
10 7th of 2018?

11 A I'm not sure of the exact date.

12 Q Okay. So does January 4th of 2016 ring a bell?

13 A January 4th of 2016 -- that does not ring a bell,
14 no.

15 Q Okay. You also allege in your charges that there were
16 false allegations made about the UPFFA. Correct?

17 A I'd have to look -- refer to the charges.

18 Q Well, are you denying that?

19 A I'm not denying it. I just said I'd like to look at
20 the charges.

21 Q Well, if you turn to Tab No. 2, Paragraph No. 2.

22 Now, sir, that you have had an opportunity to look
23 at paragraph 2 of the --

24 A I didn't. I just -- I just got there. Hang on.

25 Q Okay. Okay.

26 Now that you've had an opportunity to read
27 paragraph 2 of Exhibit 2, my question was that you've alleged

1 that statements were made that were -- there were false
2 allegations against UPFFA. Is it fair to say?

3 A Yes.

4 Q Paragraph 2. And what specific false accusations were
5 made?

6 A Various -- various press conferences they held;
7 public -- public comments, I believe, in various publications
8 around the country; and discussions with members, our members
9 around the state; there was a number of documents --
10 documentation that we had.

11 Q Okay. So that's the where. My question was, What?
12 What were the statements?

13 A I'd have to -- I'd have to go back and I guess take a
14 look at their press conference and their -- Mr. Ricci's
15 articles in various national publications.

16 Q Okay. So as you sit here today, you don't remember
17 any --

18 A I didn't say I don't remember --

19 Q -- of the alleged statements --

20 A I said I'd have -- I'd like to go back and take a look
21 at exactly what they said. I think that's what you're
22 asking.

23 Q But as you sit here today, you can't remember any of
24 the statements?

25 A I didn't say I couldn't remember. I'm just saying
26 that I would like to review their press conference and their
27 various publications.

1 Q Now, in paragraph 3 of your charges, you allege that
2 something about testifying on a PTSD bill. You see that?

3 A I'm reading number 3. Okay.

4 Q Do you remember when that occurred?

5 A I do not. No.

6 Q Is it possible that was more than six months prior to
7 May 7, 2018?

8 A I am not sure.

9 Q Okay. And is there a reason why -- assuming that that
10 testimony happened in 2017, why didn't you bring charges
11 then?

12 A I'm not sure of the dates. And circumstances. Not
13 sure.

14 Q Okay. And then you go on to say that they've done bad
15 things because they engaged National Right to Work Law
16 Foundation.

17 Who are you talking about there in your charges?

18 A I'm not sure we claimed they were doing bad things. I
19 think we claimed that they were in violation of our
20 constitution and bylaws, which specifically sets forth some
21 of the provisions to file charges.

22 Q Okay. What specific bylaw, to your knowledge, says
23 that -- would meet that portion of the charges?

24 A Well, I guess you'd have to refer to Article 15,
25 Section 1H, J, and L of the international --

26 Q Somewhere in there it says who right to work lawyers
27 are and --

1 A I don't -- I don't believe -- I don't believe it says
2 that.

3 Q Okay.

4 ATTY. VALENTINO: Your Honor, I'm going to
5 object. This is outside the scope. And he's
6 attempting to elicit testimony regarding the
7 charges, which are not before the Court. The Court
8 is being asked to enjoin them from pursuing these
9 charges at the national level. But he's attempting
10 to elicit testimony about the merits of the
11 charges. And that's -- that's not what's at issue
12 here.

13 THE COURT: Mr. Fishbein, do you wish to be
14 heard on it?

15 ATTY. FISHBEIN: Your Honor, I think that's
16 totally what we're -- basically what we're here on.
17 And, you know, certainly it's our position that the
18 cake is cooked, the pie's been baked, and the
19 kangaroos are hopping. So I think it's totally
20 relevant to what's before the Court.

21 ATTY. VALENTINO: The Court's not being asked
22 to determine the merits of the charges, your
23 Honor.

24 THE COURT: Well, let's put it this way: If
25 for instance -- and this is something we'll discuss
26 in argument -- if there's a contract and one of the
27 things I wanted to asked the sides ultimately

1 are -- are these -- is there a contractual
2 obligation by the parties to follow the
3 international bylaws? And if that's so, then I
4 raised before, if there's a provision in the bylaws
5 that applies to these circumstances, then I have to
6 consider what I'm supposed to do with that. Can I
7 make the determination or is it up to the
8 international to make that determination? And
9 then, if there is no provision in what we might
10 call a contract, well, I can hardly be asked to
11 say, Leave it to international.

12 So the question now is: Do the merits have
13 anything to do with the decision that I would have
14 to make? They certainly would have something to do
15 with it if there's -- if I find, for instance, if
16 there's no applicable provision, then there's
17 nobody but me to decide.

18 So that's an open question. And so I may make
19 use of the information, I may not. But I'll allow
20 it to go in for now because I don't -- it's a
21 question of law as to whether it's going to matter
22 or not. And that's -- that's what we'll discuss in
23 argument. For now, I'll let it -- I'll let it go
24 in. It's at least important to understand whether
25 it's invoking an actual piece of the bylaws.

26 Because I would assume that you would argue
27 that I shouldn't decide it, it's in front of the

1 international. It's under their contract and under
2 their jurisdiction to decide it. And so questions
3 that would go to what it's about would certainly go
4 to whether it applies.

5 And obviously -- and the trouble with beyond
6 the scope is all this stuff is intertwining with
7 whether someone did something to harm someone else,
8 to cover up their alleged improper expenses or to
9 retaliate against someone for trying to leave the
10 union, et cetera. It's almost impossible to --
11 they started talking to him about something he did
12 when he was with some other organization 50 years
13 ago or something, then it might matter. But that
14 might be beyond the scope. But it's going to be
15 hard otherwise. So I'll allow the testimony.

16 ATTY. FISHBEIN: Thank you, your Honor.

17 BY ATTY. FISHBEIN:

18 Q And, sir, you also refer to an antiunion attorney in
19 your charges. Who are you referring to there?

20 A That would be you.

21 Q Okay. And by what basis do you make that statement?

22 A Just your record, your record opposing public
23 employees, your relationship with our local in Wallingford.
24 I think that speaks for itself.

25 Q Okay. And, sir, when Local 825 did not pay the
26 invoices back you sent them postJanuary 24, 2016, what did
27 you do in response to that nonpayment?

1 A We attempted on many, many occasions to work this out
2 with no response from -- from Local 825. And at some point
3 our executive board -- I'm not sure exactly when it was --
4 made a decision to turn the account over to a collection
5 agency, due to the fact that they were in direct violation of
6 the constitution and bylaws. And they were not responding to
7 any of our requests. And we did -- we turned it over to a
8 collection agency.

9 Q When you say "not responding to any of your requests,"
10 isn't it true that from the period of January 4th of 2016
11 throughout the end of 2016 there were at least three meetings
12 between yourself, Mr. Colbert, Mr. Ricci? Weren't there at
13 least three meetings?

14 A There was -- there was, that I could recall, two
15 meetings that actually started off well but did not end
16 well.

17 Q Okay.

18 A Very good.

19 Q Okay. And in addition to those meetings, there were
20 some phone conversations. Correct?

21 A I don't believe I had too many phone conversations
22 with Mr. Ricci.

23 Q Okay. But there were phone conversations. I didn't
24 talk about too many. I just said there were some phone
25 conversations, too.

26 A In what -- what time period?

27 Q In that one year period from January 4, 2016, through

1 the end of 2016?

2 A There may have been --

3 Q Okay.

4 A -- some phone conversations.

5 Q And why didn't you file charges at that point if you
6 thought that there was a violation?

7 A Well, as I said, we lost all communication with the
8 local.

9 Q Okay.

10 A Because we were -- we were under the impression that
11 they were in compliance with the constitution and bylaws.
12 And later on I guess we found out that they were not.

13 Q Okay. So at the time of the correspondence to you,
14 January -- sometime in January of 2016, with regard to
15 disaffiliation, you believed them to be in compliance with
16 the constitution and bylaws?

17 A I'd have to look at the specific documentation and the
18 dates.

19 Q Okay. Well, you just testified that at some point
20 thereafter you came to a different understanding.

21 And when did you come to that different
22 understanding?

23 A There was a period later -- and I'm not sure of the
24 dates -- where we had requested --

25 Q You can continue, sir. I'm multitasking. You're
26 fine.

27 A Yeah. I lost track of the question.

1 Q Okay. So --

2 ATTY. FISHBEIN: Your Honor, I withdraw the
3 question. And I'll tender the witness.

4 THE COURT: All right. Any redirect?

5 ATTY. VALENTINO: Yes, your Honor.

6 REDIRECT EXAMINATION BY ATTY. VALENTINO:

7 Q Mr. Carozza, yesterday you testified regarding your
8 lobbying activities. And you said that you -- you lobby.

9 What did you mean by that?

10 A What I meant by that is we have an in-house lobbying
11 person. We have an outside lobbying person. And my
12 functions basically are networking.

13 Q Okay. So do you lobby legislators?

14 A I do not, no.

15 Q And you also indicated that Mr. Anthony explained the
16 mistakes made on SEEC forms regarding the PAC account to the
17 e-board yesterday during your testimony. Did he make an
18 effort to explain that discrepancy to the delegates?

19 A He did.

20 Q And when did that happen?

21 A That was approximately, I don't know, 11 -- 10 or 11
22 a.m. on the same day. The executive board met at 9 a.m. And
23 I would -- I would say it was about 10:00 or 10:30 this past
24 Tuesday.

25 Q Okay. And how was that information reviewed by the
26 delegates?

27 A It was received. He explained to the delegates. And

1 that's our leadership from our 60 affiliated locals
2 throughout the state. They accepted his explanation and
3 actually gave him a vote of confidence.

4 Q Was an election held?

5 A There was, yes.

6 Q And was Mr. Anthony re-elected to the position of
7 treasurer?

8 A Yes. Mr. Anthony's term was up. And he was nominated
9 an elected by acclimation for a three-year term.

10 Q Do you recall your testimony yesterday regarding a
11 document that had an October, 2015, date on the bottom where
12 your signature line should be?

13 A Yes.

14 Q Okay. And do you recall a question from Attorney
15 Fishbein alluding to the fact that you may have doctored the
16 document?

17 A I do.

18 Q And have you ever doctored any document?

19 A I have not.

20 Q Okay. And have you ever attempted to mislead either
21 the federation or members of the UPFFA in terms of your
22 expenses?

23 A Never.

24 Q And were you in the courtroom for Mr. Ricci's
25 testimony?

26 A I was.

27 Q And do you recall Mr. Ricci testifying about some

1 articles that either he himself penned or where he was
2 quoted?

3 A Yes. The specific articles I'm not sure, but I did --
4 I do recall his testimony, yes.

5 Q Okay. Do you recall Mr. Ricci testifying that he was
6 quoted in a May 7, 2018, article indicating that the UPFFA
7 were pickpockets?

8 ATTY. FISHBEIN: Objection, your Honor. I --

9 THE COURT: What's the name of the objection?

10 ATTY. FISHBEIN: Mischaracterizes the
11 testimony. I -- if I recall correctly, there were
12 statements that were read by Attorney Valentino to
13 the Court. And he was asked generally if he --
14 well, that's true.

15 ATTY. VALENTINO: I asked -- right.

16 THE COURT: The objection's withdrawn.

17 ATTY. FISHBEIN: Yeah. I'm good.

18 ATTY. VALENTINO: Thank you.

19 THE COURT: You may continue.

20 BY ATTY. VALENTINO:

21 Q I'm not sure if you answered the question or not.

22 But do you recall Mr. Ricci testifying that he did
23 in fact make the statement that UPFFA -- UPFFA are
24 pickpockets?

25 A I do.

26 Q And are members of -- excuse me -- members of the
27 e-board of the UPFFA in fact pickpockets?

1 A No, they are not.

2 Q So would you characterize it as a false statement?

3 A Yes.

4 Q Do you recall Mr. Ricci's testimony regarding an
5 attempted meeting between you, Mr. Ricci, and Mr. Colbert?

6 A Yes.

7 Q And do you recall about when that meeting was -- you
8 attempted to have that meeting?

9 A I'm not -- I don't -- I do not recall the specific
10 dates other than I know I declined the invitation.

11 Q Do you recall why you declined the invitation?

12 A Because of the previous -- the previous meetings we
13 had with Mr. Ricci that in hopes of resolving this issue
14 actually started off well but did not end very well.

15 ATTY. VALENTINO: No more questions, your
16 Honor.

17 THE COURT: Very well. Anything else?

18 ATTY. FISHBEIN: No thank you, your Honor.

19 THE COURT: All right. Thank you for your
20 testimony, Mr. Carozza. You can step down.

21 THE WITNESS: Thank you, your Honor. Thank
22 you.

23 (WHEREUPON THE WITNESS STEPS DOWN.)

24 THE COURT: All right. Other evidence?

25 ATTY. VALENTINO: No, your Honor. We rest.

26 THE COURT: All right. Any rebuttal?

27 ATTY. FISHBEIN: No, your Honor. Thank you.

1 THE COURT: Very well. So I assume we're --
2 we're ready now to move on to closing arguments.

3 Would counsel like a 10-minute recess to
4 prepare or are you ready to start?

5 ATTY. FISHBEIN: That would be helpful. What
6 may also be helpful is whatever questions are on
7 your Honor's mind --

8 THE COURT: Oh.

9 ATTY. FISHBEIN: -- I would think.

10 THE COURT: Well, I think I gave you somewhat
11 of a preview, but if you -- it's certainly a good
12 request, as far as I'm concerned, because I'll let
13 you know just what I'm concerned about.

14 The policy manual -- the first thing about
15 leaving the statewide union that has been on my
16 mind is that the policy manual, backed up by the
17 testimony as to its purpose, anyway, seems -- makes
18 sense to me in the -- with respect to having notice
19 be given for an upcoming year later -- no later
20 than September. So if you want to leave the union
21 affiliation with the state in 2016, you should tell
22 them before -- by September of 2015 so that they
23 can plan their budget process. And that's what the
24 policy manual says.

25 Now, I assume, then, that the claim is that
26 the policy manual is not binding in the way the
27 bylaws are. And I assume it's conceded that the

1 bylaws are binding. But the bylaws say that there
2 must be a policy manual "in effect." And those
3 last two words are interesting to me.

4 Because it may be argued that all -- if it
5 says there has to be a policy manual, that doesn't
6 mean that anyone has to follow it. But if it says
7 in effect, those words have to be given meaning,
8 too.

9 So one threshold question, as I've been
10 assuming, it's disputed that the policy manual
11 applies. But if the policy manual applies, it
12 seems to me that it means that the local can't pull
13 out of the state in the middle -- in January. It's
14 a calendar year budget. You can't just say when
15 your first payment's due, Sorry. We're leaving.
16 And it makes an awful lot of sense to me. Because
17 you're going to lay the state union with a budget
18 depending on your money and then no way to -- no
19 way to collect it. It strikes me as a -- as a kind
20 of sensible thing. And the notice, as I
21 understand, it was in January.

22 The second thing is that in terms of the
23 language is that the international language, as I
24 understand it, is the basis for the claim that the
25 local has never left because it had not had a
26 membership vote.

27 And I read the language of both of these

1 things like they're a contract. And that's another
2 thing the parties should address. If anyone says
3 that I shouldn't treat these as though they're
4 contracts, I want to hear about that. But so I'm
5 reading it like a contract. I read the
6 international language in -- as being unambiguous,
7 to me, anyway. And no one's come in here to say
8 there's a custom and a usage in the industry that's
9 any different. But I -- if it's not ambiguous, I'm
10 not sure I'd have to listen to that anyway.

11 But the bottom line is is that the language in
12 the international document is about voluntary
13 forfeitures of a charter -- and there isn't one
14 here -- and about dissolution from local unions.
15 And that plain language suggested to me that there
16 being any requirement for a vote -- a membership
17 vote has nothing to do with this case.

18 And, therefore, the question to discuss is
19 whether there's anything in the international
20 constitution and bylaws that governs the mechanism
21 for leaving the state affiliation. And I so far
22 haven't found anything. So that's the thing to
23 consider is that -- and so my preliminary thought
24 is there's nothing in there, then there's not --
25 there's no bar. There's nothing to make -- that is
26 under the jurisdiction of the international bylaws
27 and constitution. And, therefore, any complaint

1 there, there's no basis on which to say there's a
2 contractual grounds to make that complaint to the
3 international.

4 Now, there is specific provisions, on the
5 other hand, in the international constitution and
6 bylaws that say that you can make complaints
7 against them for -- and I'm just giving you a rough
8 characterization -- of things like defaming union
9 officials and antiunion activity, which I assume is
10 the basis of the other allegation about consorting
11 with antiunion lawyers and things of that nature.
12 And those things are covered by the language that's
13 in the international constitution and bylaws.

14 So the question on my mind is that if it comes
15 within that scope, can I take some action under
16 some form of contract analysis that would justify
17 this Court making a decision about those claims, as
18 opposed to the organization that has a process in
19 front of it to adjudicate it?

20 So those things are -- are on my mind with
21 respect to that. And then the other thing that
22 jumped into my mind with respect to those is
23 whether if it turns out that I should be thinking
24 about these as contracts, all contracts are subject
25 to a covenant of good faith and fair dealing. And
26 that these contract -- if the contract allegations
27 and provisions are being invoked in bad faith

1 because the real purpose of this is simply to try
2 to block the local from leaving the state and there
3 isn't a real concern about the other aspects of it,
4 then perhaps that covenant of good faith aspect of
5 it is an issue I need to address, too.

6 Then let's say -- I'm really giving you every
7 thought on my mind, so -- and, again, don't assume
8 that any of it's made -- made up. This is what I
9 think you should talk about, though. And you can
10 also tell me that I'm on -- completely on the wrong
11 topics. That would be nice, too, if I am.

12 But the point is is that the other thing
13 that's on my mind: So let's say the local couldn't
14 leave the state for 2016 because it says -- well,
15 the language says that if you don't give timely
16 notice, you're still owing the next year's dues,
17 that implies that there's the -- that the 2016 dues
18 are due. It says nothing about future years. It
19 doesn't say that the withdrawal is ineffective. It
20 seems to say, You owe the dues from the next year.
21 That's the way I -- I looked at it when I saw it.

22 And then the next thing is: I assume that it
23 will be claimed by the plaintiffs that the state
24 owes us all our dues back or so much more of it
25 that we certainly don't owe them money. And,
26 therefore, there shouldn't be any attempts allowed
27 to collect that money when there's a claim pending

1 for even more money against the state.

2 And then I start thinking about the claims
3 related to breach of fiduciary duty and whether
4 there's an indication that there is such a breach
5 or another kind of breach of contract going on
6 here. And all I can say is that there are some
7 things that are questionable. There are some
8 things that may raise questions as to legitimacy of
9 expenses.

10 There certainly is a -- I think an "admitted
11 wrongdoing," that I wouldn't characterize in any
12 other way, in the taking of a loan from the charity
13 that's affiliated. But the money was paid back.

14 And then there's the question of: What is the
15 legislative budget? And does that reflect
16 everything that the union actually spends on
17 legislative matters. Because it doesn't break out,
18 you know, a third of the president's time is spent
19 supervising these legislative staffs or going to
20 political events that don't involve lobbying, et
21 cetera and so on.

22 And the bottom line is, as I sit here right
23 now, while there are unanswered questions and what
24 I see would suggest to me some legitimate concerns
25 for, for instance, personal expenses that --
26 especially for the fiance that I can't trace from
27 what I've been given as being reimbursed. I --

1 there's no -- some reimbursement going on. It's
2 disputed as to what those documents are. But there
3 are questions that are raised in there that I think
4 raise some legitimate concerns.

5 However, quantifying them at this point, they
6 might be very tiny if we studied the evidence and
7 had a real hearing on it. Or they might be
8 substantial.

9 Because I also don't have in my mind, and no
10 explanation certainly was given by the president of
11 the union, as to, Was that \$26,000 in the PAC ever
12 there? Was it just a typo that got carried over
13 from form to form? Was \$26,000 once in the PAC and
14 then get spent and just got -- just got -- kept
15 being reported as though it was. Did he simply
16 photo copy the same report over and over again and
17 make some sort of assumption? Or did that money
18 end up going to some place it shouldn't? It's
19 unclear to me.

20 And I thought it was unusual that, despite
21 many attempts to get an answer -- at least from the
22 president -- as to why was it okay that this was
23 merely a mistake? there was no explanation of what
24 the mistake was. He says that he trusts the guy,
25 Mr. Anthony. He's a good guy. And he says it was
26 a mistake.

27 But from that testimony, anyway, I have no

1 idea what the mistake was. And I would go back and
2 check my notes on what Mr. Anthony said the mistake
3 actually was. And I think it was probably closer
4 to carrying the number over or something. But I'd
5 have to go back and check my notes.

6 Anyway, those things are sort of floating in
7 the air. But in terms of quantifying whatever
8 those things are, I don't feel I have any real way
9 to do that based on what I've -- what I have heard.

10 So with that, we'll take -- I'll give you 15
11 minutes. We'll take a recess and then resume and
12 do our closing arguments. I don't follow a clock
13 when doing that. And, you know, one of the things
14 you should really be keeping in mind is I'm going
15 to ask lots of questions about that. I want the
16 talk about these things I just raised. But if
17 there's something that you want to say that you're
18 not getting a chance to at the end, be sure to
19 bring it up. Because I don't want to keep you from
20 putting on the record what you want to put on. But
21 I do tend to ask a lot of questions, so -- all
22 right. Court's in recess for 15 minutes.

23 (WHEREUPON THE COURT STANDS IN RECESS.)

24 THE COURT: Good afternoon. Please be seated.
25 All right. So unless there's any other preliminary
26 matter, what I'd like to do is start, if we could,
27 by getting the parties' positions on whether this

1 is governed principally by the notions of contract.

2 I'll start with the plaintiff and then hear
3 the defense.

4 ATTY. FISHBEIN: In answer, yes.

5 THE COURT: All right. Does the defense have
6 any other view of it?

7 ATTY. VALENTINO: We agree, your Honor.

8 THE COURT: All right. So then the issue,
9 then, would be: Do both sides agree, for instance,
10 that I should look at these -- the state bylaws as
11 a contract?

12 ATTY. FISHBEIN: Yes.

13 THE COURT: And the same thing with the
14 international, the international bylaws?

15 ATTY. FISHBEIN: At -- yes, for the limited
16 purposes that your Honor's already addressed,
17 yes.

18 THE COURT: Okay. Fine. I assume you agree
19 with that.

20 ATTY. VALENTINO: Correct, your Honor.

21 THE COURT: All right. So then why don't we
22 talk about the notice issues first.

23 And, again, we'll go plaintiff then
24 defendant.

25 ATTY. FISHBEIN: Yes, your Honor. So, first
26 of all, in evidence, your Honor, is Exhibit 7, in
27 which Mr. Demici admitted that the UPFFA stopped

1 providing services to Local 825 upon not receiving
2 the per capita payment.

3 So --

4 THE COURT: Well, when one party announces --
5 one party to a contract announces to another that
6 it's not going to perform, the other side doesn't
7 have to perform, does it?

8 ATTY. FISHBEIN: Perhaps, depending upon
9 perhaps the duty to mitigate and all those things.
10 But, you know, we talk about substantial
11 compliance, you know, the fact that they chose -- I
12 mean, the testimony was they needed to adjust the
13 budget. That's the reason for the provision. Mr.
14 Demici also testified that it was merely for notice
15 purposes is my recollection.

16 THE COURT: Well, of course it says what it
17 says.

18 ATTY. FISHBEIN: It does.

19 THE COURT: And it says September. And we
20 know that the calendar year is their budget year.
21 So, you know, the idea of advance -- it just
22 provides notice. It provides advance notice before
23 the calendar year that begins when the money's
24 supposed to flow. I mean, it seems a very logical
25 provision.

26 ATTY. FISHBEIN: Agreed. Your Honor, you
27 know, perhaps addressing that, your Honor, I guess

1 it gets to the question: When can disaffiliation
2 come? And when does notice have to -- have to
3 occur?

4 In looking at -- once again, at the policy
5 manual, that particular section, that notice
6 provision, which is page 15 -- and it's Exhibit 16,
7 your Honor --

8 THE COURT: Yes. Paragraph 4, page 15.

9 ATTY. FISHBEIN: Yes, your Honor. E is the
10 section that we've been discussing. If we look
11 down to H, it says, A local cannot change its
12 affiliation from full service affiliation to
13 legislative affiliation during the current fiscal
14 year.

15 If it was intended for E to apply here or
16 apply to any change of affiliation, you wouldn't
17 even need that language. So puzzle why that
18 language even exists.

19 THE COURT: Well, yes, let's -- let me take a
20 look at that, but... .

21 ATTY. FISHBEIN: It's in the same area, your
22 Honor.

23 THE COURT: I see that language. I'm trying
24 to look at something else. In the -- I'm already
25 in F, I think, is the point. That's my point.

26 F: In the event that a local fails to inform
27 the secretary in a timely fashion, the executive

1 board shall assume that the affiliation of the
2 local -- whatever it is -- shall remain unchanged
3 for the following year. And I know you're -- one
4 way for me to interpret this that you'd argue for
5 is that this is all about switching from
6 legislative to full service. But it uses both
7 kinds of language. There's just a straightforward
8 affiliation word. And then there's a separate line
9 about affiliation from legislative to full
10 service.

11 So I, in giving effect just to the plain
12 language, just reading it like a person of ordinary
13 learning would do, it says, If you don't tell them
14 in a timely fashion about that the affiliation's
15 going to stay -- stay unchanged. So if you're a
16 legislative member in one year and you don't tell
17 them in time, you don't -- you have to stay the
18 same in the next year.

19 ATTY. FISHBEIN: Bringing it back, your Honor,
20 to this case, though, you know, I guess at the very
21 most the Court could find the disaffiliation would
22 have happened at the end of 2016. I think at the
23 very most.

24 THE COURT: Well, that's what I'm thinking,
25 simply because it says, For the following year. I
26 doesn't say forever --

27 ATTY. FISHBEIN: Yes.

1 THE COURT: -- or until the proper notice is
2 given or something.

3 ATTY. FISHBEIN: And actual notice was
4 actually recognized by the union in responding.

5 THE COURT: But it's --

6 ATTY. FISHBEIN: But the fact -- the fact that
7 they're looking for dues for the period of time
8 postJanuary 4, 2015, and yet no services were
9 rendered. So how could that possibly -- it's like
10 unjust enrichment. You know, if they stopped
11 rendering services -- and arguably they stopped
12 rendering their services they -- by virtue of their
13 own acts have adjusted the budget. Because they're
14 not rendering services to Local 825.

15 THE COURT: Well, from their standpoint, it's
16 a question of: How many people are going to help
17 us carry this load? And when we have to decide
18 what we're going to commit to for a certain year
19 and what dues we're going to charge other people,
20 we have to know how many people we're having to
21 what they're going to pay.

22 And so I suspect that there's nothing they're
23 going to say that may have saved them some effort.
24 Because they didn't do the work that they did.
25 Even on legislative things on behalf of Local 825,
26 they did it on issues that were in common to a
27 whole bunch of unions. I mean, that's what I

1 understood from the testimony.

2 But the bottom line is is that it's that
3 question I started with, which is: What is the
4 impact of the notion that when some one party says,
5 I'm not going to fulfill the terms of my contract,
6 the other party's released from the duty to
7 perform, isn't it?

8 ATTY. FISHBEIN: Well, perhaps released your
9 Honor. But then they can't -- if they're released
10 and they didn't render the service and they took
11 that upon themselves, do they have a right to bill
12 for a service they aren't rendering?

13 THE COURT: Well, let me give you an example.
14 Let's say you have a commercial building and you
15 lease a store front. And you have a requirement
16 that they pay \$10,000 a year rent. And you have an
17 agreement with them that they pay the rent. And
18 they decide to abandon the property. And they
19 leave there.

20 Well, they're not getting any services either,
21 but I think I would agree that they could collect
22 the \$10,000 rent because it's a contractual sum
23 that is owed.

24 ATTY. FISHBEIN: I think, given that scenario,
25 there'd be a duty to mitigate. But I understand --

26 THE COURT: Well, there might be a duty to
27 mitigate. There may be a duty to mitigate here.

1 But that doesn't mean that there isn't an initial
2 obligation to fulfill the terms of the agreement,
3 which requires a payment. In the landlord
4 situation, too, if they just sat on their hands for
5 a whole year and didn't try to market it, I could
6 see that argument being made.

7 But the -- the claim that I think's being made
8 on the other side here is you catch them
9 flat-footed when, you know, it's suddenly the
10 year's here and they have to start spending for the
11 budget that they put in place all this time and
12 then the money isn't there. How are you going to
13 get it, recruit somebody else the size of New
14 Haven?

15 I mean, that's -- in other words, you could
16 argue mitigation at some later point. But we're
17 talking about, in other words, whether -- whether
18 they -- there's a breach or not.

19 ATTY. FISHBEIN: And the size of New Haven is
20 sort of like a double-edged sword because you
21 would -- you would agree -- I think everyone would
22 agree prior to January 4, 2016, service was being
23 rendered. You know, Mr. Carozza's meeting with
24 people, going to New Haven, those kinds of things,
25 charges mileage. All of that stuff is not having
26 to be incurred post that. So that is a decrease in
27 their expenses.

1 THE COURT: But that would be sort of you
2 know, a measure. The question here is whether 825
3 fulfilled its obligation and, therefore, is
4 released from any liability.

5 ATTY. FISHBEIN: I'm going to defer for a
6 little -- unless --

7 THE COURT: All right. That's -- if you're
8 done on that point, then, why don't I hear from Ms.
9 Valentino on that point.

10 So I assume you would agree with me that the
11 September notice provision is plain on its face and
12 if they don't give it, they have to at least pay
13 the money for the next year. You'd agree that's
14 fair, wouldn't you?

15 ATTY. VALENTINO: At least. Correct, your
16 Honor.

17 THE COURT: And then I understood you to argue
18 previously -- maybe you didn't argue.

19 Are you claiming that even though they had
20 actual notice, the fact that they didn't get the
21 return receipt mailing somehow means that they
22 didn't get notice at all sufficient to ever end
23 their membership? Are you pressing that claim?

24 ATTY. VALENTINO: Well, your Honor, I mean,
25 they didn't follow the procedures that are laid out
26 in the policy manual. And the argument is: What's
27 the purpose of two parties entering a contract if

1 one party can just decide willy-nilly that they
2 don't want to abide by a particular term of the
3 contract anymore? And that's just as important a
4 term of the contract as any other term.

5 THE COURT: Well, that's a question, I
6 suppose. In other words, if the question is
7 notice: You have to give notice. We're going to
8 be able to show we can be sure we can confirm
9 notice. If it's conceded that there was actual
10 notice, doesn't that mean that the provision was
11 substantially complied with? Wouldn't that be
12 substantial compliance if somebody gets actual
13 notice?

14 ATTY. VALENTINO: I understand your Honor's
15 point.

16 THE COURT: All right. But let's go to the --
17 to the -- another point with respect to that issue,
18 how about the claim -- are you claiming that merely
19 because the notice wasn't given in September --
20 forget the international rules just for a second,
21 but are you claiming that because they didn't give
22 the notice before September that they never
23 disaffiliated? forgetting the international rules
24 for a moment.

25 ATTY. VALENTINO: Well, our claim is that
26 since they didn't follow the correct policy, which
27 was to send certified mail to the secretary --

1 THE COURT: All right. But we talked about
2 that one, yeah.

3 ATTY. VALENTINO: Right. So that -- not just
4 specifically to the date, but because they didn't
5 follow the procedure correctly that, yes, they
6 never correctly -- they never disaffiliated --

7 THE COURT: That they never disaffiliated?
8 Then what do you make of the language that says
9 that if a local wants to change its affiliation
10 status and it doesn't limit it to switching between
11 legislative and full service, it just says if you
12 want to change it, you've got to let us know by
13 September. If you don't, then it is going to be
14 assumed that you will have the same affiliation for
15 the following fiscal year. It doesn't say
16 forever.

17 ATTY. VALENTINO: Correct, your Honor.

18 THE COURT: So do you contend it means
19 forever?

20 ATTY. VALENTINO: No, your Honor.

21 THE COURT: All right. So it seems to me,
22 then, that the claim of the -- of the membership
23 continuing till now, that they were owed all of the
24 dues and they have never successfully
25 disaffiliated, turns on the international rules.
26 Is that -- let's -- putting aside for a moment, in
27 case you're claiming the certified mail return of

1 receipt thing -- forget that for a moment.

2 But let's assume that I disagree with you
3 about that and you have another argument. Your
4 only other argument is that the international rules
5 say that they needed a membership vote. Is that
6 fair?

7 ATTY. VALENTINO: That's fair, your Honor.

8 THE COURT: Okay. So why don't we talk about
9 those for a moment? Contracts, you know, are
10 supposed to be given their plain, ordinary meaning.
11 And it seems to me, given what was at stake here,
12 that the international believed that there was
13 something about their rules that they were deeply
14 concerned about enforcing, that they could have
15 responded to the notice and shown up or you could
16 have called somebody from there, it might not have
17 allowed it.

18 Because if this is a contract, my first job is
19 to look at it and see what it says. And if it's
20 easy to understand if -- by the ordinary person in
21 plain English, I'm not supposed to rewrite it
22 entirely and rewrite its substance.

23 And here the provision that it seems like
24 that's being relied on refers solely to the
25 question of the forfeiture of a charter or the
26 dissolution of a union. In other words, you just
27 read that thing and it jumps out at you and shouts,

1 if you're going to end your union, you're not doing
2 it without a member vote: forfeiture of a charter,
3 dissolution of a union. You can't just give up the
4 local without having the local's vote. That's how
5 it struck me.

6 And you -- but you claim it means that just
7 disaffiliating from any state organization's
8 covered by that?

9 ATTY. VALENTINO: Correct, your Honor. And
10 the -- we're talking about obviously a national
11 union, which bodies govern state unions from all
12 over the country. So to draft the contract
13 language in a way that specifies, you know, the
14 terms for each and every single state union it's an
15 impossibility. So there are or there may be state
16 unions that issue charters to local unions. And
17 the UPPFA happens to not be one of those unions.

18 But furthermore, Mr. Carozza testified that he
19 was a member on the board for the national
20 constitution and bylaws. And he indicated that he
21 heard testimony on the floor; and his
22 understanding, based on the serving on that
23 committee, was that this had to do with a
24 membership of -- membership of a local who chose to
25 disaffiliate from the state or the national
26 union.

27 THE COURT: Well, I certainly remember some

1 vigorous objections about people telling me what
2 their understanding of it was. I allowed some
3 testimony to understanding to say, Well, this
4 explains, for instance, why a complaint was made.
5 It was the motive for the complaint filed with the
6 international. It may be the motive for other
7 actions in this case. And I allowed it to come in
8 for motive.

9 But in terms of language, contract language,
10 I'm supposed to pick this thing up and read it.
11 And if it is obvious to me on its face, it's plain,
12 it's unambiguous, you just read it and it says what
13 it says, that's what I'm supposed to do.

14 So my -- the problem is is that when you read
15 the substance of this thing defined as forfeiture
16 of a charter, that doesn't apply here, you'd agree.
17 Right?

18 ATTY. VALENTINO: I would agree, your Honor.

19 THE COURT: There's no charter to forfeit from
20 the state.

21 ATTY. VALENTINO: That's correct.

22 THE COURT: So then the question is a
23 dissolution of any local union.

24 How can I get around what that means?

25 ATTY. VALENTINO: Your Honor, again, I would
26 just point out the fact that perhaps if we were in
27 California, maybe the state unions are issuing

1 charters to local unions. And that's just not the
2 case in Connecticut.

3 THE COURT: Right. I understand what you're
4 saying with respect to that. But that doesn't make
5 this have a provision that governs these
6 circumstances. And that's the question that I'm
7 trying to answer. In other words, there is no
8 procedure here that applies to this facts of -- the
9 facts of this case unless I interpret this as
10 either forfeiture of a charter or dissolution of a
11 union. That's the problem with just looking -- I'm
12 supposed to do that: look and read it. And I can't
13 see a way around that, so -- but I understand what
14 you're saying about it and how it might govern.

15 Let me ask you this, then, since -- well,
16 actually maybe I'll go -- go back to Mr. Fishbein
17 about this, because I'd assume you don't have any
18 argument with my view of this language. But what
19 about the fact that the -- this does have language
20 that says that under Article 15C that it's
21 appropriate for a complaint to be made for the
22 international for libelling or slandering or
23 causing to be libelled or slandered any officer or
24 member of the association or any local union or
25 other subordinate body, which clearly includes the
26 state organization.

27 And then there's the filing false charges

1 against any officer -- let's see. That's not the
2 one. C? I know C is -- H is cited, isn't it? But
3 C is clear to me enough that it might embrace some
4 of the conduct: engaging in conduct detrimental to
5 the best interests of the association, conduct
6 unbecoming of a member. You have these very broad
7 things. And they claim that false statements,
8 defamatory statements, pickpocket allegations were
9 made. And those -- those I believe there were
10 allegations that were here that where Mr. Ricci
11 agreed he made that were within the limitation
12 period that I believe you initially cited.

13 So, in other words, there are some statements
14 that were made that are within the limitation
15 period for bringing the complaint.

16 But you could deny that if you want and I'll
17 discuss that with you. But I think that's kind of
18 hard to avoid: There were those statements.

19 So then comes the question -- then comes the
20 question is: If this has a provision governing it
21 and it is a contract, how can I take out of the
22 hands of the state union the right to submit this
23 complaint to the international?

24 ATTY. FISHBEIN: So, first of all, your Honor,
25 we're not asking you to take it away. We're asking
26 you to forestall because we believe that the issues
27 in this case should inform the charges

1 ultimately.

2 But remember, your Honor, that they chose --
3 the UPFFA chose not to use this procedure in the
4 contract. They went to collections. They had the
5 matter that arguably would have fallen amongst the
6 contract as well. So when we talk about, you know,
7 who's breaching stuff, they took it upon themselves
8 so use an alternative dispute resolution procedure
9 as opposed to bringing charges themselves.

10 THE COURT: Under -- is there a provision
11 as -- I didn't look for it. But is there a
12 provision here that governs -- so, in other words,
13 a local doesn't pay a state organization. Is there
14 a provision here that says you can make a complaint
15 to the international for that?

16 ATTY. FISHBEIN: Well, there's certainly
17 general provisions that, you know, one could assume
18 or allege that that's conduct unbecoming in L.

19 A: Refusal or failure to -- without
20 justifiable cause to comply with or abide by the
21 provision of the constitution or bylaws.

22 THE COURT: How about M: Refusal or failure
23 with good reason -- without good reason to accept
24 service of charges -- oh, charges. That's not
25 money. Okay. Hum. It doesn't directly state but
26 it says, Refuses to comply.

27 I guess if some of these are broad enough to

1 encompass some of the things they're claiming,
2 maybe they would be. Maybe, maybe not.

3 But your argument is simply that they can't
4 argue you can go to a -- that you have to go to the
5 international if they've already decided not to
6 themselves on some of the issues. That's your
7 argument?

8 ATTY. FISHBEIN: Yes, your Honor.

9 THE COURT: And you would say that --

10 ATTY. VALENTINO: -- that there's nothing in
11 here directly --

12 THE COURT: There's nothing in there that says
13 that --

14 ATTY. VALENTINO: -- on the -- right.

15 THE COURT: Let me just make a note of that.
16 All right.

17 Again, so then what would be your argument in
18 terms of this as a contract analysis that would
19 allow me to -- and let me ask you this: You said
20 "temporarily." So what would I be waiting -- if I
21 were ordering them to cease pursuing their other
22 complaints, the -- I'll call them their "defamation
23 and antiunion activity complaints" -- if I were
24 doing that, what would I be doing it temporarily
25 for? What would be the ultimate way to -- to
26 resolve those? And what am I stopping it for?

27 ATTY. FISHBEIN: Your Honor, I --

1 THE COURT: Ever? Or --

2 ATTY. FISHBEIN: No. I got that. But I found
3 an answer to the prior question also.

4 THE COURT: Okay. What is that?

5 ATTY. FISHBEIN: On page 57 where it talks
6 about appeals from charges. And I would agree it's
7 inartfully drafted, but I'll read -- it's right at
8 the top of the page. It talks about certain
9 appeals. It says, Except as otherwise provided by
10 this constitution and bylaws such as in a case of
11 automatic suspension of members for failure to pay
12 dues or automatic forfeiture of subordinate union
13 charter.

14 So that contemplates that failure to failure
15 so pay dues is a chargeable offense. So it goes
16 right to the heart of what we were talking about.

17 THE COURT: Well, the inartfully drafted part,
18 I assume you were contemplating because it says
19 clearly -- most clearly, in other words, that the
20 local that gets suspended could appeal. And you're
21 saying that the suspending state organization could
22 file something. Let me read that. Any final order
23 or decision of a subordinate union shall be
24 appealable.

25 So I suppose that's what would cover -- cover
26 that is the argument, anyway. Because it says, In
27 a indicate of automatic suspension, any final order

1 or decision of a subordinate union -- and the state
2 clearly comes in that definition -- shall be
3 appealable. But that means appealable by the
4 local. That's what I don't get. How does this
5 give them the right to do something?

6 ATTY. FISHBEIN: Well, I think because it's --
7 the nonpayment of dues is referenced as a matter
8 that would result in charges, that at least at the
9 point that they did collection, that while not
10 expressly in the list of things that one could
11 bring charges -- because it's contemplated here --
12 it is possible and, therefore, authorized.

13 THE COURT: All right. I understand your
14 argument.

15 ATTY. FISHBEIN: As to, you know, what you can
16 do here, which I think is the next thing that we
17 were getting at, we go to remedies.

18 And your Honor, you know, we have not been
19 steadfast. We've been trying to be as flexible as
20 possible. And I know you tend to think outside the
21 box. And I appreciate that.

22 We had some suggestion, okay, you could order
23 them, the UPFFA, to withdraw their current charges
24 and with the ability to refile in the future and
25 bar Local 825 from asserting a lack of -- lack of
26 timely process. You could do that. Because you
27 have *in personam* jurisdiction over UPFFA. So you

1 could do -- that's one of the things you could do.

2 You could order both parties to jointly send a
3 letter to the IAFF asking for a postponement of
4 those charges. I'll bring to your Honor's
5 attention, though, that that letter, although
6 opposing counsel has said that, you know, we could
7 have done that, the rules with regard to that don't
8 go into play until a trial is scheduled. And a
9 trial has not been scheduled.

10 ATTY. VALENTINO: I'm sorry. I don't -- I
11 didn't see that anywhere in the constitution and
12 bylaws. If you could point to a specific --

13 ATTY. FISHBEIN: Where's the letter -- where's
14 the letter provision?

15 ATTY. VALENTINO: I can direct your Honor to a
16 provision that I would refer to.

17 ATTY. FISHBEIN: Well, page 54, your Honor, at
18 the bottom, the last paragraph says, Either party
19 may be granted a postponement for a reasonable
20 amount of time of a trial at the discretion of the
21 trial board if a showing is made, so on and so
22 forth.

23 A trial board has not been ordered in this
24 case. So that letter would not be ripe at this
25 point.

26 ATTY. VALENTINO: No. But at this point,
27 they've already indicated that a trial will be

1 scheduled. They've already indicated --

2 THE COURT: Well, you could still ask is the
3 point --

4 ATTY. VALENTINO: Absolutely.

5 THE COURT: -- and say I would like the trial
6 to be postponed.

7 ATTY. VALENTINO: And it --

8 ATTY. FISHBEIN: There's no one to ask.

9 ATTY. VALENTINO: And it doesn't require that
10 they ask any -- it doesn't require that they ask
11 when the trial -- once the trial's already been
12 scheduled. They could have asked in June.

13 THE COURT: Yeah. No. It doesn't say that.
14 But that's -- you know, I think that the -- that's
15 kind of one of my least likely approaches simply
16 because it's a -- it's a request.

17 And if the issue is -- let's say it went --
18 let's say there's a ruling that there's probable
19 cause to believe that they properly disaffiliated
20 at least for years after 2016. And then there are
21 implications of that: that they're going to be
22 tried in front of this tribunal. And there are
23 allegations that these claims are not made in good
24 faith and that this Court can't decide one thing
25 without deciding the other.

26 Because I assume that the arguments are going
27 to go back and forth over whether there's any

1 breach of fiduciary duty, whether there's
2 irreparable harm, and whether the parties are
3 entitled to any permanent relief. And to have a
4 foot in that boat and then on this dock gets a
5 little tricky.

6 So there's an argument, in other words, that
7 it's rooted, in other words, in the basic contract
8 issue. And if they should have the basic contract
9 issue, they should have the collateral issues and
10 that if this Court should have the contract issue,
11 it should have the collateral issues.

12 ATTY. VALENTINO: Well, your Honor --

13 THE COURT: So do you -- you think that they
14 could be tried in two different places like that?

15 ATTY. VALENTINO: I absolutely believe that
16 they could be. Because not only are the charges
17 different than what is being litigated in this
18 action, but they are -- the remedies are completely
19 different.

20 And I had mentioned previously -- I don't know
21 if your Honor recalls -- but the level of
22 defamation under the national constitution and
23 bylaws is different than -- I mean, it's lower than
24 the standard required for defamation in the
25 Superior Court action. We couldn't even make the
26 claims for defamation, not in good faith. We -- I
27 mean, I couldn't stand --

1 THE COURT: Because of the privileges that
2 would apply and the standard --

3 ATTY. VALENTINO: Right.

4 THE COURT: -- in common law.

5 ATTY. VALENTINO: Right.

6 THE COURT: And -- well, and then you'd have
7 these very broad descriptions in the language of
8 the constitution and bylaws that effectively
9 allowed the broadest sort of latitude by saying
10 you've betrayed the cause of unionism. But that
11 gives a pretty broad standard of what someone can
12 do. So it isn't the same standard necessarily.

13 But if in a breach of contract action the
14 court were to determine that one side was
15 exercising discretion under the contract, which
16 means including filing the complaint under the
17 contract, and that exercise was not made in good
18 faith, then it would violate the covenant of good
19 faith and fair dealing and would in fact be part of
20 the whole contract claim.

21 That's why I'm not sure I can separate them.
22 But I do at least understand that there are
23 provisions governing those claims. While I have
24 doubts about the dissolution thing, which I've
25 expressed, these at least are clearly covered under
26 here. And then the question is of whether there's
27 a contract remedy that this Court could grant that

1 subsumes those within it. Like I said, the
2 potential of saying, You can't exercise a contract
3 discretionary right in bad faith, which is --
4 violates the covenant of good faith and fair
5 dealing. So that's -- that's the tricky issue that
6 I've got to think about, though.

7 ATTY. FISHBEIN: I had one more suggestion
8 that we were discussing, your Honor, is perhaps you
9 could order the UPFFA to remove from their prayer
10 for relief removal of Mr. Ricci from office.

11 So, you know, that would -- if he was to be
12 removed from office, that would cause irreparable
13 harm to our clients, based upon Mr. Ricci's own
14 testimony: the many years of research he has done
15 with regard to matters that are before the union,
16 the collective bargaining agreement that he's
17 currently doing, the grievances that he's on. We
18 have a brand-new vice president. It would cause
19 irreparable harm if he was removed from office. So
20 you could perhaps do that as well.

21 ATTY. VALENTINO: Could I be heard on that,
22 your Honor?

23 THE COURT: Yes.

24 ATTY. VALENTINO: In terms of an irreparable
25 harm, all of the -- the activities that Mr.
26 Fishbein and -- Attorney Fishbein and Mr. Ricci
27 mentioned the other day, you don't have to be the

1 president of the union in order to participate in
2 them. His many years of research, if he was voted
3 out of office this past week, then he would still
4 be able to put that, you know, knowledge, database
5 into -- into good use. He could still participate
6 in the contract negotiations. He can still advise
7 other members on how to draft grievances, on how to
8 pursue grievances and that sort of thing.

9 And nevermind the fact that Mr. Ricci isn't
10 even a party to this action. It's the union. And
11 he's deciding that he wants to circumvent the
12 national policies and their procedure by going
13 through this court action.

14 THE COURT: Well, that's why I think that a
15 hard decision is when there is a provision in the
16 constitution and bylaws to the international as to
17 whether I have some contract common law basis to
18 say that you can't pursue it when the contract
19 itself says you can. The contract gives you the
20 discretion to file complaints about things covered
21 by it.

22 My problem is is that dissolution, in my view,
23 doesn't seem to be covered by it. But these other
24 two things seem to be covered by it. And then the
25 question is: What contract analysis, other than
26 the one I just expressed, which is to say that it
27 would be a breach of the covenant of good faith and

1 fair dealing to exercise discretion under a
2 contract in bad faith. That's the classic
3 violation of the covenant of good faith and fair
4 dealing is to take some discretion that a contract
5 does give you and exercise it in bad faith, which
6 means, in other words, you don't honestly -- you're
7 not honestly using it for the purpose you're saying
8 you are or et cetera.

9 And I'm not making an opinion about whether
10 that's true or not.

11 ATTY. VALENTINO: I know.

12 THE COURT: I'm trying to say what legal way
13 you could get around the fact that there is a
14 procedure here and this is something that's covered
15 by the contract. And I don't know any other way I
16 could contemplate it besides that.

17 ATTY. VALENTINO: Well, if I may add, your
18 Honor? Plaintiff's own Exhibit 3 is a letter from
19 the International Association of Fire Fighters.
20 They held a pretrial in this matter. And Attorney
21 Fishbein actually represented the local -- or
22 excuse me -- represented Mr. Ricci and Mr. Vendetto
23 in that regard. And he submitted a position
24 statement. And he laid all of these issues forth.

25 And they decided that the case should be heard
26 at the trial level. They already made that
27 determination.

1 ATTY. FISHBEIN: So if we could -- if we could
2 address that, your Honor? So I brought to their
3 attention -- and, as your Honor recognized, you
4 know, a few days ago that there's a statute of
5 limitations on bringing charges. And I pointed out
6 to this pretrial board that the statute of
7 limitations on the actions of January 4, 2016, had
8 long since passed and -- you know, well over six
9 months. And for them to sustain that charge just
10 underlies the fact that the kangaroos are hopping.

11 Similarly with paragraph 3 of the charges, you
12 know, the only allegation has to do with testimony
13 in the 2017 PTSD bill. So six months had certainly
14 passed there also. And yet they sustained the
15 charges.

16 There's no good faith here.

17 THE COURT: What's the exhibit?

18 ATTY. VALENTINO: So it's -- it's Exhibit 3.

19 THE COURT: Which exhibit? Three?

20 ATTY. VALENTINO: And they actually say in the
21 last paragraph that the charges brought here should
22 not be dismissed on the grounds that they are
23 frivolous, retaliatory, or de minimis.

24 ATTY. FISHBEIN: And that is the --

25 THE COURT: I thought they said something
26 about undisputed -- that there are disputed -- some
27 disputed facts that have to be resolved here.

1 But that's a little different from -- the
2 point is, I'll review it with -- in mind with what
3 you have said about it. I certainly -- if I have
4 to give a choice between reading the constitution
5 and bylaws, that's the contract, and taking
6 anything from the letter, I'm going to stick with
7 the constitution and the bylaws, what it says.

8 And if the issue is whether they are seeking
9 to exercise jurisdiction or something, I can -- I
10 suppose I can take note that they're saying that
11 they do want to go forward, but --

12 ATTY. VALENTINO: And I guess the other
13 opportunity they have to, you know, "dodge the
14 charges," so to speak, is they could withdraw from
15 the national. Then the national can't tell them
16 when -- whether they should be president or whether
17 they should have fines imposed on them. I mean,
18 they've got several --

19 THE COURT: Well, they may not want to do
20 that. They may not want to do that. And the
21 international may not want them to do that, which
22 is one of the reasons I was wondering that maybe
23 they didn't show up here because they didn't want
24 to take sides in the matter. Right now, anyway.

25 ATTY. FISHBEIN: Your Honor, I just -- I'd
26 like to center on the good faith and fair dealing.
27 Because it's clear that the date of the charges is

1 well after the filing of this action. So, you
2 know, it's certainly retaliatory. In fact, it
3 mentions this action in count number -- in number
4 2, it says, They allege that one of the charges in
5 Count No. 2 is by filing a complaint against the
6 UPFFA in Connecticut Superior Court on March 20,
7 2018, which is this case. So in retaliation for
8 filing this action, they brought charges.

9 THE COURT: Well, so there's also the question
10 of whether any -- I mean, I'm being asked to do
11 something preliminarily, too. And there's always
12 the question of whether temporarily delaying the
13 complaint is the same thing -- delaying the
14 complaint until, for instance, I determine whether
15 there -- two things are tied so closely together
16 that I can't decide one without the other. It's
17 really just a question of breaching the contract.

18 But I don't know. That's the point I have to
19 decide.

20 ATTY. FISHBEIN: Well, you know --

21 ATTY. VALENTINO: One of their issues that
22 they raised in their motion for temporary
23 injunction is that this process of review by the
24 trial and pretrial board was going to take -- could
25 take months, weeks. And, I mean, we're now talking
26 about moving forward in January with the trial
27 review board. So I don't -- I don't think that

1 postponing the decision on the, you know,
2 charges --

3 ATTY. FISHBEIN: Your Honor --

4 ATTY. VALENTINO: -- until your Honor makes a
5 decision is -- is going to be helpful.

6 ATTY. FISHBEIN: We filed our motion way back
7 in June, your Honor. So I don't know how -- you
8 know, it's news to me that anybody's talking about
9 January. My understanding is that Attorney
10 Valentino has nothing to do with the charges. But,
11 unfortunately, she has more information about them
12 than I do --

13 ATTY. VALENTINO: Because I have a copy of the
14 constitution and bylaws, which indicates that it's
15 120 days from the date that the pretrial --

16 THE COURT: They have to hold --

17 ATTY. VALENTINO: -- review board made it's
18 decision --

19 THE COURT: -- the trial within that or
20 something. Okay.

21 ATTY. VALENTINO: Correct.

22 THE COURT: So I note that. All right.

23 ATTY. FISHBEIN: And, your Honor, paragraph 1
24 of the charges has to do -- although Mr. Carozza
25 was unable to testify as to what date that
26 occurred, that has to do with disaffiliation. I
27 mean, that's what's before this Court.

1 So --

2 THE COURT: Well, no. I understand that one
3 piece of their complaint is squarely on the issue
4 of disaffiliation --

5 ATTY. FISHBEIN: And if this --

6 THE COURT: So my -- my -- the view that I've
7 expressed and that I'm going to consider what both
8 sides have said about it is that the disaffiliation
9 issue does not appear to be covered by the
10 contract. That's my -- that was my preliminary
11 view. And I've heard what's been said about it.
12 And I'm going to consider that.

13 But so the real -- the heart of the thing is
14 that these other things are covered by the
15 contract. And if they're covered by the contract
16 and the contract says how they should be resolved
17 or creates a mechanism to resolve them, who am I to
18 interfere with it?

19 And then that's where I -- in contract
20 analysis -- before I was asking about contract to
21 begin with -- the -- the rationale is that if the
22 contract gives them discretion to act and they use
23 that discretion in bad faith, then there is
24 something potentially the Court might be able to do
25 it about. But that's the thing I've got to think
26 about.

27 I think that's the hardest question that I've

1 got to resolve is -- is what -- how those contract
2 principles might apply here and what they might
3 require me to do.

4 Anything else on those points that -- anything
5 new on those points that we should discuss or --
6 because there's the other issue I want to go on to,
7 too. But --

8 ATTY. FISHBEIN: Your Honor, I just want to
9 quote the Connecticut Supreme Court in *Berin v.*
10 *Olson*, which is 183 Connecticut 337 at pages 342 --
11 well, at page 342 citing *Hammerberg v. Leinert*, 132
12 Connecticut 596 at page 602, the court said, The
13 prevention of a multiplicity of actions at law is
14 one of the special grounds of equitable
15 jurisdiction. For that purpose, the remedy of
16 injunction is freely used. And that, too, although
17 there may be a legal remedy.

18 ATTY. VALENTINO: These are separate actions.
19 I'd just like to point out again, your Honor, our
20 argument is that they're not the same --

21 THE COURT: Well, I understand your argument,
22 for instance, that they are separate actions
23 because the -- the nature of the underlying
24 offenses is broken out in the contract.

25 ATTY. VALENTINO: And, your Honor, I'd also
26 just like to point that in paragraph 1, while it
27 does reference the argument regarding

1 disaffiliation or the -- you know, that we argue
2 references disaffiliation, it also references
3 Article 15 Section 1A, which is just a general
4 misconduct of the parties, refusal to abide by the
5 provisions of the constitution and bylaws.

6 So it was not just the disaffiliation in
7 that --

8 THE COURT: Oh, I understand --

9 ATTY. VALENTINO: Okay.

10 THE COURT: -- that your complaint is more
11 than that. My thinking -- my problem is I think
12 that the thing I'm having the hardest time with is,
13 again, I understand your argument about the
14 disaffiliation being covered by the constitution
15 and bylaws. That's -- that to me, as you can
16 probably tell, I'm not buying that one fully. I
17 will think more about it.

18 But harder, much harder is the question that
19 these things are clearly, smack under the
20 constitution and bylaws they are covered. And
21 there is a remedy there for it. And should I
22 interfere with that? is the question. And that's
23 my toughest question.

24 I did make note of the case you just cited,
25 and I understand why you cited it and what it might
26 lead me to believe.

27 I have in mind the contract analysis about

1 whether there's some relief that can be given for
2 the bad faith use of any -- of a -- of a
3 discretionary right granted under the contract.
4 And I'll consider that, too.

5 But anything else new on these points or --
6 because I want to go on to the breach of fiduciary
7 duty and other claims for a moment.

8 ATTY. VALENTINO: Not on this point, your
9 Honor.

10 THE COURT: All right. Anything else, Mr.
11 Fishbein?

12 ATTY. FISHBEIN: No, your Honor.

13 THE COURT: All right. So let me -- when
14 you're ready, Mr. Fishbein, I have another question
15 for you.

16 ATTY. FISHBEIN: Yes, sir.

17 THE COURT: All right. So what -- is there a
18 remedy unique to the claims of breach of fiduciary
19 duty that you're asking for me to grant temporarily
20 or preliminarily now with respect to the breach of
21 fiduciary duty claims? In other words, you --
22 there's some -- there's evidence that there's a hot
23 dispute about certain travel expenses and whether
24 they were reimbursed or whether they weren't;
25 whether they -- for instance, actually covered and
26 were never reimbursed for the fiance; the
27 wrongdoing with the charitable money; the mystery

1 of the PAC money, all of these things you're trying
2 to show, in other words, that they've misused the
3 money that the union gave them, including by saying
4 that, Oh, you've got this line item for legislative
5 expenses and our dues alone exceed it, so we want
6 them back because we're obviously just subsidizing
7 your organization in general.

8 But right now, because all there is are these
9 sorts of generalized things in the area, is there
10 some relief that you believe is unique to those
11 claims? As opposed to helping to justify the
12 relief I know you want, which is the order to stop
13 that proceeding and stop the collection action, et
14 cetera.

15 Is there some specific relief to that
16 fiduciary part of your claims that you want -- that
17 you're asking me to do now?

18 ATTY. FISHBEIN: Yes, your Honor --

19 THE COURT: That's unique to it, I mean.

20 ATTY. FISHBEIN: Yes, your Honor. I would ask
21 for an attachment on the real estate in the West
22 Hartford -- in this West Hartford --

23 THE COURT: In what amount and how would I
24 conclude that you've proven --

25 ATTY. FISHBEIN: Well, that's -- I think
26 we've --

27 THE COURT: -- that it's more likely than not?

1 ATTY. FISHBEIN: Well, I think we've certainly
2 proven it's more likely than not. It's the amount
3 that becomes the problem, your Honor.

4 I mean, I can go through various ways that
5 through the testimony that it was shown, you know,
6 breach of fiduciary duty. I mean, the fact that
7 there's a policy book and nobody reads it. And
8 apparently nobody follows it. You know, that's
9 something that the delegates would rely upon as far
10 as how they're doing their money thing.

11 THE COURT: But remember this: that you
12 raised the question yourself correctly, which is,
13 How much? I mean, in other words, how am I suppose
14 to -- I mean, I -- the best you could probably do
15 is to say that all these years the line items in
16 this budget showing legislative expenses of X and
17 you're paying more than the entire legislative line
18 and that you want that money back.

19 But, I mean, I could consider that. And you
20 could say, Add them all up or give us at least one
21 year or something like that. But I -- to be
22 honest, I'd have my doubts about that, because the
23 legislative line item itself doesn't necessarily
24 mean that some portion of the rest of the work they
25 do doesn't go to legislative issues. Even if it's
26 what Mr. Carozza said, which is he's overseeing the
27 registered lobbyists. Whether he lobbies or not,

1 he says he does not.

2 But the point is is that he might spend an
3 awful lot of time on legislative issues, meeting
4 with the people within the union umbrella, meeting
5 with his lobbyists, et cetera.

6 So how could I just say if it's -- I forget
7 what the number was -- 14,000 or 13,000 was
8 legislative and you're paying 26, so the difference
9 every year should be -- in other words, how can I
10 calculate a number?

11 ATTY. FISHBEIN: Well, first of all, that's
12 based -- that number is based upon their own budget
13 and their own audit. So we get to around the
14 \$15,000. You know, that -- those are their own
15 documents. So based upon the information that the
16 auditor receives, whatever questions he asks,
17 whatever documents he reviews, those are the
18 numbers that the auditor has come up with. And
19 that's, you know, the years that you have before
20 you show about \$15,000 is actually spent on those
21 legislative matters.

22 You know, New Haven alone, you know, they
23 aren't the only union here. So you would think not
24 only -- you know, I would argue that 90 percent of
25 their dues are -- are receivable back. You know,
26 over a reasonable period of time, you know, they've
27 been in this arrangement, assuming that the Court

1 finds that there's a dissolution in 2016, which
2 I -- I believe your Honor's pretty set on that.
3 They got in in 2006. It's a ten-year period.

4 I think for the purposes of a PJR for an
5 attachment, you know, I think five years of that.
6 I think you know, at \$15,000 a year. That's the
7 math that I would be having your Honor, at least at
8 this point -- because the probable cause standard
9 on a PJR, it's not as high as the other matters
10 that we're dealing with. We're just dealing with
11 that particular count. That's what I think would
12 be appropriate for your Honor.

13 Our damages claimed are well in excess of
14 that. And I think under the PJR statute, you're
15 required to, you know, make a finding that's not in
16 excess. So it's certainly below. And I think it's
17 a reasonable number.

18 THE COURT: All right. I think I understand
19 your claims.

20 Would you like to respond to that?

21 ATTY. VALENTINO: I would like to respond,
22 your Honor. So first and foremost, I'd just like
23 to point out again that New Haven had a presence at
24 each and every delegates' meeting when these
25 budgets were presented and did in fact vote on the
26 budgets. And they had an opportunity to view on a
27 screen at the front of the room the line items.

1 And if they chose not to look -- to look away from
2 the screen -- and I believe Mr. Ricci testified
3 that he just didn't think it applied to him so he
4 didn't bother to look or something to that effect,
5 during his deposition.

6 They had knowledge of what their funds were
7 being spent on. They had knowledge of what the
8 claimed funds were being used purportedly just on
9 legislative-only matters.

10 And furthermore, they were receiving more
11 services than just the legislative-only services.
12 I mean, they were -- they weren't just paying for a
13 lobbyist to stand. They were also getting other
14 services. If they needed assistance with certain
15 things, they could call up the UPFFA and did in
16 fact in this instance call upon the UPFFA for
17 several different items.

18 But I'd also like to point out the way that I
19 likened this contract to other situations: It's
20 similar to any other service contract. So for a
21 contract to have someone come and cut your lawn,
22 for example, you're paying X-amount of dollars to
23 have your lawn cut, but you're not necessarily
24 anticipating that that \$50 a week is going directly
25 in that person-who's-cutting-your-lawn's pocket.
26 There's also money that you've got to -- you've got
27 to use that money towards putting gas in the

1 equipment, using the money for the repair of the
2 equipment. There's going to be money that's going
3 to go back to the proprietor of the company that
4 they work for. And they're going to be using some
5 of that money to keep the lights on.

6 THE COURT: All right. I understand that
7 argument, too. And I will consider both of those
8 with respect to that issue.

9 So is there anything I -- that you wanted very
10 much to address that I have prevented you from
11 bringing up?

12 ATTY. VALENTINO: No. But I would just like
13 to point out again in terms of an adequate remedy
14 at law: They've exercised their rights under the
15 contract to be heard -- under the national contract
16 to be heard at the pretrial. They're going to have
17 an opportunity to be heard at the trial level. If
18 they decide that they're not happy with the results
19 at the trial level, they can then be heard by --
20 they can appeal to the general president of the
21 IAFF. And if they don't like his decision, they
22 can then appeal again to the national review board.
23 So there's -- and, furthermore, they can send a
24 letter.

25 So, I mean, to say that they have no adequate
26 remedy at law, I just think they -- they haven't
27 demonstrated that at all.

1 And as far as an irreparable harm, again, your
2 Honor, Mr. Ricci testified that he's amazing at his
3 job. That's -- that was the breadth of his
4 testimony.

5 THE COURT: All right. Thank you. Anything
6 else, Mr. Fishbein?

7 ATTY. FISHBEIN: I just -- you know, we could
8 send a letter. My understanding is that if we sent
9 that letter that they're going to oppose that
10 letter. That's my understanding.

11 You know, I don't agree that Mr. Ricci
12 testified with regard to everything that Attorney
13 Valentino said. Your Honor heard the evidence.
14 And it is what it is.

15 But I really think that this case ultimately
16 centers upon the retaliatory nature of the charges;
17 the good faith and fair dealing under the contract
18 that they breached first. They breached by going
19 to collections. They didn't need to do that and --

20 ATTY. VALENTINO: That's not a breach of the
21 contract, your Honor. He hasn't pointed to
22 anything in the contract that specifically required
23 to go through the national to pursue dues that are
24 owed to them. There's nothing in there that says
25 that.

26 THE COURT: I understand that argument,
27 yes.

1 So have we covered everything? Is there
2 anything else either party wants to go through? I
3 think -- you know, I'm hoping what you've gotten
4 out of this -- I think I grasp what the issues are
5 and what the parties are contending. And --

6 ATTY. VALENTINO: Your Honor, if I may?

7 THE COURT: Hang on a second. I have a
8 computer issue here.

9 ATTY. VALENTINO: Sorry.

10 THE COURT: I'd almost lost everything I've
11 written down, which would be a pity.

12 ATTY. VALENTINO: I've been there.

13 THE COURT: All right. So you have something
14 else you wanted to say?

15 ATTY. VALENTINO: So in terms of the claimed
16 retaliatory nature of the charges, it was
17 demonstrated through Mr. Ricci, and your Honor has
18 acknowledged, but he indicated he continued to
19 draft articles himself and also make statements to
20 the press that rise to the level of defamation at
21 the national level certainly.

22 THE COURT: Well, that's why I mentioned, in
23 other words, that you -- that you had offered
24 evidence that within the period of time that's the
25 limitation period --

26 ATTY. VALENTINO: Right. And frankly --

27 THE COURT: -- he had made statements that --

1 ATTY. VALENTINO: Frankly, your Honor, the
2 state union had just had it. I mean, we're already
3 defending an action in Superior Court. And this
4 case -- you know, these actions by Mr. Ricci where
5 he's going all over the entire state and defaming
6 us, I mean, they're just -- that's the basis for
7 the charges. It's not retaliation. It's okay,
8 enough is enough.

9 THE COURT: All right. I understand what
10 you're saying.

11 ATTY. FISHBEIN: I just -- you know, they
12 recognize that the statements did not rise to the
13 level of defamation under the regular standard so
14 otherwise they'd be able to counterclaim in this
15 case --

16 ATTY. VALENTINO: We haven't answered --

17 ATTY. FISHBEIN: -- so --

18 ATTY. VALENTINO: -- yet, your Honor, so we --

19 ATTY. FISHBEIN: Well, that would be helpful
20 after all of these months.

21 ATTY. VALENTINO: Well --

22 THE COURT: Well, we're still here in this
23 preliminary proceeding. So that's what we're
24 supposed to decide. And you'll have a decision on
25 it tomorrow, so --

26 ATTY. FISHBEIN: Thank you, your Honor.

27 THE COURT: And then we'll move forward from

1 there. And I assume there's nothing else for us to
2 do right now. Correct?

3 ATTY. FISHBEIN: Correct.

4 ATTY. VALENTINO: Thank you, your Honor.

5 THE COURT: All right. I thank the parties
6 for their cooperation. It's -- these things that
7 are done under these circumstances can be
8 difficult. And I appreciate the work and patience
9 both sides have shown. Court is adjourned.

10 (WHEREUPON THE COURT STANDS ADJOURNED.)

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HHD CV18-6101218-S

INTERNATIONAL ASSOC. OF FIRE FIGHTERS LOCAL 825

v.

UNIFORMED PROFESSIONAL FIRE FIGHTERS ASSOC. OF CONNECTICUT

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate transcript of the recording of the above-entitled hearing before the Honorable Thomas Moukawsher, Judge of the Superior Court for the Hartford Judicial District, at Hartford, on the 6th day of December, 2018.

Dated this 27th day of December, 2018, in Hartford, Connecticut.

John McIlhoney, Court Monitor