

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.

DANIEL F. WASSER, as a trustee of the CWA/ITU Negotiated Pension Plan; and

PRINTING, PUBLISHING AND MEDIA WORKERS SECTOR  
of the Communications Workers of America, AFL-CIO, as a fiduciary  
of the CWA/ITU Negotiated Pension Plan,

Plaintiffs,

v.

ARTHUR DEIANNI, as a trustee of the CWA/ITU Negotiated Pension Plan;

JAMES BRILL, as a trustee of the CWA/ITU Negotiated Pension Plan;

DANIEL J. FARBERMAN, as a trustee of the CWA/ITU Negotiated Pension Plan;

ROBERT C. MAIDA, as a trustee of the CWA/ITU Negotiated Pension Plan;

THEODORE R. RILEA, as a trustee of the CWA/ITU Negotiated Pension Plan; and

CWA/ITU NEGOTIATED PENSION PLAN,

Defendants.

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**COMPLAINT FOR DECLARATORY RELIEF**

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Plaintiffs set forth above, for their cause of action against Defendants, allege and aver as follows in support of their complaint for declaratory relief (“Complaint”):

**Nature of the Case**

1. This Complaint is brought under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., to prevent and reverse the illegal and wrongful action of Defendants, trustees of the CWA/ITU Negotiated Pension Plan (“ITU Pension Plan” or simply,

the “Plan”), in violation of the Plan’s trust agreement, namely, changing the method by which union trustees of the Plan can be appointed, removed, and replaced. Plaintiff Daniel Wasser, President of the Printing, Publishing and Media Workers Sector of the Communications Workers of America (“ITU Sector”), is a trustee of the Plan. Since the inception of the Plan in 1966, the ITU Sector or its predecessor, the International Typographical Union, has possessed the exclusive power to appoint, remove, and replace the union trustees of the Plan, which is jointly governed by a board of three union trustees and three management trustees. The individual Defendants, who are union trustees and management trustees of the Plan (collectively “Defendant Trustees”), have attempted, through an ostensible amendment to the Plan adopted on March 12, 2018, without advance notice—in a meeting at which they knew Plaintiff Wasser would not be present—to strip the ITU Sector of its exclusive power to appoint, remove, and replace union trustees, thereby violating the Plan’s fundamental restrictions upon amendments and perpetuating Defendant union trustees’ positions.

### **Jurisdiction and Venue**

2. This Court has original jurisdiction of Plaintiffs’ claims pursuant to 29 U.S.C. § 1132(e)(1), and also has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and the Declaratory Judgments Act, 28 U.S.C. § 2201.

3. Venue is appropriate in this district pursuant to 29 U.S.C. §1132(e)(2), because the ITU Pension Fund is administered in Colorado Springs, Colorado.

### **Parties**

4. The ITU Pension Plan, a Defendant herein, is an “employee benefit plan” within the meaning of 29 U.S.C. § 1002(3) and maintains its principal place of administration in

Colorado Springs, Colorado. The ITU Pension Plan is a legal entity that may sue or be sued, pursuant to 29 U.S.C. § 1132(d).

5. Plaintiff Daniel Wasser (“Wasser”) is the President of the Printing, Publishing and Media Workers Sector of the Communications Workers of America, and is a union trustee on the ITU Pension Plan. Wasser has standing to bring this action under 29 U.S.C. § 1132(a) as a “fiduciary” within the meaning of 29 U.S.C. § 1002(21)(A).

6. The Printing, Publishing and Media Workers Sector of the Communications Workers of America, AFL-CIO (the “ITU Sector”) is a “labor organization representing employees in an industry affecting commerce” within the meaning of §§ 2 and 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. §§ 152 and 185(a), and maintains its principal office in Pittsburgh, Pennsylvania. The ITU Sector has standing to bring this action under 29 U.S.C. § 1132(a) as a “fiduciary” within the meaning of 29 U.S.C. § 1002(21)(A) to the extent, *inter alia*, that it has the power to appoint and remove trustees.

7. Defendant Arthur DeIanni is a union trustee of the Pension Plan. He is a “fiduciary” within the meaning of ERISA, 29 U.S.C. § 1002(21)(A).

8. Defendant Robert Maida is a union trustee of the Pension Plan. He is a “fiduciary” within the meaning of ERISA, 29 U.S.C. § 1002(21)(A).

9. Defendant Theodore Rilea is an employer trustee of the Pension Plan. He is a “fiduciary” within the meaning of ERISA, 29 U.S.C. § 1002(21)(A).

10. Defendant Daniel Farberman is an employer trustee of the Pension Plan. He is a “fiduciary” within the meaning of ERISA, 29 U.S.C. § 1002(21)(A).

11. Defendant James Brill is an employer trustee of the Pension Plan. He is a “fiduciary” within the meaning of ERISA, 29 U.S.C. § 1002(21)(A).

**Establishment of ITU Pension Plan & Appointment of Trustees**

12. The International Typographical Union (“ITU”), prior to its merger in 1987 with the Communications Workers of America, AFL-CIO (“CWA”), was an independent labor organization that represented employees in the printing, publishing, graphic arts, news, advertising, and communications industry.

13. On September 8, 1966, the ITU, as settlor, along with certain employers who were signatory to collective bargaining agreements with the ITU, entered into an “Agreement and Declaration of Trust” (herein “Trust Agreement”) and established the ITU Pension Plan. The Trust Agreement is attached as Exhibit 1 to this Complaint.

14. The ITU established the ITU Pension Plan after creating a “Committee on Pensions” that studied the feasibility and details of providing a pension for ITU members. The ITU decided to establish the pension after substantial debate and discussion on September 8, 1966, at the ITU’s convention in Colorado Springs, Colorado.

15. In 1987 the ITU merged with the CWA. The former ITU became the ITU Sector as defined above in paragraph 6.

16. The Trust Agreement, pursuant to the merger of the ITU and CWA, defines ITU as follows: “‘ITU’ means Printing, Publishing and Media Workers Sector of the Communications Workers of America, AFL-CIO/CLC.”

17. The Trust Agreement provides that the operation and administration of the ITU Pension Plan shall be the joint responsibility of a board of trustees, “one-half to be ITU Trustees

and one-half to be Employer Trustees . . . . **The ITU** and the Employers shall each appoint an odd number of Trustees, not less than one nor more than seven.” Trust Agreement, Article III, Sec. 1 (emphasis added).

18. The board of trustees currently consists of three “Union Trustees” and three “Employer Trustees” (all trustees collectively are called the “Trustees” or “Board of Trustees” herein).

19. The Trust Agreement, in Article III, Sec. 1, provides that the Trustees “shall be the named fiduciaries of the Plan.”

20. The Trust Agreement, in Article III, Sec. 4, provides that “Employer Trustees may be removed at will by a majority of the Employer Trustees then serving or by a majority vote of all Contributing Employers . . . .”

21. The ITU, as a settlor of the trust, has always held the exclusive power to appoint, remove, and replace Union Trustees. The Trust Agreement has provided, until the ostensible amendment in dispute: “Union Trustees may be removed and replaced at will by **the ITU.**” Article III, Sec. 4 (emphasis added).

22. The method for notification of removal or replacement of Trustees further underscores the basic purpose of the Trust Agreement that the ITU has exclusive power to appoint, remove, and replace Union Trustees. Article III, Sec. 5 provides: “In case any Trustees shall be removed, replaced, or succeeded, a statement in writing by the President and Secretary-Treasurer of the ITU shall be sufficient evidence of the action taken by the ITU . . . .”

23. From the inception of the ITU Pension Plan in 1966 until the ostensible amendment of the Plan by Defendant Trustees on March 12, 2018, the ITU had the exclusive power to appoint, remove, and replace Union Trustees.

**Ostensible and Improper Amendment in March 2018 by Defendant Trustees**

24. The Board of Trustees of the ITU Pension Plan meets in regular meetings twice a year, usually in March and September.

25. The ITU Pension Plan, with assets of approximately \$700 million, is in “Critical and Declining Status” and, as a result, has been required to implement a funding “rehabilitation plan” pursuant to the requirements of the Pension Protection Act of 2006, P.L. 109-280 (August 17, 2006).

26. Plaintiff Wasser, as a Union Trustee, has raised objections with the other Trustees regarding what he has considered extravagant or wasteful meetings, held in expensive resort locations and conducted over several days, even though the actual business of the meetings could have been conducted in less time at lower expense.

27. The regular meeting in early 2018 of the Board of Trustees was scheduled for March 11 and 12, 2018, at the Hyatt Regency Coconut Point Resort and Spa in Bonita Springs, Florida.

28. Plaintiff Wasser was unable to attend the Board of Trustees meeting in March 2018 because of a schedule conflict. Several months in advance of the meeting, he notified the other Trustees and the Plan administrator that he would be unable to attend.

29. Defendant Trustees knew, in advance of the Board of Trustees meeting in March 2018, that Plaintiff Wasser would not attend the meeting.

30. Upon information and belief, before the Board of Trustees meeting in March 2018, Defendant Trustees, knowing that Plaintiff Wasser would not attend the meeting, decided to prepare an ostensible amendment to the Trust Agreement (the “Amendment”), purporting to terminate the ITU’s exclusive power to appoint, remove, and replace Union Trustees. (The Amendment is attached as Exhibit 2 to this Complaint.)

31. Neither Defendant Trustees nor anyone on their behalf notified Plaintiff Wasser, before the Board of Trustee meeting in March 2018, that they would be considering the Amendment at the meeting.

32. Plaintiff Wasser did not know that Defendant Trustees would be considering the Amendment at the Board of Trustees meeting in March 2018.

33. On March 12, 2018, at the Board of Trustees meeting, Defendant Trustees adopted the Amendment, purporting to terminate the ITU’s exclusive power to appoint, remove, and replace Union Trustees. The Amendment, which included additional amendments to define or revise related details in the Trust Agreement, states in pertinent part: “Union Trustees may be removed and replaced by the unanimous consent of the ITU and the Largest Local.”

34. The Amendment defines “Largest Local” as “the local union affiliated with the CWA from which the greatest number of active participants, terminated vested participants and retirees are or were associated as of the end of the immediately preceding Plan year.”

35. Defendant Trustee Arthur DeIanni is the president of the Largest Local.

36. Plaintiff Wasser was not notified of the Amendment until a copy of it was sent to him after the Board of Trustees meeting on March 11 and 12, 2018.

### **Trust Agreement Violated by Amendment**

37. The Trust Agreement contains a general provision, Article X, Sec. 1, stating that it “may be amended from time to time by a majority of the Employer Trustees and a majority of the ITU Trustees.”

38. However, Article X, Sec. 2, of the Trust Agreement contains the following “Limitation on the Power of Amendment” (emphasis added):

No amendment shall be adopted which will alter the basic purpose of this Agreement and Declaration of Trust to provide pension and related benefits, or which shall be in conflict with any Collective Bargaining Agreement with respect to the Contributions to the Plan hereby created, **or which shall be in conflict with civil laws or ITU Laws.**

39. The “Agreement for Merger/Affiliation” (“Merger Agreement”) between the ITU and the CWA in 1987 provided that “the ITU shall become an autonomous ‘Sector’ within the CWA; and that **the Sector will preserve long-standing ITU traditions** in the Printing, Publishing and Media Industry.” (Emphasis added.)

40. The Merger Agreement, which was ratified by the ITU membership in 1987 and incorporated into the ITU bylaws, is one of the “ITU Laws” referenced in Article X, Sec. 2, of the Trust Agreement.

41. The authority of the Trustees to amend the Trust Agreement is limited by the terms of the Merger Agreement, specifically, the provision that “long-standing ITU traditions in the Printing, Publishing and Media Industry” will be preserved.

42. The ostensible Amendment to the Trust Agreement violated the basic purpose and historical structure of the Trust Agreement, as established by the settlors of the ITU Pension Plan in 1966, that the ITU would have the exclusive power to appoint, remove, and replace Union Trustees.

43. The ostensible Amendment to the Trust Agreement violated “long-standing ITU traditions in the Printing, Publishing and Media Industry,” specifically the tradition that the ITU, from the inception of the ITU Pension Plan in 1966, had the exclusive power to appoint, remove, and replace Union Trustees.

**First Claim for Relief**  
Breach of Fiduciary Duty by Defendant Trustees

44. Plaintiffs restate and incorporate by this reference the preceding paragraphs of this Complaint as if set forth in full.

45. Plaintiff Wasser, as a named fiduciary of the ITU Pension Plan and a fiduciary within the meaning of 29 U.S.C. § 1002(21)(A), has standing to bring this action against Defendant Trustees for breach of their fiduciary duty.

46. Plaintiff ITU Sector, as a fiduciary within the meaning of 29 U.S.C. § 1002(21)(A) to the extent, *inter alia*, that it has the power to appoint and remove trustees, has standing to bring this action against Defendant Trustees for breach of their fiduciary duty.

47. Defendant Trustees, in amending the Trust Agreement by purporting to terminate the exclusive power of the ITU Sector to appoint, remove, and replace Union Trustees, acted in contravention of the terms of the Trust Agreement that limit the authority of the Trustees to adopt amendments to the Trust Agreement.

48. Defendant Trustees, in amending the Trust Agreement by purporting to terminate the exclusive power of the ITU Sector to appoint, remove, and replace Union Trustees, acted in their own self-interest rather than the exclusive interest of providing benefits to Plan participants and their beneficiaries.

49. Defendant Trustees violated their fiduciary duties under 29 U.S.C. § 1104 by amending the Trust Agreement and ostensibly terminating the exclusive power of the ITU Sector to appoint, remove, and replace Union Trustees.

**Second Claim for Relief**  
Declaratory Judgment Invalidating Amendment

50. Plaintiffs restate and incorporate by this reference the preceding paragraphs of this Complaint as if set forth in full.

51. The Declaratory Judgment Act, 28 U.S.C. § 2201, permits this Court to enter a declaratory judgment to determine Plaintiffs' rights and status.

52. An actual and justiciable controversy exists between the parties as to the governance of the ITU Pension Plan.

53. Without resolution by this Court, this dispute about governance of the Plan is likely to have substantial effects on the governance and future of the Plan.

54. Plaintiffs seek a determination and declaratory judgment that the Amendment adopted by Defendant Trustees and the ITU Pension Plan on March 12, 2018, violated the Trust Agreement and is null, void, and unenforceable.

**Third Claim for Relief**  
Preliminary and Permanent Injunctive Relief

55. Plaintiffs restate and incorporate by this reference the preceding paragraphs of this Complaint as if set forth in full.

56. Under Federal Rule of Civil Procedure 65(a), Plaintiffs are entitled to a preliminary and a permanent injunction restraining Defendants from implementing, enforcing, or

acting in accordance with the Amendment adopted on March 12, 2018, and mandating that Defendants treat the Amendment as null, void, and unenforceable.

57. There is a substantial likelihood that Plaintiffs will prevail on the merits of their underlying claims.

58. Plaintiffs will suffer irreparable harm unless injunctive relief is granted, inasmuch as the ITU Sector will be deprived of its historical, exclusive power to appoint, remove, and replace Union Trustees, precisely at a time when crucial decisions will be made about the future of the ITU Pension Plan.

59. The irreparable harm cannot be remedied by traditional legal remedies entered in the normal course, inasmuch as the ITU Sector may be dissolved by the CWA in the near future—the Amendment itself alleges that such dissolution may occur by December 31, 2018, although Plaintiffs do not admit that is the precise date—and the future control, management, and administration of the ITU Pension Plan will be an important order of business for the ITU Pension Plan.

60. Defendants will not be injured by granting injunctive relief, but instead will simply be required to continue acting in accordance with the manner in which the ITU Pension Plan has been governed since its inception in 1966.

61. The threatened injury to Plaintiffs if injunctive relief is not entered far outweighs whatever damage may allegedly be caused to Defendants.

62. If issued, injunctive relief would be in the public interest of enforcing the Trust Agreement in accordance with the intentions of the settlors of the trust, the historical structure of

the Trust Agreement since its inception in 1966, and long-standing ITU traditions in the printing, publishing, and media industry.

WHEREFORE, Plaintiffs pray for judgment in favor of Plaintiffs and against Defendants, including a declaratory judgment requested in paragraphs 50 to 54, and injunctive relief as requested in paragraphs 55 to 62, providing for the following relief:

- A. Finding that Defendant Trustees violated their fiduciary duties by adopting the Amendment to the Trust Agreement on March 12, 2018;
- B. Determining and declaring that the Amendment is null, void, and unenforceable;
- C. Enjoining Defendants permanently from implementing, enforcing, or acting in accordance with the Amendment;
- D. Awarding Plaintiffs their costs of this action and reasonable attorney fees; and
- E. Granting Plaintiffs such other relief as the Court deems just and proper.

Respectfully submitted this 25<sup>th</sup> day of June, 2018.

**SPENCER FANE LLP**

*s/ Michael J. Belo*

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