

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No. 18-cv-1603-RBJ

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.

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE

Plaintiffs, Daniel F. Wasser and the Printing, Publishing and Media Workers Sector (“Printing Sector”), file this response to Communications Workers of America, AFL-CIO, Motion to Intervene (“Motion to Intervene” or the “Motion”) (Doc. No. 25).

I. Summary of Response

First, the Motion to Intervene is untimely, because the Communications Workers of America (“CWA”) has known about this lawsuit since shortly after it was filed on June 26, 2018, but delayed filing its Motion for more than seven months. Second, contrary to the CWA’s assertions, it does not have sufficient grounds for either intervention of right or permissive

intervention under Fed.R.Civ. P. 24, because it does not have a “direct and substantial interest” in this litigation, but instead has merely a contingent and indirect interest, at best. Moreover, CWA has failed to show that its interest is not adequately protected by the Defendants. Its interest is also too attenuated and indirect to justify permissive intervention.

II. Argument

A. The Motion to Intervene is untimely.

As the Tenth Circuit held in *Western Energy Alliance v. Zinke*, 877 F.3d 1157, 1164-65 (10th Cir. 2017), timeliness is determined in light of all the circumstances, but three non-exhaustive factors “are particularly important: (1) **the length of time since the movants knew of their interests in the case**; (2) prejudice to the existing parties; and (3) prejudice to the movants.” (Emphasis added.) Here, the CWA has known about this lawsuit since shortly after it was filed, but waited more than seven months to file its Motion to Intervene. As shown by the Affidavit of Daniel F. Wasser (“Wasser Affidavit,” Exhibit A to this response), the CWA’s general counsel contacted the undersigned attorney twice in September 2018 to discuss the case, and the CWA president sent a letter to Plaintiff Daniel Wasser on September 28, 2018, along with several additional communications since then. (Wasser Affidavit, para. 10.)

In the interim, substantial events in the case already have occurred. Defendants have filed and the parties have fully briefed a motion to dismiss, which is awaiting decision by the Court. Significantly, the most analogous deadline—the deadline for joinder of parties, which would preclude Plaintiffs and Defendants themselves from moving to add another party—expired on January 17, 2019, nearly a month before CWA filed its Motion to Intervene (Scheduling Order, Doc. No. 22, sec. 9(a)).

Although the CWA contends there is no prejudice because the parties have not engaged in discovery, the parties have already exchanged disclosures under Rule 26(a)(1). The parties have already discussed and come to an understanding about the categories and documents likely to be relevant and to be sought in discovery (Scheduling Order, sec. 6(f)).

Moreover, the delay in starting substantial discovery has occurred solely because the parties—to save costs and fees to their clients and the CWA/ITU Negotiated Pension Plan (“Negotiated Pension Plan” or simply the “Plan”)—have an informal understanding not to commence discovery until the Court has an opportunity to rule on the motion to dismiss. The CWA’s tardy effort to enter the case now—after the parties had these discussions back in late November 2018—is likely to prejudice the parties’ effort to streamline discovery. It would require a new tri-partite effort to go back over the same issues, resolve additional disputes that may occur because the CWA has now attempted to enter the fray two months after the Court issued the Scheduling Order, and potentially even jeopardize the discovery cutoff on July 12, 2019.

Thus, considering the CWA’s delay in attempting to intervene until more than seven months after the case commenced, along with the prejudice to Plaintiffs, at least, if not all the other parties, caused by its unjustified delay, the CWA’s Motion to Intervene is untimely and should be denied for that reason alone.

B. The CWA’s interest in this case is merely contingent and is too indirect to warrant intervention of right.

Although Fed.R.Civ.P. 24(a)(2) speaks of intervention “of right,” it is “not a mechanical rule. It requires courts to exercise judgment based on the specific circumstances of the case.” It is “highly fact-specific.” *San Juan County, Utah v. United States*, 503 F.3d 1163, 1199 (10th Cir.

2007). The applicant must satisfy three criteria, demonstrating that: (1) it has an interest relating to the property or transaction involved in the action; (2) disposition of the action may impair the applicant's ability to protect its interest "as a practical matter"; and (3) its interest is not adequately represented by the present parties.

Although the CWA contends that it has a "direct legal interest" in this case, its interest, to the contrary, is merely contingent and indirect. The CWA makes several broad statements of purported fact or legal conclusions that are not supported by the record in this case. First, the CWA asserts without attribution that after the merger, "CWA assumed ITU's rights and obligations to the Plan." (Motion at 4.) However, the Merger Agreement does not contain any provision that CWA assumed ITU's rights and obligations to the Negotiated Pension Plan. The statement may be true in a general and attenuated sense, because CWA is the parent international union, but the Printing Sector is an autonomous sector of the CWA. The Printing Sector or ITU has been the sole union party governing the Negotiated Pension Plan since the inception of the Plan in 1966. It continued to exercise such authority after the merger with CWA in 1987, and continues to this date as the sole union party directly interested in and governing the Plan.

The Agreement for Merger/Affiliation ("Merger Agreement," attached with amendments as Exhibit 1 to the Wasser Affidavit) states "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." (Merger Agreement, page 24, sec. 1; emphasis added.) Section 10 of the Merger Agreement, which deals with the Printing Sector bylaws, provides that the "bylaws will cover the election of Sector officers, duties of Sector officers . . . and **any other provision that may be necessary to preserve long-standing ITU traditions as**

an autonomous Sector of the CWA.” (Emphasis added.) In 2011 the Printing Sector and the CWA agreed to a supplemental agreement, emphasizing the autonomy of the Printing Sector: “The Printing, Publishing and Media Workers Sector will continue to function as an independent Sector and continue to maintain full control of all its assets and finances.” (Merger Agreement, page 32, sec. 1.)

In contrast, the CWA has not been involved in the administration or governance of the Negotiated Pension Plan, and any interest it asserts is merely contingent and indirect at this time. The CWA has its own pension plan, separate and apart from the Negotiated Pension Plan. No Printing Sector members or employees are eligible for the CWA pension plan. (Wasser Affidavit, para. 7.) No CWA officer or representative has ever served as a trustee or been involved in any other capacity on the Negotiated Pension Plan. The only union representatives who have served as trustees on the Plan have been the Printing Sector president and local union officers of the Printing Sector, who have been appointed by the Printing Sector president. (*Id.*, para. 8, 9.)

The CWA also makes the broad statement, without reference to any facts of record, that “[a]fter years of declining PPMWS finances and membership, CWA began to discuss dissolving PPMWS at its 2019 Constitutional Convention” (Motion at 4.) However, no dissolution has occurred, and no date has been set for any dissolution. (Wasser Affidavit, para. 11.) The only pertinent agreed-upon date at this point that arguably bears upon possible dissolution is contained in a 2015 amendment to the Merger Agreement, in which the CWA and the Printing Sector agreed to extend the yearly payment from the Printing Sector to the CWA for an

additional eight (8) years, thus not concluding until the end of CWA fiscal year 2023, which is May 31, 2024. (*Id.*, para. 11; Merger Agreement, page 36.)

In the amendments passed by Defendant Trustees—the validity and premises of which are the central dispute in this case—Defendants asserted, as a pretext for eliminating the Printing Sector’s historic and exclusive right to select union trustees on the Negotiated Pension Plan, that “representatives of the CWA have indicated an intention to dissolve the Sector on or before December 31, 2018.” Complaint, Exhibit 2 (Doc. No. 1). However, no dissolution occurred then, none is scheduled to occur, and no agreement has been reached about dissolution. Thus, the CWA’s contention in the Motion to Intervene that Defendant Trustees acted “[i]n anticipation of PPMWS being dissolved at the CWA Convention in July 2019” (Motion at 4) is not supported by the statement of Defendant Trustees themselves or by any fact of record herein.

In short, the issue of potential dissolution of the Printing Sector is uncertain, disputed, and contingent on events that may or may not happen this year. Until then, the Printing Sector continues to be the sole labor union with direct participation, direct interest, and a direct stake in the Negotiated Pension Plan. Until dissolution occurs, and depending upon the particular conditions of dissolution, CWA’s interest in this litigation is contingent, indirect, and hypothetical. The CWA “merely has a contingent interest in the subject of the lawsuit An interest of this sort is too attenuated and does not satisfy the ‘direct and substantial’ requirement of Rule 24(a)(2).” *City of Stillwell v. Ozarks Rural Elec. Co-op Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996). *See also New Mexico v. United States*, No. 11-CV-691 JP/WDS, 2012 WL 13081268 (D.N.M. Feb. 17, 2002) (movant’s interest had, at most, an indirect connection with subject of lawsuit).

The CWA asserts erroneously that “[a]s the legal successor to ITU, CWA is the labor organization party to the Plan’s Declaration of Trust. As such, CWA is responsible for both the appointment and removal of the Union trustees.” (Motion at 7.) To the contrary, the Printing Sector, an autonomous sector of the CWA, is the union party to the Declaration of Trust, and the Printing Sector is the union party that appoints union trustees. The Agreement and Declaration of Trust (“Trust Agreement,” Exhibit D to Motion to Intervene) establishes these principles.

First, the Trust Agreement provides the following definition, which was unchanged by the amendments at issue in this case: “The term ‘Union Trustees’ shall mean the Trustees appointed by the ITU Executive Council.” (Article I, sec. 5(b).) Second, the Trust Agreement defines “ITU” as the Printing, Publishing and Media Workers Sector. (Article I, sec. 2.) Third, Article III, Section 4—the very provision that Plaintiffs contend was improperly amended by Defendant Trustees—provides that “Union Trustees may be removed and replaced at will **by the ITU.**” (Emphasis added.) Hence, the CWA’s assertions that it is the union party to the Trust Agreement and that the CWA appoints union trustees are contradicted by the Trust Agreement.

Moreover, CWA’s participation in this lawsuit would interject, and indeed already has interjected, extraneous issues that are immaterial to the validity of the amendments to the Trust Agreement passed by Defendant Trustees. The internal dispute between CWA and the Printing Sector, and the issue about whether and when dissolution may occur—these disputes are irrelevant to the central issue in this case about whether the amendments passed by Defendant Trustees violated the provision of the Trust Agreement prohibiting amendments that conflict with “ITU Laws.” The intervention of CWA in this lawsuit threatens to enmesh the Court and the parties in these immaterial issues. *See Ozarks*, 79 F.3d at 1043 (permissive intervention

denied because it would prejudice the parties by interjecting additional issues in case, and interests would be adequately represented by existing parties).

In summary, the interests of CWA in this case are contingent and indirect, rather than direct and substantial as required for intervention of right.

C. The interests of the CWA are adequately represented by the existing parties.

Even when a putative intervenor has demonstrated an interest sufficiently direct and substantial to justify intervention, federal courts deny intervention when the interests of the movant are adequately represented by existing parties. *Ozarks*, 79 F.3d at 1042-43; *New Mexico v. United States*, 2012 WL 13081268, at *6; *Tri-State Generation & Transmission Ass’n, Inc. v. New Mexico Pub. Regulation Comm’n*, 787 F.3d 1068 (10th Cir. 2015).

Moreover, the burden is on the applicant to show that representation by existing parties is inadequate. *Coalition of Arizona/New Mexico Ctys. for Stable Econ. Growth v. Dept. of Interior*, 100 F.3d 837, 844-45 (10th Cir. 1996); *Rio Grande Silvery Minnow v. Martinez*, No. CIV991320JPRLPACE, 2001 WL 37125207, at *5 (D.N.M. April 6, 2001). Although this burden may be “minimal,” it requires more than the bald assertion that although the NPP and current trustees purportedly are not allowed to consider how changes to the Plan could impact future participants, “CWA has an interest in not just protecting current participants and beneficiaries but also how decisions regarding the selection and removal of Plan trustees may affect future plan participants.” (Motion at 8.)

Furthermore, representation is adequate “when the objective of the applicant for intervention is identical to that of one of the parties.” *Ozarks*, 79 F.3d at 1042 (internal citation omitted). In *Tri-State Generation*, the would-be intervenor filed an answer to the complaint

asserting essentially the same affirmative defenses as the defendant. 787 F.3d at 1071. The *Tri-State* court reasoned that “even though a party seeking intervention may have different ‘ultimate motivation[s]’ from the governmental agency, where its objectives are the same, we presume representation is adequate.” *Id.* at 1072-73, citing *Ozarks*, 79 F.3d at 1042. *Accord*, *New Mexico v. United States*, 2012 WL 13081268, at *6.

Here, the CWA’s objective is identical to the objective of Defendant Trustees. Like the movant in *Tri-State* who filed essentially the same answer as the defendant, the CWA has simply joined in Defendant Trustees’ motion to dismiss. Although CWA may postulate that its interest is slightly different from the interest of Defendant Trustees, its objective is the same.¹ Hence, as the court held in *Ozarks*, “absent ‘a concrete showing of circumstances . . . that make [the existing party’s] representation inadequate,’ intervention should be denied.” 79 F.3d at 1043.

D. The indirect and contingent interests of the CWA are inadequate to justify permissive intervention.

The interests of CWA are also insufficient to warrant permissive intervention, which requires the applicant to show that: (1) it has a claim or defense that shares with the main action a common question of law or fact, and (2) the intervention will not unduly delay or prejudice the adjudication of the original parties’ rights. Fed.R.Civ.P. 24(b).

Essentially, CWA’s argument boils down to the fact that CWA is the parent international union of the Printing Sector, and *ipso facto* by that relationship alone, it should be permitted to intervene. However, the CWA and the Printing Sector have taken pains, not only in the Merger Agreement but also in the 2015 amendment to the Merger Agreement, to emphasize that the

¹ To the extent that CWA, as a labor union, has the interests of future plan participants in mind and those interests are purportedly different from the interests of the Plan trustees, Plaintiff Printing Sector, as a labor union, has the same interests of future plan participants in mind.

Printing Sector is an autonomous, independent sector of the CWA. Unless and until dissolution occurs, the Printing Sector has been, and will continue to be, the union party that governs the Negotiated Pension Plan, and whose members are participants in the Plan. The CWA historically has been uninvolved in the Negotiated Pension Plan and has demonstrated little interest in the Plan.

The CWA's assertion that "[a]s the legal successor to ITU, CWA is the labor organization party to the Plan's Declaration of Trust" (Motion at 7) is not only erroneous as discussed above, but also paradoxical in light of CWA's support for the Defendant Trustees' motion to dismiss the underlying action. Should dissolution of the Printing Sector occur at some yet-to-be determined time in the future, CWA may succeed to the position of the Printing Sector as the union party to the Negotiated Pension Plan. Presumably, the CWA would prefer to succeed to the Printing Sector's position as the international union organization with sole authority to select union trustees on the Plan. Instead, the CWA supports a position that would undermine the international union's authority to select union trustees and would instead provide the largest local union with veto power over trustee selection. Thus, CWA's interest in the Negotiated Pension Plan is not only indirect and contingent, but also contradicted by its support for a position that would undermine its power, as an eventual successor, to select the union trustees.

As discussed above, CWA's tardy intervention at this stage would prejudice the existing parties, who have already exchanged disclosures, discussed the framework for limiting discovery, and fully briefed the motion to dismiss. The Court will decide in its discretion whether such intervention would "unduly delay or prejudice the adjudication of the original parties' rights." However, Plaintiffs urge the Court, in deciding such issue, to give substantial

weight to the point that the CWA's interest in the subject matter of this lawsuit is merely attenuated, contingent, and hypothetical.

In summary, the CWA's contingent interest in this case is not direct and substantial enough to warrant either intervention of right or permissive intervention. In addition, the other circumstances militate against permissive intervention. *See Ozarks*, 79 F.3d at 1043 (denial of permissive intervention upheld absent clear abuse of discretion, as trial court found that interests of movant were adequately represented by other parties, and intervention would interject additional issues); *Tri-State Generation*, 787 F.3d at 1074-75 (permissive intervention denied because it would burden parties with additional discovery, and the existing defendant would adequately represent the movant's interests).

III. Conclusion

The CWA's Motion to Intervene is untimely, because the CWA knew about this lawsuit almost from the inception, yet waited for seven months to file its Motion. The CWA's interest in this matter is contingent and indirect, rather than being direct and substantial as required by Rule 24(a). Moreover, the interests asserted by the CWA are adequately represented by the Defendant Trustees, because they have the identical objective. Finally, the CWA's interest is too attenuated to justify permissive intervention.

Therefore, the Motion to Intervene should be denied.

Respectfully submitted on this 5th day of March, 2019.

SPENCER FANE LLP

s/ Michael J. Belo

Michael J. Belo

1700 Lincoln Street, Suite 2000

Denver, Colorado 80203

Telephone: (303) 592-8313

Facsimile: (303) 839-3838

Email: mbelo@spencerfane.com

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 5, 2019, this document was filed electronically with the Court through the CM/ECF system, which will serve electronic notice upon the following counsel:

Brenna Wolcott, Esq.
Bryan Cave Leighton Paisner LLP
1700 Lincoln Street, Suite 4100
Denver, CO 80203-1541
Telephone: (303) 861-7000
Email: brenna.wolcott@bclplaw.com

Jay P. Warren, Esq.
Bryan Cave Leighton Paisner LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Telephone: (212) 541-2000
Email: jpwarren@bclplaw.com

Heather Hanneman, Esq.
RechtKornfeld, P.C.
1600 Stout Street, Suite 1400
Denver, CO 80202
Telephone: (303) 573-1900
Email: heather@rklawpc.com

Nancy B. G. Lassen, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th floor
Philadelphia, PA 19103
Telephone: (215) 656-3638
Email: nlassen@wwdlaw.com

s/Michael J. Belo
Michael J. Belo

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since July 2011. I have been president of the Printing Sector since July 2011. Prior to being president, I was the Staff Representative of the Printing, Publishing and Media Workers Sector. I have been involved in the printing and typographical industry since 1995 as a Mailer, local vice-president, and local president.

3. When the International Typographical Union (“ITU”) merged with the CWA in 1986, the Printing Sector was formed as an autonomous sector. The Agreement for Merger/Affiliation (“Merger Agreement,” Exhibit 1 to this Affidavit), in section 1 entitled “Purposes of Merger,” states “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.” Section 10 of the Merger Agreement, which deals with the Printing Sector bylaws, provides that the “bylaws will cover the election of Sector officers, duties of Sector officers . . . and **any other provision that may be necessary to preserve long-standing ITU traditions as an autonomous Sector of the CWA.**” (Emphasis added.)

4. As an autonomous sector, the Printing Sector maintains certain funds and assets entirely for its own use. Section 20 of the Merger Agreement, entitled “Funds and Assets of the ITU,” provides that “all the funds and assets of the ITU will remain with the former ITU to be used by the Sector to fund any special services or funds which may be used to supplement current CWA funds and services.”

5. In 2011 the CWA and Printing Sector agreed to a supplement to the Merger Agreement, in which they stated: “The Printing, Publishing and Media Workers Sector will continue to function as an independent Sector and continue to maintain full control of all its assets and finances.” (Exhibit 1, p. 32, sec. 1.)

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6. All of the costs and attorney fees incurred by the Plaintiffs in this lawsuit have come from the funds of the ITU, rather than the CWA.

7. The CWA has its own pension plan, separate and apart from the NPP that is the subject of this lawsuit. No Printing Sector employees or members are eligible for the CWA pension plan. The CWA pension plan was recently amended, approximately in September 2018, to reinforce the exclusion of Printing Sector employees from the CWA pension plan.

8. No CWA officer has ever participated as a trustee of the NPP or served or been involved in any other capacity on the NPP Board.

9. The only union representatives who have served as union trustees on the NPP have been the Printing Sector president and local union officers of the Printing Sector that have been appointed by the Printing Sector president.

10. The CWA has known about this lawsuit since shortly after the lawsuit was served upon the Defendants. Arthur DeIanni, the first-named Defendant, is an acquaintance of CWA President Chris Shelton due to a past relationship when Mr. Shelton was the CWA District 1 vice-president. My reasonable inference is that Mr. DeIanni informed Mr. Shelton of this lawsuit immediately. The general counsel of the CWA, Pat Shea, contacted our attorney in this lawsuit on September 13 and 26, 2018, to discuss the lawsuit. On September 28, 2018, CWA President Shelton sent me a letter about the lawsuit. There have been multiple, additional communications since then.

11. There has been no dissolution of the Printing Sector, and no date has been set for any dissolution. The only pertinent agreed-upon date in regard to dissolution at this point is contained in a 2015 amendment to the Merger Agreement, in which the CWA and the Printing Sector agreed to extend the yearly payment from the Printing Sector to the CWA for an

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additional eight (8) years, thus not concluding until the end of CWA fiscal year 2023, which will be May 31, 2024 (Exhibit 1, p. 36).

Dated this 4th day of March, 2019.

Further affiant sayeth not.

s/ Daniel F. Wasser
Daniel F. Wasser

Subscribed and sworn to before me this 4th day of March, 2019, by Daniel F. Wasser.

s/ Darlene M. Drapela
Notary Public

My Commission expires: 8/17/19

[SEAL]

Agreement for Merger/Affiliation
between the
INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, CLC
and the
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

The International Typographical Union (ITU) and the Communications Workers of America (CWA) agree to create and establish a single, more powerful labor organization with a merger/affiliation. By the merger/affiliation the Unions will significantly enhance job security and economic prosperity for the hundreds of thousands of men and women who contribute their labor to produce the diverse, quality service and products of the Communications, Graphic Arts and Media Industry.

The ITU and CWA agree upon the following objectives, purposes, principles and procedures to accomplish merger/affiliation and the following basis upon which the merged organization shall function:

1. Purposes of Merger

ITU and CWA will combine into one International Union in the Communications, Printing, Publishing and Media Industry. Purposes will be to combine services and resources for increased bargaining power and strengthen organizing efforts.

It is agreed 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.

2. Name and Headquarters

The name of the merged organization shall be the Communications Workers of North America (CWA). The former ITU will become the Printing, Publishing and Media Workers Sector of the Communications Workers of North America, AFL-CIO, CLC ("Sector"), with its own officers. Provided that the CWA name change to include the word "North" must be approved by their next Convention.

The CWA headquarters are presently in Washington, D.C. CWA will provide ample office space to house the new Sector. In recognition of the complex operations of the ITU headquarters in Colorado Springs, there shall be two offices (Washington, D.C. and Colorado Springs) for a reasonable period of time in order to effect an orderly shift to and integration of the Sector to Washington, D.C. Additionally, where practical, space will be made available in CWA's Regional Offices.

The ITU presently has an International office in Canada. In recognition of the Canadian Nation, its laws and bilingualism, the CWA will continue and expand this office for the service and representation of the Canadian segment of the ITU's membership.

The Sector shall function pursuant to its own bylaws approved by referendum vote of the membership of the ITU. The Sector shall also function pursuant to the CWA Constitution except those provisions which will not apply during the transition period (1987-1991).

3. Method of Merger/Affiliation

A. This Agreement for Merger/Affiliation, and the Bylaws of the Sector, shall be submitted

to the two merging organizations for approval in accordance with the provisions of the Constitutions of the ITU and CWA. It is understood that the ITU requires approval by a majority of those voting in a membership referendum.

B. The Agreement for Merger/Affiliation, the Sector Bylaws, and the Merger/Affiliation shall become effective 15 days after certification of the ballots approving these documents by a majority of the ITU membership voting.

4. Operating Principles of the Printing, Publishing and Media Workers Sector

Recognizing the need to smoothly and efficiently integrate the policies, programs, officer structure, necessary staff and personnel of the two merging Internationals, there is clearly a need for an appropriate transition period.

First, all ITU Locals will continue to operate according to their Local Constitutions and Bylaws until January 1, 1991. At that time all former ITU Local Constitutions and Bylaws must be consistent with the CWA Constitution. All Local Unions and Conferences of the ITU will automatically become Locals and Conferences of the Communications Workers of North America.

Second, merger of Local Unions within the Sector, while encouraged, will be voluntary and not be compelled.

Third, any picket line of any local union that has been approved by the International Union will be honored by and receive the full support of all Local Unions and members of the CWA.

Fourth, since the CWA does not approach merger/affiliation as a business proposition but rather a trade union matter, it recognizes that some deficit spending may occur during the transition period. However, with the built in attrition and reductions that will be forthcoming, it is anticipated that any such deficit spending (if any) will be short term.

5. Service to Local Unions

The CWA presently has eight (8) Regional Headquarters and more than 50 National area offices, with staff and resources that would be made available to Sector Officers, Representatives, Organizers and Local Union officers on an as needed basis. CWA has and continues to make a significant commitment to organizing the unorganized. The Printing, Publishing and Media Workers Sector of the CWA will enjoy the full resources of the organizing program which will provide new growth and members for the Sector and the International Union. CWA employs full-time legal counsel, at least one of whom is located in each Regional Headquarters.

6. Jurisdiction and Authority

The jurisdiction of the union shall be the present jurisdiction of the ITU and CWA combined in the United States, and its Possessions, and in the case of the ITU only, the Provinces, Territories and Possessions of Canada.

Upon the effective date of the merger/affiliation, all ITU local unions shall be and shall remain affiliated with the Printing, Publishing and Media Workers Sector of the CWA.

7. Officer Structure

The five elected Executive Council officers of the ITU will become the officers of the Printing, Publishing and Media Workers Sector of the CWA. No sooner than the term of office which begins in 1990, the number of elected officers of the Sector shall be reduced to three.

The elected President of the ITU will become President of the Sector. He/she will also become Vice President of CWA and represent the Sector on the Executive Board. However, he/she will only receive one salary. Three elected Vice Presidents of ITU are to become Vice Presidents of the new Sector. The ITU Secretary-Treasurer will become Secretary-Treasurer of the new Sector.

One of the above vice presidential positions is reserved for the Mailers segment of the ITU.

Sector members shall also be eligible for election to and vote for any CWA office, as provided in the CWA constitution.

8. Salaries of Sector Officers

The pay of officers and non-bargaining unit staff whose salaries exceed CWA salaries for comparable positions shall not be changed until the CWA salary equals the former ITU salary. Thereafter, they will receive any annual adjustments which may be approved by the CWA Convention.

9. Retirement Programs for Sector Officers, Representatives and Organizers

All former ITU officers, representatives, organizers and staff will continue in the ITU Negotiated Pension Plans and any other benefit that is presently provided by the ITU will be continued by the CWA.

10. Printing, Publishing and Media Workers Sector Bylaws

Upon the effective date of this merger/affiliation the new Bylaws and the ITU General Laws shall become the Bylaws and General Laws of the Printing, Publishing and Media Workers Sector of the CWA. The bylaws will cover the election of Sector officers, duties of Sector officers, any benefits or services offered by the Sector such as a mortuary benefit, or a supplemental strike benefit, if one is desired, and any other provision that may be necessary to preserve long-standing ITU traditions as an autonomous Sector of the CWA.

11. ITU Representatives and Organizers

Present ITU Representatives and Organizers will become Sector Representatives and Organizers in order to continue the service to Printer and Mailer Locals which has become so important to the ITU membership.

12. Transition: Attrition and Vacancies

A. At the beginning of the period of merger/affiliation between the ITU and CWA, there will be five (5) elected Sector officers. For the term of the office, beginning in January, 1990, there shall be three (3) Sector officers (President, Vice President and Secretary-Treasurer), elected from candidates who are members of the Sector without regard to any segment of membership in the former ITU.

B. All positions during the transition period [unless the number drops below three (3)] are subject to attrition. During the transition period there shall be at least one officer from the Mailer segment of the former ITU.

C. In the event of a vacancy in the office of President of the Sector, the First Vice President

shall fill the vacancy and hold office as President for the balance of the regular term of office. In the event of a vacancy in the office of Secretary-Treasurer of the Sector, the First Vice President shall fill the vacancy and hold office as Secretary-Treasurer for the balance of the regular term of office.

In the event of a vacancy in the office of First Vice President of the Sector, the Second Vice President shall fill the vacancy and hold office as First Vice President for the balance of the regular term of office. In the event of a vacancy in the office of the Second Vice President of the Sector, the Third Vice President shall fill the vacancy and hold office as the Second Vice President for the balance of the regular term of office.

In the event the number of Sector officers falls below the number of three (3) at any time, a special election will be held to fill such vacancy in accordance with Sector Bylaws. In the event that during the first three years (1987-1990) there is not at least one officer from the Mailer segment of the former ITU serving as an officer of the Sector, a special election will be held to fill such vacancy in accordance with Sector Bylaws.

13. Dues and Assessments

A. Each active member will pay .46 percent of straight time earnings, which is the equivalent of the standard CWA per capita tax of 40 percent of 1.15 percent of straight time earnings to the International Union. They will also pay 50 cents a month to the CWA Defense Fund. Provided, that the first monthly dues to the CWA shall be due on or before the twentieth of the second succeeding month after the effective date of the merger.

B. In addition to the International dues provided in sub-paragraph A above, each active member will pay \$1.00 per month to the Sector for the Mortuary Fund.

C. By 1988 each active local union member will be required to pay a minimum local dues of no less than the equivalent of 20 percent of 1.15 percent of straight time earnings.

By 1990 each active local union member will be required to pay a minimum local dues of no less than the equivalent of 40 percent of 1.15 percent of straight time earnings.

By 1991 each active local union member will be required to pay a minimum local dues of no less than the equivalent of 60 percent of 1.15 percent of straight time earnings.

D. Each member who is classified Not-at-the-Trade or Proprietor will be required to pay \$11.00 per month of which \$1.00 will be allocated to the Mortuary Fund. For sick, disabled and unemployed members who have no earnings during the month, \$1.00 per month to the Mortuary Fund.

14. Retirees

All retirees of the former ITU will be eligible for membership in the CWA provided they pay dues of \$1.00 per month which will be allocated to the Mortuary Fund.

By 1989 Retirees of the former ITU who wish to be eligible for full membership in the CWA will be required to pay \$2.00 per month of which \$1.00 will be allocated to the Mortuary Fund. By 1991 retirees of the former ITU who wish to be eligible for full membership in the CWA will be required to pay 1.15 percent on monthly earnings from pensions based on ITU covered employment exclusive of Social Security. They will also be required to pay \$1.00 to the Mortuary Fund. For those who have no pensions based on ITU covered employment a \$2.00 monthly payment will be required of which \$1.00 will be allocated to the Mortuary Fund. If a retiree remains a full member of the CWA, he/she will be eligible to vote, run for and hold elected office. If a retiree chooses during or after the transition period not to be a full member, he/she will still be a member of the Sector, vote for local union officers and all local union matters (except

delegates to the International Convention) and receive the monthly CWA publication. However, they must pay the \$1.00 per month Mortuary Fund Payment.

15. Defense and Strike Funds

Sector members will be eligible to receive strike funds from the CWA Defense Fund which is funded by a 50 cents per month contribution per member. The Sector may also provide a supplemental strike benefit to be administered by Sector, if so desired.

16. Mortuary Fund

The CWA does not provide for a death benefit like the ITU's Mortuary Fund. Therefore, the Sector will continue such a fund for those on retirement as of December 31, 1986, to be funded as follows:

The ITU will transfer \$1.5 million from its existing funds and assets to a Mortuary Fund account as soon as the merger/affiliation is effective. In addition, members of the former ITU, both active and retired, will pay \$1.00 per month into the Mortuary Fund.

17. Union Printers Home

The Union Printers Home will continue to be maintained as a separate entity and the CWA will provide expertise from their staff and membership, who presently work in nursing care facilities, to help put the UPH on a sound financial basis.

Every effort will be made to permit the UPH to be self-sustaining and improve the facility.

CWA recognizes the importance of the Home and in order to improve its viability will encourage retired CWA members to utilize the Home. Such use will be subject to the payment of appropriate fees and approval by the UPH trustees.

18. Designation of Locals

Former ITU Locals may retain their Local Union names and numbers if they so desire.

19. Conventions

Former ITU locals will elect delegates to the CWA annual Conventions in accordance with the CWA Constitution and Bylaws. ITU locals will have an annual International Conference for the Sector prior to the annual CWA Convention.

20. Funds and Assets of the ITU

On the date of merger/affiliation, all the funds and assets of the ITU will remain with the former ITU to be used by the Sector to fund any special services or funds which may be used to supplement current CWA funds and services. Likewise, all funds and assets of ITU local unions will remain with those local unions.

21. Arbitration and Legal Costs

CWA will pay all costs of arbitration and legal assistance that are approved by the Sector CWA Vice President. CWA shall provide attorneys for such representation when necessary. Any case not approved by the Sector CWA Vice President may be pursued by the local union at its own expense.

22. Publications

Each member of the Printing, Publishing and Media Workers Sector (Active and Retired) will receive the monthly CWA publication. Additionally, the CWA will publish and pay for a quarterly Sector publication for each member of the Sector. The Sector officers shall select the editor for the quarterly publication.

23. Executive Board

The CWA has an Executive Board which is comprised of 17 elected officers as follows: President, Secretary-Treasurer, 3 Executive Vice Presidents, 8 Regional Vice Presidents and 4 Sector Vice Presidents. A new seat will be created on the Executive Board for the Sector and will be held by the President of the Sector who shall also serve as a CWA Vice President. After 1991 the Sector Vice President must be elected in accordance with the CWA Constitution.

24. Residency Requirement

The CWA will need certain officers of the Printing, Publishing and Media Workers Sector to reside in the metropolitan Washington, D.C. area where the International's Headquarters is located; other officers are not so required to reside in the metropolitan area.

Upon merger/affiliation the Secretary-Treasurer of the new Sector will be required to establish a residency in the Washington, D.C. area. Following a reasonable period of time during which the Colorado Springs office will remain open in order to effect an orderly shift to and integration with the headquarters in Washington, D.C., the President of the Sector will be required to establish a residency in the Washington, D.C. area. All other officers will not be required to reside in the Washington, D.C. metropolitan area.

25. Election of Sector Officers

The current ITU election procedures shall continue for the election of Sector officers. Provided, however, that after 1991, the Printing, Publishing and Media Workers Sector Vice President, who will serve on the CWA Executive Board, must be elected in accordance with the CWA Constitution.

The term of office for Sector officers shall be three years with the first term of office effective the first day of the second month following the date of election as provided in the Sector bylaws.

26. The Merger/Affiliation Agreement

This Merger/Affiliation Agreement sets forth the principles for merger between the ITU and the CWA and constitutes the Document for Merger between these two Unions.

New Sector bylaws, along with the ITU General Laws, shall be drafted incorporating the principles of merger set forth herein.

This Merger Agreement and draft bylaws for the Sector shall then be submitted to the ITU membership for a referendum vote.

IMPLEMENTATION AGREEMENT ITU-CWA

Whereas the merger/affiliation of the ITU and CWA will become effective in accordance with the procedures and pursuant to the actions specified in the Agreement for Merger/Affiliation entered into as of January 1, 1987; and

Whereas an agreement to implement the merger/affiliation of the two organizations in accordance with the Merger/Affiliation Agreement is necessary;

Now therefore, the ITU and CWA do hereby enter into this Implementation Agreement as follows:

A. PROPERTY AND LIABILITIES

1. On the effective date of this merger/affiliation all the property, real, personal and mixed, and all rights, title and interest, either legal or equitable in any monies, funds or property, tangible and intangible, of ITU, including but not limited to its name, trademarks, copyrights, labels, registrations and emblems, and all debts owed to ITU, and all the rights, privileges and powers and every other interest or asset of the ITU, of whatever nature, shall by reason of this merger/affiliation be transferred to and vested in the Printing, Publishing and Media Workers Sector of the Communications Workers of North America, AFL-CIO, CLC (hereinafter "Sector"), except that on the effective date of the merger (a) the ITU Segregated Fund will be transferred and or conveyed to the existing trustees of the Fund and their Successors to be held in trust and to be administered and maintained for the purposes for which that fund was established, and (b) A Mortuary Fund will be created by a transfer of \$1.5 million from existing ITU funds and assets. This Mortuary fund will be for the exclusive use of those in the Sector who are retired as of December 31, 1986. Title to any property vested by deed or otherwise in the ITU, shall not, in any way, be impaired by reason of the merger, but shall, in all respects, be vested in the name of the Sector by virtue of the merger.

2. On and after the effective date of this merger/affiliation agreement, the Sector and the CWA shall assume and be responsible for all the debts, liabilities, contract obligations and other obligations of the ITU.

3. All funds and assets of ITU local unions will remain in all respects vested in the name of those local unions and shall not in any way be impaired by reason of this merger/affiliation and shall always be, at the time of merger and any time thereafter, exclusively vested in the Local.

4. The ITU Union Printers Home will be maintained as a separate entity. The assets and liabilities of the UPH shall not in any way be impaired by reason of this merger/affiliation.

B. TRANSFERS

1. On the effective date of the merger, the ITU shall transfer all monies, funds, or other property which is held by or due to the ITU to the Sector to fund any special services or funds which may be used to supplement current CWA funds or services except as follows:

(a) on the effective date of merger, the sum received from the ITU Segregated Fund will be transferred and or conveyed to the existing ITU trustees of this Fund and their successors to be held in trust and to be maintained for the purposes for which the Fund was established.

(b) on the effective date of merger, the Mortuary Fund will be created by a transfer of 1.5 million dollars from existing ITU funds and assets. This mortuary fund will be for the exclusive use of those in the Sector who are retired as of December 31, 1986.

2. The Executive Council of the ITU and any trustee or other person, holding property for the

ITU or its Funds, shall be empowered and shall be required on and after the effective date of the merger, to execute and deliver or cause to be executed and delivered, upon request of the Sector, any such deeds, authorizations or other instruments as the Sector may deem necessary or desirable in order to confirm the right and title of the Sector in the property, rights and privileges referred to in Paragraph A above and shall take such further and other actions as may be requested by the Sector for such purpose or for the purpose of creating a successor to the ITU Segregated Fund or for the purpose of creating the Mortuary Fund.

C. NON-IMPAIRMENT

1. This merger/affiliation shall not affect, interrupt or change, in any way, the continuing status or the rights or duties, with respect to third persons, of either organization or of any Local Union, International Grouping or affiliates of either organization, and, further, shall not impair the status of such organization in any pending action or proceeding, or any right, title or interest in any property, or arising from any deed, bonds, mortgages, leases or contracts of any kind including but not limited to recognition agreements and collective bargaining agreements, or the continuity thereof.

2. This merger/affiliation shall not impair or otherwise affect any federal, state, provincial or territorial certification, or any rights or obligations of such organizations under any collective bargaining agreements, or check-off authorizations, but all rights, privileges, duties and responsibilities, vested in either the ITU or the CWA or Local Unions, or International Groupings or affiliates of either, pursuant to such contracts or certifications are to be deemed as vested in the merged organization or any Local Union, or Grouping or affiliate thereof.

D. SERVICE CONTINUITY

The ITU Negotiated Pension Plans and any other benefit that is presently provided by the ITU, shall be continued by the CWA for applicable ITU Officers, Representatives, Organizers or other employees and accrued service in such pension and other benefits shall not be impaired by virtue of the merger. ITU Officers, Representatives, Organizers or other employees shall be covered by the CWA health insurance plans. The CWA will assume the financial responsibility for the continued health insurance coverage for former ITU officers and staff who are presently provided coverage by the ITU.

E. REVENUE

In addition to the revenue to the merged organization as provided in the merger document, each member of the Sector (active and retired) will pay \$1.00 per month to the Sector for the Mortuary Fund. The Sector may assess members additional amounts pursuant to the Bylaws of the Sector in order to provide additional benefits or services if desired.

IN WITNESS WHEREOF, the parties hereto, being fully authorized by the Executive Council of the ITU and the Executive Board of the CWA, have set their hands and seals this 9th day of February, 1987.

INTERNATIONAL TYPOGRAPHICAL UNION

(s) *Robert S. McMichen*, President

COMMUNICATIONS WORKERS OF AMERICA

(s) *Morton Bahr*, President

PPMWS AGREEMENT

This Agreement is between the Communications Workers of America, AFL-CIO (“CWA”), through its authorized representative, and the Laws and Finance Committee of the Printing, Publishing and Media Workers Sector of the CWA.

WHEREAS, the parties recognizes the importance of maintaining a fully functioning Printing, Publishing and Media Workers Sector (PPMWS) and that any severe cuts to the PPMWS budget would inhibit the ability of the PPMWS to function effectively; and

WHEREAS, The Printing, Publishing and Media Workers Sector recognizes that the PPMWS has an obligation to help meet its financial needs, to the best of its ability, so it can continue to function as a viable entity; and

WHEREAS, the intent of this Agreement is to allow the PPMWS sufficient time to make the necessary changes that would bring the PPMWS budget in line with its income;

NOW THEREFORE the parties agree as follows:

- 1) The Printing, Publishing and Media Workers Sector will continue to function as an independent Sector and continue to maintain full control of all its assets and finances. The PPMWS will continue to operate under the Printing Sector Bylaws, the Merger/Affiliation Agreement and the CWA Constitution, except where changed by this agreement.
- 2) The PPMWS delegates will elect a PPMWS Executive Officer/Sector President to run the day to day operations of the Printing, Publishing and Media Workers Sector at the July 2011 Sector Conference and every four years thereafter. The PPMWS Executive Officer/Sector President will sit on the CWA Executive Board and will have all the rights of other members of the CWA Executive Board.
- 3) Beginning with budget year 2011-2012, and all times thereafter, the PPMWS budget shall include the cost of:
 - a) The PPMWS Executive Officer/Sector President,
 - b) Two (2) fulltime representatives and additional help when needed in special situations,
 - c) Two (2) clericals for a reasonable period of time to implement an orderly transition, thereafter (1) clerical.
 - d) Rent for the current office space,
 - e) The quarterly publication of the PPMWS publication,

- f) All arbitration and legal costs as specified in the Merger/Affiliation Agreement,
 - g) The Sector Conference will be held every two years prior to the CWA Convention. Meeting rooms and budget provided by CWA for the PPMWS Conference. The PPMWS may hold additional meetings during off years at the PPMWS's expense, and
 - h) Normal day-to-day operating expenses.
 - i) Should a significant change in dues income occur, the parties will discuss and mutually agree to changes in staffing needs, if necessary.
- 4) The Laws and Finance Committee will support and recommend for approval, to the delegates of the 2011 PPMWS Conference, the following items:
- a) The PPMWS will contribute one-hundred thousand dollars (\$100,000.00) yearly toward the PPMWS budget for the next four (4) years, to help cover any deficit spending. Such contributions will begin with budget year 2011-2012, and the funds shall be transferred to the appropriate CWA operations account at the end of each quarter. If requested, CWA will provide all information needed to substantiate such PPMWS deficit,
 - b) PPMWS Executive Officer/Sector President - The PPMWS Executive Officer/Sector President will be elected in accordance with the PPMWS Bylaws. However, the compensation for such position will be \$120,000 per year and any future increases equal to the percentage increase, if any, for the other CWA officers. All other benefits will be the same as other CWA officers except that the Sector President will receive the NPP at the same contribution rate as other Sector representatives instead of the CWA pension. The PPMWS Executive Officer/Sector President will be under the direction of the PPMWS and work exclusively for the PPMWS except as provided for in the CWA Constitution, Article XII, Section 8,
 - c) The PPMWS Executive Officer/Sector President will not be required to maintain residence in the Washington DC area,
 - d) The Laws and Finance Committee – In addition to their regular duties, the Laws and Finance Committee will function as an executive committee on all matters pertaining to the PPMWS. The five (5) committee members will be elected at the PPMWS Conference to a four year term. There will be no compensation for such committee members other than expenses and lost time, and
 - e) Sector Office – The PPMWS may move its office to a location other than CWA Headquarters upon agreement with the CWA. A request to relocate the Sector offices will not be unreasonably denied provided the new location is cost neutral.

- 5) All terms and rights guaranteed to the PPMWS under the Merger/Affiliation Agreement shall remain unchanged and unabated except as specifically modified in this Agreement.
- 6) CWA will provide assistance to develop new organizing strategies geared toward smaller groups which are representative of the companies the PPMWS locals have contracts with; and the CWA Label is a valuable tool for organizing such smaller groups.
- 7) The parties will propose to the 2011 CWA Convention the requirement of the CWA Label on all CWA printing.
- 8) If the PPMWS delegates approve the above changes, the parties will propose to the 2011 CWA Convention that the CWA Constitution be amended per the attach agreed-to changes to the CWA Constitution.
- 9) In the event an alleged violation of this Agreement occurs and/or the parties have a dispute over the terms, the parties will immediately meet to resolve such dispute. If the dispute cannot be resolved within 30-days, dispute resolution may be engaged at any time by either party before a mutually-agreed upon third party neutral. This arbitrator shall have no power or authority to add to, subtract from, alter, amend or modify any of the terms of the Agreement. Expenses of arbitration, including all transcript costs, shall be shared equally by the parties, and the award of the arbitrator shall be final and binding. Both parties waive any right to appeal the dispute and/or the arbitration to the CWA internal appeals procedure.
- 10) This entire agreement is subject to approval by the PPMWS delegates at the July 2011 Sector Conference.

IN WITNESS WHEREOF, the parties hereto set their signatures:

(s) Larry Cohen, President
Communications Workers of America

(s) Robert Maida, Chairman
PPMWS Laws & Finance Committee

(s) Art DeIanni
PPMWS Laws & Finance Committee

(s) Don McConnell
PPMWS Laws & Finance Committee

(s) Mark Pullium
PPMWS Laws & Finance Committee

(s) Dan Strauss
PPMWS Laws & Finance Committee

PPMWS AGREEMENT AMENDMENT

Whereas, the parties recognize that the yearly payment of \$100,000 made by the PPMWS is set to expire with the closing of budget year 2014-2015. However, the parties have agreed to extend the yearly payment for an additional eight (8) years; subject to the approval of the delegates to the 2015 Sector Conference. Additionally, the reasonable amount of time for two (2) clericals has passed as stated in item 4b, and now there will be no less than one (1) clerical. All other terms and conditions of the 2011 PPMWS Agreement shall remain unchanged.

Whereas, the parties recognize the original Merger Agreement states that merger of Local Unions within the Sector will be voluntary and will not be compelled. However, the parties now desire to amend this single portion of the original Merger Agreement, subject to the approval of the delegates to the 2015 Sector Conference. The parties agree that mergers of Local Unions within the Sector may be compelled into other Sector Locals for violating the CWA Constitution and/or Sector Bylaws.

IN WITNESS WHEREOF, the parties hereto set their signatures:

(s) Larry Cohen
President
Communications Workers of America

(s) Daniel Wasser
PPMWS Executive Officer/Sector President