

AMENDED
NOTICE OF HEARING ON WHETHER
A TRUSTEE SHOULD BE APPOINTED AT SEIU
UNITED HEALTHCARE WORKERS-WEST
UNDER ARTICLE VIII, SECTION 7 OF THE SEIU
CONSTITUTION

**To: All Officers and Members of SEIU United Healthcare Workers –West,
Service Employees International Union, CTW, CLC**

Pursuant to Article VIII, Section 7(a) and (f) of the SEIU Constitution and Bylaws, and the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 462, I am hereby convening a hearing for the purpose of determining whether a Trustee should be appointed to take charge and control of the affairs of SEIU United Healthcare Workers-West (“UHW-W”) and a trusteeship imposed over UHW-W. This Notice amends and supersedes the notice of August 25, 2008 and the supplemental notice of September 9, 2008.

The hearing will take place on September 26-27 2008 at the San Mateo County Event Center, 2495 S. Delaware, San Mateo, California, commencing at 9:00 a.m. on September 26 and running until recessed by the hearing officer. The hearing will resume on September 27 at 9:00 a.m. and run until concluded. The hearing officer will be Secretary Ray Marshall.

Secretary Marshall holds an endowed chair in economics and public affairs at the University of Texas – Austin. Secretary Marshall served as U.S. Secretary of Labor under President Carter from 1977 – 1981.

As a result of an investigation which has been underway since March 2008, including an audit and the review of UHW-W’s book and records, along with thousands of pages of documents, the following serious matters have come to light, and have caused me to take this action. The matters which will be addressed at the hearing include:
Whether the leaders of UHW-W have engaged in financial malpractice and undermined democratic procedures by engaging in improper financial transactions and making misrepresentations to its members and the International Union through the creation of false official records and the issuance of a series of false statements and otherwise failed to carry out the legitimate objects of the International Union. The specific allegations are more fully described below.

• • •

The leaders of UHW-W appear to have engaged in financial malpractice and a series of misrepresentations to their members and to the International Union involving the expenditures of millions of dollars of union treasury monies as well as other money and property of UHW-W and of the International Union. This hearing notice also takes place against a backdrop of a pattern and practice of misconduct by this group of leaders, evidenced by the March 2008 UHW-W convention delegate election, in which these individuals attempted to secure a chosen group of supporters to promote their Convention strategy by imposing delegate eligibility rules that excluded over 95% of the local members from running for delegate. After initially defending the propriety of that election in a written denial of a protest filed by a rank-and-file member, UHW-W changed its position and reran the election only after the International Union exposed the defect in the election.

The specific issues that give rise to this Notice of Hearing include the following:

1. The Leadership of UHW-W Attempted To Move \$6 Million of Members' Dues Monies Off The UHW-W Books For Their Own Purposes, Created False Records Describing the Purpose of the Transfer, and Otherwise Misrepresented To The Members The Real Purposes For Which The Monies Were Transferred So as to Undermine Democratic Procedures

Article 21 of the UHW-W Constitution and Bylaws provides that "The title to all property, funds, and other assets of this Union except for real property, which may be held by a corporation created pursuant to Internal Revenue Code Section 501(c)(2), shall at all times be vested in the Executive Board for the joint use of the membership of this Union."

In an apparent attempt to circumvent this provision, a self-selected group of ten elected leaders of UHW-W,¹ including UHW-W President Sal Rosselli and Secretary Treasurer Joan Emslie, instituted a plan on May 18-19, 2007 to divert up to \$6 million into an outside fund termed the "United Healthcare Workers and Patients Education Fund" ("PEF") – a purported non-profit entity under the legal guise of a 501(c)(3). The stated purpose of PEF, as set forth in the official minutes of the UHW-W Executive Board meeting of May 18-19, was "to provide education to healthcare workers and patients concerning issues related to the healthcare crisis, as well as other issues of importance to healthcare workers and their patients."

Those minutes constitute a falsified record of the purpose of the authorization. The real purpose of this authorization was to funnel substantial local union assets into a fund controlled by a select group of UHW-W's leadership to carry out their own personal internal union agenda rather than the stated charitable purpose. In so doing, these officers

¹ The ten elected leaders are: Sal Rosselli (President); Jorge Rodriguez (Executive Vice President); Joan Emslie, Secretary-Treasurer; and Lori Whyman, David Shapiro, Stanley Lyles, Nancy Evans, Martha Vazquez, Rosie Byers, and Roy Chaffee (all Vice Presidents and members of the Executive Board).

subverted the kind of transparency and accountability required under the SEIU Constitution and Bylaws and under federal law and thereby undermined democratic procedures. The leadership of UHW-W appears so intent on maintaining their own power base at all costs that they have embarked on a path of financial malpractice, fraudulent misrepresentations and, it appears, schemes to retaliate against members who oppose them.

- On May 21, 2007, the leadership of UHW-W filed Articles of Incorporation for the purported 501(c)(3) that provide: “The specific purposes for which this corporation is organized are to educate the public, patients, and Union members with respect to health care issues.” On May 25, 2007, the leadership transferred \$1,000,000 to PEF.

- On September 5, 2007, UHW-W officers filed a “Statement of Information” with the California Secretary of State identifying the UHW-W Secretary Treasurer Joan Emslie’s own home address in San Jose as the “principal office” of PEF.

- On November 26, 2007, PEF submitted a request for a tax exemption to the Internal Revenue Service for PEF and stated that PEF will “educate the public, healthcare patients, and healthcare workers . . . concerning the on-going health care crisis in America and how and why to provide high quality affordable healthcare for all people regardless of their means.”

- The California healthcare ballot initiative that UHW-W later claimed was the primary focus of PEF activities died on January 28, 2008 because it depended on a financing mechanism rejected by the California Senate Health Committee.

- On February 5, 2008, the leaders of UHW-W transferred another \$2,000,000 to PEF.

- On March 24, 2008, SEIU informed the President of UHW-W that, “as early as the fall 2007, in clear violation of your fiduciary duties, you executed a plan to transfer significant local union treasury funds to an outside entity to evade the ongoing oversight and expenditure approvals of the UHW-W local/executive board membership as well as to circumvent other internal union governance requirements of the UHW-W and SEIU constitutions and bylaws.”

- On March 30, 2008, the leadership of UHW-W filed an LM-2 report with the United States Department of Labor (“DOL”) stating that it had made an “education contribution” to the PEF in the amount of \$1,000,000. Other than the May 2007 resolution, this is the only other disclosure to the members about the transfer and the purpose of the transfer. This time the Fund’s address was listed as “560 S. Winchester Boulevard, #100, San Jose, CA”—a fictitious address for the PEF—rather than Emslie’s home address. If members had notice that PEF was actually operating from Emslie’s home address, they would have been more likely to raise questions about PEF.

- On April 3, 2008, in response to the March 24 letter from President Stern, rather than saying that the Fund's purpose had expired with the healthcare initiative, Brother Rosselli said that PEF was also created both to assist UHW-W in renegotiating collective bargaining agreements as part of UHW-W's "2008 contract campaign," and to educate members and "patients" about their "LMRDA" rights.²

- After protracted correspondence between SEIU and the leadership of UHW-W, on April 28, 2008, Rosselli changed his position yet again. This time he informed the International Union that the executive boards of UHW-W and PEF met on April 24, 2008 and voted to close down the Fund and transfer the money back to UHW-W because "the healthcare initiative that was to have appeared on the California ballot this autumn never materialized, and that a primary objective of the Fund was to have educated California healthcare workers and members of the public concerning that initiative and similar issues."

From the inception and throughout, the leadership of UHW-W, including Rosselli and Emslie, have engaged in a series of shifting and conflicting misrepresentations about the nature and purpose of PEF. If the purpose of the PEF was to educate patients and the public about the healthcare crisis, as represented in UHW-W's May 18-19, 2007 Executive Board Minutes and its application for tax-exempt status, none of the expenditures are consistent with that purpose. If the PEF's purpose was to influence a public ballot initiative as UHW-W President Rosselli represented on April 28, 2008, none of the expenditures were consistent with that purpose. Although the California healthcare ballot initiative had died in late January 2008, the leaders of UHW-W transferred \$2,000,000 to PEF in February 2008.

Moreover, contrary to its stated purposes, PEF authorized the expenditure of monies or otherwise spent money on the following:

- On November 12, 2007, PEF paid \$13,259 to a consultant for a speech delivered by Sal Rosselli at an event in Wisconsin, apparently in his capacity as UHW-W President and not as a representative of the PEF.

- On February 9, 2008, PEF's Board approved a "[r]etainer of \$75,000 payable to Arthur Fox at once, the equivalent of \$12,500 per month, for a period of 6 months." Fox is a well-known LMRDA practitioner with no expertise on the healthcare crisis. Shortly after this meeting, on February 12, the Fund issued Fox a check for \$22,500. On March 29, 2008, PEF issued another check to Fox for \$52,500.

- On March 12, 2008, when PEF had no employees, UHW-W Operations Director Phyllis Willett obtained reimbursement from PEF for over \$15,000 that she spent in mid to late February to purchase 100 cellular phones and other communications equipment with her personal credit card.

² Patients do not have rights under the LMRDA.

- On March 29, 2008, PEF's Board approved an expenditure of "up to \$225,000 for worker and patient educational costs related to the Long Term Care Election which may include, but are not limited to costs incurred for materials, postage, phone banking, and translation." The "Long Term Care Election" referred to a non-binding and misleading straw poll that was conducted by the UHW-W leadership among its members ostensibly to obtain the members' views (unaided by any debate or presentation of views other than those of the UHW-W leadership) on an internal union jurisdictional matter, not an issue related to the healthcare crisis or permissible for a 501(c)(3). On March 26, PEF actually spent \$50,804 to cover the cost of postage involved in mailing results of the straw poll to UHW-W members even prior to PEF Board authorization.

None of these authorizations or expenditures is consistent with the education of patients and workers about the healthcare crisis or preparation for the California ballot initiative that had failed to materialize in January 2008.

While the officers of UHW-W were bonded as required by federal law and the SEIU Constitution, the officers of the PEF were never bonded. The monies transferred to PEF were, therefore, put at added risk of loss

The true purpose of PEF was eventually revealed: to finance a defense of the top officers in the event of a trusteeship by the International Union and to convert union dues into a private source of outside funds to maintain their power. When SEIU appoints a trustee to manage the affairs of a local union, any displaced local union officers wishing to challenge the trusteeship would lack access to the union's funds and therefore would be required to finance their challenge with their own personal funds.

- On March 27, 2008, UHW-W posted on its union-sponsored website, seiuvoice.org, a flyer stating that the promotion of "union democracy" was one purpose of PEF.
- On April 3, 2008, Rosselli responded to President Stern's letter of March 24, 2008, stating, among other points, that in the event of a trusteeship deemed by UHW-W to be unlawful, "[W]e would have every right to retain legal counsel to defend our members' right to participate in the governance of their union through their democratically elected leaders – a right that a trustee might attempt to quash by denying access to the funds needed to exercise that right."
- On April 4, 2008, UHW-W's seiuvoice.org website quoted with approval from and linked to an April 2 blog entry by Herman Benson.³ The Benson blog post stated that PEF was created as "an advance defensive measure" by UHW-W "to defend itself against the imposition of a trusteeship." The blog further stated: "[T]he local executive board voted to put money into a separate tax-exempt fund protected from seizure by Stern, with the express aim of defending membership rights.... The independent fund established by UHW-W, free from Stern's

³ Benson and Fox, the lawyer whom PEF retained under the \$75,000 retainer agreement noted above, sit together on the Board of Directors of the Association for Union Democracy ("AUD").

control, would give members resources to resist the imposition of the trusteeship and, if it is imposed, would help defend their rights while it remains in effect.”

These publications demonstrate that the real purpose behind the creation of PEF was to defend against trusteeship, not to educate workers and the public about the healthcare crisis. The leaders of UHW-W used the vehicle of authorizing what appeared to be a gift to an education fund to hide the fact that they were in effect making a gift to themselves to pay for their future personal legal fees with union funds to which they would not otherwise have had access—an act of self-dealing engaged in with the purpose of preserving their personal power within the union.

UHW-W thus fraudulently misrepresented the true purpose of PEF to its members, to the International Union, and to the federal government; and it created a false record of what its Executive Board’s purpose was in authorizing the transfer of monies to the PEF — all in order to avoid internal union oversight and to undermine democratic governance procedures. This fraud was perpetrated not only on the membership but also on the DOL, and federal and state tax agencies.

These actions constitute multiple breaches of fiduciary duty and are violations of Article XVII, Section 1, subsections (1)(Violation of any specific provision of the SEIU Constitution or the Constitution and Bylaws of a Local Union); (5) (Financial malpractice); (8) (Violations of democratically and lawfully established rules, regulations, policies or practices of the International or Local Union); and (9) (Wrongful taking or retaining of any money ... belonging to...the Local Union...). These actions may also constitute violations of federal law.

2. UHW-W Failed to Take Action to Recover All Funds from PEF

While PEF was disbanded in late April 2008, over \$100,000 formerly in the Fund’s possession still has not been returned to UHW-W. On May 15, 2008, SEIU Secretary-Treasurer Anna Burger wrote to members of the UHW-W executive board, advising them of the duty to seek the return of the funds spent by PEF. On May 17, 2008, the UHW-W executive board evasively responded that it “expected shortly a further return of approximately \$110,000.” However, those funds have not been returned as of this date. Significantly, on July 29, 2008, some members of the UHW-W executive board responded to a member’s inquiry by denying “that any expenditure of the PEF was unlawful,” apparently to justify the failure to recover the monies.

UHW-W leaders did not take prompt or sufficient action to recover the \$100,000 in funds spent by PEF, thereby breaching their fiduciary duties and committing financial malpractice. This conduct violates Article XVII, Section 1, subsections (1)(Violation of any specific provision of the SEIU Constitution or the Constitution and Bylaws of a Local Union); (5) (Financial malpractice); (8) (Violations of democratically and lawfully established rules, regulations, policies or practices of the International or Local Union); and (9) (Wrongful taking or retaining of any money ... belonging to...the Local Union...). This conduct also may constitute a violation of federal law.

3. **UHW-W Moved Another \$500,000 To An Attorneys' Trust Account As Part Of A Continuing Effort To Move UHW-W Funds Off The Books**

According to a document that purports to be the official minutes of the March 2008 UHW-W Executive Board meeting, on March 7-8, 2008, just one month after UHW-W moved \$2,000,000 to PEF, the UHW-W passed a resolution authorizing UHW-W's officers to move additional funds out of UHW-W. The resolution directed that "up to \$500,000 be placed in its [law firm's] client trust account, to be billed against pursuant to a retainer agreement with the firm to the greatest extent allowed by law in order to provide any and all legal defense of the membership and officers of UHW-W **from any attempt by any other labor organization or individual(s) to deprive UHW-W of any of its members and/or of its democratic independence and/or its lawful rights of free speech by imposition of an illegal trusteeship or otherwise**, or to deprive it of its right to be governed **by the officers the members democratically elected in the last UHW-W officers' election.**" (Emphasis added).

A few days later, UHW-W entered into a retainer with the law firm of Siegel and LeWitter. This March 10, 2008 Retainer Agreement, which was signed on March 15th by Joan Emslie and March 17th by the law firm, called for a retainer of \$25,000, with the requirement that UHW-W replenish the amount following notice of a drawdown in order to maintain a constant balance of \$25,000. On March 31, 2008, seven days after the International Union had served UHW-W with the above-described March 24 letter, UHW-W transferred the full amount of \$500,000 to the Siegel firm's trust account.

There was no proper union purpose for such a large payment. Moreover, UHW-W's transfer of \$500,000 to the Siegel firm, twenty times the amount required, is inconsistent with the Retainer Agreement, which shows the firm expected to bill no more than \$25,000/month. UHW's excessive payment demonstrates that the funds were transferred off the books to evade review, as one more device to protect the incumbent officers in the event of a trusteeship and to improperly contest actions by the International Executive Board.

Notably, even though the March 24 letter to UHW-W clearly required UHW-W to produce to the International Union the minutes of the March 7-8 UHW Executive Board meeting, UHW-W did not turn over those minutes in response to that letter. The minutes were produced more than four months late and only after the International sent auditors to UHW-W in August 2008. UHW-W refused, however, to cooperate further with the auditors on the matter of the escrow account by refusing to respond to follow-up questions raised about the billing identification numbers in the law firm's invoices against the trust account.

The resolution itself raises serious constitutional issues, since two of its purposes are contrary to the SEIU Constitution:

- The resolution authorizes payment of funds for legal fees to defend the “membership **and officers**” in the event of an imposition of an illegal trusteeship. This element of the resolution amounts to self-dealing since the officers would be the ones adversely affected by any trusteeship and, in the event of a trusteeship, they would be the ones required to personally fund any litigation challenging the legality of the trusteeship. This is an inappropriate use of union monies.

- The resolution authorizes payment of funds for legal fees to defend against any efforts by “any labor organization or individual to deprive it of its right to be governed by the officers the members democratically elected in the last UHW-W officers’ election.” This appears to have been written to specifically protect the incumbent officers in the event of internal union charges against them or removal in trusteeship, and setting aside \$500,000 of UHW-W monies for this purpose is also inappropriate.

This conduct violates Article XVII, Section 1, subsections (1)(Violation of any specific provision of the SEIU Constitution or the Constitution and Bylaws of a Local Union); (5) (Financial malpractice); (8) (Violations of democratically and lawfully established rules, regulations, policies or practices of the International or Local Union); and (9) (Wrongful taking or retaining of any money ... belonging to...the Local Union...). This conduct may also constitute a violation of federal law.

4. The Leaders of UHW-W Wrongfully Converted the International Union’s Convention Delegate Database

In June 2008, the leadership of UHW-W obtained SEIU’s proprietary 2008 Convention Delegate Database, maintained by Opus Solutions Inc., and since that date, has been unlawfully using this database despite repeated directives from the International Union to cease using the database and to return it to SEIU.

- On July 10, 2008, the International Union asked UHW-W, through UHW-W Secretary Treasurer Emslie, “to cease and desist immediately from unauthorized use” of the Convention Database. Emslie responded back to SEIU Secretary Treasurer Anna Burger on July 22, 2008. In her response, she did not provide any facts as to how UHW-W obtained the database but instead made the surprising claim that SEIU’s request for return of a misappropriated database interfered with the leadership’s Title I rights. UHW-W thus asserted the right to use stolen property, so long as the stolen property was used for purposes of communication.

- On August 8, 2008, in response to the July 22, 2008 Emslie letter, SEIU President Andy Stern formally demanded that the leadership of UHW-W cease using the database and return it immediately. “I hereby direct you and the local to comply with these requests.”

- In the meantime, on August 4, 2008, the Special Assistant to the SEIU Secretary Treasurer (“Special Assistant”) had been directed to examine the books and

records of UHW-W. Subsequently, in carrying out that examination, he asked UHW-W Secretary Treasurer Emslie about the database, and she told him that she had no idea what list he might be talking about.

- On August 14, 2008, Emslie wrote the following to SEIU President Andy Stern “in response to your August 8 letter to” the leadership of UHW-W demanding return of the database: “According to the best of my knowledge and understanding ... UHW is **not** in possession of any property belonging to SEIU.” (Emphasis in original.)

- The August 14 letter on behalf of the leadership of UHW-W is false insofar as it claims that UHW-W has never possessed or made use of the Convention Database. Many of the names and addresses in the database are unique to that database, and SEIU vendors and convention guests, including the families of delegates who attended the convention are receiving mailings, packages and e-mails from the leadership of UHW-W. Furthermore, if UHW-W were not using the database, Secretary-Treasurer Emslie’s initial July 22, 2008 response would make no sense. Likewise her statement to the Special Assistant described above cannot be reconciled with her July 22 letter.

The misappropriation of SEIU’s proprietary database constitutes a violation of SEIU Constitution Article XVII, Section 1(9), which prohibits the wrongful taking or retaining of any money, books, papers or any other property belonging to the International Union.

5. UHW-W Has Failed to Cooperate With the International Union’s Audit of UHW-W and With the International Union’s Assignment of Monitors

Pursuant to the audit of UHW-W’s records and books that was ordered on August 4, 2008, the Special Assistant, after reviewing certain UHW-W records, asked for several items of follow-up information. On August 19, 2008, UHW-W Secretary-Treasurer Emslie sent a letter to the Special Assistant refusing to provide some of the items he requested. As set forth in the August 25, 2008 letter from International Union Secretary-Treasurer Anna Burger to UHW-W Secretary-Treasurer Emslie, the refusal to provide the requested information is in violation of Article XIII, Section 6(a) of the SEIU Constitution and Bylaws. Since the time of the original notice of hearing on whether a trustee should be appointed, the International Union assigned monitors to UHW-W, and UHW-W has deliberately interfered with the ability of the monitors to perform their assigned functions.

6. Leaders of UHW-W are Alleged to have Retaliated Against Members Who Have Dissented from UHW-W’s Leadership on Internal Union Matters

It has been alleged that leaders of UHW-W have harassed, humiliated, and otherwise retaliated against members of UHW-W who have voiced support for the International Union’s “Justice for All” platform and have dissented from UHW-W’s views on internal union matters.

- On or around June 19, 2008, Dollie Lee and Dory Machica, two stewards from Kaiser Sunset, appeared for what was billed as an ordinary steward council meeting. For six hours they were subjected to a “trial” which resulted in their being removed from their leadership positions on the steward council. They and other members had appeared on a leaflet supporting the “Justice for All” platform. That leaflet together with Ms. Lee’s and Ms. Machica’s e-mails and other materials were circulated to all stewards at the meeting. After that meeting, President Rosselli visited the Kaiser Sunset facility, and visited Ms. Machica’s work area with several of his union staff. During that visit, Ms. Machica returned to her desk after a brief absence to find a copy of a member letter criticizing her left on her desk with a hand-written note reading “Step Down.” Ms. Lee and Ms. Machica have alleged that this conduct is intended to pressure them to resign from their elected stewardship positions.

- The International has received reports that Yvette Hurston, a UHW-W member who has been a vocal critic of UHW’s leadership, has been subject to retaliation as a result of her support for the International Union’s positions on internal union matters. In the weeks following the International Union’s Convention, Ms. Hurston was informed by a Kaiser supervisor that UHW-W leaders have attempted to interfere with her employment with Kaiser Permanente. More recently, Ms. Hurston has reported that she received an apparently hand-delivered anti-International Union leaflet in her home mailbox. Ms. Hurston interpreted the hand-delivery of this leaflet as a threat, particularly since none of the previous UHW materials had arrived in that way.

These actions are contrary the SEIU Member Bill of Rights and Responsibilities in the Union.

CONCLUSION

Accordingly, a hearing will be conducted on September 26 and 27, 2008 at the time and place set forth above.

Consistent with the Statement of Hearing Procedures, members and officers of UHW-W shall have the right to appear at this hearing, to present testimony and other evidence through witnesses and/or documents and to state their position on the imposition of the trusteeship. Upon the conclusion of the hearing, the hearing officer will make a report and recommendation to the International President orally or in writing, on the imposition of trusteeship. The International President shall take his decision to the SEIU

International Executive Board which will make the ultimate determination on the trusteeship.

Dated this 12th day of September 2008.



Andrew L. Stern
International President

cc: Anna Burger, International Secretary-Treasurer
JJ Johnston, Chief of Staff
Judith A. Scott, General Counsel
Kimberly Evon, SEIU California Area Director
Thomas DeBruin, SEIU
Stephen Lerner, SEIU