

Arthur Fox

From: "Mike Futhey" <mbfuthey@bellsouth.net>
To: "Arthur Fox" <alfii@lnllaw.com>
Sent: Tuesday, November 13, 2007 2:00 PM
Attach: 21632.pdf
Subject: Fw: Attached is list of conflicts in the UTU & SMWIA Constitutions sent to me by SMWIA House Counsel Patrick Riley for review and comment

----- Original Message -----

From: Mike Futhey
To: mbfuthey ; mlherzik@yahoo.com
Sent: Tuesday, September 25, 2007 4:01 PM
Subject: Fw: Attached is list of conflicts in the UTU & SMWIA Constitutions sent to me by SMWIA House Counsel Patrick Riley for review and comment

----- Original Message -----

From: Clint Miller
To: mbfuthey@msn.com
Sent: Thursday, September 20, 2007 11:13 AM
Subject: FW: Attached is list of conflicts in the UTU & SMWIA Constitutions sent to me by SMWIA House Counsel Patrick Riley for review and comment

> -----Original Message-----

> From: Clint Miller
> Sent: Thursday, September 20, 2007 11:12 AM
> To: 'kccheefs@sbcglobal.net'; 'mbfuthey@msn.co.'; Rick Marceau; David Hakey; John Fink
> Subject: Attached is list of conflicts in the UTU & SMWIA Constitutions sent to me by SMWIA House Counsel Patrick Riley for review and comment

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> -----Original Message-----

> From: Legal@utu.org [SMTP:Legal@utu.org] On Behalf Of UTULegal
> Sent: Thursday, September 20, 2007 6:29 AM
> To: Clint Miller
> Subject: Important Information

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> Please review the attached> > <<21632.pdf>>



UTU Articles in conflict with the SMWIA Constitution or Merger Agreement

Article 2 officers, boards and members

Retain 4 officers and 10 vice presidents, 6 of whom will sit on the General Executive Council. There is a President, Transportation Division, and all other officers and vice presidents will be full-time International Representatives (although not all at the same pay).

The Board of Directors will be mostly subsumed by the General Executive Council over the next 4 years. The Board of Trustees will be replaced with the existing GEC Finance Committee. Boards of Appeals may be limited to appeals from Local Committees of Adjustment. Disciplinary appeals will be according to Article 19 of the SMWIA Constitution.

Delegates will have to be elected according to Article 7 of the SMWIA Constitution because the Merger Agreement states that delegates to the Transportation Division convention in 2011 will be delegates to the SMART convention in 2011.

Attrition means the position ceases to exist by the time of the SMART convention or prior if the position is vacated for any reason. There are 4 offices that will attrite by the SMART convention in 2011 according to the Merger Agreement.

Article 3 headquarters

While no immediate conflict, the Transportation Division will be located in the DC area by June 1, 2010, according to the Merger Agreement.

Article 4 seal, emblem and ritual

SMART will eventually have a seal and emblem. Not sure what is meant by ritual.

Article 5 delegates

Delegates have no role except every 5 years at the convention to vote for international officers and constitutional amendments, unless there is a special convention as well.

Delegates are to be elected and compensated in accordance with Article 7 the SMWIA Constitution.

Article 6 international union

Parts of this article might work for the Transportation Division convention in 2011 but it is anticipated that that convention will be in session much less than 5 days, say 2 days, and should be in Chicago, the current location for the 2011 SMART convention.

Article 7 eligibility for office

The eligibility limitations in (a) (age) and (g) conflict with Article 2 of the SMWIA Constitution. By 2011 all general officers will be expected to meet the same eligibility qualifications.

Article 8 election/installation of international officers

Can only be applicable for the Transportation Division convention in 2011.

Article 9 term of office

In conflict with Article 2, Section 8 of the SMWIA Constitution. General officers are elected for a 5-year term and assume office on October 1.

Article 12 dues and assessments

The SMWIA allocates dues among the General Fund, Strike Fund, Conference Fund and Staff Pension Fund. What do you recommend with respect to the 3 additional UTU funds?

The General President rather than a board has the authority to reduce dues in Article 10, Section 2(e) of the SMWIA Constitution.

The General Secretary-Treasurer is the custodian of all funds rather than the president.

Need to discuss where the Canadian office(s) will be.

Article 13 constitutional amendments

The SMART Constitution will be amended according to Article 33.

Article 14 special conventions

SMART will follow Article 7, especially Section 14, of the SMWIA Constitution.

Article 15 bonding

Although this article is different from Article 5, Section 1(c) of the SMWIA Constitution, maybe there is a way of reading both articles together.

Article 16 international president

There can only be one international president. The duties described in this article cannot be included among the duties of the president of the Transportation Division. Assuming these are duties of the international president, two items conflict with the General

President's duties. While some decisions of the General President may be appealed to the General Executive Council, interpretations of the Constitution are not appealable. On the other hand, appointments by the General President pursuant to Article 8 are subject to approval of the GEC.

Article 17 assistant president

Can only be consistent if read as related to assisting the president of the Transportation Division.

Article 18 vice presidents

As International Representatives, they will receive assignments from the General President or his assistant and the president of the Transportation Division. SMWIA International Representatives work out of their homes.

Article 19 General Secretary and Treasurer

The new article passed at the UTU convention last month stressed the duty of forming a budget. The GS&T can work with Futhey to develop a budget for the Transportation Division prior to the GEC meeting in late January where it will be subject to review and approval along with the budgets of all other international departments. The GS&T will work full time for the Transportation Division.

Article 22 Board of Trustees

The duties herein are covered by the Finance Committee in Article 6, Section 3 of the SMWIA Constitution. The Finance Committee meets quarterly.

Article 23 Board of Directors

Essentially replaced by the General Executive Council in Article 6 of the SMWIA Constitution.

Article 24 executive board

Charges against international officers are covered by Article 2, Section 14 of the SMWIA Constitution. A hearing would be before the General Executive Council.

Article 25 charges/trials of international officers

Conflicts with Article 2, Section 14 of the SMWIA Constitution.

Article 26 appeals from executive board

Conflicts with Article 2, Section 14(i) of the SMWIA Constitution.

Article 27 Board of Appeals

It appears that this board could continue to handle appeals involving grievances, but not discipline.

Article 29 compensation and vacation

Staff will receive the same wage increases as calculated in Article 8, Section 7 of the SMWIA Constitution. Wages are paid monthly. Compensation for members on special assignment for the international is covered by Article 29 of the SMWIA Constitution.

Article 31 retirement of officers and employees

Although we don't know if this article will affect anyone over the next 4 years, there is no forced retirement on the basis of age in the SMWIA Constitution.

Article 32 printing & supplies

Our corresponding provision is Article 10, Section 12. It may be possible to read the two articles together without being in conflict.

Article 33 publications

Our corresponding provision is Article 20. The General Secretary-Treasurer is the editor rather than the president. However, it may be possible to read the two articles together than continue both publications for the time being. Our national funds do not help pay for their space in our magazine.

Article 35 order of convention business

This is fine for the Transportation Division convention in 2011. Our corresponding provision is Article 7, Section 10.

Article 36 convention rules of order

This may be fine for the Transportation Division convention in 2011, although the election of vice presidents will not occur on a Tuesday (Rule 25). The rules of order for the SMART convention are developed by the Rules Committee appointed by the General President which meets just prior to the start of the convention, according to Article 7, Section 7 of the SMWIA Constitution.

Article 38 savings clause

Our corresponding provision is Article 34. They do not appear to conflict.

Article 39 local unions

Locals are chartered pursuant to Article 10, Section 1 of the SMWIA Constitution.

Article 40 jurisdiction

Lines 10-15 conflict with Article 16, Section 9 (transfers) and with Article 3, Section 2(g) of the SMWIA Constitution giving the General President authority of the jurisdiction of the international.

Article 41 membership

Lines 8-12 conflicts with Article 16, Sections 2 and 3(a) of the SMWIA Constitution. The membership pledge is printed on the application form.

Article 43 membership cards

Does "life membership" mean a member carrying a gold embossed card no longer has to pay dues? If so, that would conflict with Article 10, Section 2(g)8 of the SMWIA Constitution.

Article 47 transfers

We would like to discuss this article in light of our Article 16, Section 9.

Article 48 local union funds

We would like to discuss this article in light of our Article 10, Sections 2(i) and 13, Article 12, Section 9, and Article 21, Section 9 of the SMWIA Constitution.

Article 49 payment of dues/assessments

The second sentence conflicts with Article 16, Section 11 and 13(c) of the SMWIA Constitution., i.e. members are not suspended until dues are 2 months delinquent. Non-working sick and disabled members continue to pay dues to remain in good standing. The dues are set in Article 10, Section 2(g)8.

Article 51 readmission

A suspended rail member for non-payment of dues must pay a reinstatement fee of not less than \$25 but not more than \$400 as determined by each local union, according to Article 21, Section 12(c) of the SMWIA Constitution. A new application form does not have to be filed, according to Article 16, Section 12(a) of the SMWIA Constitution. A rail member who is "expelled" or forfeits his membership for non-payment of dues (4 months) must reinitiate and pay not less than \$25 but not more than \$400 as determined by each local union, according to Article 21, Section 12(b). A member suspended or expelled for cause may be readmitted in accordance with the procedures in Article 16, Section 12(b).

Article 55 local meetings

Local union membership meetings are expected to occur at least quarterly rather than monthly, according to Article 10, Sections 6(a) and 9(a). Calling a special meeting is covered by Section 6(a) as well. What constitutes a quorum is established by each local.

Article 56 local officers

UTU locals, like our rail district councils, do not have as many officers as SMWIA locals do, which are listed in Article 12, Section 1. The SMWIA locals do not have an officer entitled collector. Our steward provisions are in Articles 15 and Article 22, Section 12. There do not appear to be any conflicts though.

Article 57 elections in local unions

We would like to discuss elections of local union officers. Our elections are covered in Article 12, Sections 4-8 of the SMWIA Constitution. We understand that elections of Legislative Reps will occur this fall.

Article 58 installation of local officers

We have a different oath at p. 130 of the SMWIA Constitution. This is not necessarily a conflict though.

Article 59 duties of local president

Our corresponding provision is Article 13, Sections 1 and 8. They do not appear to conflict directly.

Article 60 duties of vice president

Our corresponding provision is Article 13, Section 2. They do not appear to conflict.

Article 63 duties of local secretary

Our corresponding provision is Article 13, Section 3. They do not appear to conflict.

Article 64 duties of local treasurer

Our corresponding provision is Article 13, Section 4. They do not appear to conflict.

Article 65 duties of local collector

These duties are part of the duties of the local financial secretary-treasurer in Article 13, Section 4. We would like to discuss the duties of all local union officers to be sure we agree that there is no conflict.

Article 67 duties of trustees

Our corresponding provision is Article 13, Section 5. Let's discuss.

Article 68 declared vacancies

Our corresponding provision is Article 12, Section 11. Let's discuss.

Article 71 bonding

Seems to supplement UTU Article 15 and SMWIA Article 5, Section 1(c).

Article 72 surplus assets of local unions

Surplus assets of local union deposited with the international in a safety deposit box. Let's discuss.

Article 73 revoking local union charters

There are several conflicts within this article with Article 3, Sections 2(a) and (d) and Article 10, Section 9 of the SMWIA Constitution.

Article 74 charges and trials

Our charges and trials provisions are Articles 17 and 18. We see this as a conflict.

Article 75 appeals

Appeals are covered by Article 19 of the SMWIA Constitution. We see this as a conflict except for decisions of Local Committees of Adjustment.

Article 77 order of local union meetings

Our corresponding provision is Article 10, Section 6(b). They do not appear to conflict.

Article 80 preservation of craft autonomy

We think section (e) may conflict with the authority of the General President in Article 3. Let's discuss.

Article 81 local committees of adjustment

Where International President is mentioned, it will be the President, Transportation Div.

Article 82 general committees of adjustment

Can this process be simplified?

Article 83 retired members

Retired members in good standing with the right to vote at membership meetings pay dues between \$15 and \$22 a month as determined by their local union, according to Article 10, Section 2(g)8. Retired (or disabled) members over 60 may elect limited membership with dues of \$48 a year but no right to vote at membership meetings, according to Article 16, Section 7. Some SMWIA local unions have retiree clubs but they are not governed by the SMWIA Constitution.

Article 85 duties of general committees of adjustment

Line 20 must be read consistent with Article 30, Sections 3 (Strikes) and 4 (Strike Benefits) of the SMWIA Constitution. The reference to international president could be phrased, "the General President with the recommendation of the President, Transportation Division may order a strike."

Article 90 carrier mergers

Let's discuss lines 31-41.

Article 91 association of gen. chairpersons

The reference to international president in line 49 could be phrased, "A strike may be authorized by the General President with the recommendation of the President, Transportation Division."

Let's discuss the ratification process in lines 72-74.

Article 92 strikes

Strike assistance is covered in Article 30, Section 4(h) of the SMWIA Constitution. Strike benefits are covered in Article 30, Sections 4(c) and (k). Also, let's discuss lines 91-94.

Article 100 employee policy

Since there is a CBA, is section (2) "void and of no effect" as stated in section (5)? Overall, we would like to discuss this article.

Designated Legal Counsel policy

Is this policy a part of the UTU Constitution? If so, let's discuss.