

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

Carmelita Otis, <i>et al.</i> ,	)	
	)	
Charging Parties,	)	
	)	
and	)	Case No. L-CB-06-035-C
	)	
Chicago Joint Board, Local 200, Retail	)	
Wholesale, Department Store Union,	)	
	)	
Respondent.	)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

On May 24, 2021, Administrative Law Judge (ALJ) Michelle Owen issued a Recommended Decision and Order (RDO) recommending findings concerning Respondent Chicago Joint Board, Local 200, Retail, Wholesale, Department Store Union (Local 200)’s ability to pay the restitution and/or distribution of the \$375,000 settlement to the Charging Parties in accordance with the Board’s May 19, 2010 Decision and Order plus interest accrued since the date that order was issued. Local 200 filed exceptions to the RDO and requested oral argument. Charging Parties Carmelita Otis, et al., timely responded as did the People, ex rel. Illinois Labor Relations Board.

ALJ Owen provides in her RDO, a detailed and comprehensive recitation of the lengthy procedural posture of this case. To summarize, the case comes to us on remand from the Illinois Appellate Court’s June 26, 2018 order “for a determination of Local 200’s ability to pay the restitution and/or distribution of the \$375,000 settlement to the charging parties in accordance with the final order of the ILRB plus interest since the date of that order.” In resolving the underlying unfair labor practice charge, we directed Local 200 to pay each of the individual Charging Parties the amounts determined by the ALJ in the compliance hearing to be due. When Local 200 failed to pay as directed after the Appellate Court affirmed the Board’s compliance Decision and Order, a rule to show cause action was filed with the court and entered on March 23, 2017, resulting in the June 26, 2018 remand order.

After 4 days of hearing and the submission of numerous exhibits, ALJ Owen issued her RDO containing a detailed and thorough recitation of the evidence adduced at hearing in support of her recommendations finding that:

1. Local 200 has not shown it does not have the means to pay as directed by the Board and ordered by the Court.
2. The evidence supports a finding that Local 200 has an agency relationship with the Joint Board.
3. Local 200 and the Joint Board have not shown that they do not have the ability to recoup the finds that were wrongly distributed to members of Local 200.
4. Local 200 and the Joint Bord have not shown that they do not have the ability to comply with the Order through inter-union loans, including loan(s) from the Joint Board, RWDSU, and or the UFSCW.

Local 200 takes exception to the ALJ's recommended findings and requested oral argument based on the "novelty of the role of, and the issues presented to, the ILRB in this matter."

As a threshold matter, we deny the request for oral argument. Section 1200.135(c) of our rules provides for the grant or denial of requests for oral argument based on the significance, complexity, and novelty of the issues. 80 Ill. Adm. Code 1200.135(c).<sup>1</sup> Although the role of the Board on remand and the issues presented by the court's remand order may be novel, such issues were fully briefed, and we do not believe conducting an oral argument will further aid us in executing the Appellate Court's instructions or further clarify our role or the issues involved. Moreover, the issues presented in this matter are mostly factual and whether those findings of facts are supported by the evidence adduced at hearing is not an issue so novel, significant, or complex, that an oral argument is needed.

Local 200's exceptions are likewise unpersuasive. Its arguments in support of its exceptions were presented and considered by the ALJ, and Local 200 does not provide any compelling reason to reject the ALJ's recommendations. As such, we accept all of the ALJ's recommendations as we find that they are amply supported by the record and her sound reasoning.

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<sup>1</sup> Section 1200.135(c) states: Parties desiring oral argument before the Board shall request oral argument and state the reasons for the requests in their appeals, exceptions, and responses. The Board shall grant or deny requests for oral argument depending on the significance, complexity and novelty of the issues. In addition, the Board may, on its own motion, request oral argument, depending upon the significance, complexity and novelty of the issues. 80 Ill. Adm. Code 1200.135(c).

For these reasons, we reject Local 200's exceptions and adopt the ALJ's RDO in its entirety as findings of the Board in accordance with the Appellate Court's instructions.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Lynne O. Sered  
Lynne O. Sered, Chairman

/s/ Charles E. Anderson  
Charles E. Anderson, Member

/s/ Angela C. Thomas  
Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on August 12, 2021, written decision approved at the Local Panel's public meeting in Chicago, Illinois, on September 23, 2021, and issued on September 24, 2021.

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

Carmelthia Otis, et. al,	)	
	)	
Charging Parties,	)	
	)	
and	)	Case No. L-CB-06-035-C
	)	(Appellate Case No. 1-14-0802)
Chicago Joint Board, Local 200, Retail,	)	
Wholesale and Department Store Union,	)	
	)	
Respondent.	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On June 26, 2018, the Illinois Appellate Court remanded to the Illinois Labor Relations Board’s Local Panel (Board) for a determination of Chicago Joint Board, Local 200, Retail, Wholesale and Department Store Union’s (Local 200) ability to pay the restitution and/or redistribution of the \$375,000.00 settlement to Carmelthia Otis, et. al (Charging Parties) in accordance with the final order of the Board plus interest accrued since the date of that order. Chicago Joint Bd., Local 200, Retail, Wholesale & Dept. Store Union v. Ill. Labor Relations Bd., Local Panel, Carmelthia Otis, et. al; People ex. rel. Illinois Labor Relations Bd., Local Panel v. Chicago Joint Bd., Local 200, Retail, Wholesale & Dept. Store Union; and Carmelthia Otis, et. al, No. 1-14-0802 (Order, Petition for Review of Decision and Order of the Illinois Labor Relations Board, Local Panel, ILRB No. L-CB-06-035-C, Cross-Petition for Enforcement of an Order of the Illinois Labor Relations Board, Local Panel, ILRB No. L-CB-06-035-C, IL App (1st), June 26, 2018). [Local 200, Ex. 2].<sup>1</sup>

A hearing was conducted on January 29, February 19, April 11, and July 24, 2019, in Chicago, Illinois, at which time the People *ex rel.* Board, Local 200, and the Charging Parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, and to argue orally.

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<sup>1</sup> References to Local 200’s exhibits will be cited as “Local 200, Ex. (number)”, to the People’s exhibits as “People’s, Ex. (number)”, and to the Charging Parties’ exhibits as “Charging Parties, Ex. (number).” References to the transcript will be cited as “Tr. (page number).”

The parties filed timely post-hearing briefs on May 1, 2020. On May 6, 2020, counsel for Local 200 noted that it had exceeded the 50-page limit for post-hearing briefs contained in Section 1200.140(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code § 1200.140(b).<sup>2</sup> On May 7, 2020, the People stated that they had no objection to the length of Local 200's brief. On May 7, 2020, the Charging Parties filed a supplement to their post-hearing briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

**I. PROCEDURAL HISTORY**

On March 28, 2006, the Charging Parties filed an unfair labor practice charge with the Board alleging that Local 200 had violated Section 10(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), by failing in its duty to fairly represent employees at the County of Cook's Provident Hospital in a grievance concerning overtime.

On July 1, 2009, after a hearing on the complaint, Administrative Law Judge ("ALJ") Sharon Wells, in a Recommended Decision and Order, determined that Local 200 had violated its duty of fair representation to the Charging Parties, members of its bargaining unit who are employed as pharmacists at Provident Hospital, in violation of Section 10(b)(1) of the Act in its handling and distribution of the grievance arbitration settlement. She recommended several

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<sup>2</sup> On May 6, 2020, Mark Stein, one of the attorneys for Local 200, emailed the undersigned and the other parties stating:

On re-reading the Board's rule on the lengths of briefs, Section 1200.140(b), I see that I may have exceeded the 50-page limit by including as exhibits the two prior Board decisions in this case and the UFCW's previously-filed motion to revoke subpoena.

If that is your view, I understand that pursuant to the Rule, "All of the pages in excess of the 50 page limit will be rejected."

However, I am not sure the Rule was intended to apply to the submission of copies of prior Board decisions or a previously-filed motion in the case. I note that if the 2 prior Board decisions do not count, local 200's brief would not exceed the 50-page limit even if the pages of the UFCW motion were counted.

I note that per the Rule, it is too late to seek leave to exceed the 50-page limit.

In any event, none of the exhibits are of crucial importance to the brief.

remedies including ordering Local 200 to pay the Charging Parties the amounts owing to them after recalculation of the \$375,000.00 arbitration settlement.

On May 19, 2010, the Board issued a Decision and Order accepting ALJ Well's recommendation that Local 200 violated Section 10(b)(1) of the Act and ordering Local 200 to recalculate, properly and accurately, the distribution of the \$375,000.00 settlement. Chicago Joint Bd., Local 200 (Otis, et al.), 26 PERI ¶ 45 (IL LRB-LP 2010). On June 22, 2011, the Illinois Appellate Court affirmed the Board's Decision and Order. Chicago Joint Bd., Local 200, Retail, Wholesale and Dep't Store Union v. Ill. Labor Relations Bd., Local Panel, No. 1-10-1497, 2011 IL App (1st) 101497.

On September 23, 2011, the Charging Parties filed a Petition for Enforcement with the Board requesting that it begin proceedings to enforce the Board's May 19, 2010 Order. On June 28, 2012, (with an Erratum filed on July 3, 2012), the Board's Compliance Officer issued a compliance order setting forth in detail the amounts owing to the Charging Parties after recalculation of the \$375,000.00 to restore them to the position they would have been in absent the Local 200's violation of the Act.

On October 17, 2013, the undersigned ALJ issued a Recommended Compliance Decision and Order, recommending that the Board find that Local 200 had not complied with the Board's May 19, 2010, Decision and Order directing Local 200 to recalculate, properly and accurately, the distribution of the \$375,000.00 overtime grievance settlement and pay Charging Parties the amounts due them after proper recalculation of the settlement, including interest thereon at the rate of seven percent per annum.

On February 28, 2014, the Board issued a Decision and Order adopting the undersigned ALJ's Recommended Decision and Order and directing Local 200 to pay each of the individual Charging Parties the sum of money owed them as set forth in footnote 5 and the appendix of the ALJ's Recommended Compliance Decision and Order plus seven-percent annual interest on the base overtime amount owed each of the Charging Parties for the period from July 31, 2012, to the date that Local 200 complied with the Decision and Order. Chicago Joint Bd., Local 200 (Otis, et al.), 30 PERI ¶ 217 (IL LRB-LP 2014). On May 15, 2016, in an unpublished opinion, the Illinois Appellate Court affirmed and enforced the Board's February 28, 2014, Decision and Order. Chicago Joint Bd., Local 200 v. Ill. Labor Relations Bd. Local Panel v. Chicago Joint Bd., Local 200, 2016 IL App (1st) 140802-U (appeal denied, 2016, 406 Ill. Dec. 320, 60 N.E. 3d 871).

On January 27, 2017, the General Counsel of the Board informed Local 200 that the Appellate Court had issued a mandate regarding its Order in 1-14-0802, Chicago Joint Bd., Local 200, 2016 IL App (1st) 140802-U. [Local 200, Ex. 8]. The General Counsel included the back pay and interest calculations for the nine individuals at issue through January 30, 2017. [Local 200, Ex. 8]. The General Counsel directed Local 200 to remit payment to those individuals by January 30, 2017. [Local 200, Ex. 8]. The General Counsel noted that as of January 27, 2017, the back pay and interest due from Local 200 totaled \$284,300.40. [Local 200, Ex. 8]. The General Counsel further noted that failure to do so would result in a referral to the Illinois Attorney General pursuant to Section 11(f) of the Act for a rule to show cause action before the Appellate Court. [Local 200, Ex. 8].

On March 2, 2017, the People *ex. rel.* Board, petitioned the Appellate Court for a Rule to Show Cause why Local 200 should not be held in contempt for its continuing violation of the Court's order entered on May 25, 2016, affirming the Board's final administrative decision in Chicago Joint Bd., Local 200 (Otis, et al.), 30 PERI ¶ 217. [Local 200, Ex. 21].

On March 23, 2017, the Appellate Court entered its Rule to Show Cause allowing Local 200 thirty-five days from the date of the order to show cause why it should not be held in contempt for failing to comply with the Court's order of May 26, 2016. Chicago Joint Bd., Local 200, Retail, Wholesale & Dept. Store Union, No. 1-14-0802 (Rule to Show Cause, IL App (1st), March 23, 2017).

On May 11, 2018, the Appellate Court issued an Order finding:

1. That the ILRB ordered Local 200 to redistribute a \$375,000.00 settlement with Cook County plus interest to named members of Local 200 after finding that Local 200 committed an unfair labor practice when it did not distribute the funds fairly to those members who suffered a loss of overtime pay due them, and that the unfair distribution was the result of the actions of Local 200 by its president, George Leonard in calculating the distribution;
2. That Local 200 has not redistributed the funds and has not paid the named members in the new distribution Order any funds at all;
3. That whether Local 200 has the means to pay as directed by the ILRB and ordered by this Court is a question of fact;
4. That whether Local 200 has an agency relationship with the Chicago Joint Board and/or whether the Chicago Joint Board has an agency relationship with Local 200 is a question of fact;
5. That whether Local 200 and/or the Chicago Joint Board have the ability to recoup the funds that were wrongly distributed to members of Local 200 is a question of fact;

6. That whether Local 200 and/or the Chicago Joint Board have the ability to comply with the Order through inter-union loans, including loan(s) from the Retail Wholesale and Department Store Union is a question of fact.

Chicago Joint Bd., Local 200, Retail, Wholesale & Dept. Store Union, No. 1-14-0802 (Order, IL App (1st), May 11, 2018). [Local 200, Ex. 1]. The Court ordered, “(1) [t]hat this matter is remanded to the ILRB for a determination of Local 200’s ability to pay the redistribution of \$375,000.00 plus interest as ordered; and, that the fact finding by the ILRB includes, but is not limited to, all of the above issues on remand; and (2) that the mandate shall issue forthwith.” Id.

On June 1, 2018, Local 200 filed a motion requesting that the Court recall its mandate and modify its Order dated May 11, 2018. [Local 200, Ex. 6]. On June 27, 2018, the Court recalled the mandate issued on May 11, 2018, and entered an amended Order dated June 26, 2018. Chicago Joint Bd., Local 200, Retail, Wholesale & Dept. Store Union, No. 1-14-0802 (Order, IL App (1st) June 26, 2018). [Local 200, Ex. 2]. The Court’s June 26, 2018 Order made the following findings:

1. That the ILRB ordered Local 200 to redistribute a \$375,000.00 settlement with Cook County plus interest to named members of Local 200 after finding that Local 200 committed an unfair labor practice when it did not distribute the funds fairly to those members who suffered a loss of overtime pay due them, and that the unfair distribution was the result of the actions of Local 200 by its president, George Leonard in calculating the distribution;
2. That Local 200 has not redistributed the funds and has not paid the named members in the new distribution Order any funds at all;
3. That whether Local 200 has the means to pay as directed by the ILRB and ordered by this Court is a question of fact;
4. That whether Local 200 has an agency relationship with the Chicago Joint Board and/or whether the Chicago Joint Board has an agency relationship with Local 200 is a question of fact;
5. That whether Local 200 and/or the Chicago Joint Board have the ability to recoup the funds that were wrongly distributed to members of Local 200 is a question of fact;
6. That whether Local 200 and/or the Chicago Joint Board have the ability to comply with the Order through inter-union loans, including loan(s) from the Retail Wholesale and Department Store Union is a question of fact.

Id. [Local 200, Ex. 2]. The Court ordered, “(1) [t]hat this matter is remanded to the ILRB for a determination of Local 200’s ability to pay the restitution and/or redistribution of the \$375,000 settlement to the charging parties in accordance with the final order of the ILRB plus interest accrued since the date of that order; and (2) [t]he mandate shall issue forthwith.” Id.

At its August 7, 2018, public meeting, the Local Panel of the Board appointed the Board's General Counsel to conduct proceedings in accordance with the Court's order. On August 9, 2018, the Board's General Counsel issued an order directing the parties to appear for a pre-proceeding conference on September 13, 2018. Carmelthia Otis, et al. & Local 200, Chicago Joint Bd., Retail, Wholesale, Dept. Store Union, Case No. L-CB-06-035-C (Appellate Case No. 1-14-0802) (IL LRB-LP G.C., August 9, 2018). [Board, Ex. 1].

On September 17, 2018, the Board's General Counsel issued an order noting that the parties had met for a pre-proceeding conference on September 13, 2018, and the parties had been presented with two options on the framework for the remand proceedings summarized as follows:

Option 1: The matter would be assigned to an Administrative Law Judge (ALJ) to conduct the substance of the remand proceedings which will include an investigatory hearing under Section 1210.107 of the Board's Rules. 80 Ill. Admin. Code § 1210.107. After the close of the record, the ALJ will issue a Recommended Decision and Order (RDO) to which the parties may file exceptions and the Board will make its determination to accept or reject the RDO. The Board's General Rules of Procedures contained in Part 1200 would also apply.

Option 2: The matter would be assigned to an ALJ to conduct the substance of the remand proceedings which may include, among other things, an investigatory hearing. After the completion of such proceedings, the ALJ will draft a report of their findings and then submit them to me and I will forward those findings to the parties and the Appellate Court on behalf of the Board. Only the Board's General Rules of Procedures would apply under this option.

Otis, Case No. L-CB-06-035-C (Appellate Case No. 1-14-0802) (IL LRB-LP G.C., September 17, 2018). [Board, Ex. 2]. The General Counsel's Order directed the parties to agree on which option should be used as a framework for the remand proceedings and to advise of their selection in writing. Id. The Order noted that if the parties were not able to reach an agreement by October 1, 2018, the General Counsel would make the determination. Id.

On October 3, 2018, the Board's General Counsel issued an order noting that Local 200 selected Option 1 as described in the September 17, 2018 order, Charging Parties selected Option 2, and the People deferred to the selection of the parties with certain provisions in the event Option 2 was selected as the format. Carmelthia Otis, Case No. L-CB-06-035-C (Appellate Case No. 1-14-0802) (IL LRB-LP G.C., October 3, 2018). [Board, Ex. 3]. The Order further noted that considering that the parties were not in agreement, the General Counsel selected Option 1 as the format for the remand proceedings. Id. The Order further provided that the undersigned ALJ

would be assigned to preside over the remand proceedings using the format set forth in Option 1 described in the September 17, 2018 order. Id.

The parties proceeded to hearing before the undersigned on January 29, February 19, April 11, and July 24, 2019. The parties timely filed post-hearing briefs on May 1, 2020. On May 7, 2020, the Charging Parties filed a supplement to their brief.

## **II. ISSUES AND CONTENTIONS**

The issue is whether Local 200 has the ability to pay the restitution and/or redistribution of the \$375,000 settlement to Charging Parties in accordance with the final order of the Board plus interest accrued since the date of that order.

Local 200 asserts that the only issue that the Board is required to resolve on remand is whether Local 200 has the ability to pay the settlement. Local 200 contends that the Court's May 11, 2018 Order listed certain factual issues and required the Board to address them all, while the Court's June 26, 2018 Order listed certain factual issues, but only required the Board to determine "Local 200's ability to pay" the settlement. Local 200 asserts that the Court, by removing the requirement that the Board address other factual issues listed in its initial Order, showed receptivity to Local 200's argument that it would be improper for the Board to consider the issue of whether the Chicago Joint Board ("Joint Board") is liable for the underlying unfair labor practice charge in this case. Local 200 asserts that the Joint Board was not a party to the underlying proceedings in this case and has not been made a party to the subsequent contempt proceedings. Local 200 asserts that the Rule to Show Cause does not require Local 200 to show that any party of which it is an agent is not in contempt, nor does Section 11(f) of the Act, provide for enforcement of an order of the Board against "principals" of a person who commits an unfair labor practice. Local 200 asserts that the issue of whether Local 200 is or was an agent of the Joint Board would only be relevant to a determination of whether the Joint Board was liable for the underlying unfair labor practice in this case, or liable generally for the debts of Local 200. However, Local 200 asserts, under Illinois contempt law, it is improper to use contempt proceedings to attempt to hold a non-party affiliated entity liable for the underlying wrongful conduct, as opposed to conduct in contempt of court. Johnson v. St. Therese Medical Center, 296 Ill. App. 3d 341 (2nd Dist. 1998) (judgment against partnership cannot be enforced against partner without separate suit); Lange v. Misch, 232 Ill. App. 3d 1077, 1081 (4th Dist. 1992) (contempt proceedings cannot be used to

pierce the corporate veil). Local 200 asserts that the Court withdrew its requirement that the Board address all listed factual issues at least in part to make it clear that whatever issues might subsequently be addressed in the Court, the Board need not consider the Joint Board's liability for the underlying unfair labor practice.

Local 200 asserts that as there is no dispute that Local 200 has failed to pay the settlement, Local 200 has the burden to provide that it is unable to pay the settlement, “*if the law set down in matrimonial cases is to apply to this case.*” [Emphasis in original]. However, Local 200 asserts, in Cook County v. Lloyd A. Fry Roofing Co., 59 Ill.2d 131, 138 (1974), a non-matrimonial case, the Court did not state that the burden of proof had shifted on the issue of whether the defendant was unable to comply with the court order, and indeed seemed to imply, if anything, that the party seeking a finding of contempt had the burden to prove inability to comply. Local 200 asserts that assuming arguendo that it has the burden of proving inability to pay, Local 200 does not also have the burden of proof on all other issues in this proceeding, including the liability of independent organizations that it asserts, have never been made parties to these proceedings. Local 200 claims that the law is clear that the burden to prove contempt rests initially on the party seeking a finding of contempt, and shifts against the alleged contemnor only upon proof that the alleged contemnor has failed to comply with a court order, citing In re Marriage of Logston, 103 Ill.2d 266, 285 (1984); In re Parentage of Melton, 321 Ill. App. 3d 823, 829 (1st Dist. 2001); In re Marriage of Winton, 216 Ill. App. 3d 1084 (2nd Dist. 1991). Additionally, Local 200 contends that while Local 200 may have the burden to prove that it pursued “realistic” measures to pay the settlement, the People and the Charging Parties have the burden to prove that measures they have suggested are in fact realistic. Local 200 asserts that “notably”, the Court’s June 26, 2018, Order does not focus on burdens and presumptions, but simply states the factual issue that must be decided by the Board as “Local 200’s ability to pay.” [Local 200, Ex. 2].

Local 200 also argues that it has no ability to pay the settlement because it has no assets and no income. Local 200 asserts that it has no assets and no income because all dues of members of Local 200 are sent by the employer directly to the Joint Board, a practice mandated by the Joint Board constitution which has been in effect since long before this case began.

Additionally, Local 200 asserts that the Joint Board’s payment of attorneys’ fees, in this case, is not evidence that Local 200 has the ability to pay the settlement because the fees were paid by the Joint Board and not Local 200, the Joint Board explicitly rejected Local 200’s request that

the Joint Board pay the settlement, and the attorneys' fees were paid not just to defend Local 200, but also to defend the Joint Board, which has been threatened in these proceedings, though never made a party to them. Local 200 asserts that payment by a judgment debtor of legal fees or other expenses can evidence the ability to pay part or all of a judgment, citing In re Marriage of Peterson, 319 Ill. App. 3d 325, 333 (1st Dist. 2001), but such cases do not involve payment of fees by third parties who are unwilling to pay the judgment. Local 200 asserts that the more analogous situation is presented in People v. Love, 177 Ill. 2d 550, 562-563 (1997), where the Court held that the fact that "bail money is posted may have no bearing on whether the *defendant* has the ability to pay reimbursement for the services of appointed counsel", especially as bail money may be posted by "relatives or friends" as was the case there. [Emphasis in original].

Further, Local 200 argues that it has made reasonable but unsuccessful efforts to obtain the funds to pay the settlement: requesting that the Joint Board pay for the settlement or loan Local 200 the funds to pay the settlement, holding a Local 200 membership vote to increase dues to pay for the settlement, and requesting that the Retail, Wholesale and Department Store Union ("RWDSU") pay for the settlement or loan Local 200 the funds to pay the settlement.<sup>3</sup> Local 200 asserts that the major consideration in the Joint Board's decision on this issue was that the Joint Board could not afford to grant the request. [Tr. 63, 200]. Local 200 contends that the size of the award in 2017 was approximately twice the size of the entire Joint Board treasury. [Local 200, Ex. 5]. Since then, Local 200 asserts, the size of the Joint Board's treasury has declined, while the size of the award, with accumulating interest, has risen.

Local 200 asserts that other measures suggested by the People and/or the Charging Parties, payment over time by the Joint Board, withholding per capita tax from the international union, United Food and Commercial Workers ("UFCW"), loans by the RWDSU or UFCW to the Joint Board, secession by Local 200 from the Joint Board, and recoupment, are not realistic measures, and Local 200's failure to take them should not be taken as evidence of Local 200's ability to pay the settlement. Local 200 contends that the Joint Board's president testified that the Joint Board could not afford to pay the whole award even over time. Additionally, Local 200 asserts that neither the People nor the Charging Parties have given any suggestion that a payment plan would

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<sup>3</sup> Local 200 also maintains, in its post-hearing brief, that "while it is not part of the record of this case, Local 200's undersigned attorneys represent that Local 200 requested assistance from the UFCW, the other international union with which it is affiliated, and its request was rejected." Since this was not made a part of the record in this case, I will not consider it in my analysis.

be accepted. Local 200 contends that nevertheless if the Charging Parties and the People were actually to offer to settle all claims through a payment plan (which they have not done), Local 200 would formally ask the Joint Board to accept that plan (but without much hope of success). Further, Local 200 asserts that the Charging Parties' suggestion that Local 200 could pay the award if the Joint Board withheld per capita payments to the UFCW is unrealistic because it is barred by the Joint Board constitution and testimony indicated that the payments are mandatory. [Tr. 117, 231; Local 200, Ex. 14, Art. IX, Section 3]. Local 200 further argues that secession by Local 200 from the Joint Board is also barred by the Joint Board constitution. [Local 200, Ex. 14, Art. XI, Section 3]. Local 200 asserts that the bargaining unit represented by Local 200 and the Joint Board is a historical unit and both Local 200 and the Joint Board are parties to the collective bargaining agreements with the County. [People's, Ex. 17 at 39]. Further, Local 200 asserts, there would have to be a decertification petition for Local 200 to successfully secede from the Joint Board.

Further, Local 200 asserts that Local 200 and/or the Joint Board do not have the ability to recoup the funds that were wrongly distributed. Local 200 asserts that any recoupment action would be time-barred. Local 200 contends that presumably recoupment would be attempted through an action of unjust enrichment, and the statute of limitations for unjust enrichment is five years. CitiMortgage v. Parille, 2016 IL App (2d) 150286, ¶ 40. Additionally, Local 200 asserts that the Board and the court decisions, in this case, are not *res judicata* as to recipients of the original arbitration award who were never parties to this case. Local 200 contends that the recipients could litigate all issues relating to the Charging Parties' entitlement to the proceeds of the settlement, including the meaning of the original arbitration award. Additionally, Local 200 asserts, the position of the original recipients of the settlement may be protected by the fact that the Consent Order distributing the settlement was itself an order of the arbitrator in the case. Local 200 contends that while proof that Local 200 committed an unfair labor practice allowed the Board to deviate from the Consent Order in making an award against Local 200, there has never been an allegation of an unfair labor practice or discrimination by the original recipients, not even Leonard, who was not made a respondent in the underlying unfair labor practice charge.

Local 200 also asserts that the Joint Board is not one of the officers, agents, servants, successors, or assigns of Local 200, so the Joint Board cannot be in contempt of court in these proceedings. Local 200 argues that even if it were determined that the Joint Board is an agent of Local 200, the Joint Board did not do anything to place itself in contempt, so it cannot be held in

contempt. Local 200 asserts that the identity of the employees receiving settlement proceeds and the amounts received were determined by Local 200 President Leonard, without input from the Joint Board. [Tr. 272]. Local 200 further contends that Local 200 and the Joint Board are both distinct labor organizations under the Act, the Act does not require that a local union receive the dues paid by its members, and there is no prohibition in the Act against having two labor organizations jointly represent the same bargaining unit. Local 200 asserts that there may also be a due process problem if a person or organization is found to be in contempt of court without ever having been served with process. In re Marriage of Marshall, 278 Ill. App. 3d 1071 (3rd Dist. 1996) (judgment creditor can seek to hold in contempt persons who were not parties in the underlying proceedings, but the judgment creditor must make those persons parties to the contempt proceedings). Local 200 contends that the only alleged contemnor that has been notified of these proceedings and made a party to them is Local 200. Additionally, Local 200 asserts that the Joint Board is not an agent of Local 200 because Local 200 does not have the ability or authority to control the Joint Board's disbursement of funds. Local 200 contends that as a non-party against which no judgment was entered, the Joint Board had no obligation to pay the award, regardless of other expenses it paid on behalf of Local 200. Local 200 asserts that there is no evidence that the Joint Board has ever authorized an expenditure as large as the award in this case for any purpose or would ever do so.

Finally, Local 200 asserts that the Charging Parties and the People's argument that Local 200 was irresponsible in attempting to defend itself, in this case, is not an appropriate issue for fact-finding on remand. Additionally, Local 200 notes that the Board in the underlying unfair labor practice charge proceeding denied Charging Parties' request for sanctions against Local 200, and Local 200 prevailed in fact against the Charging Parties on several issues in the subsequent compliance proceedings. Local 200 contends that it was responsible for Local 200 to litigate its position to the exhaustion of its appeals.

The People however argue that the record supports the Board making findings adverse to Local 200 on four issues named by the Appellate Court: Local 200 has the means to pay the judgment against it, Local 200 and the Joint Board share an agency relationship, Local 200 and/or the Joint Board have the ability to recoup the wrongly-distributed funds owed under the judgment, and Local 200 and/or the Joint Board have the ability to comply with the judgment through inter-union loans. The People argue that Local 200 carries the burden in establishing that it has an

excuse to avoid compliance with the underlying judgment. The People cite In re Marriage of Charous, 368 Ill. App. 3d 99, 107-08 (2nd Dist. 2006) (noting that after it is shown that alleged contemnor violated court order, burden is on alleged contemnor to prove valid excuse for noncompliance), in support of their argument. The People argue that the “Local 200 is nothing more than a shell organization, controlled at every step by the Chicago Joint Board.” The People assert that Local 200 has agreed to direct all the dues extracted from its members' paychecks directly to the Joint Board, which in turn routinely pays the expenses of Local 200. The People contend that Local 200 and the Joint Board have created an organizational structure whereby Local 200 holds no funds, and the Joint Board pays Local 200's expenses.

The People argue that Local 200's defense of inability to pay is undermined by the fact that the Joint Board has paid \$71,147.50 since March 2, 2017, to fund Local 200's defense in this case—a defense of inability to pay. The People assert that Local 200 has accessed \$71,147.50 from the Joint Board and spent it on saying that Local 200 has no funds and is unable to access funds. The People cite In re Marriage of Peterson, 319 Ill. App. 3d at 333, where the court relied, in part, on the fact that the contemnor was able to pay a \$25,000 retainer to his attorney in determining that the contemnor was able to pay the judgment entered against him. The People further assert that the fees paid to defend this case were made entirely on behalf of Local 200 and no other entity. The People assert that this is evident from the Local 200's opening statement, where counsel for Local 200 made clear that counsel appeared only on behalf of Local 200 and counsel did not appear at the hearing on behalf of the Joint Board or the RWDSU. [Tr. 33: 8-11, 18-19]. The People assert that this fact alone is telling, for Local 200 chose to spend the money that it accessed from the Joint Board on having its attorneys argue that Local 200 has no money to pay the judgment when in reality the amount it accessed for legal fees could have been used to satisfy the judgment in the first place. The People contend that the Local 200 had also accessed another \$30,000 from the Joint Board to settle this case, which amounts to a combined total of \$101,147.50 that Local 200 has conceded that it can access from the Joint Board. The People contend that these facts alone are sufficient to find that Local 200's defense of inability to pay is belied by its own concessions.

Additionally, the People assert that the president of the Joint Board admitted that the Joint Board pays all union expenses of Local 200, including Local 200's legal expenses, and the Joint Board conceded that the judgment at issue, in this case, is a union expense. (Tr. 134:12-15, 136:15-

19, 163:21-164:1, 166:8-167:17, 203:14-16). Yet remarkably, the People assert, the Joint Board refuses to pay the judgment against Local 200. (Tr. 163:21-164:1, 315:21-316:2, 316:15-16). The People contend that the Joint Board's decision to not pay this one union expense is striking, given that it takes all of the dues paid by Local 200's members every month. (Tr. 491:7-22; People's Ex. 17 at A15). The People assert that this is the result of the organizational structure that Local 200 and the Joint Board have "concocted." (Tr. 333:20-24, 451:11-452:3; People's Ex. 17 at A15). The People argue that Local 200's only reason for not paying the judgment is the "simple fact" that the Joint Board holds all of Local 200's membership dues. (Tr. 491:7-22). The People cite to Lloyd A. Fry Roofing, 59 Ill. 2d at 137 (party cannot assert defense of inability to pay against contempt action where it voluntarily created the incapacity), in support of their argument that Local 200 cannot voluntarily enter into this sort of arrangement with the Joint Board whereby all of its members' dues bypass Local 200 and go directly to the Joint Board's "coffers" and then simultaneously argue that Local 200 lacks funds to satisfy the judgment. Additionally, the People assert that when the Joint Board agreed that it would allow Local 200 to use a marginal increase in membership dues to satisfy the judgment, Local 200's membership voted down a dues increase. (Tr. 349-350:3). The People assert that the Joint Board and Local 200 are voluntarily creating circumstances to avoid paying the Charging Parties.

Further, the People argue that Local 200 shares an agency relationship with the Joint Board, and the Joint Board controls the activities of Local 200 to such an extent that Local 200 appears "to be nothing more than a shell organization." The People assert that there is not just an agency relationship between Local 200 and the Joint Board, rather, the entities are "one and the same." The People contend that the following facts support their argument: the entire purpose of the Joint Board is to oversee the local unions including Local 200, and to promote their general welfare; the activities of Local 200 are coordinated by the Joint Board; the Joint Board has a central organizing staff, but its purpose is to serve the benefits of the local unions, including Local 200; the Joint Board handles all cash transactions for Local 200; financial documents have been signed by Local 200's treasurer at the direction of the president of the Joint Board; financial reports of Local 200 filed with the United States Department of Labor have been prepared by an accountant of the Joint Board; any dues collected from the paychecks of Local 200's members go directly to the Joint Board; the Joint Board's constitution provides that the bylaws of Local 200 shall not conflict in any way with the Joint Board's constitution and bylaws; the Joint Board conducts negotiations for

Local 200; during negotiations, the Joint Board hires the attorneys, not Local 200; there has never been a contract negotiation involving Local 200 where the Joint Board was not involved; during negotiations, the Joint Board reimburses Local 200 members' lost wages, parking, and lunches; all expenses of contract negotiations are paid by the Joint Board; Local 200 cannot enter into a contract without the approval of the Joint Board; the Joint Board has the authority to sign contracts on behalf of Local 200; if Local 200 were to open a bank account, the Joint Board would be the one to control it; the Joint Board's president signs collective bargaining agreements on behalf of Local 200; local union meetings are controlled by the Joint Board; settlement in this case, and the selection and payment to the counsel of Local 200 is controlled by the Joint Board; and the Joint Board pays Local 200's legal expenses. [Tr. 36: 12-17, 48:8-11, 51:18-19, 64:4-8, 66:14-17, 86:24-87:6, 94:3-5, 109:19-110:18, 112:15-17, 113:8-16, 138:12-18, 141:19-142:1-14, 143:19-144:13, 145:2-13, 147:2-10, 154:6-155:1, 163:21-164:1, 179:16-19, 265:4-9, 277:24-278:17, 288:21-24, 290:2-8, 291:13-20, 292:19-293:3, 304:18-305:17, 351:24-352:5, 388:14-24, 392:19-393:15, 416:10-15, 462:14-19, 465:23-466:2, 477:9-21, 474:8-12; Local 200, Exs. 12, 13, 14; People's, Ex. 7 at A53, E99].

The People further assert that Local 200 cannot simultaneously refuse to even attempt to recoup the improperly distributed funds and, at the same time, argue that the funds cannot be recouped, citing Lloyd A. Fry Roofing, 59 Ill. 2d at 137 (party cannot assert defense of inability to pay against contempt action by voluntarily creating its incapacity).

The People also assert that Local 200 and the Joint Board can utilize inter-union loans to satisfy the judgment or at least a portion of it. The People note that the Joint Board has made loans to its local unions. The People further note that RWDSU has made loans to its local unions. The People assert that although neither of the unions has agreed to utilize loans to satisfy the settlement in this case that is not an excuse to disobey a court order. The People contend that if the Joint Board cannot pay the entirety of the settlement at once, it could arrange to satisfy the settlement through a monthly payment plan. The People note that Local 200 President Leonard however chose not to pursue this course of action. [Tr. 279: 1-12]. The People argue that this is despite the fact that the Joint Board's president testified that if Local 200 asked the Joint Board to assist in paying the judgment through a payment plan, the Joint Board's executive board would consider the request. (Tr. 174: 18-22). The People assert that simply not asking the Joint Board to pursue this option is not enough to show that there is a true inability to pay, citing In re Marriage of Dall,

212 Ill. App. 3d 85, 98 (5th Dist. 1991) (defense to contempt consisting of financial inability to pay must be shown by definite and explicit evidence). The People assert that Local 200 must at least try, but it has not done even that. (Tr. 131: 12-132:3; 315: 21-316:12).

The Charging Parties set forth the same arguments as the People. Additionally, the Charging Parties request an order appointing a receiver for the Joint Board and Local 200, to the extent they are separate entities, to bring a lawsuit against Cornfield and Feldman, LLP, the law firm representing Local 200 in this case, for breach of fiduciary duty, or in the alternative, a finding that and a recommendation to the Appellate Court that a receiver should be appointed for the Joint Board and Local 200, to the extent they are separate entities, to bring a lawsuit against Cornfield and Feldman for breach of fiduciary duty.

The Charging Parties assert that Cornfield and Feldman have breached their duty to the Joint Board and Local 200. The Charging Parties contend that Cornfield and Feldman have represented Local 200 from the inception of this matter in 2006 and have known from the inception that Local 200 has no assets from which to pay any settlement that may be levied against it. (Tr. 375:1-21). The Charging Parties argue that the Joint Board has paid more in legal expenses than the total amount owed under this judgment. (Tr. 372:11-373:8). The Charging Parties assert that Cornfield and Feldman have litigated this case in bad faith from its inception, and that bad faith constitutes a breach of fiduciary duty which must be recompensed. The Charging Parties assert that a legal action for this breach of fiduciary duty is an asset that could be used to pay the settlement to the Charging Parties.

Additionally, the Charging Parties assert that Cornfield and Feldman admitted to violating the page limit on post-hearing briefs, by filing a 79-page post-hearing brief. The Charging Parties assert that this further exemplifies the law firm's continuing breach of duty to Local 200 and the Joint Board, to the extent they are separate entities. The Charging Parties contend that if as Local 200's attorney states, "none of the exhibits are of crucial importance to the brief" then why charge for and collect fees incurred from Local 200 and the Joint Board, for including them. The Charging Parties assert that there is no logical reason for the law firm to charge for and collect legal fees for a bloated and "not crucial" brief, especially when attempting to argue that Local 200 and the Joint Board have no money to pay the Charging Parties.

### **III. FINDINGS OF FACT<sup>4</sup>**

#### **Local 200**

Local 200 is the exclusive representative of a bargaining unit comprised of a variety of employees including pharmacists at the County of Cook's Stroger Hospital and Provident Hospital. As of March 2018, Local 200 had a membership of approximately 316 employees. [People's, Ex. 8]. Local 200 is a party to two collective bargaining agreements: one covering pharmacy staff and one covering administrative staff. Local 200 has a constitution and bylaws. [Local 200, Ex. 12]. The Local 200 constitution states that the local is required to have a president, secretary-treasurer, recorder, and three vice-presidents. [Local 200, Ex. 12].

Leonard has been a pharmacist for Stroger hospital for over twenty years and is represented by Local 200. Leonard has also been the president of Local 200, an elected, unpaid position, for over twenty years except for a short time, before 2006, when there was a different president. As president of Local 200, Leonard's duties include defending and supporting the members of the local and negotiating collective bargaining agreements along with the rest of Local 200's negotiating team.

Audrey Nunn, a member of Local 200, has been the treasurer, an elected, unpaid position, of Local 200 for approximately fifteen years. According to the Local 200 constitution, the secretary-treasurer assists the president in carrying out the president's duties and responsibilities and performs the duties of the president when the president is absent. [Local 200, Ex. 12]. As treasurer, Nunn attends union negotiations, serves as a union representative, and attends disciplinary meetings with local members. Nunn did not receive any money from the original distribution of the settlement in this case.

#### **Joint Board**

Local 200 is affiliated with the Joint Board. The Joint Board is also affiliated with three other local unions including Local 291, Local 20, and Local 853. Local 291 represents approximately twenty employees at Saks Fifth Avenue. Local 20 represents approximately 106 employees at Follett. Local 853 represents approximately nine employees at Rosin Optical. The local unions affiliated with the Joint board elect their own officers, file their own grievances, appoint their own stewards, and choose their own negotiating committees.

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<sup>4</sup> George Leonard, Ryan McIntyre, Andrea Nunn, Lisa Russell, Errol Staine, and Amelia Tucker testified on behalf of Local 200. The Charging Parties and the People did not present any witnesses.

Since 2018, Local 200 and the Joint Board have been affiliated with the international union UFCW. Until 2018, Local 200 and the Joint Board were affiliated with the international union RWDSU. In 2018, the RWDSU merged with the UFCW. The UFCW has provided Local 200 with union steward training and assisted Local 200 in organizing pharmacists and technicians in Chicago. UFCW also has a strike fund that sends funds to local union members if they are on strike. In 2016, RWDSU had total assets of \$42,079,138.00; total liabilities of \$761,967.00; and net assets of \$41,317,171.00. [People's, Ex. 2-3]. In 2016, RWDSU had loans outstanding to three of its local unions including \$129,145.00 to Local 110 to "construct union hall", \$54,833.00 to Local 220 to "purchase building", and \$52,877.00 to Local 108 for a "cash shortage." [People's, Ex. 3 at E11]. In 2017, RWDSU had total assets of \$43,855,534.00; total liabilities of \$757,984; and net assets of \$43,097,550.00. [People's, Ex. 14]. In 2017, the RWDSU had loans outstanding to three of its local unions including \$114,966.00 to Local 110 to "construct union hall", \$50,356.00 to Local 220 to "purchase building", and \$38,338.00 to Local 108 for a "cash shortage." [People's, Ex. 14].

The executive board of the Joint Board is composed of a president, four vice-presidents, a secretary/treasurer, and a recorder. [Local 200, Ex. 14]. Lisa Russell has been the president of the Joint Board since 2017. The position of president is the only paid executive board position. Russell is paid approximately \$62,000.00 per year. Before 2017, Russell was the secretary/treasurer of the Joint Board for five years. Before Russell, Errol Staine was the president of the Joint Board from approximately 2012 or 2013 until June 30, 2017. Before being president, Staine was the secretary/treasurer of the Joint Board for approximately fourteen years. Staine was on the executive board in some capacity since the 1980s. Amelia Tucker was the president of the Joint Board from approximately 1992 until 2012. Ryan McIntyre has been the secretary/treasurer of the Joint Board since 2017. He is also the local union president of Local 291. As secretary/treasurer of the Joint Board, McIntyre co-signs checks and attends executive board meetings. He is also responsible for stepping in as president of the Joint Board if the Joint Board president is unavailable.

The Joint Board has three and one-half employees including President Russell. Russell is the only full-time employee. The Joint Board has two part-time office assistants, who are paid approximately \$300.00 per week, and a secretary/treasurer who receives a monthly stipend of approximately \$1200.00 per month.

All presidents of the local unions affiliated with the Joint Board are also vice-presidents of the Joint Board. Thus, Leonard is both the president of Local 200 and a vice-president of the Joint Board.

The Joint Board has a constitution and bylaws. [People's, Ex. 10; Local 200, Ex. 14]. Article III of the Joint Board's constitution provides:

The Chicago Joint Board, RWDSU<UFCW is formed to promote the general welfare of the members and industries represented and, especially:

1. To unite the forces of RWDSU members and Locals, to strengthen and promote organizations.
2. To coordinate activities of Local Unions and to conduct such joint enterprises as the Locals through the Board, may decide upon.
3. To maintain a central office with such facilities and staff as the Board may determine from time to time.
4. To maintain a central organizing staff for servicing existing Locals and for recruiting new members and Locals.
5. To keep all Locals in good standing with the International Union.
6. To establish and maintain standards of wages, hours and working conditions in accordance with Union standards and Union agreements.
7. To adjust disputes between Union members and employer, and between Local Unions.
8. To conduct organizing drives, negotiations and protect the welfare of its members.
9. The Chicago Joint Board shall be the highest governing body for all the members and Locals within the Chicago Joint Board, on those matters properly coming before it. Its decisions and regulations shall be binding upon all affiliated Locals and members of Locals affiliated with the Chicago Joint board.
10. The Chicago Joint Board shall conduct and assist at all negotiations of its affiliated Local Unions. All contracts of Local affiliated Unions shall be approved by the Chicago Joint Board.

[Local 200, Ex. 14; People's, Ex. 10]. According to former Joint Board President Tucker, the Joint Board did not maintain a central organizing staff for servicing existing locals and for recruiting new members in locals when she was president. Tucker testified that the Joint Board routinely adjusted disputes between union members and employers and between local unions while she was president.

Article VI, Section 1 of the Joint Board constitution provides, in part:

The President shall be the principal officer of the Union and shall be responsible for enforcing the Constitution and By-Laws of the RWDSU, the Constitution and By-Laws of the UFCW and the by-laws and rules of the Local Unions. The

President, or, in his absence and the absence of the Secretary-Treasurer, the President's designate representative, shall preside at all meetings of the Local Union and the Local Union Executive Board and shall decide all questions of order subject to an appeal to the Local Union. ...

The President shall have general supervision over the affairs of the Local Union.

[Local 200, Ex. 14; People's, Ex. 10]. Former Joint Board President Staine testified that this section of the Joint Board constitution refers to the president of the Joint Board. Staine testified that when he was president of the Joint Board, he tried to be present at all local union meetings. Staine further testified that during his time as Joint Board president, he had general supervision over the affairs of the local unions. Former Joint Board President Tucker testified that when she was president, she enforced the bylaws and rules of the local unions and attended all local union meetings.

Article VI, Section 1 of the Joint Board constitution further provides, in part: "[t]he President may employ or retain such personnel as may be necessary to conduct the affairs of the Local Union." [Local 200, Ex. 14, People's, Ex. 10]. Former Joint Board President Staine testified that when he was president of the Joint Board, he had the authority to employ or retain personnel as was necessary to conduct the affairs of the local union.

Article IX, Section 5 of the Joint Board constitution provides: "[t]he management of all shops covered by the Local Unions affiliated with the Chicago Joint Board where dues are collected by check-off must send such check-off directly [sic] the Chicago Joint Board office." [People's, Ex. 10; Local 200, Ex. 14]. Article IX, Section 4 provides: "[w]here there is no dues check-off, all Local Unions must turn into the Board all dues, initiation fees, assessment fees and other funds collected." [People's, Ex. 10; Local 200, Ex. 14]. Former Joint Board President Staine testified that Local 200's dues have always been sent directly from the employers to the Joint Board.

Article IX, Section 6 of the Joint Board constitution provides:

The initiation fee shall be \$25.00 for membership in a Local Union, affiliated with the Chicago Joint board, except that any of the Local Unions may institute a higher initiation fee in accordance with the terms of the Local Constitution and By-Laws. Five dollars (\$5.00) of each initiation fee received shall be forwarded to the International Union. The remaining balance shall be retained by the Chicago Joint Board.

[Local 200, Ex. 14; People's, Ex. 10]. Joint Board President Russell testified that there have not been any initiation fees since she has been president of the Joint Board. Russell testified that she does not know whether any initiation fees have been paid by anyone since she has been with the Joint Board. Local 200 President Leonard also testified that initiation fees are not collected by the employer.

Article IX, Section 3 of the Joint Board constitution provides:

All funds received from Local Unions by the Chicago Joint Board shall be handled as follows:

- a) All funds shall be promptly deposited to the account of the Chicago Joint Board in the Bank designated by the Executive Board.
- b) Monthly the Chicago Joint Board shall forward to the International Union per Capita for each member and \$5.00 initiation fee for all new members, whose dues have been paid into the Chicago Joint Board. Said per capita shall be paid in the same of the Local Union to which the member belongs.
- c) All remaining funds shall be retained or expended by the Chicago Joint Board as directed by action of the Executive Board.
- d) All expenditures from the funds of the Chicago Joint Board shall be approved by the Executive Board at a regular or special meeting of the Board, except in the case of weekly salaries of employees, telephone bills, rent, Insurance, pension, which expenditures the Board may direct the President to pay at regular rates. Said rates having been approved by the Chicago Joint Board.
- e) The Executive Board of the Chicago Joint Board shall have the power to expend, in emergencies, an amount to be specified by the Chicago Joint Board.

[Charging Parties, Ex. 14].

Article XI, Section 2 of the Joint Board constitution provides: “[n]o Local Union affiliated with the Chicago Joint Board may adopt By-Laws or engage in the practices contrary to the By-Laws of this Board.” [Local 200, Ex. 14; People's, Ex. 10]. The Local 200 constitution provides that all members subject to the Local 200 constitution are also subject to the constitution, rules, and regulations of the Joint Board and the “International.” [Local 200, Ex. 12].

#### Joint Board Finances

The Joint Board has a money market account and a checking account. Local 200 does not have direct access to the bank accounts of the Joint Board. For example, Local 200 cannot write itself a check from the Joint Board's accounts. The other Joint Board affiliated locals also do not have access to the bank accounts of the Joint Board.

Two of the Joint Board affiliated locals, Local 291 and Local 20, have savings accounts. The Joint Board has access to those locals' savings accounts. Joint Board President Russell is

named on those savings accounts as well as the local presidents. However, Local 291 President McIntyre testified that he was not aware that Local 291 had a savings account. He further testified that he does not have access to Local 291's savings account. Local 200 does not have a savings account.

Thomas Carlson, the Joint Board's accountant prepares the Form LM-2s, LM-3s, and LM-4s for the Joint Board and its locals including Local 200.<sup>5</sup>

For the 2008 reporting period, the Joint Board had \$183,911.00 in total assets, \$1,370.00 in total liabilities, and net assets of \$182,541.00. [People's, Ex. 6]. For the same period, the Joint Board had total cash receipts of \$323,110.00, total cash disbursements of \$303,144.00, and fixed assets of \$67,665.00. [People's, Ex. 6].

For the 2016 reporting period, the Joint Board had \$127,516.00 in total assets, \$1,339.00 in total liabilities, and net assets of \$126,177. [People's, Ex. 5]. For the same period, the Joint Board had total cash receipts of \$279,213, total cash disbursements of \$333,367.00, and fixed assets of \$18,427.00. [People's, Ex. 5].

As of December 2018, the Joint Board had a balance of \$45,804.30 in its money market account. [Local 200, Ex. 16]. As of January 2019, Joint Board President Russell testified that the Joint Board had approximately \$78,000.00 in total assets. Russell testified that the reduction in the Joint Board's total assets was due to fewer members paying union dues after the Supreme Court's decision in Janus v. AFSCME, 138 S. Ct. 2448 (2018), which held that public employee unions cannot require nonmembers to pay fees. Russell testified that the reduction in assets was also due to the payment of members' lost wages during negotiations.

The Joint Board has recurring expenses including rent of approximately \$918.00 per month, a monthly per capita (per member) tax to the UFCW, a payment to the Chicago Federation of Labor, insurance, medical, phone bills, and lawyer fees. The Joint Board sends a monthly check for approximately \$7,000.00 to the UFCW for the per capita tax. The UFCW then pays a small

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<sup>5</sup> Every labor organization subject to the Labor-Management Reporting and Disclosure Act of 1959, as amended, must file a financial report, Form LM-2, LM-3, or LM-4, each year with the Office of Labor-Management Standards of the U.S. Department of Labor. Failure to comply may result in criminal prosecution, fines, or civil penalties. [People's, Exs. 6-7; Charging Parties Ex. 1]. The Form LM-2 is for use by labor organizations with total annual receipts of \$250,000 or more; Form LM-3 is for use by labor organizations with total annual receipts of \$10,000 or more but less than \$250,000; and Form LM-4 is for use by labor organizations with total annual receipts of less than \$10,000. [People's, Exs. 6-7; Charging Parties, Ex. 1].

portion to the RWDSU. Prior to the merger of RWDSU and UFCW, the Joint Board also paid a per capita tax to the RWDSU. The payments to the UFCW went up about three or four months ago to reflect the merger of the RWDSU and UFCW. [Local 200, Ex. 16].

Each year, approximately \$150,000.00 in dues payments is collected from Local 200 members' paychecks and sent directly from the employer to the Joint Board. [Tr. 333]. When the Joint Board receives the dues from the employers, they deposit them. The dues money is then used to maintain the office and to pay expenses. All of the local unions' dues go into "one-pot", the funds are not segregated by local.

In 2008, the Joint Board paid \$17,410.00 to the law firm Cornfield and Feldman; in 2016, the Joint Board paid Cornfield and Feldman \$114,420.00; and in 2017, the Joint Board paid Cornfield and Feldman \$80,181.00. [People's, Exs. 5-6, 11]. [People's, Ex. 11].

The Joint Board has rental insurance for the premises of its office. The Joint Board does not have errors and omissions or malpractice insurance.

According to Joint Board President Russell and former Joint Board President Tucker, besides this case, no other awards or judgments have been entered against the Joint Board or any of its locals.

#### Local 200 Finances

Article VI, Section 1 of the Joint Board constitution states, in part:

The President shall disburse the Local Union's funds and, except for disbursements required to be made from the funds of the Local Union by the Constitution and By-Laws at the RWDSU, the constitution or laws of the UFCW or those By-laws, disbursements shall be authorized or ratified by the Union Executive Board. The President shall be responsible for insuring that no checks are disbursed or financial documents executed without the signature of at least two of the three members of the Local Union's Audit Committee. The President shall invest and reinvest the surplus funds of the Local Union, upon the approval of the Local Executive Board, according to standards applicable to fiduciaries. ...

The President shall determinate the compensation and expenses, or expense policy, for all personnel employed or retain by the Local Union, subject to the approval of the Local Union Executive Board. ...

The President shall receive and properly receipt all money collected.

[Local 200, Ex. 14, People's, Ex. 10]. Former Joint Board President Staine testified that this section refers to the president of the Joint Board. Staine testified that when he was president of

the Joint Board, he was in charge of disbursing Local 200's funds and had the authority to invest and reinvest any funds that were in surplus. Staine also testified that when he was president of the Joint Board, he had the authority to determine the compensation and expenses or expense policy for all personnel employed or retained by the local unions.

Local 200 does not have a bank account, treasury, assets, receipts, or income. [Charging Parties, Ex. 1-2, People's, Ex. 13]. Local 200 does not make reimbursements or payments. [Charging Parties, Ex. 1-2]. Local 200 has had no assets since at least 2000. [People's, Ex. 13]. Local 200 had no liabilities (debts, unpaid bills, and loans) from 2009 through 2016 [People's, Ex. 13]. In 2006, Local 200 had \$1,011.00 in total liabilities; in 2007, \$812.00; and, in 2008, \$602.00. [People's, Ex. 13]. In 2017, Local 200 had total liabilities of \$300,000.00, which reflected the settlement in this case. [Charging Parties, Ex. 2, People's, Ex. 13].

Local 200 members pay union dues. Although Local 200 has dues-paying members, it has no assets and no income because, under the constitution of the Joint Board, which is binding on Local 200, all dues deducted from the paychecks of local union members must be sent directly to the Joint Board by the employer. [People's, Ex. 10; Local 200, Ex. 14]. Accordingly, the employer deducts the union dues from the employee's paychecks, and then sends the dues directly to the Joint Board. This has been the practice for at least twenty years. The Joint Board does not segregate the dues of Local 200 from the dues of other locals. Local 200 President Leonard currently pays about \$115.00 a month in union dues.

Local 200 Treasurer Nunn does not have any duties that relate to the management of money or union dues. Nunn testified that she has not seen the Form LM-4s that Local 200 files for the past nine or ten years. However, Nunn's signature appears on the Form LM-4 for 2007 and 2017. [Charging Parties, Exs. 1-2]. Nunn testified that she did not read the forms that she signed. Nunn testified that she was told to sign the forms by Local 200 President Leonard and former Joint Board President Tucker. Nunn testified that she does not know whether Local 200's liabilities of \$812.00 in 2007 were paid and if so, by whom.

Local 200 does not have any insurance policies. [Tr. 397-98]. Local 200 President Leonard testified that he is not aware of Local 200 ever having a policy insuring itself against the actions of Local 200's officers or employees. Leonard further testified that he is not aware of any locals affiliated with the Joint Board having such insurance.

### Joint Board Making Loans to Local Unions

In 2005, the Joint Board had loans outstanding to seven of its locals, including Local 200, for more than \$250.00. [People's, Ex. 7]. The Joint Board stated in its Form LM-3 for January 1, 2005, through December 31, 2005:

All amounts repaid during 2005 were made by using the Joint Board's 2005 dues rebate due to each Local. All loans outstanding are unsecured and due on demand. Loans for over \$250 are as follows: Local 15 - owed \$94 at 1/1/05, borrowed additional \$200, repaid \$40 - amount due at 12/31/05 - \$254; Local 20 - owed \$2,334 at 1/1/05, borrowed additional \$500, repaid \$137 - amount due at 12/31/05 - \$2697; Local 200 - owed \$1373 at 1/1/05, repaid \$180 - amount due at 12/31/05 - \$1,193; Local 239 - owed \$1,546 at 1/1/05, repaid \$228 - amount due at 12/31/05 - \$1,318; Local 291 - owed \$3,014 at 1/1/05, borrowed additional \$150, repaid \$28 - amount due at 12/31/05 - \$3,136; Local 317 - owed \$3,507 at 1/1/04, borrowed additional \$150, repaid \$87 - amount due at 12/31/05 - \$3,571; Local 853 - owed \$2,456 at 1/1/05, repaid \$12 - amount due at 12/31/05 - \$2,444.

[People's, Ex. 7].

In 2008, the Joint Board had loans outstanding to six of its locals, including Local 200 for more than \$250.00. [People's Ex. 6]. The Joint Board stated in its Form LM-2 for January 1, 2008, through December 31, 2008, that it had outstanding loans, at the end of the reporting period, to Local 15 in the amount of \$740.00, to Local 20 in the amount of \$4,009.00, to Local 200 in the amount of \$602.00, to Local 853 in the amount of \$2,519.00, to Local 291 in the amount \$3,546.00, and to Local 317 in the amount of \$3,758.00. [People's, Ex. 6]. In 2016, the Joint Board had no loans outstanding to its locals. [People's, Ex. 5].

Former Joint Board President Tucker also testified that none of the locals requested a loan while she was president of the Joint Board. Former Joint Board President Staine testified that he was not aware of the Joint Board issuing any loans to any local unions, including Local 200, during his time on the Joint Board's executive board. Current Joint Board President Russell testified that she is not aware of whether the Joint Board is authorized to issue loans to Local 200. Local 200 Treasurer Nunn testified that she does not know whether Local 200 has incurred any costs of any kind since she has been treasurer.

### Joint Board Paying for Local 200's expenses

On its Form LM-3 for the period covering January 1, 2005, through December 31, 2005, the Joint Board stated that it "handles all cash transactions for its Locals." [People's, Ex. 7]. Joint Board President Russell testified that the Joint Board pays for all union expenses of Local 200

including Local 200's legal expenses. [Tr. 134, 163-64, 166-67, 203]. For as long as Leonard has been president of Local 200, the Chicago Joint Board has paid the fees of Local 200's attorneys and has also paid for other necessary professional services received by Local 200. [People's, Ex. 18]. According to Local 200 President Leonard, the Joint Board pays the expenses that are needed to perform the business functions of Local 200 and pays for all of Local 200's "approved expenses." The Joint Board votes on whether certain expenses of Local 200 are authorized for payment by the Joint Board.

The Joint Board pays for lost wages, parking, and lunches for Local 200 members attending contract negotiations. The Joint Board also pays for Local 200 delegates to attend RWDSU and UFCW conferences including lost wages, hotels, plane tickets, and food allowances. The RWDSU and UFCW conferences are held every four years. Leonard testified that if the Joint Board president is not available to pay for meals or transportation, Leonard will pay for those items, and then he will ask for reimbursement from the Joint Board. In 2008, Local 200 President Leonard received total disbursements of \$11,541 from the Joint Board: \$2,051.00 for lost wages for attending a conference and \$9,190.00 for providing lunches for members. [People's, Ex. 6]. On one occasion, Leonard bought flowers for administrative staff, and he then sought reimbursement from the Joint Board. The Joint Board denied the request for reimbursement because it was not a "union expense."

The Joint Board has paid for Local 200's legal fees throughout this case. [Tr. 134, 163-64, 166-67, 203]. On February 3, 2020, the parties stipulated that "[f]rom the date of the filing of the Petition for Rule to Show Cause in the Appellate Court in Case No. 1-14-0802, which was March 2, 2017, to and including November 30, 2019, the Chicago Joint Board of the Retail Wholesale and Department Store Union incurred and paid the law firm of Cornfield and Feldman \$71,147.50 for its legal services in this case and in Appellate Court Case No. 1-14-0802." [People's, Ex. Stipulation, entered February 3, 2020].

#### Joint Board's Involvement in Local 200 Grievances, Arbitrations & Negotiations

In his capacity as Local 200 President, Leonard, without needing the approval of the Joint Board, files and settles grievances, files representation petitions, files unfair labor practice charges, and with the help of other Local 200 officers and elected stewards formulates Local 200's initial bargaining demands in contract negotiations.

The Joint Board paid for attorneys to represent Local 200 in the original grievance overtime arbitration. After Local 200 won the arbitration, there was a settlement discussion between Local 200 and the employer. The Joint Board was not involved in those settlement discussions. In Leonard's affidavit to the Appellate Court dated July 18, 2017, he stated that "[w]ith respect to the arbitration award that lies at the origin of this case, I determined, in my capacity as President of Local 200, and without input or approval from the Chicago Joint Board, Local 200's proposal as to how the arbitration settlement proceeds should be distributed by Cook County." [People's, Ex. 18].

The Joint Board does not approve the payment of arbitration expenses for cases involving Local 200 members if the Joint Board believes that the arbitration is not winnable. According to Former Joint Board President Staine, if there was a grievance, the Joint Board would receive an opinion from their attorney regarding whether the case was "winnable." Then, the Joint Board would decide whether to take the case to arbitration. Local 200 President Leonard testified that he has not arbitrated cases without the Joint Board's approval. Former Joint Board President Staine testified that he was not aware of any locals paying for their own legal representation at arbitrations.

According to the Joint Board constitution, the Joint Board conducts and assists at all negotiations of all local unions, including Local 200. [Local 200, Ex. 14]. Article XVII, Section C of the Local 200 constitution provides that "[i]n the event of rejection of the employer's proposal for a collective bargaining agreement and the failure of the affected membership to approve a strike by a two-thirds vote, the Executive Board shall, after notifying the UFCW President and receiving acknowledgment of such notice, and notifying and receiving the approval of the RWDSU Executive Board, have the authority to accept such offer." [Local 200, Ex. 12].

According to former Joint Board President Tucker, each local decides whether they want the Joint Board to assist them in negotiations. She testified that some locals do not request assistance and others do. However, she further testified that the Joint Board plays an "active role" in negotiations and that the Joint Board leads the negotiations. According to Tucker, anytime a local was negotiating a contract, the Joint Board was involved. Tucker further testified that sometimes attorneys were used to negotiate the contract for locals, and sometimes they were not. When attorneys are involved, Jacob Pomeranz of Cornfield and Feldman attended.

Tucker testified that she was involved in negotiating contracts between local unions and employers when she was the president of the Joint Board. According to former Joint Board President Staine, he would give assistance to the lead negotiator at local union negotiations, and he would sign documents that needed to be signed. Former Joint Board President Staine also testified that he would pay for the negotiating team's lunch during negotiations. Staine was involved in the negotiations for Local 200's 2012 through 2017 collective bargaining agreement. At those negotiations, Local 200 President Leonard was the lead negotiator. During the last round of Local 200 contract negotiations, the negotiating team was made up of Local 200 members and Joint Board President Russell. For negotiations, Local 200 generally has a member of the Joint Board on the negotiating team.

According to the Joint Board constitution, all contracts of local unions, including Local 200, must be approved by the Joint Board. [Local 200, Ex. 14]. Former Joint Board President Tucker testified that all contracts of local affiliated unions must be approved by the Joint Board. Tucker testified that the local members bring the contract proposals to their local union president and the Joint Board. However, she stated that the members of the local approve the language in the contract, not the Joint Board. The membership approves the contract by a secret ballot vote. If the membership votes no, negotiations continue. If the membership votes yes, then the Joint Board approves the contract. While Tucker was president of the Joint Board, the Joint Board never overturned a decision of a local union to approve or reject a contract.

Generally, the president of the Joint Board signs the collective bargaining agreements on behalf of Local 200. The collective bargaining agreement between Local 200 and the County of Cook, for the period of December 1, 2012, through November 30, 2017, was signed by former Joint Board President Staine. [People's, Ex. 17]. Cook County Board President Toni Preckwinkle signed on behalf of the employer. [People's, Ex. 17]. The most recent collective bargaining agreement was signed in 2020. Joint Board President Russell signed the 2020 agreement on behalf of Local 200. Former Joint Board President Tucker testified each time that she was involved in negotiations, there was a signature line for the president of the Joint Board, and it was not unusual for the president of the Joint Board to sign the contract and not the president of Local 200. Former Joint Board President Staine testified that during his time on the Joint Board, the president of the Joint Board always signed the local unions' contracts.

### Joint Board Offer to Charging Parties

During her time as Joint Board President, Russell authorized a \$30,000.00 settlement offer to the Charging Parties, subject to the executive board's approval, to be paid out of the Joint Board treasury to settle all claims in this case. Before the Joint Board's offer of \$30,000.00 to the Charging Parties, the Joint Board also made an offer of \$20,000.00 during the time that Amelia Tucker was president of the Joint Board. The Charging Parties did not respond to the Joint Board's \$20,000.00 offer.

### Local 200's Request to the Joint Board to Pay the Settlement

On or about July 18, 2017, Local 200 President Leonard requested that the Joint Board pay the settlement in this case. The Joint Board then held a special meeting to vote on the request. During the special meeting, Local 200 President Leonard gave a brief summary of the case. Joint Board President Russell testified that she did not participate in the vote because she was conducting the vote. Leonard voted "yes" to pay the settlement; the remaining members of the Executive Board voted "no." Joint Board Secretary/Treasurer McIntyre voted "no" because he did not "think it was [the Joint Board's] place." McIntyre testified that he believes that Local 200 is separate from the Joint Board, and the Joint Board did not have the money to pay the settlement.

On July 31, 2017, Joint Board President Russell wrote to Leonard stating:

On July 27, 2017, the Chicago Joint Board's Executive Board met to review the formal request you made on July 18, 2017. Unfortunately, the Joint Board is unable to comply with your request. We cannot assume responsibility for paying the monetary award entered against Local 200 in the "Otis" case. We are unable to loan Local 200 funds that would be sufficient to pay the monetary award in the amount of \$284,300.40.

Should the proposed "special monthly assessment" that you outlined in the previous correspondence get the necessary approval by the members of Local 200, the Chicago Joint Board will comply with your request, that Local 200 be entitled to use the assessment funds raised to pay the "Otis" award and will not be required to turn them over to the Joint Board.

[Local 200, Ex. 10].

Joint Board President Russell testified that the Joint Board does not have the money to pay the approximate \$325,000.00 settlement in this case.

Local 200 President Leonard has never asked the Joint Board to segregate Local 200 members' dues so that their dues could be used to pay the settlement in this case.

Leonard has never asked the Joint Board to pay the settlement in a payment plan over time as opposed to a lump sum.

#### Vote for Temporary Dues Increase

Local 200 held a secret-ballot vote that asked members to vote for a temporary dues increase of \$100 per month per member, over and above the existing dues, to pay for the settlement in this case. [Local 200, Ex. 22]. The result of the vote was “no” for raising dues for Local 200. The Joint Board had agreed that if the proposal to raise the dues of Local 200 members to pay for the settlement had passed, Local 200 could use the extra \$100.00 per month per member to pay the settlement. [Local 200, Ex. 22].

#### Recoupment of Funds

Twelve Local 200 members, both pharmacists and pharmacy technicians, were paid the corresponding amounts in the original arbitration settlement: Rubina Anees (\$1,685.92); Joseph Arrington (\$33,025.76); Teresita Belcina (\$16,301.60); Frederick Carter (\$28,985.85); Denise Davis (\$64,346.82); Regina Gordon (\$21,213.54); Lilia Lenafloida (\$42,328.25); George Leonard (\$88,941.97); Hilliard Moore (\$39,681.36); Kiran Nanavati (\$23,602.51); Simeon Okonmah (\$9,332.64); and Harilar Thakkar (\$3,867.91). [Local 200, Ex. 4]. These individuals received paper checks from the County.

After recalculation, the Board found that the following individuals who were originally paid from the settlement had worked the corresponding percentage of the total overtime hours: Joseph Arrington: 6.68%; Denice Davis: 6.05%; George Leonard: 17.35%; Hillard Moore: 9.85%; Kiran Nanavati: 9.31%; Simeon Okonmah: 5.99%; and Haita Thakkar: 9.88%. Otis, 30 PERI ¶ 217; [Local 200, Exs. 3, 4]. Thus, Joseph Arrington should have received \$25,050.00 (overpaid \$7,975.76); Denice Davis should have received \$22,687.50 (overpaid \$41,659.32); George Leonard should have received \$65,062.50 (overpaid \$23,879.47); Hilliard Moore should have received \$36,937.50 (overpaid \$2,743.86); Kiran Nanavati should have received \$34,912.50 (underpaid \$11,309.99); Simeon Okonmah should have received \$22,462.50 (underpaid \$13,129.90); and Harilar Thakkar should have received \$37,050.00 (underpaid \$33,182.09).<sup>6</sup> Otis, 30 PERI ¶ 217; [Local 200, Exs. 3, 4]. Additionally, the Board found that ten additional members

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<sup>6</sup> The compliance officer did not include the following individuals, who were originally paid from the settlement in the recalculation: Rubina Anees, Teresita Belcina, Frederick Carter, Regina Gordon, and Lilia Lenafloida. Otis, 30 PERI ¶ 217

should have been paid the following amounts plus interest: Marshall Berry: \$22,387.50; Ashok Ghandi: \$20,587.50; Dhirajlal Jagatia: \$10,350.00; Brian McBride: \$2,925.00; Gabriel Nwandu: \$18,637.50; Boniface Nwansei: \$10,837.50; Carmelthia Otis: \$29,475.00; Delcina Rosado: \$21,937.50; Synthia Miller: \$1,875.00; and Christiania Ohaeri: \$22,387.50. Otis, 30 PERI ¶ 217; [Local 200, Exs. 3, 8].

Local 200 President Leonard has not returned the money he received from the original settlement. Leonard has also never asked any of the individuals who received money from the original settlement to pay Local 200 back the amount of money that was later determined that they should not have received. Leonard testified that he never asked these individuals to return the money because, under the original arbitration award, Local 200 members were actually owed approximately \$900,000.00 from the County and instead received only 40% of that, or \$375,000.00, in the settlement. Joint Board President Russell said there has been no discussion amongst the Joint Board to have individuals who wrongfully received funds from the settlement return the funds.

#### Request to RWDSU to Pay the Settlement

In October 2017, Local 200 President Leonard wrote a letter to Stuart Appelbaum, president of RWDSU, requesting that RWDSU either loan Local 200 \$300,000.00 to pay for the settlement in this case or assume liability for the judgment against Local 200. Leonard does not recall if he informed RWDSU that the \$300,000.00 debt was based on an unfair labor practice finding that was affirmed by the Appellate Court.

On February 18, 2018, RWDSU denied Leonard's request, stating:

I have in hand your letter of October 29, 2017, which was only recently received because of an unexplained postal service delay in delivery. I cannot recommend approval of your request to the RWDSU Executive Board. I would oppose the Executive Board granting your request that the RWDSU either loan Local 200 \$300,000 or assume liability for the judgment against it. As you know, while Local 200 is affiliated with the Chicago Joint Board, the RWDSU and the UFCW, it is an autonomous labor organization solely responsible for its affairs and its debts. We are not liable for Local 200's debts.

New York State as well as federal law imposes a fiduciary duty on the RWDSU's officers with regard to how it handles its money. Since Local 200 is a small organization without assets, lending it \$300,000 when the Local could never repay it may well be viewed as a breach of law. Making the RWDSU liable for the local's judgment would also appear to run contrary to the constitutional relationships governing our respective organizations as well as potentially open the RWDSU to other, as yet unknown, liabilities.

[Local 200, Ex. 9].

Local 200 President Leonard testified that he is unaware of any other methods that he can use to raise the funds necessary to pay the settlement in this case besides methods he has already tried: asking the Joint Board for money, raising dues, and asking RWDSU for money. Leonard has not requested that the Joint Board pay the settlement through a payment plan. Leonard has not asked the RWDSU to pay the settlement in a payment plan over time as opposed to a lump sum. Local 200 President Leonard has not asked the UFCW for the money to pay the settlement in this case because he has “been with RWDSU for currently almost 31 years, and they said no. I didn’t think that UFCW would say yes if RWDSU said no. So I didn’t ask them.” Leonard also testified that he does not think there is any possibility that UFCW would provide the money. Joint Board President Russell has also not asked the UFCW or the RWDSU for the money to pay the settlement in this case.

#### **IV. DISCUSSION AND ANALYSIS**<sup>7</sup>

##### **A. Local 200 has failed to show that it does not have the means to pay as directed by the Board and ordered by the Court through its relationship with the Joint Board**

Local 200 and the Joint Board have created an organizational structure whereby Local 200 holds no funds, and the Joint Board pays Local 200’s expenses. Local 200 does not make reimbursements or payments, does not have a bank account, treasury, or receipts, has not had any assets or income since at least 2000, and does not have any insurance policies. [Charging Parties, Exs. 1-2; People’s, Ex. 13]. Although Local 200 members pay union dues of approximately \$150,000.00 per year, Local 200 never receives the dues money. [People’s Ex. 10; Local 200, Ex. 14; Tr. 333]. Instead, Local 200 members’ dues are deducted from their paychecks by the employer and sent directly to the Joint Board, which deposits the funds. [People’s, Ex. 10; Local 200, Ex. 14]. The Joint Board is responsible for handling all cash transactions for Local 200 and disbursing Local 200’s funds. [Local 200, Ex. 14; People’s, Exs. 7, 10]. The Joint Board pays for

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<sup>7</sup> I will not consider the Charging Parties’ request that the Board appoint a receiver or in the alternative, a finding that, and a recommendation to the Court that a receiver should be appointed as this issue was not identified by the Court’s June 26, 2018 Order as an issue that should be determined by the Board.

all union expenses of Local 200 including Local 200's legal expenses. The Joint Board has paid for Local 200's legal expenses throughout this case including the original grievance arbitration. Since the filing of the Petition for Rule to Show Cause in March 2017, the Joint Board has paid the law firm of Cornfield and Feldman \$71,147.50 for its legal services in this case. [People's, Ex. Stipulation entered February 3, 2020]. Additionally, Joint Board President Russell has authorized a \$30,000.00 settlement to the Charging Parties, and former Joint Board President authorized a \$20,000.00 settlement. The Joint Board also agreed that if the vote for a temporary dues increase of \$100.00 per month had passed, Local 200 could have used the extra funds to pay the settlement. Thus, Local 200 has failed to show that it does not have the means to pay as directed by the Board and ordered by the Court through its relationship with the Joint Board.

**B. The evidence supports a finding that Local 200 has an agency relationship with the Joint Board**

An agency relationship involves “a consensual, fiduciary relationship between two legal entities whereby the principal has the right to control the conduct of the agent, and the agent has the power to effect the legal relations of the principal.” Ret. Plan for Chicago Transit Auth. Employees v. Chicago Transit Auth., 2020 IL App (1st) 182510 ¶ 54, quoting State Sec. Ins. Co. v. Frank B. Hall & Co., 258 Ill. App. 3d 588, 595. “The usual tests of agency ask whether the principal has the authority to control the method or manner of accomplishing a task by the agent, and whether the agent has authority to subject the principal to liability.” Ret. Plan for Chicago Transit Auth. Employees, 2020 IL App (1st) 182510 ¶ 54, citing Wargel v. First Nat'l Bank of Harrisburg, 121 Ill. App. 3d 730, 736 (5th Dist. 1984). The primary consideration in determining whether an entity is acting as an agent is the nature and degree of control exercised over the work being performed. Ill. Dep'ts of Cent. Mgmt. Servs. & Corrs., 4 PERI ¶ 2034 (IL SLRB 1988), citing Dumas v. Lloyd, 6 Ill. App. 3d 1026, 1029 (1st Dist. 1972); Chief Judge of the Circuit Court of Cook Co., 34 PERI ¶ 136 (IL LRB-SP 2018). Additionally, “the relationship of principal and agent exists if the principal has the right or the duty to supervise and control, and also has the right to terminate the relationship at any time.” Id., quoting Dumas, 6 Ill. App. 3d at 1029. An agency relationship may be shown by evidence indicating that one individual has actual or apparent authority to transact business for or act on behalf of another. Teamsters, Local Union No. 744, 5 PERI ¶ 2003 (IL SLRB 1988), citing Clapp v. JMK/Skewer, Inc., 137 Ill. App. 3d 469 (3rd Dist. 1985).

The Joint Board has pervasive control, supervision, and authority over Local 200, and the Joint Board has authority to transact business on behalf of and act on behalf of Local 200. The evidence indicates that Local 200 exerts a limited degree of control and autonomy in certain affairs: Local 200 President Leonard files and settles grievances, files representation petitions, files unfair labor practice charges, and formulates Local 200's initial bargaining demands in contract negotiations. Additionally, the Joint Board was not involved in the settlement discussions after Local 200 won the overtime grievance arbitration nor involved in Local 200's proposal as to how the arbitration settlement proceeds should be distributed by the employer. [People's, Ex. 18]. However, the remaining evidence suggests that the Joint Board exerts extensive control, supervision, and authority over Local 200.

The evidence established that all presidents of the local unions affiliated with the Joint Board are also vice-presidents of the Joint Board. Local 200 President Leonard is also a vice-president of the Joint Board.

The Joint Board also decides whether to take a local union's case to arbitration. Local 200 President Leonard testified that he has not arbitrated cases without the Joint Board's approval. Former Joint Board President Staine testified that he was not aware of any local unions paying for their own legal representation at arbitrations.

The Joint Board constitution and Local 200 constitution also show the extent of the Joint's Board control, supervision, and authority over the affairs of Local 200, and the Joint Board's authority to act on behalf of Local 200. According to the Joint Board constitution, the Joint Board is the highest governing body for Local 200 and its members; the Joint Board's decisions and regulations are binding upon Local 200 and its members; the Joint Board conducts and assists at all negotiations of Local 200; all contracts of Local 200 must be approved by the Joint Board; the Joint Board pays a per-capita tax to the international union for Local 200 members; Local 200 may not adopt bylaws or engage in practices contrary to the bylaws of the Joint Board; the Joint Board adjusts disputes between Local 200 members and the employer, and between local unions; the Joint Board coordinates the activities of Local 200; the Joint Board keeps all locals in good standing with the international union; dues for Local 200 members must be sent directly from the employer to the Joint Board; the president of the Joint Board presides at all meetings of Local 200; the president of the Joint Board has general supervision over the affairs of Local 200; the president of the Joint Board is responsible for enforcing the bylaws and rules of Local 200; and the president

of the Joint Board employs or retains such personnel as is necessary to conduct the affairs of Local 200. [Local 200, Ex. 14; People's, Ex. 10]. Local 200's constitution also provides that all Local 200 members are also subject to the constitution, rules, and regulations of the Joint Board. [Local 200, Ex. 12].

Additionally, according to former Joint Board President Tucker, as president, she attended all local union meetings and enforced the bylaws and rules of the local unions. Tucker further testified that during her time as president, the Joint Board routinely adjusted disputes between union members and employers and between local unions. According to former Joint Board President Staine, when he was president of the Joint Board, he tried to be present at all local union meetings. Staine further testified that during his time as Joint Board president, he had general supervision over the affairs of the local unions and the authority to employ or retain personnel as was necessary to conduct the affairs of the local union. Staine additionally testified that Local 200 members' dues have always been sent directly from the employers to the Joint Board. According to former Joint Board President Tucker, the Joint Board also plays an active role in local unions' negotiations and leads those negotiations. Tucker testified that all contracts of local affiliated unions must also be approved by the Joint Board. Additionally, the president of the Joint Board signs the collective bargaining agreements on behalf of Local 200.

The financial relationship between Local 200 and the Joint Board, and the Joint Board's authority to transact business and act on behalf of Local 200 also shows the extent of the Joint Board's control, supervision, and authority over Local 200. The Joint Board's accountant prepares Local 200's financial reports that are filed with the United States Department of Labor. The president of the Joint Board is responsible for disbursing Local 200's funds, investing and reinvesting the surplus funds of Local 200, according to standards applicable to fiduciaries, and determining the compensation and expenses or expense policy for all personnel employed by Local 200. [Local 200, Ex. 14, People's, Ex. 10]. According to former Joint Board President Staine, when he was president of the Joint Board, he was in charge of disbursing Local 200's funds, had the authority to invest and reinvest any funds that were in surplus, and had the authority to determine the compensation and expenses or expense policy for all personnel employed by Local 200. The Joint Board handles all cash transactions for Local 200. [People's, Ex. 7]. The Joint Board pays for all union and approved expenses of Local 200 including Local 200's legal expenses. [Tr. 134, 163-64, 166-67, 203]. The Joint Board has paid for Local 200's legal fees throughout

this case including in the original grievance overtime arbitration. The Joint Board pays for lost wages, hotels, plane tickets, parking, lunches, and food allowances for Local 200 members attending contract negotiations and RWDSU and UFCW conferences. Additionally, as noted, under the constitution of the Joint Board, all dues deducted from the paychecks of Local 200 members are sent directly from the employer to the Joint Board. Additionally, the treasurer of Local 200 has no duties related to the management of money or union dues.

The Joint Board's authority to act on behalf of Local 200 is further evidenced by the fact that the Joint Board has made settlement offers on two occasions to the Charging Parties in this case, and the Joint Board agreed that if the proposal to raise the dues of Local 200 members to pay for the settlement had passed, Local 200 could have used the extra money to pay the settlement. Thus, the evidence supports a finding that Local 200 has an agency relationship with the Joint Board.

**C. Local 200 and the Joint Board have not shown that they do not have the ability to recoup the funds that were wrongly distributed to members of Local 200**

Here, twelve Local 200 members were paid in the original arbitration settlement. [Local 200, Ex. 4]. However, the Board found that seven of those members were paid incorrect amounts, resulting in a total overpayment to Joseph Arrington, Denice Davis, George Leonard, and Hillard Moore in the amount of \$76,258.41.<sup>8</sup> Otis, 30 PERI ¶ 217; [Local 200, Exs. 3, 4].

In this case, neither Local 200 nor the Joint Board have attempted to recoup the funds that were improperly distributed. Local 200 President Leonard testified that he has not returned any of the money he received from the original settlement, and he has not asked any of the individuals who received money from the original settlement to pay Local 200 back the amount of money that was later determined that they should not have received. Joint Board President Russell testified that there has been no discussion amongst the Joint Board to have individuals who wrongfully received funds from the settlement return the funds. As such, Local 200 and the Joint Board have not shown that they do not have the ability to recoup the funds that were wrongly distributed to members of Local 200.

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<sup>8</sup> As noted previously, three members who received funds from the original arbitration settlement, Nanavati, Okonmah, and Thakkar, were underpaid. Otis, 30 PERI ¶ 217; [Local 200, Exs. 3, 4].

**D. Local 200 and the Joint Board have not shown that they do not have the ability to comply with the Order through inter-union loans, including loan(s) from the Joint Board, RWDSU, and/or UFCW**

The record established that the Joint Board has made loans to some of its local unions including Local 200. [People's, Ex. 6-7]. In 2006, the Joint Board had loans outstanding to Local 15 for \$740.00, to Local 20 for \$4,009.00, to Local 200 for \$602.00, to Local 853 for \$2,519.00, to Local 291 for \$3,546.00, and to Local 317 for \$3,758.00. [People's, Ex. 6]. In 2016, however, the Joint Board had no loans outstanding to its locals. [People's, Ex. 5].

Further, although Joint Board President Russell testified that she is not aware of whether the Joint Board is authorized to issue loans to Local 200, the evidence reveals that the Joint Board has done so in the past. [People's, Exs. 6-7]. Additionally, although the Joint Board stated that on July 31, 2017, that it was "unable to loan Local 200 funds that would be sufficient to pay the monetary award in the amount of \$283,300.40", the evidence did not establish that the Joint Board is in any way prohibited from loaning money to Local 200. [Local 200, Ex. 10]. Further, although Joint Board President Russell testified that the Joint Board does not have the money to pay the approximate \$325,000.00 settlement in this case, the evidence did not establish that Joint Board would be unable to loan Local 200 funds incrementally over time as opposed to one lump sum. For the 2016 reporting period, the Joint Board had net assets of \$126,177. [People's, Ex. 5]. As of December 2018, the Joint Board had a balance of \$45,804.30 in its money market account and \$78,000.00 in total assets. [Local 200, Ex. 16]. Furthermore, each year, approximately \$150,000.00 in dues payments is collected from Local 200 members' paychecks and sent directly to the Joint Board. [Tr. 333]. Local 200 and the Joint Board have not established that those dues payments could not be segregated to pay the settlement in this case over time. Indeed, if the vote to increase Local 200 union dues by \$100.00 per month per member had passed, the Joint Board had agreed that the additional \$100.00 per month per member could be used by Local 200 to pay the settlement. Thus, Local 200 has not established that they do not have the ability to comply with the settlement through a loan from the Joint Board.

Local 200 and the Joint Board have also not established that they do not have the ability to comply with the settlement through a loan(s) from the RWDSU and/or UFCW. The record shows that RWDSU has made loans to some of its local unions. [People's, Exs. 3 at E11, 11]. In 2016, RWDSU had loans outstanding to Local 110 for \$129,145.00 to "construct union hall", to Local 220 for \$54,833.00 to "purchase building", and to Local 108 for \$52,877.00 for a "cash shortage."

[People's, Ex. 3 at E11]. In 2017, the RWDSU had loans outstanding to Local 110 for \$114,966.00 to "construct union hall", to Local 220 for \$50,356.00 to "purchase building", and to Local 108 for \$38,338.00 for a "cash shortage." [People's, Ex. 14]. The Parties did not present evidence of the UFCW making loans to its local unions.

Although the RWDSU denied Local 200 President Leonard's request for a loan to Local 200 of \$300,000.00, the evidence did not establish that the RWDSU would not loan Local 200 funds to pay a portion of the settlement. Further, the evidence established that Joint Board President Russell has never requested that the RWDSU loan the Joint Board and/or Local 200 the funds to pay the settlement. Additionally, neither Local 200 or the Joint Board have ever requested that the UFCW loan Local 200 and/or the Joint Board funds to pay for the settlement. Thus, Local 200 and the Joint Board have not established that they do not have the ability to comply with the settlement through a loan from Joint Board, RWDSU, and/or UFCW.

**V. CONCLUSIONS OF LAW**

1. Local 200 has not shown that it does not have the means to pay as directed by the Board and ordered by the Court.
2. The evidence supports a finding that Local 200 has an agency relationship with the Joint Board.
3. Local 200 and the Joint Board have not shown that they do not have the ability to recoup the funds that were wrongly distributed to members of Local 200.
4. Local 200 and the Joint Board have not shown that they do not have the ability to comply with the Order through inter-union loans, including loan(s) from the Joint Board, RWDSU, and/or the UFCW.

**VI. RECOMMENDED ORDER**

I recommend that the Board find:

1. Local 200 has not shown that it does not have the means to pay as directed by the Board and ordered by the Court.
2. The evidence supports a finding that Local 200 has an agency relationship with the Joint Board.

3. Local 200 and the Joint Board have not shown that they do not have the ability to recoup the funds that were wrongly distributed to members of Local 200.
4. Local 200 and the Joint Board have not shown that they do not have the ability to comply with the Order through inter-union loans, including loan(s) from the Joint Board, RWDSU, and/or the UFCW.

## **VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov). All filing must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois this 24<sup>h</sup> day of May, 2021**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

*/s/ Michelle N. Owen*

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**Michelle N. Owen**  
**Administrative Law Judge**