The Kelly Companies
the value of a good name

To: Mark Poole, Union President

CC: Associated Administrators, TPA

Alicia Cochran

Brian Kelly, President Kelly Press, Inc.

The Fund, Board of Trustees

Subject: Grievance- Dispute of Alleged Delinquency and Liquidate Damages Assessment (April 15, 2026)

Dear Mark, Alicia and The Fund,

This letter serves as a formal grievance under the Collective Bargaining Agreement regarding the delinquency and liquidated damages assessment issued by the Fund's Third-Party Administrator (TPA) on April 15, 2026, seeking $17,157.46 in alleged retroactive penalties dating back to 2020.

The employer disputes the assessment in full for the following reasons:

1. Ambiguous and inconsistent governing documents (2017–2025)

From 2017 through December 2025, the following documents contained conflicting or unclear language regarding contribution obligations and classifications:

- The Collective Bargaining Agreement
- The Union Constitution & Bylaws
- The Health & Welfare Summary Plan Description
- Other fund literature
- Documents still bearing the union's *old name* years after the name change.

These inconsistencies created genuine confusion for both the employer and employees. Several employees experienced financial harm due to these ambiguities, demonstrating that the confusion was real and material.

2. The Union and TPA effectively acknowledged the ambiguity

In December 2025, the Fund issued a Summary of Material Modifications (SMM) specifically to "clean up" and clarify the ambiguous language. This is a tacit admission that the prior documents were unclear and required correction.

A clarification issued in December 2025 cannot be used to impose penalties retroactively to 2020.

3. Employer provided a complete new-hire list dating back to 2017

To demonstrate good-faith compliance, the employer provided the TPA with a comprehensive list of all new hires from 2017 to the present, asking for documentation to help confirm:

- The employer used the same hiring and contribution procedure for every employee
- The employer applied a consistent interpretation of the ambiguous documents
- The Fund accepted contributions for years without objection or correction

This evidence proves the employer acted reasonably and transparently.

4. The TPA refused to review the employer's evidence

The TPA responded that "fund counsel advised they do not have to comply with the request" and declined to review the employer's documentation.

This refusal:

- Undermines the legitimacy of the delinquency assessment
- Violates the Fund's obligation to consider all relevant information
- Conflicts with ERISA fiduciary standards
- Suggests the assessment was issued without a full and fair review

A fund cannot demand retroactive penalties while refusing to examine the employer's proof of consistent compliance.

5. The Fund's own auditors did NOT find these discrepancies

During prior audits conducted by the Fund's own auditors, **no discrepancies of this nature were identified**. This is critical evidence that:

- The employer's long-standing procedures were reviewed and accepted
- The Fund had multiple opportunities to raise concerns and did not
- The alleged delinquency is the result of a **new interpretation**, not employer misconduct
- Retroactive penalties are inappropriate when the Fund's own auditors validated the employer's practices

This further demonstrates that the employer acted in good faith and that the Fund's current position is inconsistent with its own historical oversight.

6. Retroactive liquidated damages are inappropriate

Liquidated damages are intended to address **knowing or willful non-compliance**, not good-faith reliance on ambiguous documents.

Given:

- The ambiguity of the governing documents
- The union's failure to update its name and literature
- The SMM issued only in December 2025
- The employer's consistent practice since 2017
- The TPA's refusal to review evidence
- The Fund auditors' failure to identify any discrepancies
- The lack of any prior notice of alleged non-compliance

Retroactive penalties dating back to 2020 are neither fair nor enforceable.

Requested Remedy

The employer respectfully requests that the Union:

1. Withdraw the delinquency and liquidated damages assessment for all periods prior to the December 2025 SMM.
2. Confirm that the SMM applies on a go forward **only**.
3. Work collaboratively to ensure all governing documents are updated and consistent going forward.
4. Address and remedy any employee harm caused by the prior ambiguity.

The employer remains committed to full compliance with all clear and communicated obligations.

Sincerely,

Diahann Ricks

Human Resources

Kelly Press, Inc.

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