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Hon. Barbara S. Jones (Ret.)

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April 6, 2021

Via Electronic Mail

James P. Hoffa
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Charges Against Todd Mendez

Dear General President Hoffa:

On March 18, 2021, I received the Report and Recommendations of the IBT Hearing Panel appointed to hear charges against former Local Union 683 Secretary-Treasurer Todd Mendez (“Panel Report”). Pursuant to Paragraph 33 of Final Agreement and Order (“Final Order”), approved on February 17, 2015, in *United States v. International Brotherhood of Teamsters*, et. al., 88 Civ. 4486 (LAP), I write to notify you of my determination that the Panel Report is “inadequate” in part and “not inadequate” in part.

My findings are described in more detail below. Please respond in writing within twenty days of receipt of this letter as to what, if any, additional actions the IBT has or will take to correct the deficiencies that I have identified. *See* Final Order ¶ 33.

I. Background

Mr. Mendez became a Teamster in 1999. On January 1, 2005, he was employed by Local Union 683 as a business agent. From 2010 to 2018, he served as the Local’s Secretary-Treasurer. In the Fall of 2018, Mr. Mendez ran for re-election as Secretary-Treasurer. On December 20, 2018, the ballots were counted and it was determined that Mr. Mendez had lost the election. His term expired on December 31, 2018.

A. Charge Report

On August 28, 2020, the Independent Investigations Officer (“IIO”) issued a report to General President, James P. Hoffa, recommending that charges be filed against Mr. Mendez (“Charge Report”). The IIO’s proposed charges against Mr. Mendez are as follows:

Charge 1

While a Local 683 officer, Mr. Mendez embezzled and converted Local 683 funds to his own use, violated Federal law and committed an act of racketeering in violation of 29 U.S.C. § 501(c), the IBT Constitution, Article XIX, Section 7(b)(3) and (11) and Article XXII, Section 4(e), and the permanent injunction in the Final Order by making or causing to be made unauthorized and improper payments for salary, vacation, severance and bonuses to himself and his associates. Additionally, Mr. Mendez breached his fiduciary duties pursuant to 29 U.S.C. § 501(a) and the IBT Constitution for failing to properly record member dues payments.

Charge 2

Mr. Mendez brought reproach upon the IBT and breached his fiduciary duties by failing to meet with or designate a willing and qualified representative to meet with the incoming officers during the period between the date of election and the end of the term to review pending grievances, open contract negotiations, and the Local’s financial records, and by destroying Local Union property and records, in violation of 29 U.S.C. § 501(a), IBT Constitution Article XXII, Section 2(c), and IBT Constitution Article XIX, Section 9.

Charge 3

Mr. Mendez brought reproach upon the IBT and violated his membership oath when he knowingly harmed a fellow Teamster and retaliated and threatened to retaliate against a fellow Teamster for exercising rights under the IBT Constitution in violation of IBT Constitution Article II, Section 2(a), Article XIX, Section 7(b)(2) and (11), and by engaging in a pervasive pattern of verbal and physical harassment of officers, employees, Local 683 members and their families.

The Charge Report included 39 exhibits, which contained, among other things, sworn affidavits, emails, financial data, Local 683 bylaws and policies, employment records, photographic evidence, and video surveillance footage.

B. The IBT Hearing and Report

On September 1, 2020, the General President adopted and filed the recommended charges. *See* Panel Report at 2. A hearing panel was assembled (the “Panel”) and a remote hearing was conducted on January 20, 2021. *Id.* The charges were presented by Mr. Roland Acevedo, who submitted the Charge Report and its associated exhibits for the Panel’s review. *Id.*; *see also, generally*, Transcript of the January 20, 2021 Hearing (“Hearing Transcript”). Mr.

Mendez, who represented himself at the hearing, testified and submitted exhibits on his own behalf. *See* Panel Report at 2.

Counsel for Local 683, Florice Hoffman, and the Local's current Secretary-Treasurer, Lee Fletcher, observed the proceedings remotely as interested parties. *Id.*; *see also* Hearing Transcript, 15:17–16:8. Although Ms. Hoffman and Mr. Fletcher observed the proceedings, they were not called to testify by the IBT, Mr. Mendez or the Panel. The only testimony the Panel heard was from Mr. Mendez. Following the hearing, the parties provided the Panel with post-hearing submissions.

On March 18, 2021, the Panel issued its Report and recommended dismissing all of the charges against Mr. Mendez. The Panel found that the charges were not supported by a preponderance of reliable evidence. *See* Panel Report at 11. In addition, the Panel found that the charges were untimely and potentially reflected politically motivated efforts by the Local's current officers. *Id.* at 5 and 11.

II. The Independent Review Officer's Findings

As noted above, I have determined that the Panel's decision is "inadequate" in part and "not inadequate" in part. I have reviewed the IIO's Charge Report and associated exhibits; the evidence and exhibits submitted by Mr. Mendez and the IBT at the hearing; the Hearing Transcript; the parties post-hearing submissions; the Panel Report; the IIO's Position Statement regarding the Panel's Report, dated March 29, 2021; the IBT's reply, dated March 31, 2021; and additional information submitted to the IRO by the IIO regarding the IBT Auditor's report identified as Exhibit 10. My findings as to the adequacy of the Panel Report are as follows:

A. Charge 1

The IIO alleged that after Mr. Mendez's election loss and before his term expired on December 31, 2018, Mr. Mendez embezzled the Local's funds by making unauthorized and impermissible payments to himself and others in excess of \$110,000. *See* Charge Report at 4. Pursuant to the IBT Constitution and Local 683's bylaws, during the period between the date of an election and the end of a term of office, no "extraordinary expenditures" of Local Union funds shall be made without the approval of the officers-elect and the membership. *See* Exhibit 9 at 38; *see also* IBT Constitution, Article XXII, Section 4(e).

An expense may be considered "extraordinary" if, (a) it is not routine or recurring; (b) it is for an amount greater than the Local would normally pay in the ordinary course; (c) it establishes new benefits or increases the amounts of previously authorized benefits; or (d) it would have a significant adverse effect on the financial stability of the Local. *See* IBT Constitution, Article XXII, Section 4(e)(a)-(d); *see also* Article VII, Section 2(a)(1) (examples of routine or recurring payments).

The IIO charged that Mr. Mendez made or caused to be made extraordinary expenditures between the time of his loss of the 2018 election and the expiration of his term without the approval of the officers-elect and the membership. *See* Charge Report at 4-6. These payments included anniversary bonuses, accrued vacation, severance payments and salary payments to

himself and/or other Local employees. *Id.* Additionally, the IIO alleged that Mr. Mendez breached his fiduciary duty by failing to ensure that members' dues payments were posted to TITAN. *See* Charge Report at 7; *see also* 29 U.S.C § 501(a).

I find that the Panel's decisions regarding the anniversary bonus and the vacation payments are "inadequate" under the circumstances, and that the Panel's conclusions regarding the severance payments and salary payments are "not inadequate." In addition, I find the Panel's decision regarding Mr. Mendez's alleged breach of his fiduciary duty by failing to post or record members' dues to be "inadequate."

1. Anniversary Bonus

The IIO alleged that Mr. Mendez embezzled union funds by paying himself a \$10,600 anniversary bonus to which he was not entitled. *See* Charge Report at 6. The IIO further alleged that because Mr. Mendez was not entitled to the anniversary bonus, it was an unauthorized and extraordinary expenditure. *Id.*

It is not disputed that under Local 683's benefits policy in order to be eligible for an anniversary bonus, Mr. Mendez was required to be employed by the Local on his anniversary date of January 1st. *See* Panel Report at 7; *see also* Exhibit 12. The Panel recognized that Mr. Mendez was not employed on January 1, 2019, as his term of office expired on December 31, 2018. *See* Panel Report at 7. However, to support the finding that Mr. Mendez was entitled to the payment, the Panel credited Mr. Mendez's testimony that he had "verified his eligibility for an anniversary bonus even if he lost his 2018 election with an IBT auditor who reasoned that at that point he would have still worked an entire 12 months during 2018." *See* Panel Report at 7; *see also* Hearing Transcript, 100:1-3 and 101:13 – 103:10.

I find the Panel did not adequately consider evidence that the anniversary payment was in violation of Local 683's policy and should have been considered an extraordinary expenditure. As Mr. Mendez was not employed on his anniversary date, he was not entitled to the payment under the terms of the policy. Because the anniversary payment was not routine, exceeded the amount that the Local would have normally paid and created a new benefit or increased an authorized one, it appears the payment should be considered an extraordinary expenditure requiring approval of the incoming officers.

Although the Panel fully credited Mr. Mendez's testimony that he was entitled to the anniversary bonus because he allegedly discussed it with an IBT Auditor one year before the payment occurred, that discussion does not constitute authorization under Local 683's bylaws or the IBT Constitution. Further, Mr. Mendez's conversation with the auditor would not obviate the requirement that the officers-elect approve such payment. Finally, other than Mr. Mendez's testimony, there was no evidence – from the auditor or anyone else – to substantiate his claim that he had the authority to distribute the anniversary bonus to himself prior to his work anniversary.

Accordingly, the Panel's finding with respect to the anniversary payment is "inadequate."

2. Vacation Payments

The IIO alleged that Mr. Mendez made or caused to be made unauthorized payments for accrued but unused vacation time to himself and other employees of Local 683 (“Vacation Payments”) in violation of the prohibition on extraordinary expenses. *See* Charge Report at 5, 7; *see also* Exhibits 10, 13, 14, 15, 18, and 39 (collectively, the “Vacation Audit Charts”). The Panel found the Vacation Payments were permissible because the Local had an established policy that allowed for payments of unused vacation time. *See* Panel Report at 6.¹

According to the Local’s vacation policy, employees accrue vacation time per year based on union membership without any break in service. *See* Exhibit 12 at 4. Additionally, the policy is clear that vacation accrual (i.e., unused vacation) shall not carry over to the next year. *Id.* However, to the extent an employee does not use their vacation in a given year, they may receive “[p]ay ‘in lieu of’ [unused vacation]...at the discretion of the Secretary-Treasurer.” *Id.*

I find the Panel did not adequately consider the evidence regarding whether the Vacation Payments violated Local 683’s policy and/or exceeded payments authorized by the policy such that they should have been considered extraordinary expenditures requiring approval of the officers-elect.

The IIO charged that the Vacation Payments exceeded the amount that the individuals were entitled to receive under the policy. *See* Exhibit 10 and Vacation Audit Charts. In support of its charges, the IIO submitted a report from an IBT Auditor that had been sent by the International to assist the Local in January 2019 upon request from the incoming officers. On March 19, 2019, the auditor summarized her work and findings in a memorandum that was submitted to the IBT General Secretary-Treasurer. *Id.* The Panel did not adequately consider the evidence in the report from the IBT Auditor supporting the charges that the Vacation Payments exceeded those authorized in the policy.

Further, other than the one-and-a-half pages of handwritten notes from Patricia Henry, the former bookkeeper for Local 683, Mr. Mendez presented no evidence in support of the Vacation Payments, how much unused vacation the paid employees were entitled to or how much vacation time the employees had used as of their termination at the end of 2018. *See* Hearing Panel Exhibit 55.

As an example, the Panel did not adequately consider evidence that Wayne Lovett was overpaid \$11,565 for accrued vacation. *See* Exhibit 18. The Panel’s finding that Mr. Lovett was “given credit, for purposes of calculating his vacation entitlement, for prior service in the craft” as justification for his Vacation Payment is not supported by the evidence. *See* Panel Report at 6; Exhibit 56. Further, even if Mr. Lovett had been given a credit in the past for unused vacation, the payment would still have been an extraordinary expenditure requiring approval of the incoming officers. *See* Exhibit 12 at 4. The Panel similarly did not adequately consider the

¹ The Panel also found that California Labor law also permitted the payments. *Id.*; *see also* California Labor Code, Section 227.3.

evidence regarding whether the other Vacation Payments violated the terms of the policy and/or exceeded payment authorized by the policy.²

Accordingly, the Panel's findings with respect to the Vacation Payments are "inadequate."

3. Severance Payments

Mr. Mendez authorized a severance payment to himself in the amount of \$26,500 and to Mr. Lovett for \$18,000 for their more than 10 years of service at the Local. According to Local 683's policy, employees who complete 10 years of service will be "paid severance pay upon the termination of said employment equal to 10 weeks' salary at their regular rate of pay." *See* Exhibit 12 at 4. In addition, "at the option of Local 683, payment of severance will be paid in a lump sum or in bi-monthly payments within 90 (ninety) days from the date of termination or resignation." *Id.* at 5.

The IIO did not allege that the severance payment amounts were improper, only that payment in a lump sum should be considered extraordinary under the IBT Constitution. The Panel found that Mr. Mendez was permitted to make the severance payments under the policy. *See* Panel Report at 6.

It is not disputed that based on 10 years of service, Mr. Mendez and Mr. Lovett were entitled to the severance payments. Additionally, the payments were not greater than the Local would normally pay in the ordinary course, nor did the severance payments establish new or increased benefits. *See* IBT Constitution Article XXII, Section 4(e). The only question is whether the payments should have been "lump sum" or paid out over time to avoid placing the Local in financial harm. *Id.* Section 4(e)(d). On this issue, the Panel found that all of the payments, taken together, did not harm the Local's financial position. *See* Panel Report at 7. I find that the Panel adequately considered the evidence in support of its conclusion.

The Local had over \$137,000 in its accounts on January 2019.³ *See* Exhibit 4 at 3. Based on the evidence before me, this amount is consistent with the Local's historical cash balances as reflected in financial reports it previously filed. *See* March 6, 2019 Mendez Charge Report, Exhibit 5 at 3 and Exhibit 2 at 3; *see also* Exhibit 17. Thus, it does not appear that the total amount of the payments would have had a significant adverse effect on the financial

² The Panel did not adequately consider the apparent lack of evidence to support the payment to Ms. Henry of 131 hours of unused vacation. I note that according to the Local's accounts, the 131 hours (or \$4,585) payment to Ms. Henry was recorded as "vacation salary," but Ms. Henry's hand written notes indicate that 51 hours were for vacation and 80 hours were for an anniversary bonus payment. *See* Exhibits 14 and 55. Further, according to the evidence, Ms. Henry had already received an anniversary bonus of one week's pay shortly after her third year anniversary on November 15th. *See* Exhibit 14. On December 26th, just over one month later, she was apparently paid an additional two weeks' pay for another anniversary bonus. *Id.*

³ At the beginning of 2019, the Local had net assets totaling over \$1.3 million. *See* Exhibit 4. This asset figure is almost entirely comprised of fixed assets, such as the building, land, furniture and vehicles owned by the Local. *Id.* These assets are not readily marketable and, as such, are irrelevant for purposes of this analysis.

stability of the Local or affect its ability to provide representational services to the membership.⁴ *See* IBT Constitution, Article XXII, Section 4(e)(d).

Accordingly, the Panel's findings with respect to the severance payments are "not inadequate."

4. Salary to Employees

The IIO charged that Eduardo Gonzalez and Frank Sevilla were improperly paid a salary for the first week of January 2019 because they allegedly did not work during that time. *See* Charge Report at 6-7. The Panel found that both Mr. Sevilla and Mr. Gonzalez were on the payroll at the beginning of the week, which began on December 31, 2018, and were not terminated until after that date. *See* Panel Report at 6. I find that the Panel adequately considered the evidence in support of its conclusion.

To support the claim that Mr. Gonzalez was not entitled to the salary, the IIO submitted a work hour status report demonstrating that Mr. Gonzalez went on disability. *See* Exhibit 37. However, a review of this report indicates that Mr. Gonzalez was "placed off work" on January 4, 2019 – the end of that week. *Id.* The remaining evidence offered by the IIO on this point is unpersuasive to demonstrate that either Mr. Gonzalez or Mr. Sevilla were not entitled to their salaries. *See* Exhibit 8, note 8.

Accordingly, the Panel's findings regarding the salaries for Mr. Gonzalez and Mr. Sevilla are "not inadequate."

5. TITAN Records

The IIO alleged that Mr. Mendez breached his fiduciary duties by failing to ensure that members' dues payments were posted to TITAN. *See* Charge Report at 7; *see also* 29 U.S.C § 501(a). The IBT Auditor found that "[i]n December 2018, the former bookkeeper [Ms. Henry] deposited "check off" dues payments from numerous employers and did not post to TITAN." Exhibit 10 (emphasis in original).

As Secretary-Treasurer, Mr. Mendez also acted as the Local's Chief Financial Officer and was responsible for ensuring that the Local's financial records were recorded accurately. *See* Hearing Transcript, 182:7-11. However, he failed to ensure that dues payments on behalf of his members were timely and properly recorded. Among other things, an improper dues payment record can have a detrimental impact on a member's good standing, their membership in the union, their right to vote and right to attend union meetings. *See* Exhibit 9 at 4-7.

I find the Panel did not adequately consider the allegations that Mr. Mendez breached his fiduciary duties by failing to ensure the members' dues payments were posted to TITAN and the Panel did not adequately consider the evidence regarding Mr. Mendez's conduct. Accordingly,

⁴ The fact that Mr. Mendez allegedly failed to pay some of the Local's regular bills in the ordinary course is a failure of his duty as an officer, but according to the evidence it did not impact the financial stability of the union. *See* Hearing Transcript, 199:6-9.

the Panel's findings with respect to Mr. Mendez's alleged breach of fiduciary duties are "inadequate."

B. Charge 2

The IIO alleged that Mr. Mendez breached his fiduciary duties because he (1) failed to meet with or designate a willing and qualified representative to meet with the newly elected officers prior to leaving office and (2) destroyed union property and records following his election loss. *See* Charge Report at 11-20 and 28; *see also* IBT Constitution Article XXII, Section 2(c), Article XIX, Section 9, and 29 USC § 501(a). The Panel recommended these charges be dismissed. *See* Panel Report at 9. I find that the Panel's decision regarding Mr. Mendez's alleged breaches of fiduciary duty to be "inadequate."

First, pursuant to the IBT Constitution, when an election "results in a new principal executive officer, the incumbent principal officer or designee shall meet with the principal officer-elect during the period between the date of election and the end of the term of office. The incumbent principal executive or designee shall review with the principal officer-elect pending grievances and open contract negotiations, as well as the Local's financial records." IBT Constitution Article XXII, Section 2(c).

Here, there does not appear to be any dispute that the meeting mandated by the IBT Constitution did not take place and that neither Mr. Mendez nor his designee reviewed with the incoming officers pending grievances, open contract negotiations or the Local's financial records. *See* Exhibits 8, 22, 24 and 29; Panel Report at 8-9. However, the Panel does not appear to have made any findings or reached any conclusions regarding the IIO's allegation of breach of fiduciary duty in violation of Article XXII 2(c). Thus, I find the Panel did not adequately consider the allegations and the Panel did not adequately consider the evidence regarding Mr. Mendez's or his designee's failure to meet with the officers-elect and review the Local's records as required.

Second, pursuant to the IBT Constitution, it is an offense if any member (1) wrongfully takes or retains any money, books, papers, or any other property belonging to the Local Union or (2) destroys any books, bills, receipts, vouchers, or other property of a Local Union. *See* Article XIX, Section 9.

The Panel found that it could not conclude on the record before it that Mr. Mendez had destroyed records or property. *See* Panel Report at 9. The Panel based its determination in part on its conclusions that the incoming officers failed to timely report the conduct and that there were technical deficiencies and inconsistencies in some of the evidence. Additionally, the Panel found the evidence insufficient to support the claim that Mr. Mendez had destroyed the Local's records because the "Local's positions in negotiations or grievance matters were not compromised in any manner whatsoever." *Id.*

I find that the Panel did not adequately consider the evidence in support of the IIO's charge regarding Mr. Mendez's alleged destruction of the Local's property and records. *See*, e.g., Exhibits 8, 10, 22, 24, 29 and 30. For example, although the Panel places weight on the alleged delay of the new officers in reporting their concerns to the IIO, the Panel does not

adequately consider the evidence that the incoming officers reported these same issues when they met with the IBT Auditor in January 2019. *See* Exhibit 10. Nor did the Panel consider that the allegations were submitted to the IBT in March 2019. Additionally, it is irrelevant to the charge whether the Local's positions in negotiations or grievance matters were compromised or whether any individual member was actually harmed by the alleged destruction of records.

Accordingly, the Panel's conclusions with respect to Charge 2 are "inadequate."

C. Charge 3

The IIO alleged that Mr. Mendez brought reproach upon the union and violated his oath by threatening, and threatening to retaliate against, a fellow member for exercising rights under the IBT Constitution and engaged in a pervasive pattern of verbal and physical harassment of officers, employees, Local 683 members and their families. *See* Charge Report at 28.

The IIO submitted evidence in the form of affidavits and video surveillance recordings in support of these charges. *See* Exhibits 11, 35 and 36. First, the IIO alleged that Mr. Mendez threatened Robert Browning on December 20, 2018 after Mr. Mendez lost the election. *See* Exhibits 11 and 35. Next the IIO alleged that, at some point in January 2019, Mr. Mendez arrived at a membership meeting and was observed in a video surveillance recording approaching an unidentified member in a threatening manner in a parking lot. *See* Exhibit 35. According to the IIO, in another section of the same video, Mr. Mendez can be seen threatening Shannon Silva.

The Panel recommended dismissal of Charge 3, finding the evidence insufficient. *See* Panel Report at 11. I find the Panel did not adequately consider the evidence with respect to the threats against Mr. Browning, but did adequately consider the evidence regarding the alleged threats against other individuals.


As for the threats against Mr. Browning, the Panel did not adequately consider Mr. Browning's sworn affidavit. As for the evidence regarding threats against others, the Panel did adequately consider the fact that the individuals are not identified in the video surveillance recordings. While it appears in a video that Mr. Mendez approached an unidentified individual in a threatening manner, there is no audio or additional evidence regarding the identity of the individual or what was said during that interaction. *See* Exhibit 35; *see also* Charge Report at 21.

Accordingly, I find the Panel's decision regarding the charges pertaining to the threats against Mr. Browning "inadequate," but find the Panel's decision regarding the charges of threats to other individuals to be "adequate."

III. Conclusion

Pursuant to Paragraph 33 of the Final Order, you have twenty days to submit in writing any additional actions the IBT has or will take to correct the above-described deficiencies. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara S. Jones". The signature is fluid and cursive, with a large initial "B".

Hon. Barbara S. Jones (Ret.)
Independent Review Officer

cc: Bradley T. Raymond
Robert D. Luskin
David Kluck
Daniel Healy
Todd Mendez