INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

April 20, 2021

VIA EMAIL

Hon. Barbara Jones
Independent Review Officer
Bracewell LLP
1251 Avenue of the Americas
49th Floor
New York, NY 10020

Re: Charges Against Todd Mendez

Dear Judge Jones:

I am writing on behalf of the IBT and General President Hoffa in response to your letter of April 6, 2021 in the above matter. The Hearing Panel carefully considered the IIO's recommended charges against Todd Mendez and the evidence presented by the IIO, and concluded that the charges were unsupported by a preponderance of reliable evidence. Although you have found certain aspects of the IBT's determinations with respect to the recommended charges to be inadequate, the Union, respectfully, is not willing to take further action against Mr. Mendez at this time.

Should you proceed to consider the matter de novo, we respectfully urge you to consider the following with respect to those findings by the Union you found to be inadequate:

1. Charge 1.

   a. Anniversary bonus.
   If, as you suggest, the Local's policy concerning eligibility for an anniversary bonus required that a person receiving the bonus be employed on his anniversary date, the anniversary payment that was made to Mr. Mendez could certainly have been problematic. The

problem from the Union Panel's perspective was that the policy does not say that. Rather, it states only that "ANNUAL BONUSES WILL BE PAID AT THE TIME OF YOUR ANNIVERSARY DATE." The Panel members are familiar with issues like this that occur in similar situations under collective bargaining agreements they administer, and they were persuaded by the lack of explicit language requiring that the recipient of an anniversary bonus be actively employed and on the payroll on his anniversary date in order to receive the bonus. In the absence of such explicit language, they were unwilling to conclude that this aspect of the charge was supported by a preponderance of reliable evidence.

b. Vacation.

California for years has been an outlier with respect to how accrued vacation may be treated when an employee's employment ends. Policies which prevent the "carry over" of unused vacation from year to year are unlawful in California. See, e.g., Boothby v. Atlas Mechanical, Inc., 6 Cal. App. 4th 1595 (1992); Suastez v. Plastic Dress-Up Co., 31 Cal.3d 774 (1982). Respectfully, it is not a question of whether payments for all unused vacation to a departing employee are "permitted." Rather, the payment of all unused vacation when employment ends is **required; forfeiture of unused vacation in California is strictly prohibited.** The IBT on at least one prior occasion found it necessary to address this issue with IRB under the Consent Decree. In Rosas (2015), IRB had recommended charges against a Local Union official in California for, among other things, authorizing the payment of accrued vacation to a retiring business agent. IRB alleged that the payout was excessive since it exceeded a maximum carry over provision in the Local's vacation policy. The problem there, as here, was that this policy was unlawful under California law. In presenting a resolution of the charges to IRB, the IBT excluded the business agent's allegedly excessive vacation payout from the proposed remedy, and pointed out that IRB had misconstrued and misapplied the requirements of California law. Exhibit A. The same analysis applies here. Regardless of what the Local's vacation policy states, a restriction on carry over of unused vacation from year to year, or which would otherwise require the forfeiture of accrued

vacation, is unlawful in California. The IIO was simply wrong on this issue. And its efforts to challenge the calculations of vacation payouts was also largely garbled. The Panel concluded that the vacation pay aspect of the charge was not supported by a preponderance of reliable evidence.

c. TITAN Records.

Charge 1 did not allege that Mr. Mendez breached his fiduciary duty with respect to the alleged non-posting of certain dues receipts to the TITAN system. Indeed, there is no evidence that Mr. Mendez was even responsible for this alleged failure. Nor is there any evidence of any actual adverse impact on any member's good standing, right to vote or right to attend union meetings.

2. Charge 2.

Respectfully, the Panel concluded that there was no evidence that Mr. Mendez destroyed Union records. The Panel's concerns about the unexplained indolence of the incoming administration in seeking to address the concerns that were ultimately included in sworn statements first prepared more than a year and a half after the fact focused on the credibility of these concerns. The lack of evidence that Mendez destroyed or authorized the destruction of the Union's records, however, is just that: no evidence.

3. Charge 3.

The IIO alleged that Mr. Mendez "engaged in a pervasive pattern of verbal and physical harassment of officers, employees, Local 683 members and their families." The Panel concluded that the preponderance of reliable evidence did not support this claim. Two of the alleged incidents occurred when Mendez was no longer a member, well beyond the Union's jurisdiction to pursue internal union discipline. A third was predicated on unverified characterizations of a video recording that objectively did not support those characterizations. Characterizations of an incident allegedly occurring on December 20, 2018, immediately following the announcement of results of a hotly contested officer election were in many instances garbled and were not corroborated by a video recording

presented as depicting the incident. The Panel, although certainly not condoning verbal or physical harassment of members, concluded that the charge of a "pervasive pattern of verbal and physical harassment of officers, employees, Local 683 members and their families" by Mendez was not supported by a preponderance of reliable evidence.

Please let us know if you have any questions concerning the IBT's position on this matter.

Very truly yours,

Bradley T. Raymond

Bradley T. Raymond
General Counsel

BTR/lac

cc: Robert D. Luskin, Esq., Independent Investigations Officer
David Kluck, Esq.
Daniel Healy, Esq.
Thomas Kokalas, Esq.
Todd Mendez

EXHIBIT A

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

May 21, 2015

Mr. John J. Cronin, Jr., Administrator
Independent Review Board
444 North Capitol Street, N.W., Suite 528
Washington, D.C. 20001

Re: Charges Against Former Local 439 Secretary Treasurer Samuel Rosas

Dear Mr. Cronin:

Enclosed for the Board's consideration is an Affidavit and Agreement signed by Mr. Rosas and by me, on behalf of the IBT, which we believe resolves the charges that were adopted by General President Hoffa, following IRB's recommendation of February 27, 2015.

The Agreement provides that Mr. Rosas' membership in the Union will be suspended for a period of five years or until he has paid restitution, whichever occurs later. It also bars him from holding elected or appointed positions (including consulting or similar relationships) with Local 439 or any other IBT affiliate for a period of ten years or until he pays restitution, whichever occurs later. The Agreement further provides that any amounts the Local may owe him will be reduced to satisfy his restitution obligation.

As with the agreement the IBT entered into with the Local's former President, Armando Alonzo, which IRB has approved, the terms of this Agreement are, we believe, at the high end of the range of penalties that have been imposed and/or agreed to in prior cases involving allegations of embezzlement against officers of Local Unions and other affiliates, particularly those who were not the principal officer. E.g., Vazquez (March 5, 2010) (amount allegedly embezzled was approximately $55,000; officer removed from office and barred from holding union office or employment for the remainder of his term, and suspension from membership for one year and fined the amount allegedly embezzled); Hahs (March 14, 2008) (amount allegedly embezzled was approximately $55,000; principal officer was removed from office and barred from union office and employment for the remainder of his term,

EXHIBIT A

suspended from membership for one year and fined the amount allegedly embezzled); Trerotola (September 22, 1995) (amount allegedly embezzled was approximately $31,000; principal officer was removed from office and barred from union office and employment and suspended from membership for two years); Busby (April 15, 1997) (amount allegedly embezzled was approximately $6,000; officer was removed from office, barred from union office and employment for three years and suspended from membership for one year); Martucci (April 2, 2012) (amount allegedly embezzled was approximately $6,000; officer was removed from office, barred from union office and employment for two years, suspended from membership for two years and fined the amount allegedly embezzled); Moreno and Guillory (August 29, 2011) (amounts allegedly embezzled were $39,595 and $32,217; officers were barred from union office and employment for five years and suspended from membership for three years); Kenny (August 29, 2011) (amount allegedly embezzled was $168,168; principal officer was barred from union office and employment for 10 years and suspended from membership for five years).

In determining the amount of restitution applicable to Mr. Rosas (the Agreement provides for $19,164), we have excluded $15,928.43, the amount Messrs. Alonzo and Rosas were charged with improperly causing the Local to pay to retired business agent Edward Speckman in accrued vacation leave in 2013. In recommending that Alonzo and Rosas be charged with embezzlement for causing this payment to be made, the Board reasoned that it was contrary to the Local's vacation policy. The Board's referral concluded that this amount reflected 645.66 hours more than what Speckman was entitled to be paid for, since it represented amounts of unused vacation he was allowed to carry over into 2011, 2012 and 2013 over and above a maximum of 250 hour carry over limit set forth in the Local's vacation policy.

As we pointed out when we submitted Mr. Alonzo's agreement, enforcement of the 250 hour maximum vacation carry over language in the Local's vacation policy in the manner suggested in the Board's report would have raised serious questions under California law. It is our understanding that California prohibits so-called "use it or lose it" vacation policies, under which any vacation time that has been earned by an employee can forfeited if it is not used within a given time frame. E.g., Boothby v. Atlas Mechanical, Inc., 6 Cal. App. 4th 1595 (1992). California views vacation benefits as "a form of deferred compensation" which should be protected in light of the statewide policy of "jealously protecting wages." Id.; see also Suastez v. Plastic Dress-Up Co., 31 Cal. 3d 774 (1982). Thus, although an employer may have a policy which freezes future vacation accruals when a specified cap is reached, it is our

understanding that it may not provide that any portion of existing vacation accruals are forfeited if not used.

Here, as we understand the Board's analysis in its February 27 report, business agent Speckman, had accrued vacation over the 250 hour cap at the end of 2010, 2011 and 2012. Under the Local's policy he arguably should not have been able to carry over anything more than 250 hours of accrued vacation into 2011, 2012 and 2013. But, since we do not understand the Local to have paid Speckman for the unused accrued vacation over the 250 cap at the end of each year, it appears that the Board's analysis would in effect have compelled the Local to have deemed the excess unused vacation to have been forfeited. As indicated above, requiring Speckman to forfeit any portion of his accrued vacation hours would have been arguably unlawful under California law. In this regard, the Local's policy here did not provide for a freezing of future vacation accruals over a specified cap.

A Q & A pamphlet from California's Division of Labor Standards Enforcement (copy attached), which was cited by the Board in its report, supports our conclusion that mandating that Speckman forfeit vacation hours he had accrued over the 250 hour cap in 2010, 2011 and 2012 would have been unlawful under California law. Thus, the pamphlet confirms that vacation pay in California is regarded as "another form of wages which vests as it is earned." It further states that "a policy which provides for the forfeiture of vacation pay that is not used by a specified date ... is an illegal policy." It also indicates, as stated above, that it is permissible to set a cap of accrued vacation over which no more vacation may be earned. [For example, the IBT's vacation policy provides that "Class II employees cannot earn, and will not accrue, leave in excess of 280 hours."] The Local's policy did not contain such a cap on future accruals. To the extent an employer seeks to manage its vacation pay obligations from year to year, the Q& A notes that an employer that wants to prohibit employees from carrying over unused vacation from year to year has the option of electing to pay employees at the end of each year for unused vacation accruals. To the extent an employer that does not pay employees for unused vacation each year but still prohibits them from carrying over unused vacation time from year to year, and thus deems the employee's unused vacation to have been forfeited, the Q & A suggests that the affected employee can "file a wage claim with the Division of Labor Standards Enforcement ..., or you can file a lawsuit against your employer to recover the lost wages."

In these circumstances, it appears the vacation payments to Mr. Steckman were arguably required by California law. For this reason, we have not included them in

calculating the amount of restitution Mr. Rosas is required to pay under the Agreement.

Accordingly, the IBT believes that the enclosed agreement is fair and just, and we respectfully urge the Board to approve it.

Please do not hesitate to contact me if the Board has any questions.

Very truly yours,

Bradley T. Raymond
General Counsel

cc: Charles M. Carberry
Samuel Rosas

BTR/lac