

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer

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January 25, 2022

## VIA UPS

Mr. Michael Philbeck  
1520 Frog Branch Road  
Paint Lick, KY 40461

Mr. Ron Merrifield  
3465 Flintridge Drive  
Lexington, KY 40517

Re: Panel Report and Recommendations

Dear Sirs and Brothers:

You will find enclosed the Report and Recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,

  
James P. Hoffa  
General President

JPH/brc  
Enclosure

cc: Hearing Panel  
General Executive Board  
Robert D. Luskin, Esq, Independent Investigations Officer  
Hon. Barbara Jones, Independent Review Officer  
James Brant, President, Local Union 651  
Fred Zuckerman, President, Joint Council 94  
Roland R. Acevedo, Esq.

**REPORT AND RECOMMENDATIONS OF HEARING PANEL  
APPOINTED TO HEAR CHARGES AGAINST FORMER L-651  
OFFICERS MICHAEL PHILBECK AND RON MERRIFIELD<sup>1</sup>**

**Introduction**

On August 12, 2021, the Independent Investigations Officer (“IIO”) issued a report to General President Hoffa (IIO Report), recommending that the following charges be filed against former Local 651 President Michael Philbeck and former Local 651 Business Agent Ron Merrifield:

a. Charge 1 (Philbeck): Embezzlement

While principal officer of Local 651, after having lost your contested reelection but before leaving office, you embezzled and converted Local 651 funds to your own use, violated federal law, and committed an act of racketeering: *to wit*:

- i. You caused Local 651 to issues payments to you for purportedly unused leave totaling at least \$12,400.60 to which you were not entitled. You caused such payments to be made:
  1. Pursuant to a purported Executive Board resolution you knew to be invalid and in violation of the Local’s Bylaws;
  2. Without notice to or approval of the incoming officers in violation of the IBT Constitution; and
  3. Without a Union purpose.
- ii. You caused Local 651 to issue payments to you for purported salary totaling at least \$3,605.77 to which you were not entitled and for which there was no Union purpose.

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<sup>1</sup> The IIO Report’s caption is wrong. Ron Merrifield was a Business Agent until December 31, 2018. He was never an officer.

- iii. You caused Local 651 to sell to you a laptop computer for approximately \$529.00 below fair market value pursuant to a purported Executive Board resolution you knew to be invalid and in violation of the Local's Bylaws and without a Union purpose.

All in violation of 29 USC Sec. 501 (c); the IBT Constitution, Art. XIX, Sec. 7 (b) (3) and (11) and Art. XXII, Sec. 4 (e); Local 651 Bylaws, Art. 14 (D); and the permanent injunction in *United States v. International Brotherhood of Teamsters*.

b. Charge II (Philbeck): Breach of Fiduciary Duty

While principal officer of Local 651, you brought reproach upon the IBT, violated your membership oath, and breached your fiduciary duties; *to wit*:

- i. You caused Local 651 to issue payments to two Local officers and employees for purportedly unused leave totaling at least \$16,786.07 to which they were not entitled. You caused such payments to be made:
  - 1. Pursuant to a purported Executive Board resolution you knew to be invalid and in violation of the Local's Bylaws;
  - 2. Without notice to or approval of the incoming officers in violation of the IBT Constitution; and
  - 3. Without a Union purpose.
- ii. You caused Local 651 to issue payments totaling \$12,661.90 for the Christmas Breakfast pursuant to a purported Executive Board resolution you knew to be invalid and in violation of the Local's Bylaws and without notice to or approval of the incoming officers in violation of the IBT Constitution
- iii. You failed to meet with or designate a qualified representative to meet with the incoming officers in violation of Local 651 Bylaws and the IBT Constitution;
- iv. You failed to cooperate with the incoming administration in transferring signature authority over Local 651's Bank account; and

- v. After the expiration of your term as principal officer of Local 651, you failed to return control of the Local's social media accounts and used the accounts to publish your own statements without the authorization of Local 651's duly elected officers;

All in violation of 29 USC Sec. 501 (a),<sup>2</sup> IBT Const. Art. XXII, Sec 2 (c), and IBT Const. Art. XIX, Sec. 9 (b) (1) and (2); and the permanent injunction in *United States v. International Brotherhood of Teamsters*.

c. Charge III (Philbeck and Merrifield): Embezzlement

While members of Local 651 and the IBT, you embezzled and converted Local 651 funds to your own use, violated federal law, and committed an act of racketeering; *to wit*:

- i. In December 2008,<sup>3</sup> you redeemed credit card points belonging to Local 651 for valuable merchandise, which you converted to your personal use;
- ii. You refused the Local's request to return the merchandise or to reimburse the Local for the value received.

All in violation of 29 USC Sec 501 (c); the IBT Constitution, Art. XIX, Sec. 7 (b) (3) and (11) and Art. XXII, Sec. 4 (e); and the permanent injunction in *United States v. International Brotherhood of Teamsters*.

On August 16, 2021, General President Hoffa adopted and filed the recommended charges. Subsequently, General President Hoffa appointed a Hearing Panel ("Panel") comprised of the following uninvolved members: John Murphy, International Vice President and Secretary-Treasurer of Local 122; Tony Andrews, International Vice President and Secretary-Treasurer of Local 305; and Jim Kabell, International Trustee. Brother Murphy was designated to serve as the Panel's chair. The Panel was given the responsibility of hearing the evidence and making a full report to General President Hoffa.

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<sup>2</sup> We assume the IIO intended to cite 29 USC Sec. 501 (c), not Sec. 501 (a).

<sup>3</sup> We assume the IIO intended to reference December 2018, not December 2008.

A hearing on the charges was scheduled for and held on December 16, 2021 at the Hilton Lexington Downtown, 369 West Vine Street, Lexington, KY 40507.

Brothers Philbeck and Merrifield appeared and participated in the hearing. The charges were presented via Zoom by Roland R. Acevedo, Esq. Local 651's then principal officer, Michael Watson, International General Secretary-Treasurer Elect Fred Zuckerman, and various other members attended the hearing in person. That said, only Brother Philbeck and Merrifield testified at the hearing; other sworn evidence consisted of depositions and declarations obtained by the IIO during its investigation.

The following findings and recommendations of the Panel<sup>4</sup> are based on the entire record, including exhibits and sworn testimony appended to the IIO's report, the testimony and demeanor of Brothers Philbeck and Merrifield at the hearing, other documents entered into evidence, and the oral arguments made in support of and in opposition to the charges.

## **Findings**

### **Brothers Philbeck's and Merrifield's Backgrounds**

As set forth in the IIO Report, Brother Philbeck has been a Teamster since February of 1996. He was Local 651's President and principal officer from 2010 until December 31, 2018. He was defeated for reelection in November of 2018. After leaving office, he resumed driving for UPS, and has remained a member of Local 651.

Brother Merrifield has been a Teamster since May of 2008. From 2013 until December 31, 2018, he served as a Business Agent for Local 651. Subsequently, he resumed driving for UPS Freight,<sup>5</sup> and has remained a member of the Local.

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<sup>4</sup> Brother Kabell was excused from attending the hearing for medical reasons. Brothers Murphy and Andrews proceeded without him and both endorse the findings and recommendations set forth in this Report.

<sup>5</sup> We are uncertain, and the IIO Report does not indicate, whether Brother Merrifield became employed by T Force Freight, after it acquired UPS Freight in 2021.

## **Charge 1**

### i. Vacation and sick leave.

Brother Philbeck is charged with having caused Local 651 to issue payments to himself totaling \$12,400.60 for accrued leave to which he was not entitled. These payments were purportedly for unused vacation and sick time.

There is no dispute that there was not a quorum at a purported Executive Board meeting conducted on November 18, 2018, at which the payments were purportedly approved. IBT Ex. 13. We do not, however, credit suggestions by several witnesses and the IIO to the effect that the meeting proceeded without notice to the three then Trustees and Secretary-Treasurer Michael Watson who were present at the Local Union Hall on that date. In this regard, we are mindful that Brother Philbeck had been defeated in the recently conducted Local Union election, and that Brother Watson and two of the Trustees were on the winning slate. Watson and the Trustees had apparently decided to meet separately before the Executive Board meeting that was scheduled for that date. They have testified that they met separately to review Trustees' reports. It is undisputed that at approximately 12:00 to 12:15 PM, which was the customary time when the Executive Board would normally have met prior to the membership meeting scheduled for that afternoon, the Local's Vice President Mo Minix informed Watson that Philbeck and two other members of the Executive Board were ready to begin the meeting. Watson responded that they "had not yet finished their review." Watson IIO Dep. 36-37. There is no evidence that Watson ever advised Philbeck that his group had finished their review, and was ready to meet. That said, a quorum clearly did not exist when Philbeck and his group<sup>6</sup> commenced meeting at approximately 1:33 PM.

In either case, we have carefully evaluated the leave payments Philbeck caused to be issued to himself and others prior to the end of his term in light of the Local's existing policies, practices and applicable laws. To the extent the payments were permitted or prohibited by the policies, the lack of a quorum at the meeting is in our view irrelevant.

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<sup>6</sup> We are also mindful of questions raised in the IIO report concerning the eligibility of Brother Mo Minix to hold the office of Vice President in late 2018 following his retirement from his employment at UPS earlier that year. Regardless of how these questions might be resolved, however, this would not alter the fact that no quorum existed on November 18, 2018.

Since at least 2013, the Local has maintained written policies concerning the accrual, use and vesting of vacation and sick leave. IBT Ex. 20 pages 7-8. With respect to sick leave, the policies provide for the accrual of five sick days per year and that “any unused days will be lost if not used by December 31 of that year.” Prior to the end of his term of office in late 2018, Brother Philbeck caused the Local to pay him for five days of sick time (40 hours), in apparent conflict with this policy. He claims there was a past practice of paying staff for unused sick days, but there is no evidence in the record of such a practice. This payment of \$1,346.00 to Philbeck, in our view, was not permitted by the Local’s policies.

With respect to vacation leave, the 2013 written policy provides for yearly accruals based on “time served with the Teamsters Union” and that each year “those vacation days not used or sold by December 31<sup>st</sup> will be lost.” The policy further states that “unused vacation time or option days (up to one week total) [may be paid] by December 15 of [each] year.” Here, in late 2018 Brother Philbeck caused the Local to pay himself for 304 hours for accrued vacation, 192 of which had apparently been rolled over from 2017 to 2018.

Under the policy, he was entitled to be paid not more than “one week total” at the end of 2018, leaving 264 hours which appear to have been unauthorized. In other words, he caused the Local to pay himself \$12,057.67 in unauthorized vacation time.

For his part, Brother Philbeck asserts that he had previously authorized the carryover of unused vacation time from year to year when high workloads had prevented staff from using all of their earned vacation. The record reflects that this happened on occasion, but that each time it was generally authorized by the Executive Board. Respondent Ex. 5. We are aware of no action by the Executive Board to authorize this in 2018.

True enough, Kentucky law, upon which Brother Philbeck relies, has little tolerance for employers who willfully refuse to pay earned compensation. E.g., Healthcare of Louisville v. Kiesel, 715 SW2d 246 (Ky Ct App 1986). But, what constitutes earned compensation depends upon what policies have been promulgated by the particular employer; the employer need only act consistent with whatever policies are in place. E.g., City of Louisville v. Gnagie, 716 SW2d 236 (1986). This rule is significantly different from the law in California in which employers are strictly prohibited from establishing or enforcing “use it or lose it” policies for vacation or similar benefits. An email from the Local’s former law firm which is included in Respondent Ex. 8 is not to the contrary.

In these circumstances, we believe that the preponderance of reliable evidence supports the conclusion that Brother Philbeck improperly caused the Local to pay himself for accrued vacation time in excess of one week.

In sum, we recommend a finding that Brother Philbeck improperly paid himself \$1,346.00 for sick time and \$12,057.67 for vacation time. As set forth below, we recommend that his obligation to repay the excess vacation leave he received be conditioned on the Local's prompt certification under oath, and with supporting documentation, that the policy limiting the payment for unused vacation at the end of the year was consistently followed for officers and employees of the Local in 2019, 2020 and 2021.

ii. Extra salary payments.

It is not disputed that in addition to Brother Philbeck's regular salary payments made by direct deposit, he received salary payments by check totaling \$3,605.77 during the period between November 19, 2018 and the end of the year. As he did during his sworn examination before the IIO, he has offered no coherent explanation for these additional payments, beyond a vague reference to a 2013 resolution by the Executive Board which states he was entitled to future increases that mirror increases provided in the "National Master United Parcel Agreement," which he further claims he never took. Hearing Tr. 117-119; 136-139; Respondent Ex. 9. Even if this is true, it does not justify his taking of additional salary payments without approval of the Executive Board and the incoming Board. Although we express no opinion concerning the IIO's peculiar characterization of these extra payments as "supernumerary," we nonetheless conclude that they were improper and unauthorized.

In sum, we recommend a finding that Brother Philbeck improperly caused the Local to pay himself \$3,605.77 in extra salary payments.

iii. Laptop purchase.

Charge 1 alleges that after he lost his bid for reelection in 2018, Brother Philbeck caused Local 651 to sell him a laptop computer at below its fair market value. This purchase was memorialized in the "minutes" of the purported November 18 Executive Board meeting, at which no quorum was present. The evidence cited by the IIO was that Philbeck paid \$200.00 for the laptop, and that its fair market value was \$729.00.



For his part, Brother Philbeck contends that the minutes of the November 18 Executive Board meeting memorialize an understanding that Philbeck would purchase the laptop for \$200.00 so that he could use it to assist in the defense of a lawsuit that was then pending against the Local. He further contends that after the lawsuit was resolved, he attempted to return the laptop to the Local at a membership meeting in June of 2019, but that the new officers had him removed from the meeting before he could return the laptop. Hearing Tr. 82-86; see also IBT Ex. 13, pages 4-5. He further states he did not know the value of the laptop when he purchased it, and he admits that after the unsuccessful attempt to return it in June of 2019 he took no further steps to give it back to the Local. Hearing Tr. 140-143.

We conclude that Philbeck did cause the purchase of the laptop at \$529.00 below market value, and as set forth in the penalty section of this report, we recommend that he be directed either to pay the Local that amount or promptly to return the laptop to the Local with the Local refunding the \$200.00 payment he made for it in 2018.

## **Charge 2**

Charge 2 alleges that Brother Philbeck violated his fiduciary duty by improperly causing the following two additional expenditures to be made prior to the end of his term in 2018: i. \$16,786.07 in excess vacation payments to two other Local officers and employees and ii. \$12,661.90 for a Christmas breakfast. It further alleges that he violated his fiduciary duty by iii. failing to meet with or designate a qualified representative to meet with the incoming officers, iv. failing to transfer signature authority over the Local's bank accounts to the incoming officers and v. failing to return control of the Local's Facebook page and used the page to publish his own personal statements. We address these contentions as follows:

### **i. Vacation.**

The IIO's report identifies vacation payments made to business agents Joe Bill Lance and Ron Merrifield, which were purportedly approved at the November 18, 2018 Executive Board meeting at which a quorum was lacking. Following the same analysis we used with respect to the excess vacation Philbeck paid to himself, we recommend a finding that the purported approval of the payment of accrued leave for these individuals at the Board meeting was unauthorized due to

the lack of a quorum<sup>7</sup> and that the payment for leave time for these two business agents<sup>8</sup> exceeded the maximum of one week of accrued vacation provided for in the Local's policies, IBT Ex. 20, page 8, and was improper.

ii. Christmas breakfast.

With respect to payments for the Local's Christmas breakfast,<sup>9</sup> the IIO recommended charges against Brother Philbeck because the payment was purportedly approved at the Executive Board meeting at which no quorum was present. The IIO failed to mention, however, that this payment was submitted for approval at the membership meeting conducted later the same day. Respondent 7 page 2. There is evidence that a Christmas party for members has been a recurring event in this Local. Respondent Ex. 6; Respondent 5 page 9; Hearing Tr. 95-96. We are not prepared, particularly in light of the approval of the payment by the membership, to recommend a finding that it amounted to a breach of Brother Philbeck's fiduciary duty.

iii. Transition.

The IIO recommended charges against Brother Philbeck for failing to meet with or designate a qualified representative to meet with the incoming officers at the end of 2018 as required by the Local's Bylaws and Article XXII, Sec. 2 of the IBT Constitution. The incoming President, Michael Watson, who had been the Secretary Treasurer prior to being elected, wrote to Brother Philbeck on December 20, 2018, requesting a meeting "to ensure the orderly transfer of the Hall's property, grievances and financial records." IBT Ex. 17. The IIO's report finds that a meeting was scheduled for December 28, 2018, citing testimony by Brother Watson that "we did schedule a meeting for Friday, December 28<sup>th</sup>, a closeout meeting." Watson IIO Dep. 77. How this meeting was supposedly scheduled and whether the IIO found

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<sup>7</sup> The IIO did not charge Brother Philbeck over the retention of a new attorney to handle pending litigation at the November 18 meeting. We note, however, that Brother Philbeck had the authority under the Local's bylaws, IBT Ex. 11 Art. 8 (A), to select attorneys, subject to the subsequent approval of the Executive Board. In either case, the incoming Board was free to select new counsel once it took office.

<sup>8</sup> We do not recommend that Brother Philbeck be deemed responsible for reimbursing the Local for these payments, since he did not receive them.

<sup>9</sup> The IIO in his report mentions the purchase of calendars and pocket planners for distribution to members, which also appears to have been a recurring expenditure in past years. Respondent Ex. 6. The IIO did not, however, recommend charges against Brother Philbeck for these expenditures.

that it was actually agreed to by Brother Philbeck is not clear. The IIO report goes on to quote Brother Watson's testimony to the effect that "I had all of my executive board here in the local [on December 28], and [Philbeck] was in the local. He was loading stuff up and doing that, but he – he didn't meet with us. ... [M]y whole executive board was here that day to sit down for a transition meeting, and he, basically, blew us off the whole day." Watson IIO Dep. 78. Watson did not elaborate on what he meant by "blew us off." In particular, there is no evidence that Brother Watson actually communicated with Brother Philbeck on December 28.

Significantly and surprisingly, IIO report does not mention that Brother Philbeck testified at length in his IIO deposition about a written response he provided to Brother Watson's December 20 letter on December 21, the very next day, in which he offered to meet with the incoming officers on December 30 or 31, 2018 and suggested that they could at that time "change signatures on all accounts at the banks." Philbeck IIO Dep. 38-52; see also Respondent Ex. 2. There is no evidence that Brother Watson ever responded to this letter. In the hearing before us, Brother Philbeck testified that he was present in the Local's building on December 30 for most of the day, and that neither Brother Watson nor any other incoming officers appeared for a meeting. Hearing Tr. 174-75.

Far from showing that Brother Philbeck refused to meet with the incoming officers, the record shows that Philbeck promptly responded to Watson's December 20 letter requesting a transition meeting and offered two reasonable meeting dates, which Brother Watson appears to have ignored. Philbeck's obligation to participate in a transition meeting did not, in our view, require more than that he offer the incoming officers a reasonable opportunity to meet on transition matters. Just as with the Executive Board meeting on November 18, Philbeck is not responsible for Watson's lack of diligence. As the Local's longtime bookkeeper testified, "there was every opportunity for these two slates to come together and it didn't happen." Buchenroth IIO Dep. 38-39.

Accordingly, we believe that the preponderance of reliable evidence demonstrates equal culpability for the lack of a transition meeting on the parts of the Philbeck and Watson groups. In these circumstances, and while it certainly would have been better if both groups had responsibly communicated with each other and held a meeting, we do not recommend a finding that Brother Philbeck breached his fiduciary duty by failing to meet with the incoming officers. Similarly, we do not recommend a finding that Philbeck failed to cooperate with the incoming administration in transferring signature authority over the Local's bank account. He offered to do so, and Watson failed to respond.

iv. Facebook account.

We have carefully considered the IIO's findings concerning the dispute over control of a Facebook account that Brother Philbeck established while he was Local 651's principal officer and conclude that this additional breach of fiduciary duty charge is pointless in light of surrounding circumstances that the IIO was either not made aware of or chose to ignore. We do not take this position lightly.

- a. The IIO clearly was aware that the underlying dispute over control and use of the Facebook page was resolved by a court decision issued on June 3, 2020. IBT Ex. 28. In that decision, claims that Brother Philbeck had breached his fiduciary duty concerning control over the Facebook page were dismissed, but control over the page was ultimately awarded to the Local. So far as we are aware, no appeal was taken from this decision. Thus, a final and binding resolution of the dispute occurred more than a year before the IIO recommended that internal disciplinary charges be brought against Brother Philbeck over the same matter.
- b. Largely the same dispute was also the subject of election protests filed in connection with the recently concluded International Officer election. These protests were denied, Local Union 651, 2021 ESD 38 (June 4, 2021), and no appeal was taken to the Appeals Master.
- c. On top of this, internal disciplinary charges were filed in 2019 against Brother Philbeck over these same matters. Local 651's Executive Board sustained the charges and suspended Philbeck's membership repeatedly in defiance of stays issued by the General President. On June 8, 2021, the General Executive Board vacated the suspensions of Brother Philbeck's membership, citing among other things the court's final and binding resolution of the dispute back in 2020. Exhibit A. In doing so, the GEB "expressed the hope that these matters will not need to be addressed again."

The Panel agrees with the GEB and recommends a finding that this dispute has already been addressed by a final and binding court decision, by the Election Supervisor and most recently by the GEB in prior internal disciplinary proceedings. There is no need to address it yet again here. We are, in this regard, troubled by the fact that even after the GEB vacated the Local's multiple disciplinary suspensions, the IIO still saw fit two months later to recommend largely the same charges over the same dispute. There is, in our view, no justification for an abuse of the internal

disciplinary process by repeatedly charging Brother Philbeck for the same offense in order to secure a penalty which serves the political objectives of his political opponents by suspending his ability to run for office.

### **Charge 3**

Brothers Philbeck and Merrifield are charged with embezzlement when they redeemed credit card points allegedly belonging to Local 651 for valuable merchandise which they converted to their personal use. There is no dispute that both redeemed credit card points prior to leaving office. The problem for us is that the Local's policies explicitly state that "frequent flyer miles, hotel rewards and/or similar benefits earned through travel and gas purchases on union business may be retained by the traveler." IBT Ex. 20 page 13.

The IIO appears in his report to have garbled or misconstrued Brother Philbeck's testimony concerning a decision by the Local's Executive Board to obtain union credit cards that provided for these points to be retained by the card users as opposed to providing cash back to the Local. See Philbeck IIO Dep. 112-14. Rather than stating that the Local's policy was that points would "incur to the benefit of the Local if redeemed in cash, but to the benefit of the signatory if redeemed for merchandise," what Brother Philbeck actually said was that the Executive Board made a choice when it entered into an arrangement with its credit card vendor that credit card points could be retained by the card users. Hearing Tr. 146.

For his part, Brother Watson testified during his IIO deposition that his administration interprets the Local's policy regarding credit card points differently from how Brother Philbeck interpreted it during his administration. He did not say, however, that the actions of Brothers Philbeck and Merrifield to cash in their points for merchandise was contrary to the policy. Watson IIO Dep. 84-86.

Without suggesting that the Local's policy regarding credit card points is ideal or preferable, it is clear to us that that the Local had entered into an arrangement with its credit card vendor under which card users could cash in points earned when using their union credit cards, and that this policy was explicitly confirmed in the Local's written policies. Brothers Philbeck and Merrifield cashed in credit card points consistent with this policy. We recommend a finding that the IIO's recommended charges on this point are not supported by a preponderance of reliable evidence.

### **Penalties**

Although we have found that in many respects the charges recommended by the IIO are not supported by a preponderance of reliable evidence, we do conclude that Brother Philbeck improperly caused the Local to pay himself \$1,346.00 for unused sick time contrary to the Local's policies, improperly caused the Local to pay himself \$12,057.67 for vacation time contrary to the Local's policies, improperly caused the Local to pay himself \$3,605.77 in additional salary payments and improperly caused the Local to sell him a laptop at \$529.00 below its fair market value. At this point, Brother Philbeck has been out of office for more than three years.

In our view, an appropriate penalty would be for Brother Philbeck to be suspended from membership and prohibited from holding union office or employment in the future unless and until he agrees to a reasonable repayment schedule to reimburse the Local for the foregoing improper payments and the under fair market purchase of the laptop, subject to the following conditions:

- a. With respect to vacation time payments, we recommend that the principal officer of Local 651 be required to certify under oath, and with supporting documentation, that all other officers and employees of the Local have been limited to being paid for not more than one week of accrued vacation at the end of 2019, and that the Local's policy regarding payment for accrued vacation was consistently followed in each subsequent year, including 2021. If the Local is unwilling or unable to provide this certification and documentation, we recommend that Brother Philbeck be excused from being required to repay the Local for vacation time he received exceeding one week.
- b. We further recommend that Brother Philbeck's membership not be suspended so long as he continues to make reimbursement payments in accordance with a reasonable reimbursement schedule to which he agrees, as set forth above.
- c. With respect to the laptop, we recommend that Brother Philbeck be excused from reimbursing the Local for the amount he underpaid for the laptop if he promptly returns it to the Local, with the Local being further required promptly to repay him the \$200.00 he paid in 2018.

In all other respects, we recommend that the charges be dismissed.

**Additional Observations.**

We would be remiss if we failed to express our concerns about the IIO's seemingly sloppy and slipshod investigation of this matter. Over eight decades ago, former US Attorney General and later US Supreme Court Justice Robert Jackson eloquently cautioned that "the most dangerous power of the prosecutor [is] that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted." Jackson, *The Federal Prosecutor*, 24 J of American Judicature Soc. 18-19 (1940). Simply put, a prosecutor should investigate suspected violations rather than targeting individuals it suspects or has been told have committed violations. The IIO should, in our view, be especially mindful of this distinction when, as here, charges are advocated against members by their political rivals.

Here, we are particularly troubled by the IIO's selective omission from his report of conflicting and exculpatory evidence obtained during his investigation, as well as distortions or mischaracterizations of testimony which appear to have been included in the report more to justify the issuance of charges than to provide the Union with a fair and balanced understanding of all of the underlying facts. Here, it is clear that political rivals of Brothers Philbeck and Merrifield have engaged in a relentless vendetta designed to eliminate them as political opponents, pursuing the same claims over a Facebook page over and over and over again. It is disservice to the process when the IIO allows itself to become a party to such an internal feud by indulging in selective presentation of evidence in a manner that ignores context, exculpatory evidence and parallel but related proceedings, or which distorts and misrepresents the record.

That said, and as indicated above, we have found merit to charges that Brother Philbeck caused himself to be paid for sick time, vacation time and extra salary to which he was not entitled and which was unauthorized. These violations could have been avoided had the required transition meeting occurred; but, of course this didn't happen. Contrary to the recommended charges, however, it is clear to us that both the Philbeck and Watson political factions bear responsibility for this failure. That we had to discover that Brother Philbeck had made an explicit and reasonable offer to meet with the incoming officers buried in the transcript of his IIO deposition, relevant portions of which were apparently ignored in the IIO's report, is disheartening.

Finally, we are constrained to express our concerns about what appears in some respects to have been a superficial and shallow investigation. We have recommended conditions to Philbeck's restitution obligations regarding the excess vacation payment because we frankly believe that the IIO only investigated until it found what it thought was enough evidence to justify recommended charges against him, and left us with multiple unanswered questions. We simply do not know the extent to which the Local vacation policies Brother Philbeck appears to have violated have been consistently followed by the Local over succeeding administrations. Philbeck testified about past practices, but it does not appear that the IIO made any attempt during his investigation to look into them. In future referrals, we respectfully urge the IIO more thoroughly to investigate all relevant facts, and to present careful and balanced analyses, rather than slanted allegations which leave it to the Union to uncover relevant evidence in the record or elsewhere that contradicts, ameliorates or mitigates evidence that is purportedly supportive of recommended charges.

Dated: \_\_\_\_\_

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John Murphy

\_\_\_\_\_  
Tony Andrews



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Dated: January 24, 2027

John P. Murphy  
John Murphy

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Tony Andrews

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Dated: January 24, 2022

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John Murphy

Tony Andrews  
Tony Andrews

**PANEL RECOMMENDATION**

**EXHIBIT A**

Re: Appeal of Michael Philbeck, a Member of Local Union 651, from a Decision of Joint Council 94

This appeal involved multiple charges, Teamster panel decisions, Office of Election Supervisor rulings and court proceedings evidencing a long-standing and ongoing dispute between Fred Zuckerman, President of Local Union 89, President of Joint Council 94, and candidate for International Union office, and Michael Philbeck, the former President of Local 651. The immediate appeal was filed with the General Executive Board by Brother Philbeck on October 6, 2020, from a decision rendered by Joint Council 94 on October 1, 2020.

The current chapter of this saga started with the filing of charges by Zuckerman with Local Union 651 on February 1, 2019.<sup>1</sup> An additional and almost identical set of charges was filed by Zuckerman on March 21, 2019. In accordance with the requirements of the Constitution, the charges were filed with the Executive Board of the Local in which Philbeck holds membership.

The charges contend that Philbeck misused the Facebook website “Kentucky Teamsters of the Bluegrass 651” to post anti-Zuckerman materials. The charges contend that the social media site was the property of Local 651, not Philbeck’s personal property. The postings allegedly reflected “political tones and rhetoric” intending to “incite dissent” in Local 89 and adversely affect Zuckerman’s campaign for International Union office. In addition to violating various provisions of the International Constitution, Zuckerman alleged Philbeck violated the Rules for the 2021 Election of International Union Officers (“Rules”) and various provisions of the Labor Management Reporting and Disclosure Act (“LMRDA”). Zuckerman asserted that the political nature of the postings and the “fact” the Local owned the social media site required a finding that Philbeck misused Local Union 651 assets to disparage a candidate for International Union office, a violation of Section 401(g) of the LMRDA and the Rules.

The Local conducted a hearing on the February 1 charges on March 12. Philbeck did not appear but presented a written statement contesting the impartiality of the panel members and accusing Zuckerman of using Local 651 to continue a

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<sup>1</sup> These disputes started earlier, when Zuckerman filed charges at the Joint Council against Philbeck stemming from many of the same issues on or about November 5, 2018. While there are references in this record that a hearing was held by the Joint Council on December 15, 2018, there is no indications those charges have been resolved. At the time of those charges, Philbeck was the President of Local 651.

personal vendetta. At the time of the hearing, Philbeck had filed an election protest with the Department of Labor challenging the results of the Local's 2018 election. A majority of the hearing panel members were Philbeck's opponents in that election and, he asserted, had an interest in expelling him from the Union so he could not run in the event the Department of Labor ordered a new election. The hearing proceeded, nonetheless, and Zuckerman presented a number of postings from the Facebook page authored by Philbeck that Zuckerman characterized as "disparaging." In his written submission, Philbeck asserted that the Facebook page belonged to him and, accordingly, his posts constituted his opinions about union issues, which both federal law and the International Constitution gave him the right to express without fear of retaliation. As noted, Zuckerman contended the Facebook page belonged to Local 651 and, therefore, Philbeck was misusing a union resource in violation of the LMRDA and the Rules to attack a candidate for International Union office. Zuckerman submitted evidence that he had publicly declared his candidacy for International Union office on June 7, 2018, prior to the postings at issue, that Philbeck knew Zuckerman was a candidate, and that the derogatory postings were a deliberate effort to undermine Zuckerman's campaign. It was further alleged that Philbeck sought to sow "division" within Local 89 as a further means of disparaging Zuckerman and undermining his candidacy. Among the penalties sought was Philbeck's expulsion from membership.

Following the March 12 hearing, the Local filed suit against Philbeck in federal district court on March 15, requested a determination that the Facebook page belonged to the Local, not Philbeck, and the issuance of a restraining order to compel Philbeck to relinquish control over the Facebook page to the Local. The lawsuit also sought a declaration that Philbeck had violated his fiduciary obligations under the LMRDA and breached the International Constitution, issues raised by Zuckerman at the March 12 hearing. The complaint included a total of six (6) counts alleging violations of state and federal laws. A majority of the members of that hearing panel were officers of the Local. It is assumed that the lawsuit would not have been filed without the approval of the members of the Local Executive Board, and that those Executive Board members believed the allegations to be true.

Zuckerman filed another set of charges on March 21, citing additional posts on the Facebook page that he claimed were disparaging, "inciting division" and attempting to subvert his campaign for International Union office. At the May 10, 2019 hearing, which Philbeck did not attend, Zuckerman repeated arguments he made at the first hearing, noted that Philbeck's postings violated the Rules and LMRDA, and warned the panel that unless Local 651 took action to stop Philbeck, the Local 651 leadership (including again a majority of the members of the hearing

panel) would “be in peril.” Zuckerman stated that if the Local 651 officers did not deal with Philbeck and reclaim control of the Facebook page and, implicitly, stop Philbeck from posting anti-Zuckerman opinions, there would be internal union charges filed against the Local. Zuckerman noted that there were already three sets of charges filed over the postings and that more charges were coming.

The Local Union issued a decision regarding the March 12 hearing on May 6, 2019, finding Philbeck guilty, directing him to relinquish control over the Facebook page, ordering him to issue a written apology to the membership, and suspending him from membership for 90 days, among other things. Philbeck appealed that decision to the Joint Council and later obtained a stay of the effectiveness of the penalties from General President Hoffa.

On August 18, 2019, the Local issued a decision regarding the May 10 hearing. The decision again found Philbeck guilty. Similar penalties were imposed with the exception that Philbeck was suspended from membership for an indefinite period. That decision was also appealed.

On June 3, 2020, the district court issued a ruling in the lawsuit Local 651 had filed. The court rejected written statements submitted by Philbeck in support of his contention that he owned the website because of evidentiary deficiencies. It held that the Facebook page belonged to the Local and ordered Philbeck to relinquish all administrative control to the current officers. It also found that Philbeck had converted the social media site to his own use and, in so doing, had misappropriated the Local’s name and logo. The court dismissed four (4) additional claims the Local had brought against Philbeck, including the allegations that Philbeck had violated his fiduciary obligations under the International Constitution and/or the LMRDA.

On or about June 3, 2020, an election protest was filed with the Office of Election Supervisor (“OES”) for violations of the Rules by Local Union President Mike Watson. While not specifically against Philbeck, the Watson protest raised the main issue raised in the Zuckerman charges; specifically, alleging that the Local 651 Facebook site had been used “to politically attack announced candidates for International Union office including Fred Zuckerman and Sean O’Brien in violation of the Rules.” Another protest was filed on or about July 23 against Watson and Local 651 by Anthony Blair, a member of Local 89 and candidate for office in that Local’s 2020 election. The Blair protest contended that the Local 651 Facebook page was used to promote the candidacies of Fred Zuckerman and Sean O’Brien and to attack Chris Cummins, a candidate for office in Local 89. Those matters were

consolidated, and a decision was issued by the OES on January 4, 2021. (ESD No. 38) Both protests were denied.

The Joint Council considered the appeals from the Local's decisions on the basis of the transcripts of the two hearings. In a decision dated October 1, the Joint Council upheld the Local's rulings that Philbeck was guilty of the charges but modified the penalties. Specifically, the Joint Council reversed the order that Philbeck make a mailing to each Local 651 member, at his expense, and also converted the indefinite suspension included in the August 18 decision to a 90-day suspension, to be served concurrently with the similar length suspension ordered by the Local on May 6.

Despite the General President's issuance of a stay that specifically stated it would remain in effect pending Philbeck's exhaustion of any appeal to the General Executive Board, the Local imposed a 90-day suspension on Philbeck starting in October 2020.

In his appeal to the General Executive Board, Philbeck pursued his claim that he created and owned the social media site and, accordingly, is free to post whatever his opinions are as to Zuckerman or any other subject. He presented as evidence the written statements that were rejected by the district court for failing to comply with the requirements of admissible evidence, some of which were subsequently notarized. The General Executive Board did not entertain a challenge to the court's conclusions since a decision of the General Executive Board cannot nullify an injunction issued by a federal district court. Philbeck had options available to appeal the court's ruling to a higher court but did not pursue them. Accordingly, the General Executive Board considered the question of the ownership of the website to have been decided in the Local's favor. In any event, Philbeck eventually complied with the court's order and the website has been under the Local's control.

The General Executive Board proceeded to address other issues presented by the appeal. Under the International Constitution and federal law, Philbeck was entitled to a hearing panel that was unbiased and not "involved" in the dispute. The same hearing panel heard both sets of charges. Since the same allegations were raised in the second set of charges as the first, albeit with respect to two different postings on the website, the General Executive Board concluded that the Local Union panel had pre-determined the issues in the second set of charges before the second hearing. Moreover, the federal lawsuit was filed in the name of the Local only three (3) days after the first hearing was conducted. Presumably, the hearing panel members on the Local Union Executive Board authorized the filing of the

lawsuit. And the preparation necessary to file an application for an injunction in federal court, with supporting affidavits and evidence, necessarily takes more than two days for the lawyers to prepare. Thus, it was fairly assumed that the panel members had decided the key issues against Philbeck before the first hearing, at the time they authorized the suit. It was also undisputed that all of the members of the hearing panels were Philbeck's political opponents in a recently concluded election that was being actively challenged before the Department of Labor. As Philbeck alleged, the panel members had an interest in disqualifying him from eligibility in a potential re-run election. Accordingly, the General Executive Board found that Philbeck was denied the right to a hearing before an impartial panel.<sup>2</sup>

Apart from the question of ownership of the Facebook page, the charges raised the always delicate question of whether a union can regulate the speech of its members, especially speech that is political and is allegedly intended to "incite division" within the membership, or that has that effect.<sup>3</sup> The courts have repeatedly held that unions are not appropriate vehicles to decide whether discipline can be imposed on a member for harsh and even unfounded criticism of officers. Yet both Local Union decisions found Philbeck guilty of misusing the Facebook page in a manner that "maliciously damaged Brother Zuckerman in his pursuit of Office in the upcoming IBT election of officers." Based on clear court precedent, the General Executive Board dismissed the charges based on the allegations that Philbeck made disparaging statements designed to, or having the effect of, causing dissention in Local 89.

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<sup>2</sup> This is not to suggest that members are disqualified from serving on hearing panels merely because they politically opposed one of the participants at some point. But in this case, the cumulative effect of the recently completed but challenged election, the panel members' authorization of a lawsuit raising the same issues pending before the panel and the threat of charges against the panel members if they did not convict Philbeck all contribute to the conclusion that Philbeck did not receive a fair hearing. The Board was reminded that it found charges brought against former officers of Local Union 804 had been heard by panels consisting of "involved" members and, for that reason, discounted the decisions of the Local on that basis. In two decisions rendered recently by the United States District Court for the Southern District of New York, the Local was found to have violated the rights of the charged officers to a fair hearing while implicitly holding that the General Executive Board properly found the Local's procedures inadequate.

<sup>3</sup> Curiously, three members of the hearing panels and Local 651 President Michael Watson posted articles on the website in 2015 complaining of Zuckerman's interference in Local 651 and accusing him of "trying to incite distrust and division" within that Local, virtually the same verbiage as the current Zuckerman allegations of which Philbeck was found guilty.



Both Local Union decisions also found that the Facebook page belonged to the Local, not Philbeck. While the determination of whether Philbeck misused Local 651 property and failed to turn administration of the Facebook page over to his successors is an issue that falls within the jurisdiction of the International Union and involves Philbeck's obligations under the Constitution and Local Bylaws, the question of whether Philbeck violated the Rules by misusing Local 651 property to "damage" Brother Zuckerman's campaign for International office is within the realm of the OES. As noted, that issue of jurisdiction was raised in the recently decided ESD No. 38 decision.<sup>4</sup>

Over the years since 1991, the International Union and OES have recognized a jurisdictional delineation between enforcement of the Rules for International Officer Elections and alleged Constitutional violations that do not involve candidates for International office. Here, the allegations clearly asserted that Philbeck interfered with Zuckerman's candidacy for International office. Accordingly, the General Executive Board found that Local 651 and Joint Council 94 did not have jurisdiction to consider whether Philbeck attempted to undermine Zuckerman's campaign for International office and that those charges were dismissed.<sup>5</sup>

Since the Local Union found Philbeck guilty of all of the charges, it was not possible to determine what penalties were assessed for which charge. Similarly, while the Joint Council decision modified those penalties by reducing the indefinite suspension imposed by the August 18 decision and eliminating the requirement in both Local Union decisions that Philbeck make a mailing to the Local's membership, it was not clear whether the Joint Council upheld penalties based on allegations beyond its jurisdiction.

Nonetheless, it is clear that the court found that the Facebook page belonged to the Local and that Philbeck failed to return that item of Local Union property to the control of the new officers at the completion of his term. Philbeck took full advantage of the opportunity to present evidence in support of his contention that he owned the Facebook account to the General Executive Board. Upon evaluation of that evidence, and consistent with the finding of the federal court, the General

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<sup>4</sup> Ironically, the Blair protest alleged that the Local 651 officers who sat on the Philbeck hearing panels violated the Rules by using the Local 651 website to campaign for Zuckerman, not only in the International election but also in the Local 89 officer election, by disparaging a candidate running against Zuckerman in that Local election.

<sup>5</sup> It is noteworthy that the federal court rejected the Local's claim that Philbeck violated either the Constitution or federal law by misusing Local 651 funds.

Executive Board found that Philbeck failed to relinquish union property to the new officers. That finding was made without reliance on any factual determination made by the hearing panel or Joint Council. As noted, Philbeck complied with the court's order and given control over the media site to the current Local officers.

The General Executive Board expressed the hope these matters will not need to be addressed again. All involved have expended excessive time and energy on matters that either should have been resolved by the court order or have now been resolved by the OES ruling. The only remaining issue that was considered was whether discipline should be imposed on Philbeck for failing to relinquish control over the webpage upon the expiration of his term of office. Zuckerman did not present evidence that Local 89 suffered any damages as a result of Philbeck's violation. Indeed, while alleging that Philbeck's postings damaged his campaign for International office, he conceded that he did not have the right to raise any allegation that Philbeck misappropriated Local Union property.

In consideration of the lack of any damages identified by the Local as a result of Philbeck's failure to relinquish the website in a timely manner, and that the Local improperly suspended Philbeck from membership in violation of the stay granted by the General President, the General Executive Board concluded that no further penalty be imposed. The Local had the opportunity to pursue additional sanctions against Philbeck in court, but such relief was either denied or not sought. The Local retrieved control over the website, its primary objective.

Accordingly, the appeal of Michael Philbeck was granted, in part, and the decision of Joint Council 94 be reversed, except to the extent it found the Local 651 website to belong to the Local and that Philbeck failed to relinquish it to that entity upon the completion of his term of office. The Local was directed to reinstate Philbeck's membership and nullify the suspension it imposed in violation of the General President's stay. Philbeck is entitled to pay any back dues that may have accumulated during the improper suspension and, upon such payment, restore his continuous good standing in the Local.