

In the Matter of
TODD MENDEZ

Before the
INDEPENDENT REVIEW OFFICER

DISCIPLINARY DECISION OF THE INDEPENDENT REVIEW OFFICER

May 17, 2022

This matter concerns charges brought by the Independent Investigations Officer (“IIO”) against Todd Mendez, a member of the International Brotherhood of Teamsters (“IBT”) and former Secretary-Treasurer of Local 683. The IIO charged Mr. Mendez with embezzling over \$110,000 from the union. He is also charged with breaching his fiduciary duties to the local by failing to transition power after losing an election pursuant to the IBT Constitution, destroying union property and records, and failing to properly post members’ dues to the TITAN system. In addition, Mr. Mendez is charged with bringing reproach upon the union for threatening fellow members with physical harm.

A *de novo* hearing was held before me over two days on October 22 and October 23, 2021.¹ After consideration of all the evidence presented and the post-hearing submissions received from Mr. Mendez and the IIO, I find that a preponderance of the evidence supports certain of the charges against Mr. Mendez. For the reasons set forth herein, I find that Mr. Mendez breached his fiduciary duties to the IBT, brought reproach upon the union, and violated the IBT Constitution.

I. BACKGROUND

A. The IIO’s Charge Report

On August 28, 2020, the IIO referred a proposed charge report (“Charge Report”) to the General Executive Board of the IBT recommending that charges be filed against Mr. Mendez.² See IRO Exhibit 4. The charges were as follows:

¹ The hearing was held in person and open to members in good standing at a conference room in the Grand Hyatt Hotel in San Diego, California.

² On March 6, 2019, the IIO filed a separate and unrelated Charge Report against Mr. Mendez. Those charges are not before me for adjudication.

Charge One

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, 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*; to wit:

As described in the report, in December 2018, while Secretary Treasurer of Local 683, Mr. Mendez embezzled at least \$110,120 from Local 683 through causing the issuance of payments that transferred Local money to pay for unapproved payments for salary, vacation, severance and bonuses to himself and six other then-Local employees without required authorization and without a union purpose.

Charge Two

As described in the report, while the Local 683 Secretary Treasurer, Mr. Mendez brought reproach upon the IBT when he breached his fiduciary duties, failed 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 destroyed union property and records in violation of 29 U.S.C. § 501(a), IBT Const. Art. XXII, Sec 2(c), and IBT Const. Art. XIX, Sec. 9(1) and (2).

Charge Three

As described in the report, Mr. Mendez brought reproach upon the IBT when he violated his membership oath, 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 Const. Art. II, Sec. 2(a), Art. XIX, Sec. 7(b)(2) and (11); to wit: Mr. Mendez engaged in a pervasive pattern of verbal and physical harassment of officers, employees, Local 683 members and their families.

IRO Exhibit 4 at 27-28.

On January 20, 2021, an IBT Hearing Panel ("Panel") conducted a hearing on the charges and, on March 18, 2021, issued a Report and Recommendation concluding that a preponderance of the reliable evidence did not support any of the charges. *See* IRO Exhibits 6 and 7. On April 6, 2021, I determined that the Panel's Report and Recommendation was "inadequate" in part and

“not inadequate” in part, and informed the IBT of that determination (“April 6, 2021 Determination”). *See* IRO Exhibit 11. The IBT indicated that it would take no further action, *see* IRO Exhibit 12, and on July 28, 2021, I ordered a *de novo* hearing, *see* IRO Exhibit 13.³

The *de novo* hearing was held on October 22 and October 23, 2021. *See* Transcript of the *de novo* Hearing in the Matter of Todd Mendez (“Hearing Tr.”). Mr. Mendez represented himself during the proceeding and was assisted by Teamster members Patrick Kelly from Local 952 and Wayne Lovett, a former Business Agent for Local 683. Testimony was taken from multiple witnesses, including Mr. Mendez, and the parties submitted exhibits and affidavits in support of their respective positions. The IIO submitted its post-hearing brief on November 15, 2021, Mr. Mendez submitted his post-hearing brief on December 6, 2021, and the IIO submitted its reply on December 10, 2021.

II. DISCUSSION

A. Applicable Law

1. Standard of Proof

In order to sustain the charges against Mr. Mendez, the charges must be supported by a preponderance of the reliable evidence. *See* Hearing Rule C; *United States v. IBT [Simpson]*, 931 F. Supp. 1074, 1089 (SDNY 1996), *aff’d*, 120 F. 3d 341 (2d Cir. 1997); *see also* In Re Rome Aloise, Opinion of the Independent Review Officer, October 7, 2021. All evidence and testimony offered at the hearing may be accepted by the IRO, “to be weighed post-hearing in light of the hearing testimony and post-hearing submissions.” Hearing Rule L.

³ Due to scheduling conflicts, a revised Notice of Hearing was issued on August 13, 2021. *See* IRO Exhibit 2.

B. Charge One

In the fall of 2018, Mr. Mendez ran for re-election as Local 683's Secretary-Treasurer and Principal Officer. *See* Charge Report at 3. At the time of the campaign, Mr. Mendez had been the Local's Secretary-Treasurer for eight years and was seeking a third term in office. *Id.* Mr. Mendez was opposed by Lee Fletcher. *See* IIO Exhibit 21; *see also* Hearing Tr. 73:4-11. On December 21, 2018, ballots were counted in person at Local 683's offices and it was determined that Mr. Mendez lost the election, and that Mr. Fletcher would become the Local's new Secretary-Treasurer beginning January 1, 2019. *See* IIO Exhibit 8 at 1916.

Charge One originally alleged that after Mr. Mendez lost the election on December 21st – but before his term expired on December 31st – he embezzled the Local's funds by making unauthorized and impermissible payments to himself and certain employees at the Local totaling over \$110,000. *See* Charge Report at 4-5. The payments included: (1) an impermissible anniversary bonus to Mr. Mendez in the amount of \$10,600; (2) unauthorized vacation payments to Mr. Mendez and his staff totaling \$52,720; (3) unauthorized severance payments to Mr. Mendez and a member of his staff totaling \$44,500; and (4) unauthorized salary payments to administrative staff totaling \$2,300. *See* Charge Report at 5. The IIO further alleged that Mr. Mendez breached his fiduciary duties to the Local by failing to post dues remittances on behalf of members to the TITAN system before leaving office. *Id.* at 6-7.

In my April 6, 2021 Determination, I found the Panel's Report and Recommendation was "not inadequate" with respect to its conclusions that Mr. Mendez did not violate the IBT Constitution by authorizing the severance and salary payments described above. *See* IRO Exhibit 11. Additionally, during the *de novo* hearing, the IIO dismissed the charges pertaining to the unauthorized vacation payments. *See* Hearing Tr. 38:1-6; 523:1-24; 527:21-528:5; 705:13-

25. Thus, I will only consider the propriety of the anniversary bonus and whether Mr. Mendez breached his fiduciary duties by failing to post members' dues to the TITAN system.

1. The Anniversary Bonus

The IIO alleged that after Mr. Mendez's election loss, but before his term expired, he embezzled the Local's funds by making an unauthorized and extraordinary anniversary bonus payment to himself in the amount of \$10,600. *See* Charge Report at 6. 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* IIO Exhibit 9 at 38; *see also* IBT Constitution, Article XXII, Section 4(e)(a)-(d); *see also* Article VII, Section 2(a)(1).

The IIO claims that the payment was extraordinary and required the approval of the incoming officers and membership because Mr. Mendez did not meet the bonus eligibility requirements under Local 683's benefits policy. *See* IIO Post Hearing Brief dated November 15, 2021 ("IIO Br.") at 4-5 and the IIO's Reply dated December 10, 2021 ("IIO Reply") at 1-2. Specifically, the Local's policy states:

ANNIVERSARY BONUSES WILL BE PAID AT THE TIME OF YOUR ANNIVERSARY DATE (This is based on your employment date with Teamsters Local #683).

IIO Exhibit 12 at 1989. (Emphasis in original).

Mr. Mendez's anniversary date was January 1, 2019, but his last day as an employee was December 31, 2018. *See* Hearing Tr. 638:15-20; 639:2-8. According to the IIO, Mr. Mendez was not entitled to the bonus because he was not employed by the Local on his anniversary date. Mr. Mendez contends that he had nevertheless earned the bonus because he had worked the full calendar year for 2018 and met the policy's requirements. *See* Hearing Tr. at 639:2-8; *see also* Mendez Post Hearing Brief ("Mendez Br.") at 4. Mr. Mendez also claims that the Local had in

the past paid bonuses to employees who were not employed on their anniversary dates. *See* Mendez Br. at 2; *see also* Mendez Exhibit 72; Hearing Tr. 631:19-21-632:11.⁴

First, the policy does not explicitly state that an employee must be employed on the anniversary date to earn their bonus. Second, under California law, employees may be entitled to their promised bonus, pro rated, even if they are not employed on their anniversary date so long as they are not terminated for cause. *See* Section 35.5 of the California Division of Labor Standards Enforcement (“DLSE”); *see also* DLSE Opinion Letter 1987.06.03.

Here, the only reason Mr. Mendez was not employed on January 1, 2019 is because he lost an election. Further, there is no dispute that Mr. Mendez served the union as Secretary-Treasurer for the entire calendar year for 2018. Under these circumstances, and based on principles of California law, I find that Mr. Mendez was entitled to the anniversary bonus and thus it was not an extraordinary expenditure requiring the approval of the incoming officers. Accordingly, this charge is not supported by a preponderance of the reliable evidence.

2. Failure to Post Payments to TITAN

The IIO alleged that Mendez breached his fiduciary duty by failing to ensure that dues payments received in December 2018 on behalf of members were posted to the TITAN system (the IBT accounting program that records the local’s finances, including individual member dues.) *See* Charge Report at 6-7. In December 2018, Mr. Mendez’s last month in office, Local 683 received \$182,903.77 from various employers. *See* IIO Exhibit 17 at 2021-22. As Secretary-Treasurer for Local 683, Mr. Mendez was responsible for ensuring that these receipts

⁴ Mr. Mendez also testified that an IBT auditor and a Certified Public Accountant for the local assured him that even if he lost the election, he could still receive a bonus if he was employed through December 31, 2018. *See* Hearing Tr. 53:8-12; 650:15-651:6; *see also* IBT Hearing Panel Transcript (“IBT Panel Tr.”) at 102:3-103:9. Mr. Mendez further relies on a submission from the IBT indicating that bonus or salary payments are not considered extraordinary payments that require approval from incoming officers. *See* IRO Exhibit 10 at ¶ 2.

were properly posted to TITAN. *See* IIO Exhibit 9 at 1943-1846; *see also* IBT Panel Tr. 182:7-11; *Secretary-Treasurer Manual* (2012 Edition); *TITAN Manual* “Posting Menu” at 4 (“[a]ll Local Union [employer checks] **MUST** be posted through TITAN IV.”) (emphasis in original). According to the Secretary-Treasurer’s Manual, entering cash deposits into the TITAN system is a mandatory accounting control designed to ensure that the local’s books are accurate and so that each member is properly credited for having paid their dues. *See* Secretary-Treasurer’s Manual at 48.

However, in January 2019, the new administration discovered that the money deposited into the Local’s bank accounts in December 2018 was significantly more than what was entered into the TITAN system. *See* Hearing Tr. 327:5-19. The discrepancies were material enough that the new officers required assistance from an IBT auditor to reconcile the Local’s finances. *Id.* *See also* IIO Exhibit 10. In her report, the IBT auditor noted, “[w]e had to spend a large amount of time trying to determine what employer checks were deposited, not deposited, and which employers were tied to what payments.” *Id.* at 1981. According to testimony from Local 683’s current bookkeeper, a total of \$53,468.99 of the deposits received from employers were not posted to TITAN. *See* IIO Exhibit 17 at 2021-22; *see also* Hearing Tr. 337:20-342:11.

Mr. Mendez contends that there were only four working days left in his administration to complete office duties after he lost the election, his staff was very busy and there just was not enough time to post the receipts to TITAN. *See* Mendez Br. at 4. In addition, he stated that as some of the money received by the local was posted to TITAN, it demonstrated his diligence and good faith effort to comply with the IBT’s accounting rules. *Id.*; *see also* IIO Exhibit 16.⁵ These

⁵ Mr. Mendez concedes that at least \$19,000 was not properly posted to TITAN.

arguments lack merit. During this same time period, Mr. Mendez and his staff had enough time to ensure that they paid themselves over \$110,000 in bonus payments, vacation payments, severance payments and salary. While it was ultimately determined that these payments did not violate the IBT Constitution, Mr. Mendez put his interests above that of the members by failing to ensure that cash receipts were posted to TITAN before he paid himself and his staff.

As an officer, Mr. Mendez occupied a position of trust and was a fiduciary to the Local and to its members. As such, he was bound to serve the membership's interests ahead of his own. *See* 29 U.S.C. § 501(a); *see also United States v IBT [Ross]*, 826 F. Supp 749, 756 (S.D.N.Y.), *aff'd*, 22 F3d 1091 (2d. Cir. 1994) (internal quotation marks omitted). Further, in order to fulfill their obligations to the union, courts have held that officers cannot be passive or exhibit willful ignorance in serving the membership. *United States v IBT [Sansone]*, 792 F. Supp. 1346, 1354 (S.D.N.Y. 1992), *aff'd*, 981 F.2d 1362 (2d Cir. 1992). In this instance, Mr. Mendez failed to follow proper procedures and the members were not properly credited for having paid their dues in the month they were received.⁶

Accordingly, after carefully considering all of the evidence, I find that a preponderance of the reliable evidence supports the charge that Mr. Mendez breached his fiduciary duty by failing to properly post members' dues to the TITAN system in violation of 29 U.S.C. 501(a).

C. Charge Two

In Charge Two, the IIO contends that Mr. Mendez breached his fiduciary duties and violated the IBT Constitution by (1) failing to meet with, or designate a willing and qualified representative to meet with, the incoming officers between the date of the election and the end of the term to review pending grievances, open contract negotiations, and the local's financial

⁶ While the new administration was able to ultimately reconcile the payments and post the proper dues, it took considerable effort.

records and (2) destroying union property and records. *See* Charge Report at 11. After having carefully considered all of the facts presented, I find that this charge is supported by a preponderance of the evidence.

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.” IBT Const., Article XXII, Section 2(c). Further, “[t]he 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 Const., Article XXII, Section 2(c).

In addition, it is a violation of the IBT Constitution for any member to wrongfully take or retain any money, books, papers, or any other property belonging to the Local Union or destroy any books, bills, receipts, vouchers, or other property of a Local Union. *See* IBT Const., Article XIX, Section 9(1) and (2).

On December 21, 2018, shortly after losing the election, Mr. Mendez received a letter from the incoming officers seeking a transition meeting pursuant to the IBT Constitution. *See* IIO Exhibit 24. The new administration expected to have the meeting in order to gain access to the financial records of the Local and review, among other things, pending grievances and contract negotiations. *See* Hearing Tr. 75:17-21. The letter, however, went unanswered by Mr. Mendez. *Id.* at 76:17-20. On December 27, 2018, a second request for a transition meeting was sent to Mr. Mendez. *See* IIO Exhibit 22. Ultimately, business agent Frank Sevilla was designated as the transition agent and, on January 2, 2019, he eventually met with the incoming officers at Local 683’s offices. *See* Hearing Tr. 78:21-24.

The meeting was unproductive. Mr. Sevilla provided the new officers access to the building but stated that he did not have any information to share about the Local's affairs. *See* Hearing Tr. 82:16-19. Once in the office, the newly elected officers discovered that the office's security system had been turned off (Hearing Tr. 86:2-9), there were shredded papers everywhere and filing cabinets were empty (Hearing Tr. 86:13-19). In addition, employee personnel files were missing (Hearing Tr. 86:25-87:4), records of any of the Local's ongoing contract negotiations could not be located (Hearing Tr. 88:8-89:1) and member grievance files were missing. *See* Hearing Tr. 90:23-91:4. In addition, the hard drives, servers, computers and laptops had been wiped of any data and were inaccessible. *See* Hearing Tr. 92:24-94:6; 258:16-25.

Without the relevant files or data, and without any meaningful discussion with Mr. Mendez or his staff about the ongoing contracts or open grievances, the new officers were unable to fully conduct the business of the union upon taking office. *See* Hearing Tr. 90:15-22. In fact, to understand the Local's positions on business matters, the new officers were required to contact employers and third parties to recreate their own bargaining positions. *See* Hearing Tr. 88:11-90:14 and 91:18-92:15.

Mr. Mendez contends that he fully cooperated with all transition efforts. *See* Mendez Br. at 12. Mr. Mendez also claims that all pertinent information necessary to conduct union business was at the Local – either in the office or on the computer systems. *Id.* Mendez Br. at 7-8. The evidence, however, shows otherwise. Neither Mr. Mendez nor his designee met with the incoming officers to conduct a transition meeting before the end of the year pursuant to the IBT Constitution, and when there was finally a meeting on January 2nd, it was of little value. Nor did Mr. Mendez or his designee review financial records of the Local, pending grievances or

open contract negotiations with the incoming officers. In addition, employee personnel files, grievance files, and contract negotiation records were missing or had been destroyed or deleted. These actions not only violated the express terms of the IBT Constitution but also caused harm to the interests of Local 683 and its members.

Accordingly, I find that a preponderance of the reliable evidence supports the charge that Mr. Mendez violated Article XXII, Sec 2(c), Art. XIX, Sec. 9(1) and (2) of the IBT Constitution, and that Mr. Mendez breached his fiduciary duties to the local in violation of 29 U.S.C. 501(a).

D. Charge Three

In my April 6, 2021 Determination, I found that the only remaining charge with respect to Charge Three was the allegation that Mr. Mendez threatened Local 683 member Robert Browning. *See* IRO Exhibit 11. Mr. Browning has been a member of the Local for over sixteen years. *See* Hearing Tr. 529:23-530:4. Prior to joining Local 683, Mr. Browning served in the United States Marine Corps for four years in an active-duty capacity and four years on inactive duty. *See* Hearing Tr. 531:5-15.

As described above, on the evening of December 21, 2018, ballots were counted in a conference room at Local 683 where it was determined Mr. Mendez lost the election to Mr. Fletcher. According to the testimony, tensions were running high that night and, as supporters for each slate were exiting the room following the count, Mr. Browning – who supported the Fletcher slate – was confronted by Mr. Mendez’s son and an argument between the two ensued. *See* Hearing Tr. 562:2-7; 537:17-545:24; *see also* IIO Exhibit 35. The two were separated quickly. *Id.* Mr. Browning testified that he later apologized to Mendez and also thanked him for his service to the union and for mentoring Mr. Browning during his career. *See* Hearing Tr. 570:1-6. Mr. Browning then left the building.

In the parking lot, Mr. Browning entered his truck and, as he was about to drive away, Mr. Mendez approached him. *See* Hearing Tr. 535:4-17. Mr. Browning again apologized to Mr. Mendez who allegedly responded: “Browning, my clip shoots faster than your Glock. You and your family are dead.” Hearing Tr. 556:20-22; *see also* Hearing Tr. 18-24. Mr. Browning took the comment as a personal threat and a threat to his family’s physical safety. *See* Hearing Tr. 536:5-10. Mr. Mendez denies the claim citing insufficient proof that he made the comments. *See* Mendez Br. at 13. However, based on a review of the evidence, I find Mr. Browning’s testimony credible. Mr. Browning was forthright and provided ample details surrounding the events that were corroborated, in part, by video evidence.

By referencing firearms – a Glock – and threatening to shoot his family members, I find that Mr. Mendez intended to place Mr. Browning in fear for his physical safety and that his statements were a clear threat of harm. Comments like these have no place in the union, especially from a member who was an officer and held a position of trust.

Accordingly, I find that a preponderance of the reliable evidence demonstrates that Mr. Mendez brought reproach upon the union and threatened harm to fellow Teamster in violation of IBT Constitution Article II, Section 2(a) and Article XIX, Section 7(b)(2).⁷

III. CONCLUSION

For the reasons stated above, after a review of all of the evidence and the arguments submitted, I find that the IIO has proven by a preponderance of the reliable evidence that:

(1) Mr. Mendez breached his fiduciary duty by failing to properly post members’ dues remittances to TITAN in violation of 29 U.S.C. 501(a)

⁷ While the IIO charged Mr. Mendez with retaliation, I do not find that charge supported by a preponderance of the evidence

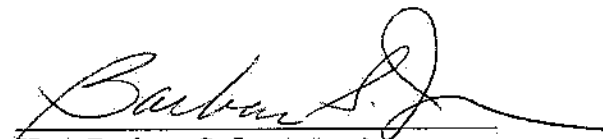
(2) Mr. Mendez violated the IBT Constitution and breached his fiduciary duty by failing to meet with or designate a willing and qualified representative to meet with the incoming officers during the period between the date of election and the end of the term to review pending grievances, open contract negotiations, and the Local's financial records, and destroyed 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, Sections 9(1) and (2).

(3) Mr. Mendez brought reproach upon the union by threatening a fellow member in violation of IBT Constitution Article II, Section 2(a) and Article XIX, Section 7(b)(2).

IV. BRIEFING SCHEDULE FOR SANCTIONS

The Parties shall file submissions on June 7, 2022 regarding the appropriate discipline for Mr. Mendez. Each submission shall be no longer than 15 pages.

Dated: May 17, 2022


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