

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

**SEAN M. O'BRIEN**

General President

25 Louisiana Avenue, NW  
Washington, DC 20001



**FRED E. ZUCKERMAN**

General Secretary-Treasurer

202-624-6800  
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July 27, 2023

**VIA EMAIL**

Mr. Dennis Hart  
1138 Bella Vista Avenue  
Oakland, CA 94610

Dear Brother Hart:

Enclosed please find the Report and Recommendations of the Panel that conducted the hearing 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,

A handwritten signature in black ink, appearing to read "Sean M. O'Brien".

Sean M. O'Brien  
General President

EMG/pjp

Enclosure

cc: Hearing Panel  
General Executive Board  
Robert D. Luskin, Esq., Independent Investigations Officer  
Hon. Barbara Jones, Independent Review Officer  
Patrick Szymanski, Esq.  
Brian Kelly, Esq.  
Edward M. Gleason, Jr., General Counsel

## MEMORANDUM

TO: General President Sean M. O'Brien

FROM: William Hamilton, Panel Chairman  
Charles A. Whobrey, Panel Member  
Daniel J. Kane, Jr., Panel Member

CC: Ed Gleason, General Counsel

DATE: July 14, 2023

RE: Report and Recommendation in re. IIO charges against Dennis Hart

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Pursuant to your request and appointment of March 20, 2023, we conducted a hearing on the Independent Investigations Officer's charges against Dennis Hart. The hearing was held on May 23, 2023, in San Francisco, California.

It is our understanding that the deadline for IBT action on the charges has been extended to July 27, 2023.

Attached for your consideration is our Report and Recommendation.

**REPORT AND RECOMMENDATION  
REGARDING CHARGES AGAINST  
FORMER LOCAL 853 SECRETARY-TREASURER DENNIS HART**

**I. Introduction**

Pursuant to your appointment, a hearing was convened before the undersigned Panel on May 23, 2023. The hearing pertained to charges brought against Dennis Hart, former Secretary-Treasurer and principal officer of Teamsters Local Union No. 853, in Oakland, CA.

**II. Procedural Background**

On February 28, 2023, Robert D. Luskin, the Independent Investigations Officer (IIO), referred three charges to the IBT General President and General Executive Board. The charges alleged that Hart:

1) knowingly disregarded the order of suspension against Rome Aloise and “enable[d] Aloise to exercise authority from which the IRO’s suspension order barred him”;

2) provided “material evidence under oath in the Aloise investigation, both in sworn examination and at a *de novo* hearing, he knew to be false; and

3) authorized and permitted expenditures of local union funds without membership approval and “without legitimate union purpose.”

The charges are discussed in more detail below. It was alleged that these actions violated Hart’s duties as an IBT officer and member and brought reproach upon the IBT, in violation of the Final Agreement and Order in *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D. N.Y), and the Oath of Office contained in the IBT Constitution.

At the Panel hearing, held in San Francisco, California, Hart was represented by his attorney, Patrick J. Szymanski. The IBT, as the Charging Party, was represented by Brian Kelly and Joshua Sharp, of Nixon Peabody, LLP. Hart and his attorney had a full and fair opportunity to review the evidence against him, submit additional evidence, testify, confront witnesses, cross examine witnesses, and submit post-hearing written arguments.

**III. Charges and Factual Background**

Aloise, who was formerly principal officer of Local Union 853 and Joint Council No. 7, was suspended for two years from December 22, 2017, to December 21, 2019. The suspension was imposed as a result of charges related to: (1) the improper receipt of things of value, in violation of 29 U.S.C. § 186(b) of the Taft Hartley Act; (2) negotiating a “sham” collective bargaining contract and failure to ensure a collective bargaining process that complied with the IBT Constitution and Local Union bylaws; and (3) repeatedly using union resources to

improperly influence a local union election in violation of the Labor Management Reporting and Disclosure Act.<sup>1</sup>

The charges against Hart alleged that, during the period of Aloise's suspension, Hart allowed Aloise to continue exercising authority and influence over Teamster affairs. Hart was appointed to the position of Local Union 853 Secretary-Treasurer upon Aloise's suspension. The charges alleged that Hart allowed Aloise to continue conducting union business, advising the Local Union on a wide range of matters including collective bargaining, organizing, jurisdictional disputes, political activities, administrative, and personnel matters.

The charge report from IIO Luskin (hereafter "Charge Report") detailed frequent and pervasive involvement by Aloise in Teamster affairs, much of it directly involving the business of Local Union 853. For instance, Aloise drafted and sent the Local Union communications for use in organizing campaigns and collective bargaining. Aloise developed bargaining strategies, drafted flyers, appeared at union meetings and addressed members on contract proposals; he toured a building to advise union officials on the purchase of real estate. At one point, Aloise communicated directly with legal counsel for an employer on behalf of the Local Union in collective bargaining. Aloise weighed in on everything from labor-management relations, to internal union governance, to political activities, to Local Union personnel and administrative matters.<sup>2</sup> The Charge Report identified no less than 52 written communications detailing ways in which Aloise involved himself in union affairs with the full knowledge and consent of Hart.<sup>3</sup> In short, on countless occasions, Aloise told Hart and others at the Local Union how to conduct their business, what to say, to whom, and how to say it. Hart approved of, and facilitated, this conduct.

Charge One against Hart alleged that: "Far from taking affirmative steps to prevent Aloise from violating his suspension, Hart repeatedly and pervasively breached his obligations under the IBT constitution by enabling and welcoming Aloise's continued leadership of the union." (Charge Report at 8, para. 14.)

Charge Two alleged that Hart lied, that is, he "gave false evidence" on four matters, specifically:

"a. HART falsely asserted that he was permitted under the suspension order to consult Aloise for 'historical perspective' when he was not;

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<sup>1</sup> Subsequently, Aloise was charged with, and found guilty of, violating his suspension order, as well as other violations of the IBT Constitution and his oath of office. He was permanently barred from the IBT and barred from discussing or conducting Teamster business, or participating in Teamster elections "in any way," effective January 31, 2022. (IRO Order 12/10/2021 at p.4.)

<sup>2</sup> Aloise's extensive involvement in Local 853 affairs was also detailed in the IRO opinion of October 7, 2021, finding Aloise violated his suspension.

<sup>3</sup> These consist mainly of emails discovered in the course of the IIO's investigation; this does not include phone calls, in person, or other communications that may have occurred.

b. HART falsely asserted that his consultations and communications with Aloise during the period of suspension was [sic] limited to 'historical perspective' when they were not;

c. HART falsely denied that Aloise was in control of and used his official Local Union 853 email address during the period of suspension when HART knew the contrary was true; and

d. HART falsely denied that Aloise was not involved in the appointment of Rodney Smith as business agent for the Levi's Stadium bargaining unit."

(Charge Report at 18-19, para. 22.)

Charge Three alleged financial improprieties – specifically that Hart, as a member of the Local Union Executive Board, authorized and permitted expenditures “totaling hundreds of thousands of dollars to occur without advance approval” of the Executive Board “and/or the local union membership and/or without legitimate union purpose...” In Charge Three, the IIO cited a total of six instances of financial misconduct:

“a. Payment of severance in excess of \$10,000 to former business agent Rodney Smith without membership approval at any time;

b. Payment of severance in excess of \$10,000 to former office clerical Jan Johnson without membership approval at any time;

c. Payment of \$25,000 to Alameda County Central Labor Council in support of its “Unionist of the Year” event, without membership approval at any time;

d. Payment of \$15,000 to Alameda County Central Labor Council, without executive board or membership approval in advance of the expenditure; and

e. Purchase of hooded sweatshirts and duck jackets, without membership approval.”

(Charge Report at 20-21, para. 25.)

In a separate category, the IIO also cited as being improper a payment of \$100 per year of service that Aloise received after being permanently banned. (Charge Report at 21-22, para. 26.) That payment amounted to \$4,650; Aloise asked that it be donated to a local charity and the Local honored his request. (Exh. H-10.<sup>4</sup>)

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<sup>4</sup> So as to avoid confusion, “H-” will refer to exhibits submitted previously on behalf of Dennis Hart in proceedings held on Aloise’s violation of his suspension order, while exhibits submitted for Dennis Hart at the Panel hearing held on May 23, 2023, will be referred to as “DH Exhibit \_\_\_” or “DH Exh. \_\_\_”). Exhibits supporting the Charge Report are herein referred to as “CR Exh. \_\_\_”.

## IV. Evidence and Analysis

### A. Charge One

The documentary evidence alone against Hart with respect to Charge One was compelling. Countless emails and other written records left no doubt that Hart permitted Aloise to muscle in on Local Union affairs. This went far beyond what was permitted by the suspension order, even allowing for some limited participation by Aloise as a union member. When asked at the Panel hearing whether Aloise helped Hart “run the union” while Aloise was on suspension, Hart did not deny it. (TR 182:10-16.) Hart admitted that he believed Aloise would be returning to resume the position of Secretary-Treasurer one day. He acknowledged that Aloise was Hart’s “former boss” and expected that he would be Hart’s “future boss.” (TR 183:1-21.)

Hart does not attempt to deny guilt as to Charge One. In fact, he conceded that he did nothing to stop the conduct. (*See, e.g.*, TR 170:13-15: Q. “[Y]ou at no point told Mr. Aloise that he should stop doing that sort of stuff? A. “I did not do that.”) In his closing brief, Hart admitted that he “failed to act diligently to prevent Aloise from influencing the actions of Local 853 personnel” and admits that “Charge I should be sustained.” (Hart Brief at 5).

The Local Union Bylaws state that the Secretary-Treasurer “shall be the principal executive officer” of the organization and should be generally and primarily responsible for conducting the affairs of the Local Union:

The Secretary-Treasurer shall have the general charge and supervision of all the officers and employees of this organization. He shall have the power to appoint personnel, and to suspend or discharge all clerical employees. In all cases where the duties of the officers, business agents, or employees are not specifically prescribed by these By-laws, the Constitution or resolution of the Executive Board, or the membership, they shall obey the directions and orders of the Secretary/Treasurer.

Local Union 853 Bylaws, Article VIII, Section 3(h) (emphasis added).

Hart failed to uphold his duties as “principal executive officer” and allowed Aloise to act as a *de facto* principal officer in clear violation of the suspension order and the Final Order, thereby violating his duties and his oath under the IBT Constitution. Hart essentially “kept the seat warm” for Aloise during his suspension. It is no excuse to argue that Hart feared retribution; he accepted the position of the Local’s principal officer and had the duty to live up to the responsibilities that came with the position, as well as those that came with being an IBT member. We further find that Hart brought reproach upon the IBT and violated his oath by not taking any action to stop Aloise’s retaliation against Rick Hicks and, in fact, joined in retaliatory remarks and behavior when Hicks attempted to uphold the order, thereby bringing harm to a fellow IBT member. (IBT Const. Art. II, Sec. 2(a); CR Exhs. 76, 77, 84.)



As the court in *Friedman* observed, the community around a suspended officer must share a “grave sense of respect” for the suspension “and do everything within their power to see that the suspension is truly effectuated.” *U.S. v. IBT (Friedman)*, 838 F.Supp. 800, 890 (SD NY 1993). A “suspended individual is afforded the opportunity to remain a member of the IBT in return for the covenant that he and his IBT community will scrupulously abide by the terms of the suspension,” and when a violation occurs, it is a breach if this covenant. *Id.*

For these reasons, and based on the overwhelming evidence, including Hart’s own recognition of his guilt, the Panel concludes that Charge One should be sustained.

B. Charge Two

1. Charge Two, items (a) and (b): what Hart believed he was permitted to do under the suspension order, and what he did

Charge Two, items (a) and (b) concern the veracity of Hart’s responses to questions concerning the extent of his communications with Aloise. The IIO alleged that Hart: (a) “falsely asserted that he was permitted under the suspension order to consult Aloise for ‘historical perspective’ when he was not” and (b) Hart “falsely asserted that his consultations and communications with Aloise during the period of suspension was limited to ‘historical perspective’ when they were not.” (Charge Report at 18.)

Hart maintained at the hearing that he understood, based on the advice of legal counsel, he was permitted to communicate with Aloise, “ask him questions,” and receive information from him pertaining to union business, since Aloise was not suspended from membership. (TR: 159:11-19.) Hart testified that he understood the “limits of contact” with Aloise during the suspension to be only that he and others at the Local Union were not to “take direction” from Aloise; he believed other communications with Aloise “concerning operations at the local union” to be permitted. (*Id.* Hart Brief at 7. *See also*, Hart Declaration of June 3, 2020, Exh. H-2, at paras. 6-9, 14.)

Hart’s testimony at the hearing was consistent with statements made in previous testimony, including a Declaration wherein Hart stated his belief that he was allowed to contact Aloise for “historical background” *and* other information, based on the advice of legal counsel. (Hart Decl. at para. 6.) At the hearing, Hart re-affirmed the contents of his Declaration, wherein he stated that he believed he could communicate with Aloise about union affairs, but “Rome could not instruct or direct me or anyone else at Local 853.” (Hart Decl. at para. 6; TR:162:5-7.)

In testimony provided on April 27, 2021, Hart stated, “There is no question that I talked to Rome during his suspension.” (Exh. 51a, 1332:23-24.<sup>5</sup>) Hart explained at the Panel hearing that it was his belief Aloise had unique knowledge to supply answers to certain questions that

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<sup>5</sup> Hart further stated: “It was very clear that Rome could talk about Teamster business, he could give us information, he could give us historical stuff, he could give us names of people to call to run something down and et cetera. But he could never – he could never direct us, but he could give us information.” (CR Exh. 51a, 1513:12-18.)

were of “paramount importance” to the members of Local Union 853 (TR:168:7), and that most communications with Aloise were “to figure out solutions” to problems Hart was facing as the newly installed Secretary-Treasurer (TR:182:3-9).

It is clear that Hart believed he had wider latitude to communicate with Aloise than he actually did or than was prudent. Hart believed, evidenced by the testimony cited above, that allowable communications included getting “historical perspective” but were not limited to “historical perspective.” Thus, it was simply not the case that Hart asserted his communications with Aloise were limited to getting “historical perspectives,” as alleged in the Charge Report.

The Panel concludes that Hart did not lie or provide “false” evidence, as specified in items (a) and (b) of Charge Two. It is both undisputed and beside the point that Hart relied on legal advice to form an opinion as to what the suspension order required and permitted.<sup>6</sup> Whether it was sound legal advice or not, we find that Hart genuinely believed that the key distinction was whether the Local was receiving “instruction” from Aloise (which was prohibited, in his mind), versus merely receiving “information” from Aloise (which was permitted, in his mind). We find that he genuinely believed – rightly or wrongly – that he could speak with Aloise about historical perspectives<sup>7</sup> and other union business so long as Aloise did not give him instructions, and the Local Union retained all decisionmaking authority.

The question presented to the Panel with these charges is not whether Hart was being reasonable in his interpretation of the suspension order. It is whether Hart was being truthful. Having evaluated Hart’s credibility, and having considered the evidence presented, we find nothing that demonstrates dishonesty or an intent to deceive on this issue. The Panel declines to sustain these items in Charge Two.

## 2. Charge Two (c): Aloise’s email account

Regarding Aloise’s use and control of his official Local Union 853 email account, Hart testified that he believed Aloise did not have access to, or control of, this account at the time he gave his Declaration in June of 2020. (TR: 162:8-20.) Hart stated that he gave instructions to Local Union staff to forward personal emails to Aloise, and work-related emails to the appropriate business agent or to himself.<sup>8</sup> (TR 163:7-164:8.) Hart stated that he subsequently learned Aloise did send emails from his work account during his suspension, a fact that Hart first

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<sup>6</sup> He stated that he was advised by legal counsel as to what the suspension order meant in terms of permitted communications with Aloise. (TR:157:17-159:19.) Hart also stated that he read the order himself (TR:179:22-24). Before and during the hearing, much was made about whether Hart relied on the legal advice and whether he could introduce testimony regarding the details of that advice. The Panel concludes that it is unnecessary to venture into this thicket.

<sup>7</sup> The Charge Report cites, in support of its allegation, Hart’s testimony at the *de novo* hearing held on April 27, 2021, which consists of some of the very same testimony cited above.

<sup>8</sup> Hart testified, in April 2021, that he and an office assistant sorted through “hundreds” and “thousands” of calls, emails and other communications involving Aloise. (Exh. H-2 at para. 10.)



realized at the hearing in April of 2021, when such information was presented to him.<sup>9</sup> Hart maintained that at the time he signed his Declaration, on June 3, 2020, he believed the contents to be true. (TR: 162:8-20; 174:4-175:25.)

At the Panel hearing, Hart was confronted with two emails from 2018 that showed on their face that Aloise had been using his Local 853 email account and Hart had been copied. Hart essentially responded that his focus was on how to deal with the issues in the emails rather than which email address Aloise was using. (TR: 174:4-182:7.) The record reflects that Aloise frequently used the email address [ibtrome@gmail.com](mailto:ibtrome@gmail.com). Emails cited by the Charge Report contained 40 instances where Aloise used this Gmail address and twelve instances where he used his official Teamsters address, [raloise@teamsters853.org](mailto:raloise@teamsters853.org). The record does not reflect that there was any distinct time period wherein Aloise used one versus the other, or any pattern whatsoever to Aloise's use of one email address versus the other. Emails sent and received throughout 2018, the first year of Aloise's suspension, come from both addresses, seemingly at random. Anyone who has ever sent an email to the wrong address, or clicked on a link from a email phishing account posing as a legitimate organization, can understand the common occurrence of not scrutinizing email addresses with sufficient care.

Yet, the evidence does not support a finding that Hart "falsely denied" Aloise was controlling and using his Local Union 853 email account. That is, the evidence failed to support the conclusion Hart knew Aloise was using his official account, and then lied about it. Based on the evidence and testimony presented, the Panel finds that – negligent as it may have been – it was credible for Hart to have held a mistaken belief that Aloise was not "in control" of his official Local 853 email account. We decline to sustain this item in Charge Two.

### 3. Charge Two (d): Rodney Smith's assignments

The communication giving rise to the last item in Charge Three began as an email from "Effie Arnolfo" to Hart with a copy to a person who appears to be another Local Union 853 staff member, asking the question, "Should Rodney be there on Tuesday, as he will be the business agent (per Rome) once we get a deal?" (CR, Exh. 52.) The email shows that Aloise responded<sup>10</sup>, telling recipients, "Rodney was to be Levi BA, not anywhere else, just to be clear." (*Id.*)

Hart testified that Aloise's communication was "clarifying" of what had been said and decided previously, in 2017, in regards to Rodney Smith's assignments. Hart believed that conversations occurred in 2017 concerning what matters "Rodney was going to handle"; he stated that the exchange with Aloise – although it could be interpreted as a directive – was, in

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<sup>9</sup> When asked at the hearing on April 27, 2021, "Q. Did Jennifer Payne ever report to you that Rome Aloise continued to use that account remotely?" Hart replied, "A. She did not." (CR Exh. 51a, 1380:19-22.)

<sup>10</sup> The email does not reflect that Aloise was a recipient of the original email, or copied. Presumably some communication with Aloise occurred that was not reflected in the face of the email thread that was reproduced in the exhibit.

fact, only “clarifying” what had been said and decided already. (TR: 190:3-192:4.<sup>11</sup>) This was consistent with Hart’s prior testimony at the hearing in April of 2021. (CR Exh. 51a, 1456:24-1457:18<sup>12</sup>.)

The Panels finds it credible that Hart understood the comment to be a clarification of what was said in the past, versus a directive. Use of the phrase “was to be” versus “should be” or “is to be” indicates a conversation that occurred in the past. The evidence does not support a finding that Hart “falsely denied” the claim regarding Aloise’s involvement in Rodney Smith’s assignments. We, therefore, decline to sustain this item in Charge Two.

C. Charge Three

Charge Three alleged that several expenditures were made by the Local Union 853 Executive Board, while Hart was either President or Secretary-Treasurer, that did not have membership approval<sup>13</sup> or a legitimate union purpose, as required by the Bylaws and other controlling policies of the IBT.

These expenditures consisted of two payments to the Alameda County Central Labor Council (one for \$25,000, approved by the Executive Board on February 8, 2018, and another for \$15,000, approved by the Executive Board on August 12, 2021); two severance payments to former employees of Local Union 853; and one payment for hooded sweatshirts and jackets at “a cost not to exceed \$35,000.” (CR at 20-21; CR Exh. 90<sup>14</sup>.) The report also cited a “customary retirement payment” to Aloise of \$4,650 (an amount equal to \$100 per year of service), as being improper since Aloise had been permanently banned from the IBT at the time the payment was approved. (Charge Report, at para. 26.)

The Local Union Bylaws, passed with amendments made effective as of April 17, 2018, provided that the Executive Board could make expenditures of up to \$10,000 without membership approval; but for expenditures over \$10,000, “membership approval is required.” (Bylaws, Article VIII, Section 5(f), CR Exh. 3.)

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<sup>11</sup> Hart testified at the Panel hearing: “I remember having a conversation with Rome about [Rodney Smith] handling a couple places, okay. [...] I testified that I didn’t think it was a directive because I had some previous conversations with Rome, going back to ’17 about where he may or may not be. I don’t remember exactly where the places we talked about. We talked about him doing some business agent work.” (TR:190:6-16.)

<sup>12</sup> Hart testified at the April 27, 2021 hearing: “A. It’s clarifying – he’s clarifying – I guess Effie thought maybe he was going to be handling other stuff also, is the way I read it. Okay? That he was going to be doing other stuff, and he’s clarifying that – that Levi is the only – not directed him. At an earlier point, me and Rome had talked about that. And so...” (CR Exh. 51a, 1457:3-8.)

<sup>13</sup> The Charge Report asserts that the payment of \$15,000 to the Alameda County Central Labor Council did not have membership approval “in advance” of the expenditure, while the other payments did not have membership approval “at any time.” (CR at 20-21.)

<sup>14</sup> The Stars & Stripes invoice of 10/2/2018 reflects a total payment of \$35,136.43. (Exh. H7)



Notably, Article VIII, Section 3(j) states that the Secretary-Treasurer may make expenditures of up to \$5,000 “without *prior* Executive Board approval, and which shall be approved by the Executive Board *subsequent* to the expenditure” (emphasis added).

By contrast, the Bylaws in Section 5(f) do not specify when approval must occur, as they do in Section 3(j). Thus, when membership approval is required for an expenditure over \$10,000, it is unclear if it must be given in advance under Local Union 853’s Bylaws. The IBT’s Model Bylaws, adopted on December 9, 2016, includes similar language regarding membership authorization for transactions over \$10,000, but it also fails to specify if membership authorization must occur in advance. *See* IBT Model Bylaws, Sec. 14(a)(8), (9).

Hart submitted evidence that each of the expenditures except the retirement payment had been approved by the Executive Board and subsequently approved by the membership, through the procedure of the Executive Board meeting minutes being read and accepted at a subsequent regular membership meeting. (DH Exhs. 8-15.)

Although there are good reasons to adopt a rule requiring advance membership approval of large, non-recurring expenditures<sup>15</sup>, we find no evidence that such a rule had been adopted at Local 853. In fact, testimony and other evidence support the conclusion that the Local had used the same procedures for membership ratification of expenditures for many years and had not been advised that its procedures were deficient. (TR. 137:11-14; 138:25-139:6; 140:15-23; 152:21-153:3; DH Exhs. 16-17.)

In support of its case, the Charging Party submitted an “Advisory Concerning Bylaws and Minutes” dated December 4, 2002, wherein the IBT General Counsel at the time advised affiliates that the procedure of reading out Executive Board meeting minutes at regular meetings for membership ratification of expenditures was not acceptable. It stated that: “Membership approval must be recorded in the minutes of the meeting and the minutes should state the motion, the name of the member making the motion, the name of the member seconding the motion, and the outcome of the vote.” (DH Exh. 11.) That is, a non-regular-and-recurring expenditure should be considered by the membership upon a specific motion. There is no question that the procedure used by Local 853 contravened the Advisory, but the Advisory says nothing about whether *prior* membership approval was required.<sup>16</sup>

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<sup>15</sup> The U.S. Department of Labor, Office of Labor-Management Standards conducts audits of labor organizations and it has issued “Compliance Tips.” One such Compliance Tip on “Internal Financial Controls” states that a local union executive board “should consider” requiring “that prior authorization be obtained for large or unusual transactions.” See OLMS website (last accessed July 7, 2023): <https://www.dol.gov/agencies/olms/compliance-assistance/tips/internal-financial-controls>

<sup>16</sup> There is also no evidence that a General Counsel Advisory from 2002 reflects the current policies of the IBT, or the IBT’s policy during the time frame at issue, roughly 2018-2021.

The Panel finds that membership approval for the cited expenditures over \$10,000 occurred, and there was no requirement in place at Local Union 853 mandating that such approval be provided in advance.

However, on the issue of whether each expenditure had a “legitimate union purpose,” the Panel finds that the donations to the Alameda Central Labor Council were improper. Those donations served to support Aloise’s designation as “Unionist of the Year” and buttressed his broader standing in the labor community at a time when he was suspended and then being investigated for violating his suspension. We find this to be similar to the conduct at issue in *Friedman*, whereby fliers and member appreciation notes portraying Friedman in a favorable light were distributed, and his attendance at union-related social events was publicized, which events functioned to keep Friedman in a position of prominence and authority during his suspension, thus signaling that the “suspension was not really in effect on a practical level.” *Friedman*, 838 F.Supp. at 811. This accolade from a key labor organization kept Aloise from being sidelined in the labor community during his suspension. The donations more directly benefitted Aloise than the membership of Local 853, and ran counter to the Local’s responsibility to “scrupulously” abide by the suspension order and Final Order. In this way, the payments failed to have a “legitimate union purpose” and should not have been approved.

As for the other payments, we find that each of them did have a legitimate union purpose, and therefore decline to sustain the charges as to those payments. The payments for hooded sweatshirts and other branded apparel are common union expenditures designed to promote union pride and solidarity. Severance payments to staff in exchange for waivers of liability are also not unusual, and benefitted the Local Union by limiting liability and avoiding litigation. Although the \$100 per year “customary retirement payment” was unusual, given Aloise’s permanent ban from the IBT at the time the payment was approved, we find that this was in keeping with the Local’s practice with other employees upon retirement (TR:150:18-151:4), and constituted earned compensation. We also note that the payment was approved by the Executive Board, in keeping with the Local’s Bylaws, and then donated to charity.

In sum, we sustain Charge Three with respect to the Alameda County Central Labor Council payments, but we decline to sustain the charge as to the remaining payments.

## **V. Recommended Penalty**

The Panel has considered the penalty at great length. Based on the arguments presented, we feel there is no authority to support a lifetime ban, as was originally requested by the Charging Party at the hearing. In fact, we note that the Charging Party recommended a lesser penalty in its closing brief upon “careful reflection.” We recommend, based largely on the *Friedman* and *Yontek* cases<sup>17</sup> cited to us, a penalty consisting of:

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<sup>17</sup> *Friedman*, *supra*, at 4, and Decision of Independent Administrator in re. Gerald Yontek, et al. (June 21, 1993) (CR Exh. 16).

(1) a two-year suspension from IBT membership with a full associational ban (meaning, Hart is banned from communicating in any manner with IBT officers, employees, and members<sup>18</sup>); and

(2) a five-year ban from running for office or having any leadership role, paid or unpaid, in any IBT-affiliated entity, or conducting union business in any way.

We recognize the gravity of the offenses, but we are not aware of any legal precedent or other circumstances that would justify a harsher penalty and believe this penalty to be sufficiently serious. We also recognize that Hart has admitted wrongdoing, appeared remorseful at the hearing, has announced his intention to retire imminently and has "commit[ted]" to not holding office or employment with the IBT "at any time in the future" (Hart Brief at 16).

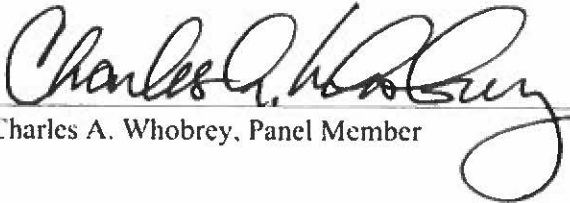
The Panel respectfully submits this report and recommendation for your consideration.

By:



William Hamilton, Panel Chairman

Dated: 7/14/23



Charles A. Whobrey, Panel Member

Dated: 7/14/23

\_\_\_\_\_  
Daniel J. Kane, Jr., Panel Member

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

<sup>18</sup> The only exception from the associational ban we recommend would be for communications necessary for obtaining and managing Hart's earned retirement and/or health care benefits.

(1) a two-year suspension from IBT membership with a full associational ban (meaning, Hart is banned from communicating in any manner with IBT officers, employees, and members<sup>18</sup>); and

(2) a five-year ban from running for office or having any leadership role, paid or unpaid, in any IBT-affiliated entity, or conducting union business in any way.

We recognize the gravity of the offenses, but we are not aware of any legal precedent or other circumstances that would justify a harsher penalty and believe this penalty to be sufficiently serious. We also recognize that Hart has admitted wrongdoing, appeared remorseful at the hearing, has announced his intention to retire imminently and has “commit[ted]” to not holding office or employment with the IBT “at any time in the future” (Hart Brief at 16).

The Panel respectfully submits this report and recommendation for your consideration.

By:

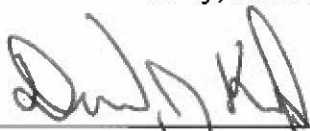


William Hamilton, Panel Chairman

Dated: 7/14/23

Charles A. Whobrey, Panel Member

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



Daniel J. Kane, Jr., Panel Member

Dated: 7/14/23

<sup>18</sup> The only exception from the associational ban we recommend would be for communications necessary for obtaining and managing Hart’s earned retirement and/or health care benefits.