

INDEPENDENT DISCIPLINARY OFFICERS

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

Independent Investigations Officer
Robert D. Luskin, Esq.

September 14, 2023

Via Electronic Mail

Edward M. Gleason
General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Charges Against Dennis Hart

Dear Mr. Gleason:

On July 27, 2023, I received the Report and Recommendations of the IBT Hearing Panel (“Panel Report”) appointed to hear the charges against Local 853 member Dennis Hart. Pursuant to Paragraph 33 of the Final Agreement and Order (“Final Order”), approved on February 17, 2015, in *United States v. International Brotherhood of Teamsters*, et. al., 88 Civ. 4486 (LAP), I write to notify you of my determination that the Panel’s Report and Recommendations are “not inadequate” in part and “inadequate” in part.

My findings are described in more detail below. Please respond in writing within twenty days of receipt of this letter as to what, if any, additional actions the IBT has or will take to correct the items deemed to be “inadequate.” See Final Order ¶ 33.

I. Background

Dennis Hart became a Teamster in 1976. Since 1982, Mr. Hart worked as an officer and representative in different capacities for various IBT affiliates and locals in Northern California and, in 2017, became President of Local 853. At that time, Rome Aloise was Local 853’s Secretary-Treasurer and Principal Officer.

In December of 2017, Mr. Aloise was suspended from his positions as an International Vice President, President of Joint Council 7 and Secretary-Treasurer of Local 853 for two years. See *In the matter of Rome Aloise*, Disciplinary Decision of the Independent Review Officer, December 22, 2017 (“2017 Disciplinary Decision”); IIO Exhibit 5. While Mr. Aloise was

permitted to remain a Teamster, he was prohibited from carrying out duties as a Teamster officer. *Id.*; *see also* IIO Exhibit 12.

During the pendency of Mr. Aloise's two-year suspension, Mr. Hart took over as Local 853's Secretary-Treasurer and Principal Officer from 2017 to 2019.

In February 2020, Mr. Aloise was charged with violating the terms of his suspension, bringing reproach upon the union and harming a fellow Teamster and other related charges. Following a *de novo* hearing before me, I found that Mr. Aloise violated the terms of his 2017 Disciplinary Decision by, among other things, continuing to direct and control the affairs of Local 853 as well as Joint Council 7 while he was barred from doing so. *See In Re: Aloise*, Opinion of the Independent Review Officer, October 7, 2021 ("2021 IRO Opinion"); IIO Exhibit 85. At the *de novo* hearing, Mr. Hart submitted an affidavit and testified on Mr. Aloise's behalf. *See*, IIO Exhibits 51(a) and (b). As a result of his misconduct, Mr. Aloise was permanently barred from the Teamsters and was permanently barred from knowingly associating with Teamsters except in social settings. *See, In Re: Aloise*, Disciplinary Decision of the IRO, December 10, 2021 ("2021 Disciplinary Decision"); IIO Exhibit 92. However, the 2021 Disciplinary Decision made clear that Teamsters were prohibited from discussing any of the affairs or business of the Teamsters with Mr. Aloise. *Id.*

A. The IIO's Charge Report

On February 28, 2023, the Independent Investigations Officer ("IIO") issued a report to General President Sean M. O'Brien, recommending charges be filed against Mr. Hart. ("Charge Report")

Charge One alleged that Mr. Hart failed to cooperate with the orders of the Independent Review Officer by enabling and assisting Mr. Aloise to circumvent the terms of the 2017 Disciplinary Decision by allowing Mr. Aloise to continue to direct and control the affairs of Local 853. Charge Two alleged that Mr. Hart failed to cooperate by providing false evidence and testimony during Mr. Aloise's 2021 *de novo* hearing. Charge Three alleged that Mr. Hart approved unauthorized expenditures while he was an officer of Local 853. *See, generally*, IIO Charge Report.

B. The IBT Hearing and Report

The Charge Report against Mr. Hart was adopted by General President O'Brien on March 3, 2023. On May 23, 2023, the Panel conducted a hearing on the charges, and, on July 14, 2023, the Panel rendered its decision in a written opinion. The Panel sustained Charge I, declined to sustain Charge II and sustained portions of Charge III.

As a penalty, the Panel recommended that Hart serve "(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; 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." *See* Panel Report at 10-11.

II. The Independent Review Officer's Findings

The Panel's Report and Recommendation was submitted to me for review on July 27, 2023 and, on August 22, 2023, I received submissions from the IIO, the IBT and counsel for Mr. Hart, Patrick J. Szymanski, regarding the adequacy of the Panel Report's findings and its recommended sanction. In addition, I have reviewed the Charge Report and its exhibits, the post-hearing briefs submitted by the IBT and Mr. Szymanski to the Panel, the hearing transcript as well as the exhibits submitted to the Panel during the hearing.

A. Charge One

The IIO charged that Mr. Hart, "as Secretary-Treasurer and principal officer of Local 853 and as an officer of Joint Council 7, during the period of Rome Aloise's suspension, knowingly and with the purpose or effect of circumventing, frustrating, evading, and disregarding said suspension, did permit, empower and enable Aloise to exercise authority from which the [2017 Disciplinary Decision] barred him..." IIO Charge Report at 1. According to the Charge Report, Mr. Hart was charged with "failure to cooperate with the independent disciplinary process of the Final Order and the IBT Constitution and thereby bringing reproach upon the IBT and violating his oath as a member and officer." *Id.*

Based on these allegations, the relevant provisions of the IBT Constitution at issue here are Article II, Section 2(a) ("bringing reproach" and "harming a fellow Teamster"), Article XIX, Sections 7(b)(2) ("violation of a member's oath") and 7(b)(2)(5) ("failure to cooperate with the independent disciplinary process," e.g., Paragraph 2D, of the Final Order).¹

I find the Panel appropriately considered the evidence submitted in support of Charge One, including the evidence, testimony and arguments submitted on behalf of Mr. Hart. There was ample evidence that Mr. Hart continued to permit Mr. Aloise to direct and control the affairs of the union while Mr. Aloise was suspended. *See United States v. IBT [Friedman, et. al.]*, 838 F. Supp 800 (SDNY 1003) (officers and agents violated the IBT Constitution by acquiescing and assisting suspended officer's involvement in a local's affairs). Accordingly, the Panel's findings with respect to Charge One are "not inadequate."

B. Charge Two

The IIO charged that Mr. Hart failed "to cooperate with the independent disciplinary process of the Final Order and IBT Constitution by providing material evidence under oath in the Aloise investigation, both in sworn examination and at a *de novo* hearing, he knew to be false, thereby bringing reproach upon the IBT and violating his oath as a member." *See* IIO Charge Report at 1; (Article II, Section 2(a) and Article XIX, Sections 7(b)(2) and 7(b)(2)(5)).

¹ A summary list of the types of charges available to the IIO and IBT for similar conduct are laid out in the 2021 IRO Opinion. *See* IIO Exhibit 85 at 7-8. For future disciplinary proceedings, please cite the specific provisions of the IBT Constitution Respondents are alleged to have violated either in the IIO's Charge Report or in the Panel's Report and Recommendations.

The IIO charged more specifically that Mr. Hart provided false testimony by claiming that he was permitted to consult Mr. Aloise for “historical perspectives” regarding the operations of Local 853; falsely claiming that his consultation and communications with Mr. Aloise were limited to “historical perspective” when he was actually taking direction from Mr. Aloise; falsely denying that Mr. Aloise was in control of his official Local Union 853 email address; and falsely denying that Mr. Aloise was not involved in the appointment of Rodney Smith as business agent for the Levi’s Stadium bargaining unit. *See* IIO Charge Report at 18-19.

The Panel declined to sustain Charge Two. *See* Panel Report at 5-8. The Panel found that Mr. Hart reasonably believed he was permitted to communicate with Mr. Aloise and, moreover, that Mr. Aloise had not provided direction to Mr. Hart. *See* Panel Report at 6. That is, despite his discussions with Mr. Aloise regarding the affairs of the local, Mr. Hart’s prior testimony was nevertheless accurate because he reasonably believed that he was free to make his own decisions as the Principal Officer of Local 853. *Id.* The Panel reached similar conclusions with respect to Mr. Aloise’s use of his email address and Rodney Smith’s appointment as business agent. In reaching its decision, the Panel considered all of the available evidence, including making its own independent evaluation of Mr. Hart’s credibility during the hearing.

I find the Panel appropriately considered the evidence submitted in support of Charge Two, including the evidence and testimony submitted on behalf of Mr. Hart, as well as an assessment of his credibility. Accordingly, the Panel’s findings with respect to Charge Two are “not inadequate.”

C. Charge Three

The IIO Charged that Mr. Hart:

As a member of the Executive Board of Local Union 853, by overt acts and by omissions, both during the period he was president (non-Principal Officer) and Secretary-Treasurer (Principal Officer), did authorize and permit expenditures of Local Union 853 funds totaling hundreds of thousands of dollars to occur without advance approval of such expenditures by the local union executive board and/or the local union membership and/or without legitimate union purpose, such acts and omissions by Hart violating the IBT Constitution and local union bylaws, thereby bringing reproach upon the IBT and violating his oath as a member and officer.²

IIO Charge Report at 1.

At issue are five payments, each exceeding \$10,000, that were authorized by Mr. Hart as an officer but allegedly violated Local 853’s by-laws.³ According to the by-laws, “the Executive

² *See* IBT Const. Article II, Section 2(a) (reproach) and Local 853 by-laws, Article VII, Section 5(f) and Article VII, Section 3(g).

³ In its August 22nd submission, the IBT cited evidence that only four expenditures exceeding \$10,000 should have been subjected to membership approval.

Board may make expenditures up to Ten Thousand Dollars (\$10,000) without membership approval and for amounts in excess of Ten Thousand Dollars (\$10,000) membership approval is required.” IIO Charge Report, Exhibit 3 at 14. The IIO alleged that Mr. Hart did not obtain appropriate membership approval for these expenditures. Based on testimony and evidence submitted during the hearing, the Panel concluded that Mr. Hart did obtain appropriate approval because the “expenditures had been approved by the Executive Board and subsequently approved by the membership, through the procedure of Executive Board meeting minutes being read and accepted at a subsequent regular membership meeting.” Panel Report at 9.

The IIO contends that the Panel’s conclusion on this point should be deemed “inadequate” because the members did not actually approve the expenditures *before* they were made. *See* IIO Submission dated August 22, 2023 (emphasis added). In support of its position, the IIO cites the by-laws and also references an IBT Advisory Opinion issued to all local union affiliates dated December 4, 2002 drafted by then-General Counsel Szymanski (the “2002 Advisory”). The 2002 Advisory states, in pertinent part, that “Local Unions cannot obtain specific membership approval simply by including an action in the Executive Board minutes and then having the minutes approved by the membership.” *See* December 4, 2002 Advisory Concerning by-laws and Minutes.

In considering these issues, the Panel determined that Mr. Hart still complied with the local’s by-laws because the membership approved the expenditures and that there was no requirement in place at Local Union 853 mandating that such approval be provided in advance.⁴ *See* Panel Report at 10. Moreover, the Panel found that the 2002 Advisory was not adopted by Local 853 and that there was no evidence that it reflected the IBT’s policy when the expenditures were made over 17 years after its issuance. *Id* at 9. Mr. Szymanski asserts that the 2002 Advisory was “consigned to a black hole” and the evidence submitted to the Panel demonstrated the procedures followed by Mr. Hart to approve the expenditures were never raised as issues by the IBT during its prior audits of the local union. *See* Szymanski Letter dated August 22, 2023 at 2-3.

I do not consider the Panel’s findings on this Charge “inadequate” under the facts and circumstances presented. I agree that Local 853’s by-laws are vague as it pertains to the timing of when expenses exceeding \$10,000 should be approved by the membership. In addition, it is not clear if the 2002 Advisory had any binding effect on Local 853. While officers must obtain membership approval and follow Executive Board procedures as stated in a local’s by-laws, the Panel found that Mr. Hart did obtain membership approval, even if after the fact.

I also agree that the Panel appropriately determined that the two payments to the Alameda Labor Council in 2018 did not serve a legitimate union purpose. *See* Panel Report at 10. Those payments were made by Local 853 in support of Mr. Aloise’s nomination as “Unionist of the Year” by the Labor Council at a time when he was suspended for failing to abide by Teamster disciplinary rules. While Mr. Hart claims that the Panel exceeded its authority by making this determination, it is clear from the language in the Charge Report that Mr. Hart was charged with making payments that did not serve a legitimate union purpose. *See* IIO Charge Report at 1. Further, the record

⁴ The Panel found that Hart violated the local’s bylaws for two expenditures sent to the Alameda Labor Council on separate grounds because they did not serve a legitimate union purpose.

makes clear that the funds provided to the Labor Council did not benefit the local and were designed to keep Mr. Aloise in a position of prominence and authority during his suspension.

I find the Panel appropriately considered the evidence submitted in support of Charge Three, including the evidence and testimony submitted on behalf of Mr. Hart. Accordingly, the Panel's findings with respect to Charge Three are "not inadequate."

D. Penalty

As noted above, in sustaining Charge One and portions of Charge Three, the Panel recommended that Mr. Hart serve "(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; 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." See Panel Report at 10-11.

Both the IIO and Mr. Hart claim that the sanction goes too far. The IIO further asserts that the Panel did not adequately address and analyze various factors in reaching its sanction recommendation. However, I find the Panel adequately considered the penalty and considered the arguments presented by Mr. Hart and the IBT. *Id.* at 10. In addition, the Panel stated that it based its decision largely on prior disciplinary precedent (e.g., the *Friedman* and *Yontek*) in reaching its penalty determination. See *Friedman*, 838 F. Supp. 800 (SDNY 1993); *aff'g, Yontek, et. al.*, Decision of the Independent Administrator (June 21, 1993).

Like the matter before me, the *Friedman* and *Yontek* matters involved officers who actively helped a suspended officer violate the terms of his sanction by allowing him to continue to control the affairs of a local. As a penalty, the officers were "prohibited from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship position for a period of eighteen months." *Id.* at 817-18. However, the officers were permitted to remain Teamsters. *Id.*

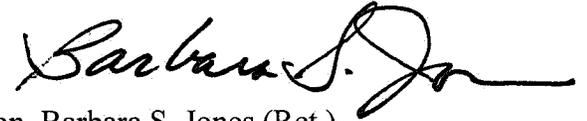
Based on a review of the cases the Panel relied upon, the term of suspension along with an associational ban constitutes an upward departure from prior precedent. Mr. Hart's conduct certainly merits a term of suspension from the Teamsters and a ban from holding office because without his acquiescence and assistance, Mr. Aloise could not have continued to direct and control the affairs of Local 853. However, the Panel should revisit and reexamine its determination as it pertains to the associational ban. Based on the record, an associational ban is not outside the range of possibilities, however, the Panel should either limit its duration to one year or provide some additional basis for its decision.⁵

⁵ For example, IBT Panel Report and Recommendations in prior disciplinary proceedings considered the sentencing factors enumerated in Title 18 U.S.C. 3553(a). These include the nature and circumstances of the offense; the history and characteristics of the Respondent; the need for the discipline to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; the need for the punishment to deter future violations; the kinds of penalties available, and the need to avoid unwarranted disparities amongst offenders with similar characteristics and who committed similar offense. See 18 U.S.C. 3553(a).

III. Conclusion

Pursuant to Paragraph 33 of the Final Order, please provide within twenty days a submission that sets forth any additional actions the IBT has or will take to address the above-described deficiencies with respect to the penalty in this matter. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara S. Jones", with a long horizontal flourish extending to the right.

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

cc: Robert D. Luskin, Esq.
David Kluck, Esq.
Jeffrey J. Ellison, Esq.
Brian T. Kelly, Esq.
Joshua C. Sharp, Esq.
Patrick J. Szymanski, Esq.