

**MEMORANDUM**

To: James P. Hoffa, General President, International Brotherhood of Teamsters

From: Robert D. Luskin, Independent Investigations Officer

Date: August 12, 2021

RE: Proposed Charges Against Former L-651 Officers Michael Philbeck and Ron Merrifield

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**I. RECOMMENDATION**

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer (“IIO”) recommends to the IBT General President that charges be filed against former Local 651 President and principal officer Michael Philbeck (“Philbeck”) and former Local 651 Business Agent Ron Merrifield (“Merrifield”) as follows:

**a. Charge I**

The IIO recommends that Philbeck be charged with bringing reproach upon the IBT by embezzling union funds, violating Federal law, and committing 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. Int’l Br’d of Teamsters; to wit*: In November and December 2018, while still in office but after having lost his bid for reelection, Philbeck caused the Local to make at least \$16,006.37 in unauthorized payments to himself and caused a sale of Union property to himself for substantially below fair market value, all of

which acts were done without valid approval of the Local's Executive Board, without notice to or consent of the incoming officers, and without a Union purpose.

**b. Charge II**

The IIO further recommends that Philbeck be charged with bringing reproach upon the IBT by breaching his fiduciary duties, failing to meet with the incoming officers, and failing to return control of Union property in violation of 29 U.S.C. § 501(a), IBT Const. Art. XXII, Sec. 2(c),<sup>1</sup> and IBT Const. Art. XIX, Sec. 9(b)(1) and (2); *to wit*: Philbeck caused the Local to issue to officers and employees of the Local at least \$16,786.07 without the valid approval of the Local's Executive Board, without notice to or consent of the incoming officers, and without a Union purpose; Philbeck caused the Local to issue payment for the 2018 Christmas Breakfast without the valid approval of the Executive Board and without notice or consent of the incoming officers; Philbeck refused 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; Philbeck failed to make arrangements to change the signature cards on the Local's bank account or to cooperate with the new administration's efforts to do so; and refused to return control of the Local's social media accounts upon the expiration of his term of office.

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<sup>1</sup> IBT Const. Art. XXII, Sec. 2(c) required that he or his designee meet with the principal officer-elect 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. Ex. 1.

**c. Charge III**

The IIO further recommends that Philbeck and Merrifield be charged with bringing reproach upon the IBT by embezzling union funds, violating Federal law, and committing 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*: In December 2018, Philbeck and Merrifield redeemed, respectively, 165,000 and 15,000 credit card points belonging to Local 651 in exchange for valuable merchandise, which they converted to their personal use.

**II. JURISDICTION**

Pursuant to paragraph 32 of the Final Agreement and Order, the IIO designates this as a matter within the jurisdiction of the General President. The Final Order requires that within 90 days of the IIO's referral to him, the General President must file with the Independent Review Officer ("IRO") written findings setting forth the specific action taken and the reason for such action. Ex. 33. at ¶ 32. Failure to meet this legal obligation may be found to be an act taken to hinder the work of the IRO in violation of the permanent injunction. *Id.* at ¶ 2 (D).

### **III. INVESTIGATIVE FINDINGS**

#### **a. Local 651**

Local 651 is located in Lexington, Kentucky and had approximately 3,050 members as of its most recently<sup>2</sup> filed LM-2. Ex. 2. Its members are predominantly UPS workers, production plant workers, and freight drivers.

#### **b. Michael Philbeck**

Michael Philbeck has been a Teamster since February 1996. Ex. 3. He was the Local's President and principal officer from 2010 to December 31, 2018. Ex. 4. Philbeck Tr. 8:18-19. On November 15, 2018, Philbeck lost his bid for re-election as President for the term beginning on January 1, 2019. Ex. 5. Prior to becoming principal officer, Philbeck had been a driver for UPS. He resumed driving for UPS after January 1, 2019. Ex. 3. Philbeck Tr. 8:13-15.

#### **c. Ron Merrifield**

Ron Merrifield has been a Teamster since May 2, 2008. Ex. 6. He was a Business Agent from 2013 until December 31, 2018. Ex. 7. Merrifield Tr. 14:22-25 – 15:2-5. Prior to becoming a Business Agent, Merrifield had been a driver for UPS. After losing his bid for re-election in November 2018, Merrifield resumed driving for UPS Freight on January 1, 2019. Ex.8.

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<sup>2</sup> March 29, 2021.

**d. Stephanie Buchenroth**

Stephanie Buchenroth (“Buchenroth”) was hired by Philbeck on December 16, 2016 as Assistant to the President for Local 651, a position she still holds.

Buchenroth Tr. 9:6-19, Ex. 2.

**e. Michael Watson**

Michael Watson (“Watson”) is the current President and Principal Officer of Local 651. Watson Tr. 12:7-8. He has been a Teamster for approximately 42 years, all of which was with Local 651. *Id.* at 12:16-20. Watson ran for President in Local 651’s November 15, 2018 election, in which he opposed then-President Philbeck’s reelection. *Id.* at 16:21–17:5. Watson defeated Philbeck by a margin of 492 to 446, or approximately 4.9%. Ex. 5.

**IV. Philbeck Caused Local 651 to Make Unauthorized Expenditures During His “Lame Duck” Period.**

The election results were announced on November 15, 2018. Ex. 5; Watson Tr. 18:13–19:20; Buchenroth Tr. 61:21-24. After the election outcome was announced but before leaving office, Philbeck caused to be issued at least 23 checks for extraordinary expenditures without obtaining the required<sup>3</sup> approvals of the

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<sup>3</sup> See IBT Constitution, Art. XXII, Sec. 4(e): “During the period between the date of election and the end of the term of office, no extraordinary expenditure of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make such extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure may be considered to be “extraordinary” if: (a) it is not routine or recurring in the operation of the Local Union, such as, but not limited to, those items set forth in Article VII, Section 2(a)(1); (b) it is for an amount greater than the Local Union would normally pay for the particular item in the ordinary course of its business; (c) it establishes new benefits, or increases the amounts of previously authorized benefits, for Local Union officers or employees; or (d) the payment would have a significant adverse effect on the financial stability of the Local Union and/or affect its ability to provide representational services to the membership.” Ex. 1. See also, L-651 Bylaws, Article 17 (E) (7): “During the period between the date of election and the end of the term of office no extraordinary

incoming Executive Board<sup>4</sup> and the General Membership. The checks totaled approximately \$45,454.34. Ex. 9. Philbeck signed each check.<sup>5</sup> Ex. 9.

These expenditures were styled as cash-outs of unused vacation and sick time leave, primarily to the outgoing Board members. Additionally, beginning November 19, 2018, Philbeck caused the Local to pay him total of five (5) supernumerary salary payments totaling \$3,605.77. Ex.10. The vacation payments, the sick leave payments, and the supernumerary salary payments all lacked the requisite authority, and none served a union purpose.

Of the 23 unauthorized checks at issue, Philbeck received eleven (11), totaling \$17,430.76, and Merrifield received six (6), totaling \$11,401.92. Ex. 9. Merrifield admits to having cashed out his vacation time at the end of 2018, but claims the transactions were approved by the Local's then-counsel, Al Priddy. Merrifield Tr. 74:10-17. Neither Philbeck nor Merrifield has paid back any of the funds. Buchenroth Tr. 104:11.

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expenditures of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make such extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure shall be considered extraordinary if it falls within the definition set forth in Article XXII, Section 4 (e) of the International Constitution. In event the election results in a new complement of officers, the outgoing officers must comply with the restrictions in Article XXII, Section 2(b) of the International Constitution regarding entering contract for personal services.” Ex. 11 at Art.17 (E) (7)

<sup>4</sup> As detailed *infra*, part IV.a), Philbeck also failed to obtain the approval of the then-current Executive Board, whose purported approvals of the expenditures were *ultra vires* and invalid for want of a quorum.

<sup>5</sup> Each check was also signed by then-Vice President Morse “Mo” Minix, who had retired from UPS and stopped paying his Local dues in March of 2018. Ex 9; Buchenroth Tr. 22:10-15; Ex. 34. Minix’s continued active service in an official capacity with the Local after his retirement and cessation of dues payments—including purportedly voting on Executive Board motions and signing checks—is indicative of the general disregard the norms of good governance that characterized the final year of Philbeck’s administration. Ex. 9.

**a. November 18, 2018 Executive Board “Meeting”**

On November 18, 2018, all seven members<sup>6</sup> of the Executive Board were present on the Local’s premises to attend the Executive Board and General Membership Meetings, both scheduled to occur that day. Ex. 12.<sup>7</sup> It was the Local’s practice that financial documents be reviewed by the trustees prior to Executive Board Meetings. Tomblin Decl. at 2 (“The trustees were reviewing the Local’s financial documents which we routinely did before each Executive Board meeting.”) Mullins Decl. at 3 (“I was present at Local 651 on November 18, 2018 in my capacity as Trustee and I reviewed the Local’s finances. That review took place in Secretary-Treasurer Mike Watson’s office, with Watson and the other two Local Trustees, Iris Groves and Jimmy Tomblin.”)

Beginning around 11:00 am on November 18, 2018, the Trustees (Groves, Tomblin, and Mullins)—along with Watson and Buchenroth—were in Watson’s office reviewing the trustee’s reports. Buchenroth Tr. 67:12-68:4; *see also* Tomblin

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<sup>6</sup> Mike Philbeck, President; Mike Watson, Secretary Treasurer; Mo Minix, Vice-President; Gina Bennett, Recording Secretary; Lona Mullins, Trustee; Iris Groves, Trustee; and Jimmy Tomlin, Trustee. Mullins Decl. at 4; (“On November 18, 2018, I noticed that Philbeck, Vice President Morse Minix and Recording Secretary Gina Bennett were in Philbeck’s office with the door closed. I along with Watson and the other two trustees were waiting to be called into the conference room to have the Executive Board meeting.”) Tomblin Decl. at 2; (“I was at the Local 651 on November 18, 2018 in order to fulfill my duties as Trustee and to review the Local’s financial documents, attend the Executive Board meeting, and the General Membership Meeting. During that day, I was in Secretary-Treasurer Mike Watson’s office with Watson and the other two Local Trustees, Iris Groves and Lona Mullins.”) Tomblin Decl. at 3; (“While we were reviewing the Local’s financial records, Philbeck, Vice President Morse Minix and Recording Secretary Gina Bennett were in Philbeck’s office with the door closed.”)

<sup>7</sup> As a matter of practice, Local 651 did not separately notice Executive Board meetings, but “we all knew” that “unless something came up” they would be held the same day as the General Membership meetings. Watson Tr. 29:2-12. *Cf.* Buchenroth Tr. 62:10-20: (“Well, I have it written in my calendar, GMM [General Membership Meeting] at 2:00 p.m. And the reason that’s written down is always prior to the general membership meeting there is an executive board meeting.”)

Decl. at 2; Watson Tr. 38:1-2. The review was taking longer than usual because the International had raised issues with the September and August trustee's reports, requiring the books to be reopened. Buchenroth Tr. 68:9-17. Additionally, the review was prolonged by Philbeck's failure to turn in any of his expense reports. Tomblin Decl. at 2; *see also* Groves Tr. 27:23-28:2 ("The trustees and M[ike] Watson were going over the books with a lot of questions to be answered.") Mullins Decl. at 3 ("During my tenure as Trustee, the Trustees had recurring issues balancing the Local 651's finances, mostly because then-President and principal officer, Michael Philbeck would routinely fail to turn in his expense receipts.")

Executive Board meetings take place in the Local's conference room (the "Hoffa Room,") Tomblin Decl. at 4; Groves Tr. 30:22-23, which is located on the opposite side of the building from Watson's office. Watson Tr. 34:21-22. At around 12:00 to 12:15 pm (roughly 45 minutes to an hour after the trustees began their review), Minix came from the conference room to Watson's office and informed the trustees and Watson that the remaining three members of the Executive Board (Philbeck, Minix, and Merrifield) were ready to begin. Watson Tr. 36:23-37:5. Watson informed Minix they had not yet finished their review. Watson Tr. 37:6-7.

Merrifield claims Watson also told Minix that he (Watson) was "not going to attend any more meetings." Merrifield Tr. 27:15-16. Merrifield claims to have overheard the conversation between Watson and Minix from his own office, next



door to Watsons.<sup>8</sup> Merrifield Tr. 26:12-23. Watson, along with all other witnesses present in Watson's office at the time, deny he made such a statement. Watson Tr. 31:11-19; Mullins Decl. at 4 ("On November 18, 2018, I noticed that Philbeck, Vice President Morse Minix and Recording Secretary Gina Bennet were in Philbeck's office with the door closed. I along with Watson and the other two trustees were waiting to be called into the conference room to have the Executive Board Meeting. No one ever called us into the conference room or announced a meeting.")<sup>9</sup> The other trustees likewise deny making any statement to the effect that they would refuse to attend any meetings; in fact, Tomblin testified that ("if Watson did say that he would not attend that meeting or any other meetings, he still would have attended the Executive Board meeting, because it was my job, and it was the reason I was there.") Tomblin Decl. at 7. Both Tomblin and Mullins further stated that they did not recall seeing Minix, or anyone else coming into Watson's office to inform us of the start of any meeting. Tomblin Decl. at 4. ("On November 18, 2018, no one came to tell the trustees and Watson that the meeting was starting. I do not remember Minix, or anyone else, coming into Watson's office to inform us of the start of the meeting.") Mullins Decl. at 5; ("I do not recall seeing Minix, or anyone

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<sup>8</sup> Minix, having retired, was no longer subject to sworn examination by the IIO at the time of this investigation.

<sup>9</sup> Both Philbeck and Bennett admit that they were not with Minix at the time he supposedly informed Watson and the Trustees of the meeting, that they therefore did not personally hear any such exchange, and that they did not personally make any attempt to communicate with the Board members reviewing expenses in Watson's office. Philbeck Tr. 98:3-20 ("Q Did they tell you that was the reason they didn't attend the meeting? A. I did not hear Mr. Watson make that statement; no, sir.") Bennett Tr. 53:19-20 ("Q: You didn't hear [Watson's purported refusal] from Mr. Watson, did you? A: I did not walk over there with Mo; no."); Bennett Tr.; 50: 2-4 ("Q: Did you speak to them? A: Not about why they didn't come to the meeting; no".)

else, coming into Watson's office to inform the Trustees and Watson of any meeting that was about to begin.")

At approximately 1:30 pm, Philbeck purported to call the Executive Board Meeting to order. Ex. 13; Bennett Tr. 50:13-16. Philbeck was aware that a quorum was required and that none was present at the time of the call to order. He proceeded anyway:

Q. So on November 18th, 2018, according to these minutes, you called to order a meeting, that you called a meeting, without a quorum present in the meeting; correct?

A. Yes; that's correct.

Q. All right. And your understanding of the quorum requirement is what?

A. We needed at least four.

Q. Four?

A. Yes.

Q. How many were present at this meeting?

A. There was three.

Philbeck Tr. 94:3-18.

During this gathering, Philbeck, Minix, and Bennett voted to approve various expenditures. In particular, Philbeck entertained a motion to "pay all vacations to business agents Joe Bill Lance, Ron Merrifield and Mike Philbeck." Ex. 13.<sup>10</sup> The

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<sup>10</sup> The cover page of the minutes recording Philbeck's November 18, 2018 *ultra vires* meeting erroneously states that the meeting was "cancelled because of a threat of violence." In fact, that notation refers to the February 25, 2018 meeting. Bennett reused the Word document containing the February 25 minutes as a template for the November 18 minutes and inadvertently failed to remove the notation. Bennett Tr. 44:23 – 45:2-22

three also “approved” Philbeck’s purchase of his Local-owned laptop—purchased by the Local 16 months earlier at a price<sup>11</sup> of \$2,695.43—for \$200.<sup>12</sup> In direct contravention of the IBT Constitution,<sup>13</sup> the three also purported to retain a new attorney, Nick Wallingford, to represent the Local in litigation *after* Philbeck left office. Ex. 30 (“[Then-Local 651 attorney Al] Priddy told P Philbeck to get another attorney to handle [an existing] lawsuit. [Priddy] felt he needed to step out as he couldn’t represent both boards since . . . Watson had been elected.”) They also “approved” funds for the Local’s Christmas Breakfast. *Id.* at Item H (1).

Philbeck admitted that all of these actions were taken without a quorum. Philbeck Tr. 96:25-97:5 (“Q: Okay. So your position is that you — you forged ahead in a meeting that didn’t have a quorum to protect the local. A: Yes; absolutely.”) He further admitted that he was aware that both Watson and the Trustees were in the building, Philbeck Tr. 97:25-98:2, that he did not personally hear either Watson or any or Trustees refuse to attend the Executive Board meeting, Philbeck Tr. 98:12-20, and that he did not make any attempt to speak with them himself. Mullins Decl. at 5 (“I do not recall seeing Minix, or anyone else, coming into Watson’s office to inform the Trustees and Watson of any meeting that was about to begin.”) Tomblin

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<sup>11</sup> See Ex. 14

<sup>12</sup> In February 2019, the new administration obtained (from the same vendor who originally sold the laptop) an estimate of \$729.00 for laptop’s fair market value. Ex. 15.

<sup>13</sup> “A Local Union Executive Board shall not have the authority to bind the Local Union for personal services to be rendered to the Local Union or its Executive Board, such as, but not limited to, legal, accounting, consulting, public relations, and editorial services, by contract, agreement, or otherwise, beyond the expiration of the term of the Executive Board in office at the time such action is taken.” Ex. 1 at Art. XXII, Sec. 2 (b). See also, Ex. 11 at Art. (8)(A): “[The principal officer] shall also select the attorneys, accountants or other special or expert services to be retained by the Local, subject to the approval of the Executive Board.”

Decl. at 4 (“On November 18, 2018, no one came to tell the Trustees and Watson that the meeting was starting. I do not remember Minix, or anyone else, coming into Watson’s office to inform us of the start of any meeting.”)

Furthermore, even if Watson refused to attend—which he denies, Watson Tr. 32:11-15—there is no evidence that the other two Trustees refused to attend or were even aware that Philbeck had purported to convene the meeting. On the contrary, the Trustees testified that they would have attended if they were aware Philbeck intended to hold the meeting. Groves Tr. 29:2-7 (“Q: If you had been aware that Mr. Philbeck and the others were gathering in what they were intending to treat as an e-board meeting, would you have attended that meeting? A: Yes.”) Tomblin Decl. ¶¶ 4-5, 7 (“I do not remember Minix, or anyone else, coming into Watson’s office to inform us of the start of any meeting. \* \* \* I did not hear Watson or Groves say that they would not attend that meeting or any other meetings. In fact, if Watson did say that he would not attend, I would have still attended the Executive Board meeting, because it was my job, and it was the reason I was there.”)

For each of the four motions considered at the November 18 gathering (Christmas Breakfast, cashing out unused leave, retaining new counsel, and allowing Philbeck to purchase his laptop), the three absent board members (two of whom were officers-elect) testified that if given an opportunity to attend the meeting, they would either not have approved the motions at all or would not have approved them without knowing and specifically approving their cost. Watson Tr.

45:9-22; 47:13-25; 49:3-23; 51:2-6; and 51:16–52:3; Groves Tr. 33:14-17; 35:12-18; 36:5-8; 38:11-18; 39:8-18.

**b. Philbeck was aware he needed the approval of the incoming officers before making any extraordinary expenses.**

On November 20, 2018, Watson sent a letter to Philbeck stating “[i]n accordance with Article 17, Section E (7) of the bylaws of Teamsters Local 651; we are requesting to be consulted on any expenditures over \$1,000.00 and any expenditures that are not routine in nature.” Ex. 16. Watson never received a response. Watson Tr. 62:24–63:2. Watson followed up with another letter reminding Philbeck of IBT Const. Art. XXII, Sec. 3(c)’s requirement to obtain the approval of the officers-elect before making any extraordinary expenditures. Ex. 17. Watson did not receive a response. Watson Tr. 67:4-7.

Without specifically admitting to having received Watson’s letters,<sup>14</sup> Philbeck admitted he was aware of his obligation to “get the board-elect and the members to approve any extraordinary expenses,” Philbeck Tr. 57:15-17, and that he was aware that the outgoing officers were restricted in their ability to “spend something outside of routine nature” between “the period of election loss and the end of the term.” Philbeck Tr. 77:5-18. In fact, Philbeck admitted to having sent a similar letter to the outgoing administration when he himself was first elected principal officer in 2009. Ex. 18. Philbeck Tr. 79:1-25.

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<sup>14</sup> When confronted with the November 20 letter at his sworn examination, Philbeck admitted that “it sounds familiar,” Philbeck Tr. 57:3-7.

**c. The purported vacation and sick leave cash-outs violated the Local's policies and procedures.**

Notwithstanding Philbeck's failure to obtain valid Executive Board approval and approval from the incoming administration, the payments that Philbeck caused the Local to make for allegedly unused sick and vacation leave violated the Local's internal policies and procedures, as noted by an International Auditor in April 2019.

Ex.19. The International auditor described:

On Philbeck's pay stub for pay period 11/11/18 – 11/17/18 there was a balance of 304 hours of vacation and 40 hours of sick time available on his paystub, for pay period 11/18/18 – 11/24/18 all vacation and sick time had been cleared out. He was paid out for all 304 hours of unused vacation @ \$10,229.60, 40 hours of sick time @ \$1,346.00 and Presidents salary for 340 hours @ \$4,086.54 totaling \$15,662.14. Per the policies, Philbeck should have only been able to cash out 1 week, of vacation and no sick pay. One week of regular salary and President's salary is \$1,826.92, deduct 1 week for cash out per policy @ \$1,826.92 for an overpayment of \$13,835.22. All checks were signed by Vice President – Minix.<sup>15</sup>

Ex. 19 at 3.

The auditor noted that the 304 hours of vacation time purportedly available to him in 2018 included 192 hours "rolled over" from 2017 to 2018, *none of which was recorded as an obligation on the Local's Statement of Assets and Liabilities.*" *Id.* at 19 (emphasis added). Per the Local's Policies and Procedures Manual, "[a]n employee may be paid for unused vacation time or option days (up to one (1) week total) by December 15 of that year." Ex. 20 at Vacation Policy. The Local's policies do not allow for sick leave to be cashed out at all. *Id.*

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<sup>15</sup> As noted *supra*, n. 8, Minix had retired ceased paying dues, and thus had no authority to sign checks.

**d. Philbeck caused the Local to make other extraordinary expenditures without consulting the incoming officers as required by the IBT Constitution and Local's Bylaws**

On December 10, 2018, Philbeck ordered three hundred and fifty (350) 2019 Wall Calendars for a total cost of \$2,218.58. Exs. 21, 22. On December 11, he ordered one thousand (1,000) pocket planners at a cost of \$2,430.05. Ex. 23, 24. Both exceeded the \$2,000 threshold for Executive Board approval per Bylaws Sec. Article 8 (I) Ex. 11 at Art. (8) (I); neither were approved by the Executive Board, nor were they approved by the incoming officers as required. Ex. 13. Watson Tr. 102:11-13.<sup>16</sup> Watson testified that “between the period of November 15th when [he] won [the election] and January 2nd when you formally took office,” he did not “remember at all” being asked to approve “any expenditure of any kind.” Watson. Tr. 78:18-24. He was not “consulted at all about any kind of decisions that Mr. Philbeck was making;” in fact, Philbeck never contacted him in any way. Watson Tr. 78:25-79:6

**V. Philbeck breached his fiduciary duty by acts and omissions in the transition of office.**

In addition to his self-dealing transactions, Philbeck also failed in his Constitutional duties of office and in his fiduciary duties to the Local.

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<sup>16</sup> Philbeck insists that ordering—after he had lost the election for the term beginning January 1, 2019—\$4,648.63 worth of materials for calendar year 2019 identifying him as president of the local “had nothing to do with any animosity . . . toward the incoming board” because they were distributed at the Christmas breakfast, before the end of his term. Philbeck Tr. 63:1-22. “[I]n December I was still the president. It had the right name on.” *Id.* at 63:4-5.

**a. Philbeck failed to meet with or designate a qualified representative to meet with the incoming officers**

In addition to making expenditures without the approval of the incoming Board, Philbeck also failed in his obligation to meet or designate someone to meet with the incoming officers to review the Local's affairs. See I.B.T. Const., Art. XXII, Sec. 2(c). Ex. 1. As a result, several of the Local's obligations went unpaid. Ex.25. ("As of [January 2, 2019], checks that require your signature are not signed. These checks include Local Dues, 401K, Employee payroll along with other miscellaneous checks for Local business. These checks include Local Dues, 401K, Employee payroll along with other miscellaneous checks for Local business. Also included in the financial file was the signature card for the Central Bank that requires your signature for the new Executive Board to conduct business without interruption.") Ex. 25.

Watson wrote Philbeck on December 20, 2018, stating "I am available now through the 28th to meet to review outstanding grievances, contractual issues and financial records pursuant to [the IBT Constitution]." Ex. 17 at 2. Watson testified that a transition meeting was scheduled for December 28. Watson Tr. 77:23-78:13 ("We did schedule a meeting for Friday, December 28th, a closeout meeting. And I had all of my executive board here in the local that day, and he 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.")



The Local's bookkeeper under both administrations, Stephanie Buchenroth, testified that she prepared financial documents for Philbeck's signature during the transition period. Ex. 26; Buchenroth Tr. 29:3-6. She placed these documents in a "financial folder" for Philbeck's approval. *Id.* Philbeck "selectively signed" these checks. Buchenroth Tr. 38:4-5. "If we were to look at these [checks] in order, we'll see that the check numbers aren't in order; that you can tell that other checks have been pulled out, Philbeck signed those, and just left this pile for whoever else to deal with." *Id.* at 38:8-14. Philbeck also failed to sign the Local's payroll for the December 16-22, 2018, pay period. Ex. 27.

According to Buchenroth, "[t]here was no transition. There was every opportunity for these two slates to come together and it didn't happen." Buchenroth Tr. 38:23-39:2.

**b. Philbeck wrongfully maintained control the Local's social media accounts after his term of office ended.**

After Philbeck lost his re-election bid in 2018, he changed the passwords to the Local's Facebook account and blocked several union members from using their administrative privileges within that account. Despite no longer having any official position with Local 651, he continued to exercise control over the account, to represent the publicly visible pages associated with it as official Local 651 publications, and the Union "suffered damage because of inaccurate information being disseminated to members of the Union and it was hindered in its ability to communicate with the Union members." Ex. 28 at 10. To obtain control of the Facebook pages, the Local was forced to file suit in the Eastern District of Kentucky

on March 15, 2019<sup>17</sup> alleging breach of fiduciary duty under the L.M.R.D.A (29 U.S.C. § 501(a)) and various state law claims. Ex. 28. The Local obtained a preliminary injunction<sup>18</sup> on March 22, 2019 enjoining Philbeck from “posting on the social media accounts he controls that are portrayed, publicized, or otherwise held out or could be perceived as official accounts or pages of the Union without identifying himself as the poster and from holding himself out as a current officer of the Union.”

The Court ultimately entered summary judgment in favor of the Local<sup>19</sup> on June 3, 2020, ordered Philbeck to deliver the passwords to the accounts to an authorized representative of the Local, and permanently enjoined him from “continuing to administer the social media accounts or any other account that is or could be perceived as an official social media account of the Union while he is not serving as an officer of the Union.” Ex. 28 at 23.

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<sup>17</sup> *IBT Local 651 v. Philbeck*, 5:19-cv-105-DCR (E.D. Ky. 2019).

<sup>18</sup> The Court later found that “Philbeck violated the preliminary injunction several times.” Ex. 28 at 3.

<sup>19</sup> While granting summary judgment on the state law claims, the Court dismissed the L.M.R.D.A. claim. The Court found that the Local failed to specifically allege a violation of the Union constitution, by-laws, or statutes implicated by Philbeck’s continued control of the Facebook account. Under Sixth Circuit precedent, in the absence of an allegation of a specific constitutional, by-law, or statutory violation, there is no private right of action under § 501(a)’s general violation of fiduciary duty prong without a finding of “deprivation of democratic rights.” Ex. 28 at 15-16. Importantly, the Court’s rejection of the L.M.R.D.A. claim was not based on a finding of fact, but on the Local’s inartful pleading. *Id.* at 16: “[W]hile the Union mentions the conversion of credit card points, keeping a laptop and camera, paying out vacation in violation of the Constitution, and over-spending on calendars, *which better fit into the purpose behind § 501(a)*, the Union does not seek relief on these issues. \* \* \* And because the Union does not elaborate on its injuries and does not seek relief for any of that property, the claim will be denied.” (Emphasis added.)

## **VI. Philbeck caused the Local to pay him additional salary payments.**

In addition to his weekly salary of \$1,346.15, Philbeck received a weekly salary of \$480.77 for his duties as President. Ex. 19 at 3. Philbeck typically received his salary via Direct Deposit. Ex 10. The IIO's investigation determined that beginning November 19, 2018, Philbeck caused the Local to pay him additional salary payments, also purportedly for his duties as President and on top of the \$480.77 weekly presidential salary he had been receiving before the election. Ex. 10. Philbeck received a total of five (5) supernumerary payments totaling \$3,605.77 of additional salary. The supernumerary payments were issued as live checks. Ex. 9. Philbeck's legitimate salary for the same pay periods<sup>20</sup> were paid through direct deposit. Ex. 10. The Local's QuickBooks records indicate that Philbeck's five supernumerary salary checks (like all 23 checks at issue in this Report) were issued by Kelly Stinnett.<sup>21</sup> Ex. 30. Philbeck was unable to provide an explanation for the supernumerary payments. Philbeck Tr. 122:20-123:9.

Buchenroth discovered the unauthorized checks. She explained:

[S]o when—when it was time to do payroll after the new team transitioned in, I would have opened the books on the 2<sup>nd</sup>, which makes sense. Being a Wednesday, we have to have two days for direct deposit. So, we would have gotten paid on that Friday. And I would have been running payroll for the prior week, which was the end of the year. Now, as I was scrolling through – and I don't even know why I saw it. I

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<sup>20</sup> The five supernumerary salary checks were inscribed in the memo line with the pay periods for which they purported to be.

<sup>21</sup> Philbeck admitted that "Kelly Stinnett's my girlfriend." Philbeck Tr. 129:3-129:5. Stinnett was one of two users with QuickBooks accounts able to issue checks, the other being Stephanie Buchenroth. Buchenroth Tr. 91:18. Philbeck wanted Buchenroth to use the same username and password as Stinnett, but Buchenroth refused, stating that if she acceded to Philbeck's request, "[w]e wouldn't be able to tell whose [accounting entry] work was whose," in contravention of GAAP standards. *Id.* at 91:23–92:10.

saw a check made out to Philbeck. I clicked on it. I saw where he had been paid a president's salary that covered the week that I was getting ready to do payroll for. So, I didn't pay him a president's salary for that week. I didn't do any further investigation at that point, because there was a –you know, it was busy. It was a whole lot going on; but then the following week on the 11<sup>th</sup> of January, I finally had a little bit of time. And I don't even remember for sure what drew my attention to it, but – yeah, I do. I balanced the statement. And I started to see checks that I didn't recognize. So that's when I started investigating a little further, and I found a whole mess of double- dipping checks.”

Buchenroth Tr. 86:9-87:20. She clarified that by “double-dipping checks,” she meant checks “[w]here Mr. Philbeck and Mr. Merrifield were paid for the same time period more than once.” *Id.* at 87:23-25.

## **VII. Philbeck and Merrifield redeemed credit card points for valuable merchandise without authorization.**

In December 2018, Philbeck redeemed 165,000 points from the Local's credit card issued by Central Bank of Lexington, Kentucky.<sup>22</sup> With these points he received six (6) \$25 Amazon gift cards and two (2) Apple Watches (\$1,494.41 value).

Ex. 31. Philbeck admits receiving the two Apple Watches but denies receiving the gift cards. Philbeck Tr. 110:14-11:5.

Philbeck claims the Local adopted a policy “around 2016” whereby authorized signatories on Local-owned cards were permitted to redeem credit card points—supposedly at his or her option—for either merchandise or for cash back. If the signatory elected cash back, the funds “went back into the local's account,” but if redeemed for merchandise, the signatory could keep the merchandise for his or her

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<sup>22</sup> The Local's Policies and Procedures permits Local employees to retain “[f]requent flyer miles, hotel rewards and/or other similar benefits earned through travel and gas purchases on union business *on his or her own card*” and reimbursed by the Local, but make no provision for the personal redemption of points accrued on credit cards owned by the Local. Ex. 20 at Expense Reports (emphasis added.)

personal use. Philbeck Tr. 112:24-113:15. Philbeck produced no documentation that such a policy ever existed, nor was he able to provide a rationale for allowing the same points to incur to the benefit of the Local if redeemed for cash, but to the benefit of the signatory if redeemed for merchandise. Philbeck Tr. 114:4-5 (“That was the choice the board made.”) Philbeck never responded to Watson’s March 1, 2019 letter<sup>23</sup> requesting the items’ return or reimbursement, nor have the gift cards—which Philbeck denies receiving—ever been located. Watson Tr. 83:21-84:4.

Also in December 2018, Merrifield redeemed 15,000 points from the Local’s credit account for three (3) \$50 Ruth’s Chris gift cards. Ex. 31. Unlike Philbeck, Merrifield admits receiving both the gift cards themselves and Watson’s March 1, 2019 request for their return or reimbursement. Merrifield Tr. 55:18-54. Merrifield admits he never responded to Watson’s request, claiming “I believe his motive here, his goal here, is to make me appear to be doing something that is less than right.” *Id.* at 56:5-56:8.

## VIII. ANALYSIS

### a. Standard of Proof

The standard of proof for charges brought pursuant to the Final Order is preponderance of the evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Section C (“The purpose of the hearing shall be to determine whether the proposed findings, charges, or recommendations regarding discipline or trusteeship found in the Independent

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<sup>23</sup> Ex. 32.

Investigations Officer's Investigative Report are supported by a preponderance of reliable evidence"); *United States v. IBT [Simpson]*, 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), *aff'd*, 120 F. 3d 341 (2nd Cir. 1997); IBT Constitution, Art. XIX, Sec. 1(e).

#### **b. Embezzlement**

The IBT Constitution prohibits embezzlement and conversion of union funds. *Id.* at Art XIX, Section 7(b) (3). The standard for embezzlement under federal labor law, 29 U.S.C. § 501(c), is instructive in interpreting the IBT Constitutional provision. *Investigations Officer v. Calagna*, Decision of the Independent Administrator at 11 (May 9, 1991), *aff'd*, *United States v. IBT*, 777 F. Supp. 1123 (S.D.N.Y. 1991). The IIO must prove that Philbeck acted with fraudulent intent to deprive the union of its funds. *Id.* at 11, citing *United States v. Welch*, 728 F.2d 1113 at 1118 (8th Cir. 1989). See also *Investigations Officer v. Caldwell*, Decision of the Independent Administrator at 7 (February 9, 1993), *aff'd*, 831 F. Supp. 278, 283 (S.D.N.Y. 1993).

Determining whether a union employee had the requisite intent to embezzle should be done "on the basis of 'all of the evidence considered together' and 'in light of all the surrounding circumstances.'" *Welch*, *supra*, 782 F.2d at 1119 (quoting *United States v. Morissette*, 342 U.S. 246, 275-76 (1951)). "[I]t is permissible to infer from circumstantial evidence the existence of intent." *United States v. Local 560*, 780 F.2d 267, 284 (3d Cir. 1985) (citation omitted).

Two factors to be considered in determining fraudulent intent are whether there was authorization from the union for the expenditure and whether there was a benefit to the union for the payments at issue. *See, e.g., United States v. Butler*, 954 F.2d 114, 118 (2d Cir. 1992); *United States v. IBT [Kenny, Moreno and Guillory]*, 2014 U.S. Dist. LEXIS 186808 (S.D.N.Y. 2014), *aff'd*, 600 Fed. Appx. 9 (2d. Cir. 2015).

**i. Purportedly Unused Leave**

With respect to the payments totaling \$12,400.60, Ex. 9; which Philbeck caused to be made to himself for allegedly unused leave, Philbeck admits that the November 18, 2018 “Executive Board meeting” lacked a quorum and was thus unable to validly authorize the payments as required by the Bylaws. Philbeck Tr. 94:3-18; *See also*, L-651 Bylaws, Article 17 (E) (7). Ex 11. He also admits he was aware that he was required to obtain authorization of the incoming officers for these extraordinary expenditures, and that he did not do so. Philbeck Tr. 54:20 – 57:17. Philbeck’s willingness to violate the Bylaws and the Constitution is evidence of his fraudulent intent. *United States v. IBT [Wilson]*, 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (failure to comply with bylaws “gives rise to an inference of fraudulent intent,” particularly where charged party is “in conflict with other members of the Executive Board” and the payments at issue benefit the charged party), *aff'd*, 978 F.2d 68, 72 (2d Cir. 1992). *See also, Georgopoulos v. IBT*, 942 F. Supp. 883, 899 (S.D.N.Y. 1996) (fraudulent intent evidenced where purported authorization of

union funds occurs “in a manner that contravened union rules and procedures of which the [charged parties] admittedly were aware.”)

Additionally, the fact that Philbeck convened the meeting without personally informing or otherwise attempting to facilitate the attendance of Watson, Groves, Tomblin and Mullins—all of whom he knew to be present in the building and at least one of whose attendance at the meeting he knew to be necessary for the Board to take valid action—evidences his intent to conceal the payments. Additional facts supporting Philbeck’s intent to conceal the payments are that check stubs were missing from the Local’s records when the new administration took office, that the checks were cut by Philbeck’s girlfriend rather than Ms. Buchenroth, and that the minutes of the *ultra vires* November 18 meeting were not delivered to the Local until January 18, 2019—nearly 3 weeks after the new administration had taken office and a full two months after the gathering occurred.

**ii. Supernumerary Salary Payments**

Two of the same circumstantial factors supporting a finding of fraudulent intent with respect to Philbeck’s unauthorized leave payments apply to his duplicate salary payments: the check stubs were removed from the Local’s records, the checks were cut by Philbeck’s girlfriend. Furthermore, when given an opportunity to explain the reason for the payments at his sworn statement, Philbeck was unable to provide any explanation.



### iii. Laptop Computer

Philbeck's causing the Local to sell the laptop computer to him for less than 10% of its price at purchase only 16 months prior evidences his intent to defraud the Local by obtaining its property at significantly below fair market value. As with other transactions arising from the November 18 gather, his willingness to act pursuant to a purported authorization he knew to be *ultra vires* and invalid further evidences his fraudulent intent.

### c. Breach of Fiduciary Duty

“As a fiduciary, an IBT officer enjoys the trust of the general membership. In exchange for this privilege, each officer is bound to serve the membership's interest.” *United States v. IBT [“Ross”]*, 826 F. Supp. 749, 756 (S.D.N.Y.), *aff'd*, 22 F.3d 1091 (Table) (2d Cir. 1994) (internal quotation marks omitted). *See also*, *United States v. Boffa*, 688 F.2d 919, 930-31 (3d Cir. 1982) (“We believe that the LMRDA established, as a matter of federal law, union members' right to the honest and faithful services of union officials.”). The Southern District “has noted that IBT officials have a ‘fiduciary obligation to ensure that union funds [are] used only for union purposes.’” *United States v. IBT [Kenny]*, 2014 U.S. Dist. LEXIS 186808 at \*13 (Preska, J.) (citing, *inter alia*, *United State v. IBT [Hahs]*, 652 F. Supp. 2d at 447, 452.) Philbeck's willingness to expend funds pursuant to a resolution he knew to be invalid, without notice to the incoming officers, and for the personal benefit of individuals friendly to him such as Merrifield and Lance evidences his willful misuse of union funds.

Furthermore, the duty to meet with or designate a qualified representative to meet with the principal-officer elect during the period between the date of election and the end of the term of office is an express obligation of the IBT Constitution, *id.* at Art. XX, Sec. 2(c). Likewise, the duty to “promptly delivery any money or property of this Union in my possession to my successor in office” is an express obligation of every Teamster’s oath of office, *id.*, preamble at 2, and failure to do so is an express enumerated offense pursuant to IBT Const., Art. XIX, Sec. 9.

## **IX. RECOMMENDED CHARGES**

Based upon the evidence discussed in the above Report, it is recommended that the following charges be filed against Philbeck and Merrifield:

### **a. Charge I (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 issue 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.

- 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 U.S.C. § 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 2018 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 U.S.C. § 501(a), 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, 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 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*.