

REVISED

To: IBT General President James P. Hoffa
From: Joseph E. diGenova, Independent Investigations Officer
Re: Recommendation Concerning Ohio Conference of Teamsters
Officer William Lichtenwald, Former Officer Charles
Cimino and Former Administrator Kimberley Bales
Date: June 15, 2016

I. RECOMMENDATION

Pursuant to ¶¶ 30 and 31 Of the Final Agreement and Order (Ex. 246), the Independent Investigations Officer recommends to the International General President that charges be filed against Ohio Conference President William Lichtenwald ("Lichtenwald"), former Conference Secretary-Treasurer Charles Cimino ("Cimino") and former Conference administrative assistant Kimberly Bales ("Bales") who were all fiduciaries under 29 U.S.C. §501 (a), for breaching their fiduciary duties and violating the Conference Bylaws by consistently making expenditures of Conference funds without approvals required under its Bylaws and in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1)and(2) of the IBT Constitution. They caused over \$1,755,000 in unauthorized expenditures to be made.

It is also recommended that Lichtenwald and Bales be charged with embezzling and with breaching their fiduciary duties through making approximately \$238,433 of unauthorized transfers of Conference money to their Locals to be used to pay their Local's

benefits contributions as part of their local compensation owed to them in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution. They did this without authority in violation of the Bylaws and the law and with no benefit to the Conference from these expenditures. Embezzlement is an act of racketeering all members are enjoined from committing under the Consent Decree and the Final Agreement and Order. (Ex. 1; Ex. 246; 18 U.S.C. §1961)

It is also recommended that Lichtenwald be charged with embezzlement and conversion and with breaching his fiduciary duty by causing the Conference to purchase for over \$62,000, a Ford Expedition Limited Edition for his exclusive use without the Bylaws-required Board authorization for the amount and with no Conference purpose for the car for his exclusive use. In addition to a breach of his fiduciary duty not to spend Conference money without proper authorization, this embezzlement and conversion was in violation of Article II, Section 2(a) and Article XIX, Sections 7 (b)(1), (2)and (3), of the IBT Constitution as well as the injunction's prohibition against members committing acts of racketeering.

It is also recommended that Lichtenwald and Cimino be charged with failing to meet their legal obligations under Federal criminal and civil law to have the Conference keep records that both

reflected the disposition of Conference assets and that indicated expenditures were for a Conference purpose, in violation of 29 U.S.C. §§ 431(b), 436 and Art. II, Section 2(a) of the IBT Constitution.

II. JURISDICTION

Pursuant to Paragraph 32 of the Final Agreement and Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) this matter is designated within the original jurisdiction of the General President. It requires that within 90 days of the IIO's referral of this matter, written findings setting forth the specific action taken and the reasons for that action must be filed with the Independent Review Officer. Pursuant to ¶ 32, copies of this report are being sent to each member of the General Executive Board and the United States Attorney's Office, Southern District of New York.

III. INVESTIGATIVE FINDINGS

The Ohio Conference of Teamsters was located in the offices of Local 114 at 4632 Paddock Road, Cincinnati, Ohio. (Ex. 26; Ex. 13 at 67; Ex. 5 at 8, 18; Ex. 32)¹ Currently the officers are: Lichtenwald, President, Patrick Darrow, Secretary-Treasurer, Randall Verst, Vice-President, David Dudas, Paul Suffoletto and

¹ By letter dated February 4, 2016, IBT Trustee for the Conference reported that the Conference has "tentatively decided" to relocate the Conference offices from Cincinnati to 555 East Rich Street, Columbus, Ohio, in the building also occupied by Locals 284 and 413. (Ex. 247)

Dennis Roberts, Trustees. The office of Recording Secretary is vacant. (Ex. 248) At the time of the events in this report, Cimino was the Secretary Treasurer, Darrow, Vice-President and Verst a Trustee.

Bales, the Secretary Treasurer of Local 114 and Vice-President of Joint Council 26, was the salaried office administrator of the Conference. (Ex. 5 at 8-10; Ex. 26) She attended all Conference Board meetings and controlled the Conference's checkbook². (Ex. 5 at 21, 29, 35) The IIO was informed that Bales resigned as administrator for the Ohio Conference effective April 11, 2016.

The Conference included all 27 traditional IBT locals within Ohio and also Division Three of the Brotherhood of Locomotive Engineers and Trainmen ("BLET")³. These locals were divided into two Joint Councils. Joint Council 41 had 24 locals and the BLET Division; Joint Council 26 in Cincinnati had three locals, the constitutional minimum for a Joint Council. (Exs. 84-85) At the

² Bales was not in attendance for the October 23, 2015 Board meeting. (Ex. 224)

³ These are Local 20, Toledo, Local 24, Akron, Local 40, Mansfield, Local 52, Brook Park, Local 92, Canton, Local 100, Cincinnati, Local 114, Cincinnati, Local 244, Cleveland, Local 284, Columbus, Local 293, Independence, Local 348, Akron, Local 377, Youngstown, Local 400, Cleveland, Local 407, Cleveland, Local 413, Columbus, Local 416, Cleveland, Local 436, Valley View, Local 473, Brook Park, Local 507, Cleveland, Local 637, Zanesville, Local 908, Lima, Local 957, Dayton, Local 964, Brook Park, Local 1108, Richmond Heights, Local 1164, Cleveland, Local 1199, Cincinnati, Local 1224, Wilmington and Division Three of the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), Cleveland. (Exs. 84, 85)

time of the adoption of the Conference's By-laws, there were four Joint Councils in Ohio. (Ex. 86)

Each IBT Local in Ohio paid from the dues received from its members, \$1.25 per member per month to the Conference. (Ex. 26; Ex. 12 at 23) As IBT membership has steadily decreased in Ohio, so have conference revenues. The per capita taxes the Conference received were \$802,598 in 2010, \$806,297, in 2011, \$771,464, in 2012, \$755,494, in 2013, and \$746,690 in 2014. (Exs. 22-26) In 2014, over 50% of Conference revenues from the members' dues were paid as compensation to its officers and employees and as stipends to other local officers. (Ex. A at 8; Ex. 127) The Conference performed little, if any, service for the members. (Ex. 26) A fuller description of the evidence supporting the finding of the Conference's lack of service to the members is contained in the IRB's Trusteeship Report and its Exhibits, which are incorporated by reference as Exhibit A⁴.

Unlike for Joint Councils, the IBT Constitution does not specify duties for geographic conferences. (Ex. 3 at 124-125) IBT members do not elect the Board of the Conference and have no direct ability to place checks on its officers. Each local and Joint

⁴ This report adopted the exhibit numbering system used in the September 25, 2015 Trusteeship Recommendation report for the OCT. That Report, its Exhibits and the Exhibit List attached thereto, are included on the same CD containing the instant Report, Exhibits and Exhibit List. The exhibits exclusive to this report start at number 201.

Council has two delegates to the Conference. Bylaws, Art. II, Sec. 5. (Ex. 82) The select group of office holders who are Conference delegates elect the seven members of the Conference Board for four year terms. Bylaws Art. III, Sec. 3 (Ex. 82) The Board is authorized to approve its own compensation and other expenditures. (Exs. 54-56; 59-60; 66; 74; 220; 223-224; Ex. 82 at 16-19) The Conference delegates have no approval power over any expense. Art. VI, Sec.2 (Ex. 82)

Historically, until the IRB-recommended Trusteeship was imposed, the IBT abandoned its supervisory powers over the Conference. The Secretary Treasurer's Office never caused the Conference to be audited prior to its being placed in Trusteeship. (Ex. 87) Despite being obligated to submit monthly Trustees Reports to the IBT, the Conference for decades failed to submit such reports. The IBT without objection or inquiry accepted the decades long Conference Trustees' failure to meet their obligations. (Ex. 121) The IBT closed its eyes to how the Conference spent the members' money.

In fact, the Conference officers exercised their control over members' money unfettered by any checks, including the Bylaws which they ignored. The officers' trampling on restraints on their power to spend was aggravated because the Conference Trustees did not do their jobs.

A. Respondents

The Conference's Board consisted of a President, Vice-President, Secretary-Treasurer, Recording Secretary, and three Trustees. (Ex. 82 at Article III, Section 1)⁵

William Lichtenwald was its President⁶. He was also President of Local 20 in Toledo, Recording Secretary of Joint Council 41, President of Ohio DRIVE and a Trustee of the Local 20 Legal Defense Fund. (Ex. 84; Ex. 13 at 6-7, 11, 16, 21, 37; Ex. 10 at 46) In 2014, Lichtenwald received salaries of \$81,690 from the Conference, \$94,810 from Local 20 and \$6,000 from Joint Council 41. (Exs 26, 29, 28) These totaled \$182,500. (Exs 26, 29, 28) He also drove a car he caused the Conference to purchase in violation of the Bylaws for his exclusive use. In addition, he caused the Conference without any authorization and Conference purpose to reimburse Local 20 between \$14,196 and \$18,252 per year for the contribution the Local made on Lichtenwald's behalf to the Central States Pension Fund as part of his Local compensation. (Exs. 207-212)

⁵ During the relevant period discussed in this report The Conference officers currently were: Lichtenwald, President; Randall Verst, Vice-President; Pat Darrow, Secretary-Treasurer; Albert Mixon, Recording Secretary; and Trustees David Dudas, Paul Suffoletto and Dennis Roberts, (Ex. 224).

⁶ Lichtenwald became Conference President on January 1, 2011. (Exs. 59-60) To the extent the discussion herein relates to his actions, individually as President of the Conference, it starts on that date.

Charles Cimino was both Secretary Treasurer of the Conference and Secretary Treasurer of Local 400 in Cleveland. (Ex. 9 at 5, 7-8, 23-24) Cimino was Vice-President of Ohio DRIVE. In 2014, Cimino received \$34,490 from the Conference. Local 400 paid him no salary. (Ex. 35; Ex. 9 at 24-25) He resigned from his Conference position after the IBT General President's imposition of the IRB recommended Trusteeship. (Ex. 201) The IIO was informed that Cimino resigned from his officer position at Local 400.

Kimberly Bales was the office administrator of the Conference. (Ex. 5 at 10; Ex. 26) An experienced union fiduciary officer, she was Secretary Treasurer of Local 114 in Cincinnati and Vice-President of Joint Council 26. (Ex. 26, 32, 27 Ex. 5 at 8, 10; Ex. 13 at 56-57; Ex. 9 at 27-28) The Conference kept its records in her Local. In 2014, Bales received salaries of \$55,440 from the Conference for her part-time position, \$55,300 from Local 114 and \$11,400 from the Joint Council, totaling \$122,140. (Exs 26, 32, 27; Ex. 5 at 12-13; Ex. 13 at 56-57) In addition, she caused the Conference without authorization and with no Conference purpose to pay Local 114 approximately \$31,448, per year for the Local's payments of the contributions due both to the Central States Pension Fund and the Central States Health and Welfare Fund for Bales' benefits that formed part of her compensation from the local for her local employment.

1. The Conference's Lack of Benefit to Members

It was evident from the minutes of its meetings, its Forms LM-2 and its expenses, the Conference did little that benefited the members for decades. Over 50% of its revenues were used for payments to its officers, employees and other Local officers. (Ex. A at 8; Ex. 127) At least, another 20% improperly paid legal expenses of other entities without the required Board approvals. (Exs. 22-26; Exs. 147-151; Ex. 235)

An indication of the Conference's lack of activity was the Board averaged less than three meetings a year from 2009 through November 2015. (Exs. 54-78) Its Board members and other Local officers it paid were unable to provide examples of concrete actions taken to benefit the members⁷. Indeed, one Conference employee, realistically reported the Conference's major purpose was to supplement the salaries of officers in less prosperous locals. (Ex.7 at 27-28) That was consistent with the evidence. In addition to Board meetings, the Conference had an annual meeting of Delegates which was held at a resort and included golf for the delegates, a select group of local officers. (Exs. 57, 58, 64, 65, 67, 68, 71, 72, 73) It also held a separate annual golf tournament. (Exs. 196-199)

⁷ See e.g. (Ex.5 at 38; Ex. 4 at 33-34, 37; Ex. 7 at 27, 41-42; Ex. 9 at 25-28, 32, 39; Ex. 10 at 29)

Among the objectives stated in the Conference Bylaws beyond general statements of assisting workers and encouraging fraternity, were that the Conference educate members and develop statistical information services to assist locals in serving membership. (Ex. 82 at Art. I, Sec. 2) The Conference did not do either. Its officers did not have the Conference perform its specific Bylaws obligation of reviewing locals' collective bargaining agreements. (Ex. 82 at Art. I, Sec. 4) Unsurprisingly, it did not publish a Conference newsletter for the members to inform them of what it did.

LICHTENWALD'S, CIMINO'S AND BALES' BREACHES OF FIDUCIARY DUTY THROUGH PAYMENTS OF UNAUTHORIZED EXPENDITURES

Under 29 U.S.C. § 501(a), union officers are fiduciaries to the members whose money they hold in trust. An explicit requirement of that statute is that officers and employees only spend members' money when they have the required Bylaw approvals for doing so. The statute made it an explicit breach of an officer's and key administrator's fiduciary duties to spend union money without required approvals. Id.; 29 U.S.C. §402(q)

Those operating the Conference ignored this requirement for years. Lichtenwald, Cimino and Bales, in running the Conference, violated Conference Bylaws, the IBT Constitution and federal law, in spending members' money without the approvals the Bylaws

required. Bales, the key administrator for the Conference, who was central to the proper handling of and accounting for the Conference's funds, was a fiduciary under 29 U.S.C. §501(a) as defined in 29 U.S.C. §402(q).⁸ She attended all Board meetings. (Ex. 5 at 29) Moreover, separately as an officer of a Joint Council which paid per capita tax to fund the Conference from members' dues, she was a fiduciary over the members' funds being held in the Conference's trust under her control.

How the Officers and Bales Paid Expenses

Cimino and Lichtenwald abandoned their responsibilities to perform specified duties. The President and Secretary-Treasurer, under the Conference By-laws, were both required to sign Conference checks. No other officers were authorized to sign. (Ex. 5 at 21; Ex. 82 at 13 & 15) Bales maintained the Conference's books and records in Cincinnati, including the check book. (Ex. 5 at 20-21) Lichtenwald was in Toledo and Cimino in Cleveland. (Ex. 13 at 17) With their knowledge, Bales used a facsimile stamp for both Lichtenwald's and Cimino's signatures for all Conference checks that were issued. (Ex. 5 at 20-21; Ex. 13 at 18; Ex. 9 at 27-28)

⁸ 29 U.S.C. §402(q) defines "Officer, agent, shop steward, or other representative" when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority) but does not include salaried nonsupervisory professional staff, stenographic, and service personnel"

Since at least 2009, when she started keeping the books of the Conference, the President and the Secretary-Treasurer never signed checks. (Ex. 5 at 24) Both Lichtenwald and Cimino admitted they did not sign checks. They also did not review the invoices or other backup for the Conference expenses before the checks were issued to pay expenses. (Ex. 13 at 17-19; Ex. 9 at 28-31; Ex. 5 at 35) Lichtenwald stated Bales "sends us a printout of what the expenses are every month and we look it over. . . . the Secretary-Treasurer also looks at the same thing and if we don't have any objections then a check is issued". (Ex. 13 at 17-18) As officers, Cimino and Lichtenwald attended Board meetings. Bales also attended. (Ex.5 at 29; Exs. 55-77) They would have known what the Board approved as the Bylaws required and did not approve. Lichtenwald, Cimino and Bales thus, as they went through their process, should have been aware expenditures were being made without required Board approvals. The Bylaws explicitly required Board approvals; Lichtenwald, Cimino and Bales ignored them. (Ex. 82)

Cimino did not review the checks. Cimino further claimed, "I don't see the receipts for the expenses on the credit cards". (Ex. 9 at 29) Cimino also claimed he ignored his obligation to review expenditures before they were paid and only reviewed them afterward. (Ex. 9 at 28-29) His deliberate ignorance of facts was not a defense to his failure to follow the Bylaws and his

violations of his fiduciary duties to ensure expenditures were properly approved. (Ex. 82)

Article V, §1 of the Conference Bylaws required the Secretary-Treasurer, to "sign, along with the President (Chairman), all checks drawn on the funds of the Conference." (Ex. 82 at Art. V, Sec. 1) Similarly, Art. IV, Section 1 separately required the President to sign all checks, "together with the Secretary Treasurer". (Ex. 82 at 13) They bore the consequences of their choice not to follow the Bylaws. Even though they did not sign the checks, Lichtenwald admitted he knew what was going to be paid before Bales issued the checks. (Ex. 13 at 17-18,) Cimino claimed he ignored his obligations and only learned what was paid after the expenditures were made. (Ex. 9 at 28) The evidence showed that he never raised an objection to any of the unauthorized expenditures.

Lichtenwald, Cimino and Bales were all experienced Local officers who also had held Joint Council positions. All knew their powers to spend were restrained by the Bylaws they had taken an oath to follow. (Ex. 82 at Art. XIII; Art. III, Sec.4) All deliberately ignored their sworn obligations. All were familiar with the IBT's Secretary-Treasurer's manual's requirements or should have been from their various union positions. (Ex. 5 at

15-16; Ex; 9 at 13; Ex. 13 at 9, 66) They failed to comply with those obligations also.

B. Board Approvals Were Not Obtained For Expenditures as Required.

The Conference Bylaws had separate required approvals for different types of expenditures and other financial transactions. Among these were three provisions the respondents violated frequently. First, any expense in excess of \$5,000 needed Board approval before it could be paid. Art. VI, Sec. 2. (Ex. 82 at 18) Second, expenditures of \$5,000 or less required either Board approval or explicit Board ratification of the expense after it was paid. Bylaws Art. IV, Sec. 1 (Ex. 82 at 12) Thus, an expenditure of \$3,000 might be made without Board approval but under the Bylaws the officers who signed the checks needed to secure subsequent Board ratification of the payment of the expense. Lichtenwald, Cimino and Bales never did this. Third, to authorize the Conference's payment of legal expenses for locals, the Board was required under the Conference Bylaws to find certain conditions were present before payment could be made under Bylaw Art. XII, Section 1. After making those findings, the Board needed to authorize the specific expense. (Ex. 82 at 23-24)⁹ Lichtenwald,

⁹ These are: "...only such matters as involve the International Union and in which the State of Ohio has an interest, or in such matters as the Conference deems to be for the general welfare of the Teamster movement". (Ex. 82 at Art. XII, Section 1, at 24)

Cimino and Bales caused the Conference to pay expenditures without the required Board actions under the three Bylaws.

EXPENSES OVER \$5,000

Conference Bylaws Art. IV, Sec. 1 and Article VI §2 (L) required Board approval for any expense over \$5,000. Article VI, §2 (L) of the Conference Bylaws authorized the Executive Board:

To do all acts, whether or not expressly authorized herein, which the Board may deem necessary or proper for the protection of the property of the Conference and for the benefit of the organization and members.

The provisions of this Article shall be qualified as follows: All expenditures, investments, contributions, sales or acquisitions of property whether real or personal which exceeds, in any one instance, the sum or value of an amount equal to \$5,000.00, shall, need the approval of the Executive Board.

(Ex. 82 at Art. VI, Sec. 2(1))

Lichtenwald, Cimino and Bales failed repeatedly to obtain required approvals before making expenditures in excess of \$5,000. A review of the Conference expenditures they caused to be made of more than \$5,000 for which Board approval was not obtained, from January 2011 to November 2015, showed Lichtenwald, Cimino and Bales spent over \$498,000, in Conference funds for expenditures of over

\$5,000, without approval as required¹⁰. These are shown on schedule, Ex. 122.

The following are examples:

On August 23, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay \$22,205.83, to the Tam O'Shanter Golf Course. (Ex. 124) They did not obtain required Board approval for the expenditure.

On March 16, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$6,750.55, to Local 407 for alleged Lost Time reimbursements. (Ex. 183) They did not obtain required Board approval for the expenditure.

On August 15, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$21,933.10, to the Tam O'Shanter golf course for a Conference golf tournament. (Ex. 131) They did not obtain required Board approval for the expenditure.

On August 15, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$31,616.97, to the Salt Fork Lodge & Conference

¹⁰ From February 2011 to January 2015, the total amount of unapproved expenditures in excess of \$5,000 or more was \$498,386.53. (Ex. 122) Approximately \$38,382 of those expenses were incurred in 2015. Despite a request for minutes for meetings on July 27, 2015 and October 5, 2015, the Conference only provided the IRB with draft minutes. (Exs. 220, 223) These expenses were not approved at those meetings. (Exs. 102; 122; 220; 223; 241) The inability to supply approved minutes months after events is further evidence of the Conference's lack of functioning under Lichtenwald and Cimino.

Center for the Annual meeting. (Ex. 107) They did not obtain required Board approval for the expenditure.

On December 28, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$7,332.27, to Local 507 for Lost Time reimbursements. (Ex. 184) They did not obtain required Board approval for the expenditure.

On August 30, 2013, Lichtenwald, Cimino and Bales caused the Conference to pay \$42,887.57, for its 2013 annual meeting to the Maumee Bay Lodge. (Ex. 109) They did not obtain required Board approval for the expenditure.

On September 13, 2013, Lichtenwald, Cimino and Bales caused the Conference to pay \$7,500, to the Mayor CPA Group. (Ex. 185) They did not obtain required Board approval for the expenditure.

On May 9, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay \$7,500, to Gary M. Tiboni, C.P.A. for a 2013 Year End Audit¹¹. (Ex. 186) They did not obtain required Board approval for the expense.

On August 15, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay \$31,284.07, to Maumee Bay Lodge for its 2014 annual meeting. (Ex. 111) They did not obtain required Board approval for the expenditure.

¹¹ Gary M. Tiboni, C.P.A. is the son of Gary M. Tiboni, a former President of Joint Council 41. (Ex. 16 at 5; Ex. 5 at 36-37)

On August 22, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay \$20,235.22, to the Tam O'Shanter golf course for the annual golf tournament. (Ex. 133) They did not obtain required Board approval for the expenditure.

On December 26, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay \$6,449.78, to Local 507 for lost time reimbursement. (Ex. 189) The required Board approval was not obtained by them.

On May 22, 2015, Lichtenwald, Cimino and Bales caused the Conference to pay \$7,500 to Gary M. Tiboni, C.P.A. for a 2014 Year End Audit. (Ex. 192; Ex. 206) They did not obtain required Board approval for the expense.

On August 28, 2015, Lichtenwald, Cimino and Bales caused the Conference to pay \$30,882.70, to Maumee Bay Lodge for its 2015 annual meeting. (Ex. 193; Ex. 206) They did not obtain required Board approval for the expenditure.

EXPENDITURES MADE OVER \$5,000 FOR WHICH NO APPROVAL OF THE AMOUNT WAS OBTAINED AS REQUIRED

In addition, the Board on occasion would approve the idea of an expenditure, but not the amount that could be spent. The respondents would then cause an expenditure over \$5,000, to be made for which the Board never approved the amount as required. The Bylaws for expenses over \$5,000 specifically did not give the

officers a blank check to spend whatever amount they wanted on a Conference expense.

The following are examples of Lichtenwald, Cimino and Bales paying expenditures over \$5,000, without Board approval of the amount. In such circumstance, there was no knowing Board approval of the expense over \$5,000 as the Bylaws required. Yet Lichtenwald, Cimino and Bales caused the checks to be issued in those amounts and the Conference funds spent. See e.g., Brink v. DaLesio, 496 F.Supp. 1350, 1358. (D. Md., 1980) All instances are on Exhibit 122. Below are examples:

In a telephone poll on March 10, 2011, the board had approved the Conference holding a cocktail party in Las Vegas in connection with the IBT convention. It had not approved the cost of either the deposit or the full expense of the party which would need to be known before the board knew what amount it was authorizing as required under the Bylaws. (Ex. 143) The result of the telephone poll was affirmed at a Board meeting on April 14, 2011, without any approval of an amount¹². (Ex. 62) On June 17, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay \$11,293.67, to Bally's Las Vegas for a deposit for a cocktail party

¹² The Conference paid a law firm hourly fees to attend the meeting and draft the minutes. (Ex. 13 at 83-85) Given the professional assistance, there can be no claim that amounts, as consistently as they were not contained in Conference records, were in fact voted on but accidentally omitted. See U.S. v. International Brotherhood of Teamsters, (Ligurotis), 814 F. Supp. 1165, at 1179-1181 (S.D.N.Y., 1993) (Edelstein, J.)

to be held on June 28, 2011. (Ex. 182) Lichtenwald, Cimino and Bales made the expenditure although the board did not approve an amount as the Bylaws required. (Ex. 62) On October 14, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay to Bally's an additional \$9,912.52 above the \$11,293.67 deposit, for the cost of the party. The respondents caused the payment to be made without the required Board approval for either that expense or the over \$21,000 cost of that party. (Exs. 191)

At the April 14, 2011 Board meeting, the Board voted to provide four shirts to each member of the Ohio delegation to the IBT Convention and agreed to split the cost with the two Joint Councils. (Ex. 62) The Board never approved as required the amount spent. On June 24, 2011 Lichtenwald, Cimino and Bales caused the Conference to pay \$7,413.79, to American Way Sales, a vendor of T-shirts and other items. (Ex. 144) The Conference never received from the Joint Councils any money as Lichtenwald represented to the Board would be done. The respondents caused the Conference to pay the full cost without Board authority.

The Board in a telephone poll conducted on March 10, 2011, approved the holding of the Conference annual meeting at the Doubletree Hotel in Columbus Ohio. (Ex. 145) It did not approve an amount. On October 3, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay \$16,642.04, to the Doubletree. (Ex.

105) The Board had not approved the amount of this over \$5,000 expenditure as the Bylaws required.

The Board approved a proposal to hold the annual golf tournament in 2013 at its July 16, 2012 Board meeting. (Ex. 66) On August 9, 2013, Lichtenwald, Cimino and Bales caused the Conference to pay \$18,553.90, to the Tam O'Shanter golf course for the golf tournament. (Ex. 132) There was no Board approval for the cost that Lichtenwald, Cimino and Bales caused to be paid over a year later, after the site and date were approved. (Ex. 66) Without knowing approval of the amount by the Board, there was no authorization for the expenditure the respondents caused to be made.

UNAUTHORIZED CONFERENCE PAYMENTS OF LOCAL LEGAL EXPENSES

The Conference Bylaws also specifically required the Board to make certain findings before it could authorize the Conference's payments of legal expenses a local incurred. Bylaws Art. XII, Sec. 1 (Ex. 82) This requirement would have been known to any officer who read the Bylaws. Apparently, despite being well-compensated fiduciaries for part-time work, either none did, or they deliberately ignored the restrictions on their power. From when Lichtenwald became President on January 1, 2011 until November 6, 2015, the Conference paid \$580,000, in 58 monthly \$10,000 payments under an alleged unwritten retainer agreement with the law firm of

Doll, Jansen, Ford & Rakay for legal expenses incurred by locals. (Exs. 23-26; 148-151; 226)¹³ The Board did not approve these expenses as explicitly required by the Bylaws. (Ex. 82) Bylaw Article XII, Section 1 provided:

In the event that any member Local Union of the Ohio Conference of Teamsters shall avail itself of the legal service of local, area or house counsel which pertains to matters, controversies or litigation which directly or indirectly affects or involves the policies of the International Union under which the Ohio Teamsters operate, those Local Unions shall be obligated to consult or cause counsel to consult the office of the general counsel of the Ohio Conference of Teamsters as to procedure and operation with reference to the matters, controversies or litigation so that the office of the general counsel may take such steps as are necessary or proper in order that the policy of the International Union is conserved and protected to the end that a uniform continuity prevails in the State of Ohio.

Should the General Counsel for the Ohio Conference of Teamsters be requested to render services for any local union or unions, such counsel shall act only on behalf of such local or locals and not the Conference. The Executive Board, in their discretion, may consider assisting in the payment, or the payment of legal expenses in only such matters as involve the International Union and in which the State of Ohio has an interest, or in such matters as the Conference deems to be for the general welfare of the Teamster movement.

(Ex. 82 at Art. XII, Section 1 (emphasis added))

In addition to the unapproved amounts paid to the law firm through the alleged retainer for legal expenses for locals, Lichtenwald, Cimino and Bales caused the Conference, as detailed

¹³ The alleged retainer agreement and local legal expenses are discussed and the evidence cited in pages 41 to 49 of the incorporated Trusteeship Recommendation Report. (Ex. A)

in Exhibit A to this Report, at pp. 47-49, to pay an additional \$206,258.72 to the firm, for the payment of other local legal expenses without the required Board finding and approval¹⁴. (Exs. 148-151; 226)

The Board never made the findings the Bylaws required it to do to authorize each payment of legal expenses for a local. Despite the absence of the explicit required authorization for each expense, in breach of their fiduciary duties, Lichtenwald, Cimino and Bales caused the Conference to pay the law firm without required approval at least \$786,258.72. (Exs. 23-26; 148-151; 226; 245)

Expenses For \$5,000 or Under for Which Board Approval or Ratification Was Not Obtained

As noted the Bylaws required the Board either approve Conference expenditures for \$5,000 or under, or subsequently ratify them. Bylaws Art. VI, Sec. 2(1) (Ex. 82) In violation of their fiduciary duties, Cimino, Lichtenwald and Bales caused the Conference to make, at least, \$54,880 in expenditures without approval and subsequently never obtained ratification as required. Bylaws Art. IV, Sec. 1 (Ex. 82) These are on an included schedule, Ex. 243. Below are some examples:

¹⁴ This amount is for the payments of legal expenses for Locals allegedly outside the alleged retainer agreement from January 1, 2010 through November, 2015. (Exs. 148-151; Ex. 226)

At a Conference Executive Board meeting on February 23, 2010, the Board had approved an expenditure of \$2,000 for a donation to the Hoffa Memorial Scholarship Fund. (Ex. 55) On February 9, 2011, Lichtenwald, Cimino and Bales, ignoring the explicit limited authorization, caused the Conference to pay \$6,000 for a Silver Page Sponsorship for that Fund. (Ex. 125) Without the required authority, the two officers and Bales caused the Conference to pay more than twice what was authorized, and spent an additional unauthorized \$4,000 in violation of their fiduciary duties¹⁵. There was no Conference purpose given for the respondents' increasing the approved donation by over 140%. Lichtenwald, Cimino and Bales never sought ratification of the additional amount paid.

On February 23, 2010, the Conference Board approved the expenditure of \$35,000 for its share of the cost for a Conference-Joint Council 41 Christmas party for officers, staff and spouses. (Ex. 55) On February 25, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay an additional unapproved \$2,123.39 to Joint Council 41. (Ex. 126) The check voucher reflected, "Balance due per Bill Lichtenwald 02/15/11 Help defray cost of Christmas Party (1/2 cost)". (Ex. 126)¹⁶ This payment was for an excess over

¹⁵ Even if this was considered an expense under \$5,000 the additional \$4,000 was neither approved nor ratified by the Board.

¹⁶ The Conference Board had approved the providing of financial assistance to Joint Council 41's Christmas party. The specific authorization was in the amount of \$35,000. (Ex. 55) The total cost of the party was \$74,246.78. (Ex. 130) On December 29, 2010, Lichtenwald, Cimino and Bales caused the Conference

the Board approved \$35,000 for the Conference's share of the expenses for the Christmas party with Joint Council 41 which was not open to members and their spouses. The three ignored the Board-approved limit. There was no authority for them to cause the Conference to pay the additional \$2,123. (Ex. 126) Lichtenwald, Cimino and Bales never sought ratification of the payment. There was no Conference purpose given in the records for the party or the inclusion of spouses.

The following are further examples of expenditures of \$5,000 or less which Lichtenwald, Cimino and Bales caused the Conference to pay without approval or ratification in violation of the Bylaws. In addition to evidencing that the three violated their fiduciary duties by causing unauthorized expenditures, they also show Lichtenwald and Cimino failed to meet their legally required record keeping obligations.

In violation of their fiduciary duties, on August 5, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay \$3,529.16 for 228 golf hats. (Ex. 179) There was no required Board approval or ratification of this expenditure. There were 168 golfers that year. (Ex. 196) Based on Conference history, the number of hats ordered was far beyond any reasonably anticipated

to pay \$35,000 to Joint Council 41 only for the previously approved amount of \$35,000. (Ex. 130)

tournament-related need. There were no records as the law mandated showing the disposition of the hats, including the surplus.

On December 12, 2011, Lichtenwald, Cimino and Bales caused the Conference to pay \$5,000 to the Salt Fork Lodge & Conference Center as a deposit for the July 2012 Annual Meeting. They did not obtain required approval or subsequent ratification by the Board for the expenditure. (Ex. 129)

In violation of their fiduciary duties, on July 27, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$6,163.03 for 262 divot repair kits, 189 golf cases, 50 dozen Titleist golf balls and 180 golf towels¹⁷. (Exs. 163, 164, 165) These were items that could easily be converted to personal use. There were 159 golfers at the tournament. (Ex. 197) There was no Board approval or ratification for these expenditures as required. There were also no Conference records as the law required showing how the Conference disposed of the items it owned¹⁸.

On Wednesday, July 5, 2013, Darrow, the vice-president of the Conference, charged \$1,385.29, for golf clubs and golf merchandise

¹⁷ In sequential checks to the same vendor, American Way Sales, Lichtenwald, Cimino and Bales caused the Conference to pay \$1,051.62 for divot repair kits and golf cases, \$1,973.15 for golf balls and \$3,138.26 for towels. (Exs. 163, 164, 165)

¹⁸ In no year from 2010 to 2013, did the Conference have more than 170 golfers, yet the officers and Bales consistently paid for merchandise for considerably more golfers than could be expected to attend. (Exs. 181; 196-198)

on his Conference credit card at the Lakeview Golf Course¹⁹. (Ex. 166) On Sunday, July 2, 2014, Darrow charged \$1,463.31, on his Conference credit card for golf clubs and golf merchandise at the Lakeview Golf Course in Hartville, Ohio. (Ex. 240) A golf course pro shop was not the source of the 32 other sets of clubs the Conference purchased from 2010 through 2014²⁰. Those other purchases were purchased from a wholesaler. There was no approval or ratification by the Board for Darrow's expenditures as required. The receipts or other records did not disclose a Conference purpose for Darrow's purchases as law required. (Exs. 166; 240) None is apparent²¹. There were no records as IBT policy required reflecting the Conference actually received these items and evidencing that Darrow had not just taken them. (Ex. 83 at 73) There were no records of their disposition by the Conference, if that occurred, as law required. 29 U.S.C. § 436 (Exs. 166; 240) In violation of their fiduciary duties, despite the lack of necessary information, Lichtenwald, Cimino and Bales caused the Conference to pay the credit card company for these unauthorized purchases²². (Exs. 166;

¹⁹ The purchases were made at the Lake View Golf Course, in Hartville, Ohio, approximately 17.39 miles from Akron, Ohio, where Darrow's Local 348 was located. (Ex. 34; Ex. 166; Ex. 203; Ex. 240)

²⁰ The Conference bought 32 other sets of golf clubs from June 25, 2010 to August 8, 2014. All of these were purchased from a wholesale provider; the Steven A. Heslet, Foregolf, in Delta, Ohio. Darrow's golf purchases were made at a golf course pro shop. (Exs. 166; 174-178)

²¹ The receipt for Darrow's July 2, 2014 golf club and merchandise purchase bears a handwritten notation "OCT golf outing". (Ex. 240) Without more, a Conference purpose for the expenditure is not apparent.

²² Cimino testified he did not know that Darrow had purchased golf clubs for \$1,385.29, although he reviewed expenses and did not object to it. (Ex. 9 at

240) The officers also violated their obligations under federal law for required record keeping. 29 U.S.C. §§ 431(b), 436. (Ex. 231)

In the years from 2011 through 2014 the Conference purchased 26 sets of golf clubs with members' dues for \$14,367.83, which it claimed to donate to eight Locals and Joint Council 41 for each entity's golf outing²³. There was no approval or ratification by the Board for these expenditures as the Bylaws required. Bylaws Art. IV, Sec. 1 (Ex. 82) There was no union purpose provided for the expenditures in the records as the law required. The costs were as follows:

<u>Year</u>	<u>Number</u>	<u>Cost of Sets of Golf Clubs</u>
2011	7	\$ 3,358.62
2012	5	\$ 2,510.75
2013	7	\$ 4,083.91
2014	<u>7</u>	<u>\$ 4,414.55</u>
Total	<u>26</u>	<u>\$ 14,367.83</u>

(Exs. 166; 175-178)

41-42) If that was the case, it was because Cimino consciously avoided knowing by not performing his required duties. Cimino testified that Bales would send him a list of checks to be paid which included the payee and the amount, but that he would never look at the receipts. (Ex. 9 at 28-29)

²³ The sets of golf clubs were, according to records, donated to Local 20 in Toledo (4), Local 52 in Brook Park (4), Local 100 in Cincinnati (4), Local 348 in Akron (4), Local 407 in Cleveland (4), Local 413 in Columbus (2), Local 436 in Valley View (1) and Joint Council 41 in Valley View, Ohio (3). (Exs. 175-178) With the exception of Local 436, Conference officers or directors were associated with each of these entities. (Ex. 202)

In violation of their fiduciary duties, on July 12, 2013, Lichtenwald, Cimino and Bales caused the Conference to pay \$5,344.82, for the purchase of 50 dozen Titleist golf balls and 225 golf caps²⁴. (Exs. 167, 168) The Board did not either approve or ratify the purchases as required. These were items easily converted for personal use. There were 134 golfers that year. (Ex. 198) In 2011 through 2013, the Conference did not have more than 170 attendees at its tournament. (Ex. 196-198) Cimino and Lichtenwald failed in their duty to ensure there were records showing that the Conference received the items or how they were disposed of.

On September 28, 2012, Lichtenwald, Cimino and Bales caused the Conference to pay \$5,000 to the Maumee Bay Lodge as a deposit for its 2013 annual meeting. (Ex. 108) They did not obtain required Board approval or subsequent ratification for the expenditure.

On December 9, 2013, Lichtenwald, Cimino and Bales caused the Conference to pay \$5,000, to the Maumee Bay Lodge as a deposit for the 2014 annual meeting. (Ex. 110) They did not obtain required Board approval or subsequent ratification for the expenditure.

²⁴ In sequential checks to the same vendor, American Way Sales, Lichtenwald, Cimino and Bales caused the Conference to pay \$2,057.20 for the golf balls and \$3,287.62 for the hats. (Exs. 167, 168)

On August 15, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay the Truck Drivers Local 92 PAC \$5,000, for "Reimbursement". They did not obtain either the board approval or subsequent ratification the Bylaws required. (Ex. 187) What the PAC was being reimbursed for was not reflected in the Conference's records as required.

On December 12, 2014, Lichtenwald, Cimino and Bales caused the Conference to pay \$5,000, to Maumee Bay Lodge for a deposit for the 2015 annual meeting. (Ex. 188) They did not obtain either the Board approval or subsequent ratification required to pay the expense.

Lichtenwald and Bales Embezzled From the Conference By Engaging in Self-dealing Expenditures Which Benefitted Themselves Without Required Approvals and That Had No Conference Purposes

From 2011 through November 2015, the Conference reimbursed Local 114, \$156,637 for contributions that the Local paid to the Central States Pension and Health & Welfare Funds as part of Bales' compensation as a Local officer. (Ex. 219) In 2011, the Conference paid the Local \$34,424, in 2012, \$34,424, in 2013, \$31,966, in 2014, \$31,448, and as of September 2015, \$24,375 for the contributions on Bales' behalf. (Exs. 214-219) Bales and Lichtenwald caused these payments to be made from Conference funds based on members' dues received from all the Locals to pay the

Conference per capita tax, without authority and without a Conference purpose.

In addition, from January 2011 through November 2015, the Conference reimbursed Local 20, \$81,796, for contributions that Local paid to the Central States Pension Fund as part of Lichtenwald's compensation as a Local officer. (Ex. 212) In 2011, the Conference paid the Local \$15,886, in 2012, \$18,252, in 2013, \$16,224, in 2014, \$17,238, and as of September 2015, \$14,196. to Local 20 (Ex. 212) Bales and Lichtenwald caused these payments to be made from Conference funds without authority and without a Conference purpose. (Ex. 82) As long-time Local and Joint Council officers, they were well aware that they could not spend members' money to benefit themselves without the explicit authority to do so as required under the Bylaws. (Ex. 82) Money from the members throughout the state was being used to pay Bales' and Lichtenwald's compensation from the Locals from which they were elected.

There was no Board authorization as required for these expenditures of Conference money either under Art. VI, Sec. 2(1) or Art. IV, Sec. 1 of the Bylaws, which required respectively Board approval or ratification of expenditures in excess of \$5,000, and also in the fixing of Conference employee salaries and benefits²⁵.

²⁵ On December 7, 2015, the IRB requested the conference provide pension plan records. (Ex. 230) The Conference claimed it was the "past practice" to make such payments, which was not authorization according to the Bylaws, Art. IV, Sec. 1. (Exs. 82, 227)

(Ex. 82) These payments on their face were not for a Conference purpose. The Conference had no agreement with these funds obligating it to make contributions for benefits for its employees²⁶. The Conference did not make such payments for any other current employee or Board member. These were obligations of their Locals to Lichtenwald and Bales that pre-existed Lichtenwald's and Bales' Conference employment. (Ex. 5 at 13; Ex. 13 at 14) That there was neither the required Conference authority for their payment nor a Conference purpose in paying these local expenses for part-time well compensated Conference employees evidenced that Lichtenwald and Bales had the intent to embezzle these monies in violation of the IBT Constitution, the Consent decree and the Final Agreement and Order and in breach of their fiduciary duties, 29 U.S.C. §501(a)²⁷ Among current Conference employees they stood alone in causing such payments to be made on their behalf.

When an IRB inquiry was made to the current IBT Trustee for the pension plan information, the explanation provided by a Conference attorney was an undefined and unexplained "past practice". (Exs. 227; 230) That did not meet the local Bylaw

²⁶ Even if the respondents were to claim these payments as part of their compensation, they did not obtain the Board authorization the Bylaws Art. IV, § 1 required. (Ex. 82)

²⁷ Embezzlement is an act of Racketeering which all IBT employees are enjoined from committing. See Consent Decree, United States v. IBT. (Ex. 1); The Final Agreement and Order, ¶49 (Ex. 246); 18 U.S.C. §1961(1).

requirement. It was an admission that the expenditures were unauthorized under the Bylaws. As the court noted in United States v. Goad, 490 F.2d 1158, 1165 (8th Cir. 1974) in finding IBT local officers embezzled salary increases given without required approval and not known to others:

The exercise of power by union officials is not unfettered, but checked in the first instance by proper approval within its own ranks. The salary increases, which were not approved by the Executive Board, effectively were kept secret until the second reelection of defendants. Section 501(c) was designed to reach this exact type of occurrence.

490 F.2d, at 1165.

As fiduciaries, Bales and Lichtenwald had an obligation, particularly concerning payments from which they benefitted, to determine the payments were authorized in accordance with the Bylaws and the law. See United States v. Goad, supra. Experienced Local officers, they failed to meet that obvious obligation. That former Conference employees may have violated their obligations by embezzling similar payments in the past was not a defense to these two continuing an illegal practice. It did not establish a right to their unauthorized taking. It was unauthorized and without a Conference purpose. Prior looting, just as decades-long failures of Conference officers to do their jobs, was not a recognized defense for current officers to act in violation of the law and their obligations. Nor did it undercut the evidence of their intent to embezzle. Such studied ignorance of their obligations

was conscious avoidance of knowledge that the payments were unauthorized. When payments for themselves were concerned, they needed to be particularly diligent in ensuring they were authorized. Indeed, their pattern of consistently making other Conference expenditures knowing that they were unauthorized showed that they were indifferent, at best, to that central requirement of authorization for spending Conference funds.

Given the lack of facial evidence of any Conference benefit for these payments, at a minimum, Lichtenwald, and Bales needed to demonstrate how those unauthorized expenditures for their local compensation benefitted the Conference. United States v. IBT [Kenny, Moreno and Guillory], slip op, at 10, (S.D.N.Y. 2014), affirmed, 600 Fed. Appx. 8; 2015 U.S. Lexis 774 (2d Cir., 2015); Investigations Officer v. Gerald Yontek, Dec. of the Ind. Admin., (June 21, 1993) aff'd sub nom, U.S. v. International Brotherhood of Teamsters, 838 F.Supp. 800 (S.D.N.Y. 1993) There was no such explanation in any Conference record. On its face, having the Conference assume Local obligations was not a benefit to the Conference and did not benefit the IBT members throughout the state whose dues funded those payments.

Indeed, the wrongfulness of their conduct should have been obvious to Lichtenwald and Bales. They were experienced fiduciaries having lengthy experience as Local and Joint Council officers. That they could only spend Conference money for a

Conference purpose with required authorization were core principles each of them had agreed to follow in multiple IBT entities. That they only violated it in the Conference, which by structure and the IBT's decades-long intentional failure to supervise, was the entity in which detection of embezzled funds was least likely to be detected, further evidenced their intent to embezzle. In addition, their intent to embezzle was evidenced by their failure to obtain Board approval, as the Bylaws explicitly required. (Ex. 82 at Art.VI, Sec. 2(1)) This Bylaw violation assisted them in concealing payment from the Board members not receiving such payments. United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent.) aff'd, 978 F.2d 68 (2d Cir. 1992)

Bales was Secretary-Treasurer of Local 114. Without this over \$30,000 per year she caused the Conference to improperly pay the Local for the Local's obligations to the funds on her behalf, her local would have shown a pattern that over at least four years its officers, including her, spent more than the local was taking in. (Exs. 32; 249) The unlawful transfer of money that came from members' dues throughout the state allowed Bales to conceal from her Local's members that the Local's officers consistently overspent. Below is what was fraudulently disclosed to the Local

114 members on Forms LM-2 and what would have been disclosed without the money embezzled from the Conference²⁸.

<u>Year</u>	<u>Form LM-2 Difference Between Expenses and Revenue</u>	<u>What The Difference Was Without The Unapproved Conference Reimbursement</u>
2010	(\$29,068)	(\$78,968)
2011	(\$41,209)	(\$76,985)
2012	\$20,235	(\$14,189)
2013	\$15,797	(\$16,169)
2014	<u>\$37,218</u>	<u>\$5,770</u>
Five year Net	<u>\$2,973</u>	<u>(\$180,541)</u>

Bales' Local 114 held an election in December 2014. (Ex. 32) The 2012 and 2013 Forms LM-2 for Local 114 falsely showed the difference between receipts and disbursements at a surplus of \$20,235 and \$15,797, respectively. (Ex. 32) Without the illegal reimbursements wrongfully taken from the Conference, it instead should have reported spending exceeded receipts in those years by \$11,213 and \$16,169, making at least a four year pattern. (Exs. 32; 228; 249)

The reliance on "past practice" is not a defense. United States v. Goad, 490 F.2d at n. 10 (8th Cir. 1974):

'[G]ood faith' cannot include, as a matter of law, spending union funds thinking it proper since the union would benefit from the expenditure. The fiduciary responsibility requires union officials to follow the proper procedures to authorize the expenditure of funds. A union official cannot be acting in 'good faith' when not following his union's own procedures for authorizing

²⁸ Local 114 had 815 members in 2014. (Ex. 32)

expenditures. An elected union official must know the proper procedures for conducting his union business.”

Id. at n.10

The Second Circuit Court explained in Morrissey v. Curran, 650 F.2d 1267 (2d Cir., 1981) that Congress “did not contemplate giving free rein through the device of authorization in the use of union funds for the personal benefit of union officers.” Id. at 1273. As the Morrissey Court found, problems of “questionable spending practices” by “unrestrained” union management were particularly likely to occur in an entity such as the Ohio Conference which used members’ money without any opportunity for members to review and influence its actions through elections or in any other manner. Id. at 1273. Here members, whose money was used without restraint by the Conference President and Administrator, were structurally barred from having any influence on the Conference Board which was elected by a select group of Local officers as delegates. Even those Conference delegates had no direct power over Conference expenditures. Bylaw Art. VI (Ex. 82) The other Conference Board members whose approval was necessary and not obtained were not informed of the payments. As was well known to Lichtenwald and Bales, the IBT had abandoned its supervisory role over the Conference and its officers. They also knew the Conference trustees did not review expenditures to determine what was authorized. (Ex.5 at 38-39; Ex. 13 at 16-20)

Thus they acted wrongfully when they knew it could be easily concealed, providing further evidence of intent.

There were no checks on Bales or Lichtenwald acting in their self-interest. (Ex. 5 at 38-39; Ex. 13 at 16-20) Indeed, that lack of restraint of self-interest generally within the Conference was evident from the fact that over 50% of Conference revenues were used to pay some form of compensation to Conference and Local officers without any arguable benefits to the members from the Conference's activities. (Exs. 22-26; 127; 204) With their extra unauthorized payments to their Locals to pay for benefits the locals owed them, Bales and Lichtenwald took that step past breaches of fiduciary duty to embezzlement. (Exs. 32; 228; 249)

The Second Circuit further noted that union officers in such structural situations as the Ohio Conference, often engage in practices similar to those in public companies where occurrences of financial abuse are common because of the divergent interests of shareholders and managers. Id. at 1272. Indeed, it noted it was even more of a problem in an entity like the Ohio Conference because the officers themselves were setting compensation and approving self-dealing without any check on their actions like a public company's committee of outside directors. Id. at 1274. As the court found, "The fiduciary standards for union officers impose liability upon them when they approve their receipt of excessive benefit, significantly above a fair range of reasonableness." Id.

at 1275. When they do not have any approval as here, the conduct is even more blatantly violative.

The Conference payments to the Locals of payments equal to what the Locals paid to funds as part of their compensation to Bales and Lichtenwald as Local employees were a personal benefit and required close scrutiny by Bales and Lichtenwald before they caused them to be made. Ray v. Young, 753 F.2d 386, 390-391 (5th Cir., 1985); Brink v. DaLesio, 496 F.Supp. 1350, 1357 (D. Md., 1980), rev'd in part on other grounds, 667 F.2d 420 (4th Cir. 1981) There was no Board approval for these expenditures. There was no explanation in Conference records as to why the Conference was paying this expense for part-time Conference employees which it had no legal obligation to pay. None was apparent. Locals 20 and 114 had previously paid Lichtenwald's and Bales' pension contributions. Local 114 had paid Bales' health and welfare contribution obligations. The legal obligations to the Funds to pay the contributions were the Locals' and not the Conference's. Both Lichtenwald and Bales continued to work full time at the Locals after they assumed their part-time Conference positions. (Ex. 5 at 7-13; Ex. 13 at 10-11, 37-38; Ex. 29; Ex. 32) Under the circumstances, including their ignoring whether these particular payments that benefitted themselves and were not for a Conference purpose had actually been authorized and their routine practice of ignoring Bylaw restraints on their use of Conference money, the

evidence established intent to embezzle. Taking money with no authorization and with fraudulent intent from one union entity to pay off the obligation of another is embezzlement. United States v. Long, 952 F.2d 1520 (8th Cir. 1991), aff'd on appeal following remand, United States v. Cantrell, 999 F.2d 1290 (8th Cir, 1993).

LICHTENWALD EMBEZZLED WHEN HE CAUSED THE CONFERENCE TO PURCHASE A CAR FOR HIS EXCLUSIVE USE WITHOUT REQUIRED BOARD AUTHORIZATION AND WITHOUT A CONFERENCE PURPOSE

On January 17, 2014, Lichtenwald solicited and received Board approval to purchase a car. (Ex. 74) No amount was approved as the Bylaws required for any expenditure over \$5,000.²⁹ Lichtenwald gave no conference purpose for the car and none was shown by his use of it as reflected in Conference records. The evidence established there was no Conference benefit from the car he purchased without required Board approval of the amount.

On May 1, 2014, Lichtenwald purchased a 2014 Ford Expedition 4WD Wagon Limited from Kistler Ford Sales, Inc., in Toledo, Ohio, where his Local was located. Lichtenwald's name appeared on the purchase agreement as "purchaser". (Ex. 225)³⁰ As part of this transaction, he traded in for a \$7,000 credit, a car the Conference then owned. (Ex. 225) To make the purchase, on May 1, 2014, he obtained in the Conference's name from Toledo Teamsters Credit

²⁹ Bylaws, Art. VI, § 2(1) (Ex. 82)

³⁰ The car was on the Conference Form LM-2 for 2014 as a conference asset. (Ex. 26)

Union without the required Conference Board approval a loan for \$55,395.27, for which he signed. (Ex. 225) Conference Bylaw Article XI, Section 4 provided:

The Conference shall provide its representatives as determined by the President (Chairman), with automobiles, same to be purchased every two (2) years, if the Conference funds permit, or in lieu thereof, they shall be paid an allowance for mileage in such amount or at such rate as shall be determined by the Executive Board. In either event adequate insurance coverage shall be provided by the Conference which shall be in addition to all other automobile allowances.

In such instances where the Conference either provides an automobile or provides an allowance for the use of the automobile, it is recognized that such officers or employees are required to be on instant call at all times, may be required to garage such car, and are responsible for its safekeeping. Accordingly, for the convenience of the Conference and the officers or employees, such officers or employees shall be permitted private use of such car on a round-the-clock, continuous basis, including private use when the car is not required on Conference business. The President (Chairman) is empowered to sell, exchange, or lease new automobiles, or arrange financing therefore in behalf of the Conference from time to time provided that in his opinion the Conference funds permit.

Thus, the President could determine whether a Conference representative, including himself, needed a car for Conference business and authorized the person to have the car. The Board under the Bylaws needed to authorize any expenditure over \$5,000.00.

Nowhere in the conference records or in the Board minutes was there any explanation of the benefit to the Conference of providing

this car to Lichtenwald, a part-time employee for whom there was no evidence that either he needed a car to perform the Conference duties that he actually undertook, and that he used the car for Conference purposes. Indeed, the sole basis for Lichtenwald's determination in any record that he needed a car was that the existing Conference car he was using was "showing its wear". (Ex. 74) The records reflect no determination he made that the Conference would benefit from supplying him with a car for his use for Conference business. Moreover, the car purchase was not exempt from the required Executive Board's approval which was required for all expenses over \$5,000 Art. VI, Sec. 2(1). The Board had no power to vote him a blank check. He needed its approval of the amount. The Bylaws did provide the President may obtain a car for Conference use and that the car may also be used personally when not used for business. Bylaw Art. XI, § 4. (Ex. 82) If there was no Conference purpose neither Lichtenwald nor the Board could authorize a car be purchased for him for non-Conference purposes. See Morrissey v. Curran, supra, 650 F.2d at 1273 (2d Cir. 1981) (Union officers not given free rein to use union funds for personal benefit under the guise of authorization.)

That he failed to provide a Conference purpose for the purchase in the Conference records, as he was legally responsible for ensuring was done, also provided additional evidence of Lichtenwald's intent to embezzle. 29 U.S.C. §§431, 436, 439. OLMS,

Compliance Tips 2010. (Ex. 231) It also was proof there was no such purpose since he was unable to explain one in the records. As his actual use of the car indicates, there, in fact, was no Conference purpose served by his determining the Conference should buy a car for him.

Lichtenwald's Conference duties were such he was not travelling other than on rare occasions, if at all, on Conference business. For example, between the date Lichtenwald caused the Conference to purchase the car in 2014, and October, 2015, he attended only three Conference-related meetings, the 2014 Annual Meeting, the 2015 Annual Meeting, both of which were at Maumee Bay Lodge, located approximately 13.5 miles from Lichtenwald's Local 20 office, and one Special Meeting on October 5, 2015, in Columbus, Ohio. The lack of use for Conference purposes was corroborated by the car expenses he caused the Conference to reimburse him for. Most expenses he incurred were in the Toledo area, or on out of state trips which did not reflect Conference business. (Ex. 205) There were no reports he made either to the Board or to the Delegates that showed any purpose for Lichtenwald to possess exclusive use of a Conference paid car for Conference business.

At the January 17, 2014 Board Meeting at Lichtenwald's request the Board approved the idea of a purchase of a new car for Lichtenwald. (Ex.74) It did not approve the amount to be spent on the purchase as required under the Bylaws. Art. VI, Sec. 2(1) (Ex.

74; Ex. 82) It did not and could not vote him an open checkbook to do as he pleased. Lichtenwald, without required explicit authority, purchased a new Ford Expedition for \$62,395.27 for his use. (Ex.100)

During the time he had a Conference car, further evidencing the lack of Conference purpose for the car, Lichtenwald submitted expenses to the Conference for the car that were incurred in the Toledo area, where his Local was located, and not on Conference business. (Ex. 205) During the five years he was president of the Conference from January 2011 through 2015, the Board met 13 times. (Exs. 60-63; 66; 69-70; 74-75; 78; 220; 223-224) Three of these were telephone meetings.³¹ (Exs. 60; 220; 224) It was not apparent from Conference records that he did any other Conference work besides the meetings and what he did in his office in Toledo concerning his claimed review of Conference expenses³².

As an example, in 2014, Lichtenwald incurred \$8,089.80, in expenses he claimed were connected to his use of the car for the Conference. (Ex. 205) These were primarily gasoline expenses and an occasional car wash or service charge, all in the Toledo area.

³¹ In 2011, the Conference held four meetings, one of which was a telephone conference. In 2012, there were two Conference meetings; one meeting in 2013; three meetings in 2014 and three meetings in 2015, two of which were telephone meetings. The Conference annual meeting was included among those meetings. (Exs. 60-63; 66; 69-70; 74-75; 78; 220; 223-224)

³² Prior to the purchase of the Ford Expedition, Lichtenwald as President had exclusive use of the car the Conference had previously owned and which he traded in.

The overwhelming majority, 89% of the refueling charges were incurred in the northwestern corner of Ohio and nearby locations in Michigan, where Lichtenwald's Local 20 was located³³. Only Local 20 and Local 908 of the Conference locals were in that area³⁴. (Ex. 233) This area did not include Cleveland, Akron, Columbus and Cincinnati, where the 25 other Ohio Locals and the BLET Division in the Conference were located. (Exs. 205; 229; 233) None of these expenses indicated the specific Conference purpose as required. In total, they further evidenced the lack of Conference purpose for the car.

Lichtenwald and Cimino Failed to Comply With Their Obligations Under Federal Law to Ensure Required Information Was Reflected in Conference Records

The law and Conference Bylaws required that there be a Conference purpose for expenses it incurred. Bylaws Art. 4, Sec. 1 (Ex. 82) Federal law and IBT policy required the union purpose be disclosed in an entity's records of expenditures. OLMS, Compliance Tips 2010 (Ex. 83 at 178, Ex. 157; Ex. 231) Under Federal law, as the signatories on the Conference's Forms LM-2,

³³ There were also fuel charges in neighboring parts of Michigan. There was a restaurant charge in northern Michigan, not in the vicinity of his house, that Lichtenwald inexplicably categorized as car-related and caused the Conference to pay without explanation of the Conference purpose. (Ex. 205) One Conference charge for fuel which he caused it to pay was incurred in Arlington, Texas, without explanation. (Ex. 205)

³⁴ Local 908 had 870 members. (Ex. 234)

Cimino and Lichtenwald had a personal obligation to ensure this was done. (Ex. 157) See 29 U.S.C. §§ 431(b), 436³⁵. Lichtenwald and Cimino had a consistent pattern of not requiring the union purpose for expenditures to be given. Lichtenwald and Cimino also violated Federal Law and IBT policies when they failed to have the Conference maintain records supporting the disposition of over \$39,017.32, in golf-related assets.

Title 29 U.S.C. §431(b) required the Conference to file with the Department of Labor an annual form disclosing mandated information. (Ex. 239) Included in that required information were all the entity's expenditures. (Ex. 239) Title 29 U.S.C. § 436 required the Conference to maintain and keep for five years all records necessary to support the information required for the form. (Exs. 157; 239)

Title 29 U.S.C. §436 provided:

Every person required to file any report under this title shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

(Ex. 157)

³⁵ Failure to comply is punishable by both criminal and civil sanctions. 29 USC §§ 439, 440.

This obligated the Conference to have "...accurate, contemporaneous records reflecting all union receipts and disbursements..."United States v. Budzanoski, 462 F. 2d 443, 450 (3rd cir. 1972) cert. denied, 409 U.S. 949 (1972). The officers who signed the Forms LM-2, Lichtenwald and Cimino, were required under 29 U.S.C. §436 to ensure the Local has records "... contemporaneously made with the transactions involved from which the secretary of Labor as the representative of the public, and the labor organization's members can check to verify and clarify any expenditures made by the labor organization." Hodgson v. United Mine Workers, 1971 WL 705 at *2 (D.D.C. April 13, 1971; United States v. Chittenden, 530 F.2d 41, 42 (5th Cir. 1976) (officer required to sign a Form LM-2 was personally responsible for failure to keep required records under 29 U.S.C. §436).

The Court in Budzanoski, supra, 462 F. 2d at 450, explained the law required a union to retain, (1) accurate, contemporaneous records reflecting all union receipts and disbursement; (2) supporting documents reflecting the entry of transactions into the union's accounts and their reproduction in the annual financial records, that can serve to check that annual report. See, OLMS, Compliance Tips 2010, IBT Secretary Treasurers Manual (Exs.83; 157)

The Conference's practice for tracking merchandise allegedly purchased and disposed of, as Bales described it, was to distribute

it without keeping records and to return any excess to her office in Cincinnati, Lichtenwald's office in Toledo, or Cimino's office in Cleveland. (Exs. 5 at 70-75; 11 at 36-37; 13 at 88-91) These distributions and returns to Conference employees were not recorded in the records. Required records reflecting the receipt of these assets and their disposition were not created nor maintained for the five years after the filing of the Form LM-2 that federal law mandated Lichtenwald and Cimino personally to ensure occurred. Since the records were never created and not maintained, the officers made it impossible for any third party retroactive review of their and the Conference officers' and employees' use of these assets, such as the Department of Labor or an IBT auditor, hypothetically³⁶. As an example, there were no records of the disposition of the two sets of golf clubs Vice-President Darrow purchased at a golf course over a holiday weekend and no union purpose for the purchases were provided in the records.

In addition to those discussed in the unauthorized expenditure section above, the following are other examples of Lichtenwald's and Cimino's failure to comply with their Federal recordkeeping obligations:

³⁶ From experience, they understood the IBT conducted no audit oversight of how they spent members' money since it never in decades audited the Conference and despite its own rules requiring the filing of monthly Trustee Reports never inquired about the Conference's decades of failure to submit any.

Lichtenwald testified that Conference Officers Robert Jackson and Pat Darrow would purchase giveaways for the Conference golf tournaments³⁷. They would call Lichtenwald and tell him they were going to buy certain items as giveaways for the golfers. Lichtenwald stated he would then approve the purchases. When the bills came, Bales, who was located in Cincinnati would call Lichtenwald in Toledo, and tell him what was reported as purchased and the amount. She or an employee not involved in the purchase would not receive the merchandise. The only record was based on bills from merchandise others purchased and received. This was a practice IBT policy forbade. (Ex. 83 at 73) Lichtenwald would then approve the payment. Most of the time no Conference purpose was given. Lichtenwald testified he "...can't remember..." if he saw the bills. (Ex. 13 at 90) It was his practice not to review bills. (Ex. 13 at 17-19) There were no Board approvals for or ratifications of the expenditures as required. There were no records showing the Conference's receipt of the merchandise or its ultimate disposition. Lichtenwald and Cimino violated the statutory requirements.

Below are examples of other merchandise, besides that discussed above, the Conference allegedly purchased for which the

³⁷ In 2012, Jackson was the Vice President of the Conference. He was also president of Local 92 in Canton, Ohio. (Ex. 232) He retired as of the November 1, 2012 Board meeting. (Ex. 69)

Conference had no records of its being received or disposed of. As detailed above at pages 25-29, many of the Conference's expenditures that were not for officers' and employees' compensation and legal expenses for locals were golf related.

Between 2011 and 2014, in connection with its annual golf tournaments, the Conference also purchased various items as alleged giveaways for the golfers, such as golf clubs, hats, balls, divot repair tools and custom embroidered towels. (Ex. 13 at 87-91; Ex. 5 at 69-70; Ex. 237) Lichtenwald, Cimino and Bales consistently caused the Conference to purchase quantities of these items in excess of the number of participants in these golf tournaments and without required approvals. Lichtenwald and Cimino did not, as they were obligated to do under federal law, ensure records were kept of the disposition of the Conference assets.

In terms of asset disposition, the respondents did not record their disposition of excess Conference property for purposes different than for which it was allegedly purchased. Trustee Dudas had seen "sleeves" of excess golf hats in Lichtenwald's Local office in Toledo. (Ex. 11 at 37) Bales stated that excess items the Conference purchased such as hats, desk plaques, pen and pencil sets and playing cards, usually come back to her, Lichtenwald or Cimino. Then they allegedly were distributed to members of their Locals who asked for "free" items. That was not a use that

established a Conference purpose for the purchase. There were no records of such distributions³⁸. Bales stated that the purpose for that informal distribution was because, "Well the guys all like, you know, gifts." (Ex. 5 at 71-75).

In another example of Lichtenwald's and Cimino's failures to follow the federal law on recording the purchase, inventory and disposition of Conference assets, Diana "Corky" Hymore, Assistant Conference Administrator, and an employee also of Lichtenwald's Local, on Sunday, July 27, 2014, charged \$476.09 on her Conference card at Best Buy in Toledo, Ohio. (Ex. 113) She purchased two Galaxy tablets for \$169.99 each, two tablet cases for \$30.62 each and one Bluetooth speaker for \$43.73. (Ex. 113) Her Conference expense report stated, "Raffle Prizes for OCT Annual 7/30/14 (2) galaxy tablets (2) tablet cases (1) Bluetooth speaker". (Ex. 113) There were no indications in Conference records, including Delegates meeting minutes, that it had received these items, or how and to whom they had been disposed of as Federal law required. Indeed, there was no indication a raffle was held. What the Conference purpose was for spending members' money on raffle items for a gathering where only select local officers attended was never explained. Moreover, there was no Board approval or ratification

³⁸ Lichtenwald and Cimino were required to have records that accounted for the disposition of Conference assets. 29 U.S.C. §§431, 436, 439.

of the expenditure as required. These unauthorized purchases were additional breaches of Bales', Lichtenwald's and Cimino's fiduciary duties.

C. Defense

Cimino, at each of the annual meetings between 2011 and 2014, read the "Acts and Actions" report as follows:

I move that all acts, actions and undertakings heretofore engaged in by the Executive Board of the Ohio Conference of Teamsters from the last Annual meeting ending on (date) to this date, (date), be approved, confirmed, accepted and ratified, presently and retroactively, and that the financial transactions as disclosed by the Financial Statements heretofore accepted, be approved through (date) as all such acts, actions and undertakings have been made pursuant to the Bylaws of the Ohio Conference of Teamsters and for the benefit of the Ohio Conference of Teamsters and its membership.

(Exs. 65, 68, 73, 77)

Such a general exculpatory resolution is specifically prohibited under Federal law:

"A general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy".

29 U.S.C. § 501(a)

The delegates at each of these annual meetings seconded and approved the motions. (Exs. 65, 68, 73, 77) There was no provision in the Conference Bylaws giving the Delegates that power. Indeed, the Bylaws specifically limited their authority regarding expenditures. (Ex. 82) These *post hoc* attempts of the officers

to escape liability for acting improperly were worthless. Indeed, it evidenced Cimino believed it was needed, but did not absolve them of their failure to act properly. See U.S. v. International Brotherhood of Teamsters, (Ligurotis), 814 F. Supp. 1165, at 1179-1181 (S.D.N.Y., 1993) (Edelstein, J.) Every year, Lichtenwald, Cimino and Bales ignored their fiduciary obligation to inquire into, monitor and ensure the Conference expenditures were approved.

IV. ANALYSIS

A. Standard of Proof

The standard of proof for establishing the charges against Lichtenwald, Cimino and Bales is a preponderance of evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Paragraph C ("to determine whether the proposed. . . charges . . . found in the Independent Investigations Officer's Investigative Report, are supported by a preponderance of reliable evidence."); the Final Agreement and Order, at Paragraph 35; United States v. IBT [Simpson], 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F.3d 341 (2d Cir. 1997). (Ex. 48 at 12) ³⁹

B. Embezzlement

³⁹ In addition, Article XIX, Section 1(e) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence. (Ex. 236)

The prior actions under the Consent Decree are the controlling precedent for interpreting the IBT Constitution, Final Agreement and Order, ¶ 49. The IBT Constitution prohibits embezzlement or conversion of union funds. IBT Const. Art XIX, Section 7(b) (3). (Ex. 236) In addition, IBT members are specifically enjoined from committing embezzlement, an act of racketeering. 18 U.S.C. § 1961(1). The standard for embezzlement under federal labor law, 29 U.S.C. § 501 (c), is instructive in interpreting the IBT Constitutional provisions. It would govern the Consent Decree obligations not to commit an act of racketeering. 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). For Lichtenwald and Bales to be found to have embezzled Conference funds, it must be established that they acted with fraudulent intent to deprive the Conference of its funds. See, United States v. Welch, 782 F.2d 1113, 1118 (8th Cir. 1984) (under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds"); 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 official 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.’” United States v. 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)

The Court of Appeals for the Second Circuit has stated that two evidentiary factors in determining the issue of fraudulent intent can be whether there was authorization from the union for the expenditure and 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). See also, United States v. IBT [Kenny, Moreno and Guillory], slip op, at 10, (S.D.N.Y. 2014), affirmed, 600 Fed. Appx. 8; 2015 U.S. Lexis 774 (2d Cir., 2015). The payments to reimburse Bales’ and Lichtenwald’s Locals for their payment of Fund obligations the Locals had for Bales and Lichtenwald were not approved and served no Conference purpose⁴⁰. They were not the result of any obligation the Conference had to the Funds. The Board had not approved the expenditures as required. Only Lichtenwald and Bales and the locals they were officers of benefited from these payments from the money the Conference collected in per capita tax, although members’ dues throughout the state paid for them. By their nature these were not expenditures

⁴⁰ Under the explicit terms of the Bylaws and of § 501(a), even decades of prior violations cannot authorize these expenditures. The only issue is intent.

in the Conference's interest. Lichtenwald and Bales were using funds contributed by members throughout the State of Ohio to pay the pre-existing obligations of two of the Locals had incurred for the local employment of the individuals who coincidentally happened also to be Conference employees. Indeed, as their conduct as Conference employees showed, they both broadly and continuously caused unauthorized Conference purchases to be made. Required authorization of payments was never a hurdle to their spending Conference money. They were, at best, indifferent to any restraints on their spending Conference money. Their across the board violations for other expenditures rebuts any good-faith claim they relied on past practice for assuming these particular ones were authorized. Addressing the issue of unauthorized raises for officers in United States v. Goad, 490 F.2d 1158 at n. 10 (8th Cir. 1974), the court stated:

'[G]ood faith' cannot include, as a matter of law, spending union funds thinking it proper since the union would benefit from the expenditure. The fiduciary responsibility requires union officials to follow the proper procedures to authorize the expenditure of funds. A union official cannot be acting in 'good faith' when not following his union's own procedures for authorizing expenditures. An elected union official must know the proper procedures for conducting his union business."

Id. at n.10

When as here the expenditures were for the officers' personal benefit, the absence of good faith is magnified, as their duty of

scrutiny to ensure the benefits to them were authorized in accordance with the Bylaws was heightened.

From the sum of the circumstances surrounding these payments here, including: the lack of authority, personal benefits with no conference purpose, their violations of and general indifference to Bylaw requirements for approval for almost all expenditures they made, and that no other employee received benefits payments to pay local obligations in addition to the salaries provided for part time work, Lichtenwald's and Bales' intent to embezzle was evident. At best, they deliberately closed their eyes to the lack of authorization when heightened scrutiny was required because the expenditures benefitted themselves.

Indeed, the unauthorized payments let Bales conceal from her Local members that in the two years prior to the 2013 Local election that contrary to what the Local reported publically, the officers had been spending more Local money than the Local had coming in. An accurate Form LM-2 would have shown that the Local had been spending more than it was taking in for four consecutive years. Two of these false LM-2's were the information before the members in a Local election.

Any claim that they relied on their predecessors' past practices, i.e., because past employees prior to them looted the conference for personal benefits without authority, they in good faith could assume those benefits were approved, as an explanation

of why they believed they could cause the payments to be made for themselves in their circumstances, did not negate the evidence of fraudulent intent. They needed to establish that their payments were properly authorized. United States v. Goad, supra. As experienced local and Joint Council officers they would have instantly recognized that almost all of the Conference past expenditure practices were flagrant violations of the Bylaws and IBT policies which Lichtenwald and Bales observed in different entities where their actions were under more scrutiny from members and others. They were on notice that in the Ohio Conference they could not rely on past practices because in the Conference Bylaw violations had been pervasive for years. Their having ignored those red flags is further evidence of fraudulent intent. Instead of relying on the wholesale previous violations of the Bylaws, they should have been insisting on compliance with them. United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp. 345, 352 (S.D.N.Y. 1992) (failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent.) aff'd, 978 F.2d 68 (2d Cir. 1992). They applied no scrutiny to what benefitted them.

Lichtenwald did not have the required board approval for the amount of \$62,395.27 he caused the Conference to spend on a Ford Expedition for his exclusive use. From Conference records, his limited exercise of any Conference duties and from where his car expenditures were made, it was evident there was no Conference

purpose for the car. The Bylaws allowed him to make a determination if a Conference representative needed a car for Conference purposes. (Ex. 82) There was no evidence he made such a determination and there was no evidence to support it.

Given the lack of facial evidence of any Conference benefit, Lichtenwald was obligated to demonstrate how those personal expenditures benefitted the Conference.⁴¹ United States v. IBT [Kenny, Moreno and Guillory], slip op, at 10, (S.D.N.Y. 2014), affirmed, 600 Fed. Appx. 8; 2015 U.S. Lexis 774 (2d Cir., 2015). (Ex. 125) No evidence in the contemporaneous Conference records showed that the car and car-related charges, which on their face appeared not to be for Conference use, were for a Conference purpose.

The law and evidence summarized in this Report supported that both Bales and Lichtenwald had the required intent to embezzle.

C. Violation of Fiduciary Duties Through Unauthorized Expenditures

Section 501(a) of the Labor Management Reporting and Disclosure Act ("LMRDA") imposes a fiduciary obligation upon union officers and employees. Section 501(a) provides in pertinent part:

⁴¹ The conference bylaws provided a car for the President that could be used for Conference business as well as his personal use. There had to be some tangible Conference benefit before he could use Conference funds to buy it.

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder

29 U.S.C. § 501(a).

This section imposes a broad fiduciary obligation on union officers. See United States v. Bane, 583 F.2d 832, 834-35 (6th Cir. 1978) cert. denied, 439 U.S. 1127 (1979). Section 501 addresses the misuse of union funds and property in all forms. See Stelling v. International Brotherhood of Electrical Workers, Local 1547, 587 F.2d 1379, 1386-87 (9th Cir. 1978).

The Respondents, in causing the Conference to spend over \$1,755,000 in funds without the required authorizations, as detailed throughout this Report, violated their fiduciary duties as explicitly outlined in 29 U.S.C. § 501(a). (Ex. 244)

PROPOSED CHARGES

Based upon the evidence summarized in the above Report, it is recommended that the following charge be filed against William Lichtenwald, Charles Cimino and Kimberly Bales:

A. Charge One

Lichtenwald and Cimino, while officers of the Ohio Conference of Teamsters, and Bales, while Administrator, and a Joint Council officer, violated their fiduciary duties under 29 U.S.C. § 501(a) and their oath of office and brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, and the Ohio Conference of Teamsters Bylaws, Article VI, Section 2(1), *to wit*:

While officers and members of the Conference, you violated your fiduciary duties to the Conference and its members, through spending, as detailed in the above report, over \$1,755,000 in Conference funds without required approvals.

B. Charge Two

It is also recommended that the following charge be filed against Lichtenwald and Bales:

While President and Administrator, respectively, you embezzled and converted Conference funds to your own use, and brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, *to wit*:

As described in the above report, between approximately January 2011 and September 2015 while President and Administrator of the Conference, respectively, you embezzled at least \$238,433

from the Conference, as described above, by causing the Conference to pay your Locals without Board approval as required and without a Conference purpose funds equal to benefits contributions that were part of your Local compensation for your Local work, in violation of Article XIX, Section 7 (b) (1), (2) and (3) of the IBT Constitution and the Consent Order in United States v. International Brotherhood of Teamsters, 88 C. V. 4486 (S.D.N.Y.). The evidence is detailed in the above Report.

C. Charge Three

It is also recommended that Lichtenwald be charged: As described in the above report, while President of the Ohio Conference in 2014, you embezzled and converted to your use Conference property worth over \$62,395.27 through making an unauthorized purchase for your personal benefit without the Board approval the Bylaws required when you caused the Conference to purchase a car for your exclusive use and to be kept in your possession, without the required Board authorization of the amount spent, in violation of Article VI, Section 2 (1) of the IBT Constitution, and the injunction in United States v. International Brotherhood of Teamsters, 88 Civ. 4486, as detailed in the above Report.

D. Charge Four

It is also recommended that the following charge be filed against Lichtenwald and Cimino:

Lichtenwald and Cimino, while officers of the Ohio Conference of Teamsters required to sign the Conference's Forms LM-2 violated 29 U.S.C. §436 and the IBT Secretary Treasurers Manual Section 2, to wit:

As described in the above report, you failed to ensure the Ohio Conference of Teamsters kept records that you were required by law to ensure were kept to show the purpose of union expenditure and the disposition of union assets in violation of 29 U.S.C. §§431, 436, 439 and Art. II, Sec. 2(a), (2) of the IBT Constitution, as detailed in the above Report.