

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

November 28, 2016

Independent Review Officer
Independent Disciplinary Officers
444 North Capitol Street, N.W.
Suite 528
Washington, D.C. 20001

Re: Recommendation of Disciplinary Charges Against
Former IBT Political Director Nicole Brener-Schmitz

Dear Sir/Madame:

Enclosed please find a signed Affidavit and Agreement, which we believe fairly and responsibly resolves the charges that were recommended and filed against former IBT Political Director Nicole Brener-Schmitz. The Agreement provides that Ms. Brener-Schmitz, who has previously resigned her IBT employment and union membership, shall be ineligible to hold membership in any IBT affiliate for a period of three years after the Agreement has been approved or until she has paid restitution in the amount of \$11,495.43, whichever occurs later. It also provides that she shall be ineligible to hold any employment, office, consulting or similar position with the IBT or any IBT affiliate for a period of five years, or until she has paid restitution as described above, whichever occurs later. The Agreement further provides that Ms. Brener-Schmitz shall pay restitution to the IBT within ten days after the Agreement is approved.

Given that the charges recommended by the IIO in this matter essentially boil down to allegations that Ms. Brener-Schmitz embezzled funds from the IBT, we believe the penalties set forth in the Affidavit and Agreement are consistent with and within the range of penalties that have been approved in prior cases, including the following:

- | | |
|------------------------|---|
| Jerry Conner (2013) | Amount allegedly embezzled: \$11,275
Penalty: membership suspended for 3 years;
ineligible to hold union office or employment
for 5 years; restitution previously paid |
| Gary Guillory (2011) | Amount allegedly embezzled: \$32,217
Penalty: membership suspended for 3 years;
ineligible to hold union office or employment
for 5 years; suspension of membership and bar
from union office or employment extended
until restitution paid |
| Abraham Moreno (2011) | Amount allegedly embezzled: \$39,595
Penalty: membership suspended for 3 years;
ineligible to hold union office or employment
for 5 years; suspension of membership and bar
from union office or employment extended until
restitution paid |
| Oswald Martucci (2012) | Amount allegedly embezzled: \$6,184
Penalty: membership suspended for 2 years;
ineligible to hold union office or employment
for 2 years; restitution required |
| German Vazquez (2010) | Amount allegedly embezzled: \$72,302
Penalty: membership suspended for 1 year;
ineligible to hold union office or employment
for remainder of current term; suspension of
membership and bar from union office or
employment extended until restitution paid |

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Ernest Sowell (2009) Amount allegedly embezzled: \$251,871.15
Penalty: membership suspended for 5 years;
ineligible to hold union office or employment for
5 years; suspension of membership and bar from
union office or employment extended until
restitution paid

Don Hahs (2008) Amount allegedly embezzled: \$44,963.97
Penalty: membership suspended for 1 year;
ineligible to hold union office or employment for
remainder of term of office; restitution required

Accordingly, we respectfully request that the Affidavit and Agreement be approved. If there are any questions, please do not hesitate to contact me.

Very truly yours,



Bradley T. Raymond
General Counsel

BTR/lac

cc: ✓ John J. Cronin, Jr.
Joseph diGenova, Esq.
George W. Johnston, Esq.
J. Bruce Maffeo, Esq.
Nicole Brener-Schmitz

-----X
 In The Matter of :
 :
 NICOLE BRENER-SCHMITZ :
 : AFFIDAVIT AND AGREEMENT
 :
 Before the :
 :
 INDEPENDENT REVIEW OFFICER :
 :
 -----X

DISTRICT OF COLUMBIA) ss.:
 CITY OF WASHINGTON) ss.:

Nicole Brener-Schmitz, being duly sworn, deposes, says, and agrees as follows:

1. On or about November 9, 2016, the Independent Investigations Officer (“IIO”), appointed pursuant to the Final Order, dated February 17, 2015, in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (DNE) (SDNY) (the “Final Order”), recommended that the following charges be filed against me:

Charge One.

While an IBT employee, you embezzled and converted IBT funds to your own use, brought reproach upon the IBT, violated Federal law and committed an act of racketeering in violation of Articles II, Section 2 (a) [and] XIX, Section 7 (b) (1), (2), (3), (5) and (11) of the IBT Constitution, to wit:

As described in the [HIO's] report, between approximately January 2013 and June 2015, while an IBT employee, you embezzled at least \$11,495.43 from the IBT, by causing the IBT through false representations you made to pay for expenses incurred without a union purpose.

Charge Two.

While an IBT employee, you brought reproach upon the IBT, interfered with its legal obligations, and exposed the IBT to the risk of civil and criminal penalties and violated the IBT's recordkeeping policies in violation of Articles II, Section 2 (a) and XIX, Section 7(b)(1), (2), and (5) of the IBT Constitution, to wit:

As described in the [HIO's] report, between January, 2013 and August, 2015, while an IBT employee, you brought reproach upon the IBT and violated Article II, Section 2 (a) of the IBT Constitution when you submitted to the IBT at least 564 false receipts for charges you incurred on your IBT credit card. You also falsified expense reports you submitted. The union was required to maintain accurate records pursuant to 29 USC Sections 431, 436 and 439, and IBT policies. Your causing the IBT to fail to comply with its record keeping obligations under federal law and your failure to follow IBT policies

exposed the IBT to the risk of civil and criminal actions. 29 USC Sections 439, 440; 18 USC Section 2.

Charge Three.

While an IBT employee, you brought reproach upon the IBT and caused the IBT to violate its legal obligations in violation of the IBT Constitution, Article II, Section 2 (a) and Article XIX, Sections 7(b)(1), (2) and (5), to wit:

On at least two separate occasions, in 2013 and 2015, you caused the IBT to extend interest free loans to you, each of which was over \$2,000, in violation of the IBT's legal obligations under 29 USC Section 503, as described in the [HIO's] report. Under 18 USC Section 2 (b), you were as liable as the principal for these criminal acts.

Charge Four.

While an IBT employee, you brought reproach upon the IBT in violation of Article II, Section 2 (a) and Article XIX, Section 7 (b) (1), (2) and (5) by engaging in criminal conduct designed to defraud the IBT by knowingly writing checks to pay your obligations to it when you knew there were insufficient funds in your accounts to cover the checks. Your actions were felony violations of the Code of the District of Columbia, Section 22-1510, to wit:

As described in the [HIO's] report, while an employee, you brought reproach upon the IBT through defrauding it by submitting to it personal checks when you knew there were insufficient funds in your account to cover the checks you gave the IBT to pay it for your debts owed it for illegal loans. These were crimes with the IBT as your victim.

Charge Five.

While an IBT employee, you brought reproach upon the IBT when you created a conflict of interest under the law and in violation of the IBT's Code of Conduct for its employees, and in violation of Articles II, Section 2 (a) and XIX, Sections 7 (b) (1), (2) and (5) of the IBT Constitution, to wit:

As described in the [HIO's] report, you received \$4,000 in your personal bank account from the executive of an organization that received donations from the IBT PAC, D.R.I.V.E. As part of your duties, you were involved in having donations from D.R.I.V.E. made to this organization. You did not disclose your personal receipt of money from the done organization's executive to anyone at the IBT as required under its Code of Conduct and the law.

2. General President Hoffa subsequently adopted these recommended charges.
3. I make this Affidavit and Agreement (the "Agreement") to resolve the IIO recommended charges described in paragraph 1. This Agreement does not constitute an admission or denial of the wrongdoing alleged in these charges.
4. I represent and agree to the following:
 - (a) I have been an employee of the IBT since May of 2008. Shortly after being hired, I became a member of Local 175. From 2009 until 2014, I held the position of Federal Political and Field Director. In December of 2014, I was promoted to the position of Political Director. I resigned my employment with the IBT effective September 16, 2016. On or about that date, I also resigned my membership in Local 175.
 - (b) Other than the foregoing, I have held no other elected or appointed positions or offices of any kind with the IBT, Local 175 or any of their affiliated entities, including any other locals, superior bodies, inferior bodies, conferences, councils, committees, divisions, pension, health, welfare or severance plans or other such entities ("IBT entities").

5. I hereby agree that from the effective date of this Agreement (which is the date on which the Agreement is approved by the Independent Review Officer) and for a period of three years thereafter or until I pay the restitution set forth below, whichever occurs later, I shall be ineligible for membership in Local 175 or any other affiliate of the IBT. I further agree not to seek, accept or hold any employment, office, position or consulting or similar relationship, whether paid or unpaid, with the IBT or any other IBT entity for a period of five years from the effective date of this Agreement or until I pay the restitution set forth below, whichever occurs later.
6. From the effective date of this Agreement and for a period of five years thereafter, neither the IBT nor any other IBT entities shall pay me, nor shall I accept, any salary, gratuities, gifts, payments, allowances, fees, benefit payments or contributions or any other compensation of any kind, except that I may receive any compensation or benefits which have accrued to me prior to the effective date of this Agreement, including any vested or accrued pension, vacation or other benefits under any existing benefit plans or programs maintained or sponsored by the IBT. In addition, I may receive payment for any salary or expenses I incurred in connection

with my work on behalf of the IBT prior to the effective date of my resignation on September 16, 2016 in accordance with existing policies and procedures of the IBT.

7. For a period of five years from the effective date of this Agreement, the IBT and other IBT entities shall not make, nor shall I accept, any contributions on my behalf to any pension, health and welfare, severance or other health benefit fund, except as required by any vested benefits to which I am entitled under any existing benefit plans or programs maintained or sponsored by the IBT.
8. I further agree that within ten (10) days after the effective date of this Agreement I shall pay to the IBT restitution in the amount of \$11,495.43.
9. I understand and agree that this Agreement will be submitted to the Independent Review Officer ("IRO") for his or her review and approval. I understand that no representations have been made as to whether this Agreement will be approved by the IRO. If this Agreement is not approved by the IRO, this Agreement will be null and void.
10. I make this Agreement freely and under no duress or coercion of any kind.

Nicole Brener-Schmitz

Nicole Brener-Schmitz

Sworn to before me this

21st day of November 2016

[Signature]

Notary Public

CHANG HO CHU
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires June 14, 2019



Witnessed

[Signature]

Bh

Dated: 11/28/16

For International Brotherhood of Teamsters

APPROVED:

Dated: _____

For the Independent Review Officer