

INDEPENDENT DISCIPLINARY OFFICERS

17 Battery Place, Suite #331
New York, NY 10004
(202) 434-8080
Corruption Hotline (800) CALL-472

Independent Review Officer
Hon. Barbara S. Jones

Independent Investigations Officer
Hon. Joseph E. diGenova

SENT VIA FIRST CLASS MAIL AND E-MAIL

July 5, 2017

James P. Hoffa
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Re: Disciplinary Decision Concerning Former Local 186 Officers
William Elder and Douglas Saint

Dear General President Hoffa:

I have reviewed your disciplinary decision regarding the above-described matter, which adopted the International Brotherhood of Teamsters hearing panel Report and Recommendation, dated May 19, 2017. I find the decision to be not inadequate.

Sincerely,

/s/ Barbara S. Jones

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

Cc: Bradley Raymond, Esq.
Joseph diGenova, Esq.
Charles Carberry, Esq.
Daniel E. Kann, Esq.

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

May 22, 2017

Mr. William Elder
1440 Magnolia
Santa Paula, CA 93060

Mr. Douglas Saint
1532 Marinero Place
Oxnard, CA 93030

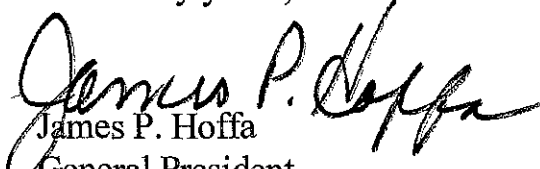
Re: Proposed Charges Against Former Local 186 Officers
William Elder and Douglas Saint

Dear Sirs and Brothers:

You will find enclosed the Report and Recommendations of the Panel that conducted the hearing on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,


James P. Hoffa
General President

JPH/brc

cc: General Executive Board
Joseph E. diGenova, Esq., IIO, Independent Disciplinary Officers
Hon. Barbara S. Jones, IRO, Independent Disciplinary Officers

Mr. William Elder
Mr. Douglas Saint
May 22, 2017
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John J. Cronin, Jr., Administrator, Independent Disciplinary Officers
Hearing Panel
Bradley T. Raymond, Esq.
Abel Garcia, Secretary-Treasurer, Local 186
Dan Kann, Esq.

**REPORT AND RECOMMENDATIONS OF HEARING PANEL
APPOINTED TO HEAR CHARGES AGAINST FORMER LOCAL 186
OFFICERS WILLIAM ELDER AND DOUGLAS SAINT**

Introduction

On December 5, 2016, the Independent Investigations Officer (“IIO”) issued a report to General President Hoffa, recommending that the following charge be filed against former Local 186 officers William Elder and Douglas Saint:

While Local 186 officers, you embezzled and converted Local 186 funds to your own use, brought reproach upon the IBT, violated Federal law and committed an act of racketeering in violation of Article II, Section 2 (a) and Article XIX, Section 7 (b) (1), (2), (3) and (11) of the IBT Constitution, to wit:

As described in the [IIO’s] report, in December, 2015, while Local 186 employees, you embezzled, at least, \$97,780.50 from Local 186, by signing checks that transferred Local money to pay for unapproved severance payments to yourselves and two other than Local employees without required authorization and without a union purpose.

On December 8, 2016, General President Hoffa adopted and filed the recommended charge. Subsequently, General President Hoffa appointed a Hearing Panel (“Panel”) comprised of the following uninvolved members: Pat Darrow, Secretary Treasurer of Local 348; Rick Hicks, Secretary Treasurer of Local 174 and Daniel H. Grace, Secretary Treasurer of Local 830. Brother Darrow was designated to serve as the Panel’s chair. The Panel was given the responsibility of hearing the evidence and making a full report to General President Hoffa.

By letter dated January 25, 2017, General President Hoffa notified Brothers Elder and Saint that a hearing on the charge was scheduled for February 16, 2017 at a location to be determined. Subsequently, following an adjournment request from counsel for Brothers Elder and Saint, the hearing was rescheduled for 9:30 a.m. on April 18, 2017 at the Sheraton Gateway Los Angeles Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045. All parties were duly notified.

The hearing proceeded on April 18, 2017. Brothers Elder and Saint and their attorney, Daniel E. Kann, Esq., appeared and participated in the hearing, although neither Elder nor Saint testified. The charges were presented by Roland R. Acevedo, Esq. Both attorneys were also given the opportunity to provide written submissions, which have been duly considered.

The following findings and recommendations of the Panel are based on the entire record, including exhibits and sworn testimony appended to the IIO's report, the testimony of witnesses at the Panel hearing, other documents entered into evidence, the demeanor of all witnesses who testified before the Panel and the Panel's consideration of the oral and written arguments made in support of and in opposition to the charge.

Brother Elder's and Brother Saint's backgrounds

Brother Elder has been a Teamster since 1975. From 1990 until 1998, he served as a Business Agent for Local 186. In 1998, he became the Local's Secretary Treasurer (the Local's principal officer), a position he held until December 31, 2015, after he and the other incumbent officers were beaten in the Local's officer election that was concluded earlier that month. He is currently on withdrawal.

Brother Saint has been a Teamster since 1981. He served as President and Business Agent for Local 186 from 1998 until December 31, 2015. He left office after he too was beaten in the Local officer election that was concluded in December of 2015. He had previously served as an officer of the Local from 1989 to 1994. He is currently on withdrawal.

Factual background

Local 186's most recent officer election was concluded on December 10, 2015. The slate headed by Elder lost by roughly 10 % of the votes cast. After the results of the balloting were known, it is undisputed that Elder and Saint caused the Local to pay themselves and two other employees of the Local a total of \$97,780.50 in "severance pay." The payments were as follows:

William Elder, Secretary Treasurer and Principal Officer	\$48,730.50
Douglas Saint, President	\$19,500.00
Dennis Shaw, Office Manager and Business Agent	\$25,650.00
Carlos Torres, Business Agent	\$3,900.00

The checks are dated December 28 and 29, 2015, several days before the term of office for the losing incumbent officers, including Elder and Saint, ended. The formula used in computing the payments was one week's salary for each year of service.

The Local has no written severance pay plan, and it is undisputed that the payments set forth above were not approved by the outgoing or the incoming executive boards, or by the Local's membership.

Prior to these payments being made, two letters were provided to Brother Elder by the newly elected principal officer, Abel Garcia, reminding Elder that under the Local's bylaws and the IBT Constitution no "extraordinary expenditures" could be made during the period between the date when the outcome of the election was determined and the end of the outgoing officers' term of office. Elder did not respond to these letters.

"Past practice" and "advice of counsel"

Brothers Elder and Saint contend that their actions in causing just under \$100,000.00 in severance payments to be made to themselves and two other employees were supported by an unwritten "past practice" and an opinion provided to them by the Local's long time counsel. The asserted past practice amounts, according to Dennis Shaw, who served as the Local's office manager until the end of 2015, to a single instance – in 1994 – in which severance pay was allegedly provided to officers who were voted out of office. According to Shaw, who was the principal officer of the Local in 1994 and who supposedly received a severance payment at that time, he had heard "through hearsay" that prior administrations had also taken severance pay when they left office, although "there's no records of that." Brother Shaw testified that the incoming administration in 1994 "challenged" the payment of severance to the outgoing officers, but never pursued it.

According to Shaw, on or after December 10, 2015, Brother Elder asked him to seek legal advice concerning the propriety of paying severance pay in accordance with past practice. Shaw consulted with Ralph Phillips, Esq., an attorney who testified he has represented the Local for 30 years. Phillips provided a verbal opinion, which was memorialized in an email dated December 28, 2015. The opinion states that assuming severance payments to officers who lost their

positions were consistent with a “long existing past practice” it was permissible to make them to the outgoing officers in 2015.

Analysis

As an initial matter, we flatly reject the claim that the payment of almost \$100,000 in severance to departing officers and employees was justified by a “past practice.” Surely, as experienced and seasoned union officials, Brothers Elder, Smith and Shaw knew that a binding past practice commonly involves something far more routine, regular and consistent than a single prior instance, occurring more than 20 years in the past. See generally Elkouri & Elkouri, How Arbitration Works, Eight Edition, pages 12-1- 12-29 (BNA, 2016).

Moreover, given the marginal basis for claiming past practice, it is inexplicable why the outgoing officers did not consider it important that the severance payments be formally considered and approved by the executive board. This is particularly baffling given that they did consider giving Brother Elder his union provided cell phone and tablet “as a thank you for his 25 years of local union service” significant enough to require that they formally approve it at the executive board’s final meeting on December 10, 2015.

And, even at this, Brother Elder had been placed on notice – at least twice – by incoming Secretary Treasurer Garcia about the prohibition in the bylaws and in the IBT Constitution against “extraordinary expenditures” without the approval of the officers-elect and the membership. Under no contortion of the facts can it be suggested that payments of nearly \$100,000.00 in severance pay without executive board approval would be anything other than extraordinary. Even under Brother Shaw’s testimony about a supposed “past practice,” severance pay had not been paid by the Local in over 20 years.

So what are we to make of attorney Phillips 11th hour legal opinion? The simple answer is that in order for a defense based on “advice of counsel” to be considered, the advice must at a minimum have been provided based on full disclosure of all relevant facts. E.g., Williamson v. United States, 207 US 425, 453 (1907). Here, it is unfortunately clear that Brother Shaw did not provide Phillips with all of the relevant facts.

To the extent that Shaw told Phillips that “for as long as he could remember, ...the administration who was leaving was entitled to a severance package based

on the formula that he described,” it is clear that Shaw did not tell Phillips that he had personal knowledge of this happening only once, in 1994, and that anything he knew about prior administrations paying severance was “through hearsay” about which he had “no firsthand knowledge.” He also did not apparently tell Phillips that the Trustee who was assigned to the Local when the Local was placed into trusteeship from 1995 to 1997 had rescinded “any severance policy which may have been in place prior to the imposition of this Trusteeship.” Of course, both Shaw and Phillips have denied they were aware of the Trustee’s actions at the end of the trusteeship, but it is clear to us that neither Shaw nor Phillips made any effort to review the Local’s records for any documents regarding the Local’s severance pay practices. Rather it is clear that Shaw provided virtually no details to Phillips regarding the supposed past practice and that Phillips simply relied on what Shaw told him, without insisting that corroborating documentation be provided. Even at this, there is a clear conflict between what Phillips testified he was told by Shaw about the prior practice and what Shaw offered before us as the basis for claiming such a practice existed. In these circumstances, any claim by Brothers Elder and Saint to have relied on advice of counsel has no merit.

Accordingly, we find that the preponderance of reliable evidence supports the charges against Brothers Elder and Saint.

Penalties

Brothers Elder and Saint elected not to testify in this matter. Thus, we are left with no direct evidence concerning their motives in causing nearly \$100,000.00 in improper and unapproved payments to be made to themselves and two employees shortly before their term of office ended. We are likewise left with no evidence of any mitigating circumstances.

Accordingly, we must conclude that Elder and Saint should be required to reimburse the Local for the improper and unapproved severance payments they authorized. This includes the unauthorized payments made to themselves, as well the payments made to the two other Local employees.

We are mindful that the range of additional penalties imposed in prior cases of this nature also extends from permanent expulsion from the Union to suspensions from office and membership for varying periods of time. The most common penalties have been removal from office for five years and suspension from membership for three years.

We recommend here that Brothers Elder and Saint should be immediately barred from holding any office or employment with Local 186 or any other affiliate of the IBT, including benefit funds and any employment by the Local or other affiliates as a contractor or consultant, for a period of five years or until the restitution set forth below has been paid in full, whichever occurs later. Effective immediately, Brothers Elder and Saint should also be jointly and severally liable to the Local for \$97,780.50, the amount they caused the Local to pay in improper and unapproved severance payments. In addition, and also effective immediately, neither Local 186, the IBT nor any other IBT affiliates may pay Elder or Saint, nor may Elder or Saint accept, any salary, gratuities, gifts, severance payments, allowances, consulting fees, benefit payments or contributions or other compensation of any kind, directly or indirectly, except that they may receive fully vested or accrued pension, vacation or other benefits they have already earned under any existing benefit plans or programs maintained or sponsored by Local 186, the IBT or any affiliates of the IBT. In addition, Brothers Elder and Saint should be immediately suspended from membership in Local 186 and the IBT for a period of three years or until the restitution set forth above has been paid in full, whichever occurs later.

May ____, 2017

Patrick J. Darrow

Rick Hicks

Daniel H. Grace

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May 19, 2017


Patrick J. Darrow

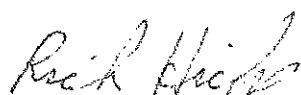
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May __, 2017

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