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Hon. Barbara S. Jones

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Hon. Joseph E. diGenova

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John J. Cronin, Jr., CPA

SENT VIA E-MAIL AND U.S. MAIL

February 14, 2017

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

Re: Disciplinary Decision Concerning Former Ohio Conference Of Teamsters Officer William Lichtenwald, Former Ohio Conference Of Teamsters Officer Charles Cimino, and Former Ohio Conference Of Teamsters Administrator Kimberly Bales

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 December 15, 2016. I find the decision to be not inadequate.

Very truly yours,


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

cc: Joseph diGenova, Esq.
Charles Carberry, Esq.
Bradley Raymond, Esq.
Geoffrey Lohman, Esq.
Basil Mangano, Esq.

Pursuant to the Consent Order of the United States District Court of the S.D.N.Y.
United States-v-International Brotherhood of Teamsters, 88 CIV. 4486 (LAP)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

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December 14, 2016

Kimberly A. Bales
Secretary-Treasurer
Local 114
4632 Paddock Road
Cincinnati, OH 45229

Mr. Charles A. Cimino
4242 Shelly Drive
Seven Hills, OH 44131

Mr. William Lichtenwald
8191 County Road NR
Delta, OH 43515

Re: Panel Report and Recommendations

Dear Sister and Brothers:

You will find enclosed the Report and Recommendations of the Panel that conducted the hearings 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

December 14, 2016

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cc: Hearing Panel
General Executive Board
Joseph diGenova, Esq., Independent Disciplinary Officers
John J. Cronin, Jr., Administrator, Independent Disciplinary Officers
Roland Acevedo, Esq.
Basil W. Mangano, Esq.
Fred Towe, Esq.
Geoffrey Lohman, Esq.
Denis J. Taylor, Temporary Trustee, OTC
Patrick Darrow, President, Joint Council 41
Bradley T. Raymond, Esq.

**REPORT AND RECOMMENDATIONS OF HEARING PANEL
APPOINTED TO HEAR CHARGES AGAINST FORMER OHIO
CONFERENCE OF TEAMSTERS OFFICER WILLIAM LICHTENWALD,
FORMER OHIO CONFERENCE OF TEAMSTERS OFFICER CHARLES
CIMINO AND FORMER OHIO CONFERENCE OF TEAMSTERS
ADMINISTRATOR KIMBERLEY BALES**

Introduction

On June 9, 2016, the Independent Investigations Officer (“IIO”) issued a report to General President Hoffa, recommending that charges be filed against Former Ohio Conference of Teamsters Officers William Lichtenwald and Charles Cimino and Former Ohio Conference of Teamsters Administrator Kimberly Bales. On June 15, 2016, the IIO issued a “revised” report. The recommended charges set forth in the initial and revised reports are identical and state as follows:

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 USC Section 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, [they] violated [their] fiduciary duties to the Conference and its members, through spending, as detailed in the IIO’s report[s], over \$1,755,000 in Conference funds without required approvals.

B. Charge Two

While President and Administrator, respectively, [Lichtenwald and Bales] embezzled and converted Conference funds to [their] 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 [IIO's reports], between approximately January 2011 and September 2015 while President and Administrator of the Conference, respectively, [Lichtenwald and Bales] embezzled at least \$238,433 from the Conference, as described above, by causing the conference to pay [their] Locals without Board approval as required and without a Conference purpose funds equal to benefits contributions that were part of [their] Local compensation for [their] 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 [Civ] 4486 (SDNY). The evidence is detailed in the [IIO's Reports].

C. Charge Three

While President of the Ohio Conference in 2014, [Lichtenwald] embezzled and converted to [his] own use Conference property worth over \$62,395.27 through violating multiple Bylaws to cause the Conference to purchase a car for [his] exclusive use and kept in [his] possession, with no proper authorization and no Conference purpose, in violation of Article XIX, Section 7 (b) (1), (2) and (3) of the IBT Constitution, and the injunction in United States v. International brotherhood of Teamsters, 88 Civ. 4486, as detailed in the [IIO's Reports].

D. Charge Four

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

[Lichtenwald and Cimino] failed to ensure the Ohio Conference of Teamsters kept records that [they] 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 USC Sections 431, 436, 439 and Art. II, Section 2 (a), (2) of the IBT Constitution, as detailed in the [IIO's Reports].

On or about June 24, 2016, General President Hoffa adopted and filed the recommended charges. Subsequently, General President Hoffa appointed a Hearing Panel ("Panel") comprised of the following uninvolved members: David Laughton, Secretary Treasurer of Joint Council 10 and Local 633; Greg Nowak, President of Joint Council 43 and Local 1038 and Brent Taylor, Secretary

Treasurer of Joint Council 80 and Local 745. Brother Laughton 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 September 7, 2016, General President Hoffa notified Brothers Lichtenwald and Cimino and Sister Bales that a hearing on the charges was scheduled for October 12, 2016, beginning at 9:30 a.m. Subsequently, the hearing was rescheduled for November 1, 2016, beginning at 9:30 a.m. at the Hilton Garden Inn Columbus Airport, which is located at 4265 Sawyer Rd., Columbus, OH 43219.

The hearing proceeded on November 1, 2016. A second day of hearing occurred on December 1, 2016, at the Courtyard Airport Marriott, which is located at 2901 Airport Drive, Columbus, OH 43219.

Each of the charged parties was present and represented by counsel. Basil W. Mangano, Esq. represented Brothers Lichtenwald and Cimino. Geoffrey Lohman, Esq. represented Sister Bales. Both attorneys have submitted written submissions which we have considered. The charges were presented by Roland R. Acevedo, Esq.

The following findings and recommendations of the Panel are based on the entire record in this case, including exhibits and sworn testimony appended to IRB's report, the testimony and demeanor of witnesses at the Panel hearing, other documents entered into evidence and the Panel's consideration of the written and verbal arguments made in support of and in opposition to the charges.

Background

a. The Trusteeship

In September of 2015, IRB recommended that the Ohio Conference of Teamsters ("OCT") be placed into trusteeship by the IBT. IRB's report cited, among other things, concerns about the OCT's inadequate internal financial controls, failures by the OCT officers to follow the OCT bylaws with respect to expenditures, excessive and unapproved spending and questions concerning whether the OCT provides meaningful services to Ohio locals and the two Ohio joint councils. The report identified a number of specific areas of concern, including the following:

1. Salaries. For a number of years the OCT's annual payroll for officers, employees and stipends for other local officers appeared to have consumed over half the OCT's annual revenues. IRB alleged that an OCT employee testified that the OCT's "major purpose was to supplement the salaries of officers in less prosperous locals."
2. Internal Controls. IRB alleged that the OCT lacked appropriate internal financial controls in the following areas:
 - a. A lack of required approvals by the OCT Executive Board for expenditures.
 - b. A lack of accounting for merchandise purchased for promotional purposes or as gifts to be distributed at OCT events.
 - c. An unwritten retainer agreement for a Dayton law firm, under which the firm was paid \$120,000 per year for legal services provided to Ohio locals. IRB alleged the OCT's arrangements with the law firm were not documented or approved by the OCT Executive Board.
 - d. OCT's Trustees allegedly did not personally examine financial records or prepare and sign Trustee reports.
 - e. Facsimile signatures were used on OCT checks, and the officers did not examine backup documentation before authorizing expenditures.
 - f. OCT officers, on some occasions, approved their own expenses.
 - g. The OCT did not review collective bargaining agreements negotiated in Ohio, as provided in the OCT bylaws.
 - h. Brother Charles Cimino was allegedly ineligible to hold office with the OCT since he was allegedly ineligible to hold office in his Local Union after waiving his salary at Local 400.

Following IRB's recommendation, the IBT placed the OCT into trusteeship in October of 2015. In the ensuing months the Trustee appointed by the IBT, Brother Denis Taylor, worked with the OCT Executive Board, staff and the Ohio locals to address each of IRB's stated concerns. On January 20, 2016, Brother Taylor made a verbal presentation to IRB concerning his activities to date as Trustee.

On or about February 3, 2016, IRB provided the IBT with a letter dated January 20, 2016, which stated that "[i]n response to the union's representations as to steps being taken to address long-standing issues in the Ohio Conference, the

IRB will delay recommending to the IBT that charges be filed against current and former officers and employees for 120 days.”

Subsequently on March 30, 2016, the IBT provided the IRB with a written summary of the actions that had been taken during the OCT’s trusteeship with respect to the issues IRB had raised. These actions included the following:

- a. Charles Cimino resigned as an officer of the OCT on October 12, 2015. He subsequently resigned as an officer of Local 400, and retired.
- b. A CPA who had formerly performed accounting services for the OCT was replaced.
- c. New policies and procedures relating to travel expenses were adopted on December 21, 2015.
- d. All OCT checks are now signed by two OCT officers, after backup information has been reviewed.
- e. OCT Trustees review expenditures monthly, conduct audits quarterly and submit Trustee Reports.
- f. Expenditures are reviewed and approved in accordance with the OCT Bylaws.
- g. Travel expenses of OCT officers are reviewed and approved by two OCT officers. Officers are not permitted to approve their own expenses.
- h. Division chairmen prepare and submit monthly activity reports.
- i. The practice of paying holiday bonuses has been discontinued.
- j. The OCT golf outing has been discontinued.
- k. The OCT Administrator’s credit card has been discontinued.
- l. The monthly retainer agreement for the law firm identified in the IRB report has been cancelled and replaced by a new agreement which sets forth the services provided and an hourly rate to be billed for those services.
- m. OCT Executive Board meetings are scheduled quarterly.
- n. Minutes of the OCT Executive Board meetings are prepared by the OCT Recording Secretary, and are approved at the next Executive Board meeting.
- o. The practice of having the OCT reimburse the President’s and Administrator’s Local Unions for their benefit contributions was discontinued on October 5, 2015. Subsequently, the two affected Locals were requested to reimburse the OCT for five years of payments. One Local did so; the other one requested an offset for the value of space it provided in its offices and services provided for the OCT.

- p. Ohio locals have been instructed to submit contracts and contract proposals to the OCT, per the OCT bylaws.
- q. The longstanding practice under which the OCT provided its president with a vehicle was discontinued. Local 20 purchased the existing vehicle for Local Union business.
- r. Effective February 1, 2016, the OCT's annual payroll was reduced by more than 60 percent, from approximately \$332,000 to \$136,000. This also resulted in the number of persons receiving salary payments from the OCT being reduced from 38 to 13. In arriving at these reductions, the Trustee consulted with the Ohio locals to ascertain the level of services they wanted performed by the OCT and implemented adjustments designed to ensure that salaries paid by the OCT were commensurate with the duties performed.
- s. The OCT's Administrator's position was eliminated, after a transition.
- t. Training conferences were scheduled for all Ohio affiliates' trustees, officers and business agents.

In addition to advising IRB of corrective measures implemented, the IBT informed IRB that the OCT had successfully endured a CAP audit performed by the U.S. Department of Labor. Apparently satisfied with the corrective measures implemented during the Trusteeship, DOL in March of 2016 notified the OCT that it declined to pursue "further enforcement action at this time."

In its correspondence with IRB, the IBT also indicated that it did not believe that internal disciplinary actions against the OCT officers were warranted in light of the corrective measures that had been implemented, the extensive and voluntary cooperation of the OCT officers in effectuating these corrective measures and the need for the Ohio locals to continue to review the level of services provided by the OCT and the OCT's compliance with the newly implemented internal controls.

b. IIO Proposes Conditions Under Which He Would Not Recommend Charges Against OCT Officers which the IBT and OCT Officers Accepted but the IRO then Rejected

The IIO responded on April 1, 2016 to the IBT's March 30, 2016 correspondence, summarized above, as follows:

"From your submission it appears that after decades of violations the Ohio Conference has been brought into compliance with IBT requirements and federal labor law. As a consequence, I will not recommend any charges

against the former Conference Trustees for past conduct. As to Mr. Lichtenwald, Mr. Cimino and Ms. Bales, if the following conditions are met I will not recommend any charges against them. Mr. Lichtenwald, and Ms. Bales must enter into agreements to be approved by the Independent Review Officer that they will never hold any positions with the Ohio Conference and that they will never receive any payments from the Conference. The standard language of the IRB's previously approved agreements should be included. If either fails to enter into such an agreement, I will recommend the charges previously discussed be brought against that individual. As to Mr. Cimino, I will not recommend any charges against him if he enters into an agreement to permanently resign from the IBT."

Agreements containing the conditions proposed by the IIO were obtained by the IBT from Brothers Lichtenwald and Cimino and Sister Bales, and were submitted for approval.

On May 16, 2016, correspondence signed by John J. Cronin, Jr., purportedly on Mr. Civiletti's behalf, advised the IBT that the agreements proposed by the IIO were rejected as "insufficient considering the alleged offenses." The IBT requested the opportunity to meet with the IIO and the IRO to discuss this problematic development. Notwithstanding language in the Final Order specifying, among other things, that "the individual ... charged, and the IBT shall have the right to be heard by the Independent Review Officer in connection with his decision whether to approve a proposed settlement," a meeting with the IRO did not occur prior to Mr. Civiletti's resignation on October 6, 2016.

c. IIO Issues Report Recommending Charges Against Brothers Lichtenwald and Cimino and Sister Bales

On June 9, 2016, the IIO issued a report recommending the charges, quoted above, against Brothers Lichtenwald and Cimino and Sister Bales.

On June 10, 2016, the IBT requested the opportunity to meet with the IIO and the IRO concerning these charges and an unrelated matter. Among other things, the IBT expressed its exasperation with having obtained agreements satisfying the conditions that the IIO had proposed only to have the agreements rejected by the IRO. The IBT also cited a number of relevant facts that were omitted from the IIO report and allegations in the report that appeared to be at odds with the evidence cited in the report. This included citation to one witness's testimony for the conclusion that the OCT serves no purpose and exists principally

to supplement the salaries of officers in less prosperous locals, a characterization which is unsupported by the cited testimony – in any respect. It also included an assertion that Brother Lichtenwald caused the OCT to purchase an automobile, an action which allegedly was not authorized by the OCT's bylaws. In fact, this allegation is directly contradicted by specific language in the OCT's bylaws which expressly authorizes the OCT President to purchase or lease an automobile. This language was omitted from the IIO's initial report recommending disciplinary charges.

On June 15, 2016, the IIO responded to the IBT's June 10 correspondence, essentially contending that the IRO had full authority to reject the conditions the IIO had proposed. He also issued a "Revised" report, dated June 15, 2016, which quoted the language in the OCT bylaws authorizing the OCT President to purchase or lease an automobile, but nonetheless recommended that Brother Lichtenwald still be charged with embezzlement for doing so.

Concerns About the IIO's Investigation and Discrepancies between Allegations set forth in the Reports and the Evidence

The Panel has carefully reviewed the IIO's report and revised report recommending charges in this matter, as well as the investigative record. We have found a number of extremely troubling discrepancies between the IIO's "Investigative Findings" and the evidence cited as support for them. We are also concerned about instances in which the IIO's investigators appear to have avoided the development of a complete record.

The IIO's "finding" that the OCT "did little that benefitted the members for decades" appears to be predicated on outright distortions and mischaracterizations of the evidence. This was exacerbated by documented efforts by the IIO's staff to prevent witnesses or their counsel from establishing a full and complete record during the investigation.

The IIO cites as sole support for the assertion that "[t]he Conference performed little, if any, services for members" an LM-2 filed in March of 2015. The LM-2 actually states that that the OCT spent \$429,895 on "representational activities" and another \$195,673 on "political activities and lobbying." We are left to wonder how the IIO could rationally have concluded that this exhibit supported its assertion that the OCT performed little, if any, services for members.

The IIO's report also asserts that the OCT "Board members and other Local officers it paid were unable to provide examples of concrete actions taken to benefit the members." Cited as support for this assertion were excerpts from the testimony of five witnesses, most of whom were never even asked to describe the services performed by the OCT. The testimony cited in the IIO's report was as follows:

Exhibit 5, page 38. Sister Bales testified about her preparation of trustees reports, which she provided to the OCT's officers. She was not asked about the services provided to locals by the OCT.

Exhibit 4, pages 33-34, 37. Doyle Baird, who is chair of the OCT's construction division, testified earlier in his deposition about his duties for the OCT in the construction industry. These duties included negotiating and administering a statewide highway construction contract with the Ohio Contractors Association, providing assistance to locals throughout Ohio which had construction jurisdiction, negotiating and assisting with the administration of statewide pipeline agreements, assisting business agents throughout the state with pre-job meetings for construction projects, administering prevailing wage requirements on state construction projects in Ohio and working with statewide construction grievance panels.

Exhibit 7, pages 27, 41-42. Travis Bornstein, chair of the OCT's freight division, testified about his participation on freight grievance panels, his involvement in inspecting hotels used by freight members during the performance of their duties and in handling jurisdictional disputes between Ohio locals. The testimony cited in the report dealt with Bornstein's dispute with former Joint Council 41 President Al Mixon over Mixon's proposal to eliminate the OCT, with which Bornstein strongly disagreed.

Exhibit 9, pages 25 -28, 32, 39. Brother Cimino testified about his administrative duties as Secretary Treasurer of the OCT. He was not asked about services that benefitted members.

Exhibit 10, at 29. Pat Darrow, chair of the OCT's UPS division, provided testimony about the approval of expenses at the OCT, and later testified about his duties as UPS division chair, including participation on UPS grievance panels.

The IIO's report also alleges that 20 % of the OCT's expenditures were for legal expenses for other union entities without the required Board approvals. The report later states that "[f]rom 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. ... The Board did not approve these expenses as explicitly required by the Bylaws." In fact, although Ohio law does not mandate that attorney retainer agreements be in writing, minutes of the OCT Executive Board confirm that the currently operative terms of the Doll firm's retainer were approved -- on July 19, 2010 (Ex. 56) -- a fact that is inexplicably omitted from IIO's report. Also omitted from the report is the fact that the Doll firm has regularly provided the OCT with detailed and itemized statements reflecting the legal services it has performed under the retainer agreement, which are approved by the OCT Executive Board and by the OCT delegates. What the retainer covers and does not cover is set forth in a document that has been routinely distributed by the OCT to all Ohio affiliates.

Similarly, the assertion in the IIO's reports, to the effect that one Conference employee realistically reported the conference's major purpose was to supplement the salaries of officers of less prosperous locals is contradicted by the evidence cited as support for this claim. The testimony of Travis Bornstein, cited for this conclusion (Exhibit 7, pages 26-28), was as follows:

A (By Bornstein): [Describing a Joint Council 41 delegates meeting occurring in March of 2015] "... But the most unusual thing that really threw everybody off at some point, and I believe it was under the president's report, but at some point Brother Mixon had decided that he was going to make a proposal to the delegates to eliminate the Ohio Conference of Teamsters, and he had never brought that up to us at our meeting that we just had an hour before, and he had never brought up to us at any time in any discussion with me or the executive board that I'm aware of. And one of his comments was that 'I'm proposing that we eliminate the Ohio Conference of Teamsters. Its salaries and hotel rooms,' and being totally honest, that pissed me off.

Q (By IRB attorney Healy): Why?

A: Because Brother Mixon is the highest paid union official in the room, and I couldn't believe that he had the gall to bring up salaries as he's the

highest paid union official in the room and he don't believe the rest of us deserve to make any money?

Q: Wasn't he also the highest ranking official in the room?

A: He's on the International payroll, but I don't know that he's -- I don't know how you want to do rank. I mean, I was in the Marine Corps. I know a little bit about rank.

Q: One assumes.

A: I mean, yeah, he's on the International payroll, he's on the Ohio Conference payroll, he's on the Joint Council payroll.

Q: He's an International vice president.

A: That's correct. That's correct. And, you know, I'll just be totally straightforward --

Q: Please.

A: -- I make about \$111,000. He makes twice as much money [as] I make, so I just couldn't believe that that's the direction he was going. I couldn't believe it. And not -- it made me feel like he doesn't know what the Ohio Conference does, all the services we provide, all the things we do. You know, I get phone calls every week from business agents across the state, text messages, I do a lot, and I just couldn't believe that that's the direction he was going without no warning shot, without no discussion with the executive board, without -- this was his first meeting as the president Joint Council 41. Now, if he had this agenda, you would have thought he would have discussed this with us, because I can look you dead in the face and say, 'If that was his agenda, I would not have supported him for president.' It just makes no sense to me."

Far from being a "different interpretation of the evidence," as the IIO suggested in his correspondence of June 15, 2016, the assertion in the IIO's report that Brother Bornstein had testified that the OCT's major purpose was to supplement the salaries of officers in less prosperous locals, is not supported by Bornstein's testimony -- at all.

Moreover, the IIO's report asserts that Bornstein, among other witnesses, was unable to provide examples of concrete actions taken to benefit the members. In fact, although he was not asked during his deposition to "provide examples of concrete actions taken to benefit the members" he testified extensively about his involvement with grievance committees that meet monthly to adjust grievances in freight and other industries, as well as the assistance he has provided to Locals in other industries (Exhibit 7, pages 8-11). We are frankly mystified that anyone could conclude that the adjustment of grievances does not benefit members. And, when the attorney representing Bornstein at his sworn examination sought to ask Bornstein additional clarifying questions concerning the duties he performed for the OCT, the IRB attorney conducting the sworn examination cut him off and terminated the proceedings. The exchange was as follows (Exhibit 7, pages 44-46):

Q (By Attorney Baptiste): You were talking about the amount of time you spend under the auspices of the Ohio Conference with the freight committee. But you also made reference to a miscellaneous and private carriage committee.

A: Yes.

Q: Describe for us what that is.

A: The private carriage and miscellaneous committee is done on Tuesday and that handles our miscellaneous contracts, our contracts that don't necessarily fall under the freight agreement.

Q: Do you handle that committee.

A: I do.

Q: And what kinds of companies are covered by this --

[By IRB Attorney Healy]: Mr. Baptiste, can I interrupt for a second? This is our deposition and we're --

MR. BAPTISTE: We're trying to make a complete record and an accurate one.

MR HEALY: If you would like to send a follow-up letter –

MR. BAPTISTE: -- and since you all are getting into the time allocations, this goes beyond the freight agreement and that's not been brought up.

MR. HEALY: Mr. Bornstein has said it's difficult to give us percentage numbers and we'll accept that as his answer.

MR. BAPTISTE: I would like to address the issue of this other committee, which is non-freight.

MR. HEALY: Can you have a conversation with him off the record and maybe if you'd like to append other information? This is not a two-way street here, this is a deposition.

MR. BAPTISTE: We're trying to make sure we get an accurate record; are we not?

MR. HEALY: Have a conversation with your client.

MR. BAPTISTE: I know what his answer is going to be. We've gone over what he does.

BY MR. BAPTISTE:

Q: Do you understand the question?

A: I understand your question about the other committees.

MR. HEALY: As far as we're concerned this deposition is over.

BY MR. BAPTISTE:

Q: What other companies participate in the committee?

MR. HEALY: I'm going to object to anything further. This is over. We're finished. Thank you.

MR. BAPTISTE: I guess they don't want to get the whole story."

Needless to say, Mr. Healy's pronouncement that an attorney conducting a deposition has the authority unilaterally to preclude a deponent or his attorney from asking questions on cross examination is directly at odds with how depositions are conducted under Rule 30 (c) of the Federal Rules of Civil Procedure. Moreover, it is quite obvious to this Panel, from the exchange between Mr. Healy and Mr. Bornstein's attorney in particular, that the IRB's investigation in these matters was conducted with the apparent purpose of generating evidence to support charge recommendations as opposed to obtaining all relevant facts. In our view, this undermines the credibility of the investigation, the allegations in IIO report and, frankly, the entire independent disciplinary system established by the Final Order.

And, irrespective of the forgoing, we are disturbed by what appears to be a fundamental theme in the IIO's report, to the effect that no union purpose can be achieved when a labor organization provides assistance to an affiliate. Thus, in connection with the report's characterization of the longstanding practice under which the OCT reimbursed its President's and Administrator's Local unions for benefit contributions the Locals made on their behalf, the report implies that having "one union entity ... pay off the obligations of another is embezzlement," citing 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). The cited litigation actually involved circumstances that were far different from having the OCT reimburse two local unions for what were otherwise appropriate benefit contributions. Rather, the cited litigation involved a scheme in which the defendants caused one union entity to reimburse another union entity for payments that were inappropriate and fraudulent in the first place.

For our part, we are aware that it is not infrequent that the IBT, a Joint Council or a Conference will provide a loan or financial grant to ensure that a Local Union can meet its responsibilities to members. Mutual support for the common good is expressly contemplated in the preamble to the IBT Constitution. Whether and to what extent Locals can be assisted in fulfilling their responsibilities to members by other affiliates is well within the prerogatives of the Union and its affiliates to decide. The arrangement under which Locals in Ohio have the option of using the services of the Doll law firm is plainly an example of this. This is not to say that the formalities of obtaining necessary approvals may be arbitrarily dispensed with. But we are compelled to reject any suggestion in the IIO's report that a decision by one union entity to subsidize expenses properly paid by another union entity has no union purpose and must be deemed "embezzlement."

In either case, and again in regard to the IIO's recurrent claim that the OCT performs no services for members, Brother Lichtenwald testified before us about the various functions performed by the OCT, including the following:

1. The OCT has established divisions for crafts that are represented by the Local unions in Ohio. These include a UPS division, a freight division, a beverage division, a solid waste division, a public sector division, a law enforcement division, a construction division, a warehouse division, a bakery division and an industrial trades division.
2. These divisions administer procedures for the adjustment of statewide grievances for their respective crafts on a monthly basis.
3. The OCT negotiates and administers Ohio riders to the National Master Freight Agreement and the UPS national contract.
4. The OCT construction division negotiates a statewide construction agreement, coordinates with the Ohio locals regarding upcoming construction projects and assists them in dealing with other construction unions.
5. The OCT warehouse division participates in a warehouse grievance panel that meets in Dayton and Lima, Ohio.
6. The OCT solid waste divisions assists Ohio locals representing workers in this industry, in order among other things to ensure that the contracts have common expiration dates and to address efforts by the employers to withdraw from the Central States Pension Fund.
7. The OCT beverage division has coordinated negotiations by the Ohio locals with major beverage distributors. This has included the organization of a coordinated bargaining strategy which includes ensuring that representatives of all Ohio locals with members employed by a particular employer attend all negotiations with that employer, a recognized method of preventing the employer from attempting to whipsaw the locals with which it bargains. General Electric Co., 173 NLRB 253 (1968), enforced, 412 F2d 512 (2nd Cir. 1969).

These services obviously benefit members.

Without belaboring our concerns further, we have approached our review of the specific charges against the charged individuals here with a strong dose of skepticism concerning the accuracy and completeness of the report recommending them.

Analysis of Specific Charges

Charge One

Brothers Lichtenwald and Cimino and Sister Bales are charged with having violated their fiduciary duties to the OCT by spending over \$1,755,000 in Conference funds without required approvals. A significant portion of this amount, as discussed above, comprises legal fees paid to the Doll law firm pursuant to an arrangement that was most recently approved by the OCT Executive Board on July 19, 2010 and documented in the minutes, a fact omitted from the IIO's report. The relationship between the OCT and this law firm, and a predecessor firm, dates back many years before that. Also not mentioned in the IIO's report is the fact that the Doll firm has regularly accounted to the OCT for the services it performs pursuant to its retainer, as well as those performed outside of its retainer, in detailed legal reports which have been submitted to and approved by the OCT Executive Board and the OCT delegates. Given the nature of legal expenses, which generally cannot be determined in advance of when the services are provided, we are not prepared to conclude that the OCT Board failed to monitor the longstanding arrangement with the Doll firm, or that it failed to approve the payment of the firm's fees on a periodic basis.

The practice, under which checks were prepared by Sister Bales with stamped signatures for Brothers Lichtenwald and Cimino, and without obtaining affirmative approvals based on their review of invoices and other backup is, however, another matter. Of course, stamping signatures on checks on behalf of persons who have not actually reviewed the underlying documentation is clearly inconsistent with the requirement of internal controls. We reject the IIO's charge that Sister Bales is culpable for this inappropriate procedure, however, given her testimony that she was instructed by the OCT officers to handle checks this way after her proposal to travel monthly to Columbus so that she could meet in person with Brothers Lichtenwald and Cimino to review and sign checks was rejected by these two top OCT officers.

Additionally, it is apparent to us that the OCT officers were less than attentive to the requirement that all OCT expenditures be expressly approved, although as with legal expenses we think it is nonsensical to suggest that every expenditure must be expressly approved before the OCT Board even knows the specific amount. Thus, the record shows that the OCT Board generally approved the OCT's payment for expenses for various Conference events in advance of knowing specifically what the expenses were going to be. Nevertheless, it would

have been preferable for express approvals to have been obtained for these expenditures once the precise amounts were known, rather than merely including them in financial statements for which blanket approval was obtained at the end of the year.

The lax adherence to the requirement that expenses be expressly approved by the OCT Board has, we understand from the evidence before us, been corrected in connection with the trusteeship the IBT imposed. Nevertheless, we conclude that as experienced union officials, Brothers Lichtenwald and Cimino and, to a lesser extent, Sister Bales were responsible for the prior defects.

Charge Two

Brother Lichtenwald and Sister Bales are charged with embezzling OCT funds because of their involvement in the continuation of a longstanding practice under which the OCT reimbursed the Local Unions of the OCT President and Administrator for benefit contributions made on their behalf. It is clear that this practice dates back to at least 2000, long before Lichtenwald became OCT President and long before Bales was hired as Administrator. It is also clear that minutes have not been located that reflect that this practice was ever expressly approved by the OCT Executive Board. Nevertheless, and as indicated above, we do not believe these reimbursements could never serve a proper union purpose, since assisting other affiliates with legitimate expenses would be consistent with the OCT's bylaws, which clearly contemplate assistance by the OCT to the constituent Local unions.

Embezzlement, of course, occurs when a fiduciary improperly takes assets with fraudulent intent. In order to establish the requisite intent, the government must establish that the defendant "did not believe in good faith that the use of the [union's] funds ... would benefit the [members]; or that defendant did not believe in good faith that his or its use of the funds was authorized or would be authorized by the [union's] representatives. United States v. Nolan, 136 F.3d 265, 270 (2nd Cir. 1998). Both Brothers Lichtenwald and Bales have testified that they had a good faith belief that continuation of the longstanding practice by which the OCT reimbursed the OCT President's and OCT Administrator's Local Unions for benefit contributions was appropriate. Clearly, they were entitled to have these contributions paid by their Local Unions. We do not believe, in these

circumstances, that the preponderance of reliable establishes that they acted in bad faith or with fraudulent intent.

In either case, the practice was terminated in October of 2015, and the two affected Local Unions were requested to return the funds the OCT had reimbursed to them for Brother Lichtenwald's and Sister Bales' benefit contributions since January 1, 2011. Both Locals have subsequently done so, with Local 114 obtaining a credit, acceptable to Trustee Taylor, for the value of office space provided by Local 114 to the OCT during the same time period.

In these circumstances, and while we consider the lack of specific authorization by the OCT's Executive Board for the payments to have been problematic, we do not believe that "embezzlement" by Lichtenwald and Bales has been proven by a preponderance of reliable evidence. As discussed previously, Brother Lichtenwald and Sister Bales were entitled to the benefit contributions in connection with their positions with their Local Unions, and we do not find that the OCT's reimbursement of these contributions lacked any proper union purpose. Moreover, five years of these payments have been refunded and the practice has been discontinued.

We accordingly recommend that Charge Two be deemed resolved.

Charge Three

Brother Lichtenwald is accused of "embezzlement" because he allegedly caused the OCT to expend union funds to purchase a vehicle without authorization and without a proper union purpose. According to the IIO's June 9 report, the purchase was not authorized because he did not ask the OCT Executive Board to approve the specific amount paid for the vehicle and a union purpose for the vehicle was not "given in the records." He is faulted for failing to obtain specific Executive Board approval to dispose of an existing vehicle he had inherited from his predecessor as OCT President, for failing to obtain specific Executive Board approval to borrow funds to purchase the replacement vehicle and for failing to obtain specific Executive Board approval for payments the OCT made on the loan for the new vehicle. The lack of union purpose was, according to the charge report, confirmed by Lichtenwald's "lack of even an attempt to justify one in the records" and by an assertion that his "duties were such he was not traveling in Ohio frequently, if at all, on Conference business," a conclusion that according to the report was corroborated by the fact that many of the vehicle related expenses Lichtenwald caused the OCT to pay were incurred in the Toledo area.

In a number of respects, the report is misleading and distorts the evidence in order to support the IIO's insinuation that the vehicle was purchased for Lichtenwald's personal use. Lichtenwald was not asked about the vehicle or, for that matter, to describe his duties for the OCT during his IRB conducted sworn examination. In his testimony before us, Brother Lichtenwald described his various duties on behalf of the OCT and stated that he drove the OCT vehicle while performing them. He described driving the vehicle to monthly grievance panels conducted by the OCT for the Ohio freight and UPS divisions, to attend negotiations for an Ohio rider to the NMFA and the central region rider to the UPS agreement, to activities of the OCT's construction division, warehouse division, beverage division, solid waste division and bakery division, to meetings and events related to a contract campaign involving Heidelberg Distributing, an Ohio beverage distributor. He discussed driving the OCT vehicle to various locations throughout Ohio on OCT business, including attendance at grievance hearings, contract negotiations, visiting each of the locals throughout the state, and attending steward seminars and workshops. He testified that he regularly drove the OCT vehicle to these various OCT events, not merely on "rare occasions, if at all," as is asserted in the IIO's report. To the extent his fuel expenses were incurred primarily in and around the vicinity of Toledo, where he resides and where his Local Union is located, he credibly testified that he generally fueled the vehicle at the beginning of each trip.

While the procedures he used to ensure that the transactions with the OCT's vehicle were approved were less than ideal, we do not believe that the preponderance of reliable evidence supports the assertion that he acted with fraudulent intent or committed "embezzlement" with respect to these transactions. Thus, the OCT Executive Board in January of 2014 expressly authorized Brother Lichtenwald to purchase a new vehicle to replace the one that had been purchased by his predecessor in 2008. He credibly testified that several months later he caused the OCT to sell the 2008 vehicle he had been driving since he became OCT President and purchase a 2014 version of the same model. Although no mention of the provision appears in the IIO's June 9 report recommending the charge of "embezzlement," Lichtenwald credibly testified before us that he had relied in good faith on Article XI, Section 4 the OCT's bylaws, which expressly authorized the OCT President to purchase a vehicle every two years for use on Conference business or for other purposes. And, according to his testimony before us, which again we find credible, Brother Lichtenwald made sure that the financial transactions related to the vehicle were reported on the OCT's financial statements, which were submitted to and approved by the OCT Executive Board and the

delegates at the annual OCT meeting occurring several months later. We do not believe that the preponderance of reliable evidence supports a conclusion that Lichtenwald's actions were in bad faith or manifested fraudulent intent. See United States v. Nolan, supra.

To the extent that the IIO's report suggests that Lichtenwald's travel on OCT business was limited only to attending several OCT meetings per year, and that therefore the vehicle was simply a personal perquisite with no union purpose, we note the IIO's investigator failed to ask him or other witnesses about what OCT business was conducted using the vehicle, and instead drew inferences from expense records obtained from the OCT. Lichtenwald's testimony confirms that these inferences are incorrect and contrary to the clear preponderance of reliable evidence. It is also clear that Brother Lichtenwald used the vehicle for conducting business relating to his duties for his Local Union, a union purpose that was permitted under the terms of the OCT bylaws, and that he occasionally used the vehicle for personal business as well, which was also expressly permitted by the OCT's bylaws.

In either case, on January 27, 2016, the Executive Board of Local 20 and its stewards' council approved the purchase and transfer of the vehicle from the OCT to Local 20, a transaction which has been effectuated.

In short, and while it would have been better practice for Brother Lichtenwald to have more thoroughly documented the reasons why he believed replacement of the OCT's existing vehicle was warranted in 2014 and the union purposes for which it would be used, and while it would certainly have been better practice for him to have obtained prompt approval by the OCT Executive Board of the specific amount of OCT funds that were going to be spent to obtain a replacement vehicle once he knew what the amount was, it is clear to us that the report's characterizations of Brother Lichtenwald's actions as "embezzlement" are not supported by a preponderance of reliable evidence.

We accordingly recommend that Charge Three be deemed resolved.

Charge Four

Brothers Lichtenwald and Cimino are charged with having failed to ensure that records were kept by the OCT that show the union purpose of expenditures they caused the OCT to make or the disposition of certain assets contrary to the requirements of the LMRDA and the IBT Constitution. Although there is evidence

that record keeping by the OCT was lax and that adequate internal controls were lacking, we are comfortable that these issues have been adequately addressed during the trusteeship, to the apparent satisfaction of the agency charged with enforcing the LMRDA's record keeping requirements, which has indicated it will "take no further enforcement action at this time regarding [these] violations."

We recommend that Charge Four be deemed resolved.

Recommended Penalties

As indicated above, we have concluded that some aspects of the charges against Brothers Lichtenwald and Cimino and Sister Bales have merit, while others are not supported by a preponderance of reliable evidence. We have concluded that each charged individual violated to some extent their responsibilities as union fiduciaries. While it appears that financial practices in the OCT were generally lax and documentation was poor, we do not believe that a preponderance of reliable evidence supports the charges of "embezzlement" against either Brother Lichtenwald or Sister Bales.

In this regard, we believe there is and should be a distinction between improper actions which result from ignorance, mistakes or inattention as opposed to those which are animated by greed, dishonesty or other illegal motives. Much of what was charged here appears to us to have been the product of ignorance, mistakes or inattention, albeit in circumstances in which some discipline is warranted. Moreover, we believe that the charged individuals' long records of otherwise exemplary service and lack of discipline are substantial mitigating circumstances that should be considered in formulating our recommendations concerning appropriate penalties. In this regard, we have concluded that IIO diGenova got it right on April 1, 2016, when he proposed terms to resolve these matters without issuing formal charges.

Here, Brother Lichtenwald has an exemplary record as a union official dating back more than 35 years. He has now relinquished all of his Union positions, has agreed that he will never again hold a position, elective or appointed, with the OCT, and has retired. He has further agreed that following his resignation, he will not seek or accept salary, gratuities, gifts, payments, allowances, fees, benefit payments or contributions or any other contributions or any other compensation of any kind from the OCT, except for any compensation which may have accrued to him prior to his resignation. We agree with Mr.

diGenova's view that these terms are as an appropriate penalty for his actions, and adopt them as our recommended remedy.

Similarly, Brother Cimino has an unblemished record as a Union official dating back to the 1960's. He has now relinquished all of his Union positions, has agreed he will never again hold a position, elective or appointed, with the OCT, and has retired. He has further agreed that following his resignation as an officer of the OCT he will not seek or accept salary, gratuities, gifts, payments, allowances, fees, benefit payments or contributions or any other compensation of any kind from the OCT, except for any compensation which may have accrued to him prior to his resignation. We likewise agree with Mr. diGenova and accept the terms he proposed on April 1, 2016, as the appropriate penalty for his actions, and adopt them as our recommended remedy here.

In regard to Brothers Lichtenwald and Cimino, we additionally note that the only significant additional penalty we could consider imposing against them at this point would be to bar them from associating with members. Both of them have clearly dedicated their lives and careers to the Union and to representing the members. Both have compiled otherwise exemplary records in doing so. In our view, imposing an associational ban at this point would be unnecessarily petty and vindictive, and would neither remedy the violations with which these former Union officers have been charged or serve as a valid deterrent to others. Their careers are over, and in our view their reputations have been already tarnished by the charges that have been brought against them. An associational bar, which would preclude them from social interactions with long term colleagues and associates, and which I normally reserved for individuals found to have committed far more serious violations, would serve no valid purpose under the IBT Constitution or the Final Order.

Finally, with respect to Sister Bales, we note that since she became a Teamster in 1982 she has served the Union in various capacities continuously since then. She has been the Administrator for the OCT since 2009. The charges against her largely involve actions she took at the direction of the OCT's top officers. Prior to these charges, her record as a Union official has been unblemished. She has resigned her position as OCT Administrator and, like Brothers Lichtenwald and Cimino, has agreed that she will never hold a position, elective or appointed, with the OCT, nor will she seek or accept salary, gratuities, gifts, payments, allowances, fees, benefit payments or contributions or any other compensation from the OCT, except for any compensation that may have accrued to her prior to her resignation. Once again, we agree with Mr. diGenova, accept these penalties

as proposed by him on April 1, 2016 as appropriate, and adopt them as our recommended remedy here.

December 15, 2016

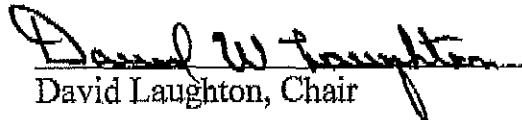
David Laughton, Chair

Greg Nowak

Brent Taylor

as proposed by him on April 1, 2016 as appropriate, and adopt them as our recommended remedy here.

December 15, 2016


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