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June 16, 2017

SENT VIA FAX AND UPS
Demos Demopoulos
Secretary-Treasurer
IBT Joint Council 16
265 West 14th Street, Room 1201
New York, NY 10011

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RE: Appeal of the IBT Local 804 Executive Board's Decision Concerning Charges filed by John Piccinich against Timothy Sylvester, James Reynolds, Peter Mastrandrea, David Fennell and Neil O'Brien

Dear Brother Demopoulos:

This appeal is submitted on behalf of Tim Sylvester, Jim Reynolds, Pete Mastrandrea, Dave Fennell and Neil O'Brien ("the appellants") in regards to the undated decisions issued by IBT Local 804's Executive Board concerning internal union charges filed against them by John Piccinich. While individual decisions were issued against each appellant, the decisions in large part repeat the same findings, and will therefore be addressed together. Piccinich, the Secretary Treasurer of Local 804, charged the appellants, who are members of the prior Local 804 Executive Board, with embezzlement and refusing to cooperate with an investigation.

The alleged "embezzlement" is simply that the outgoing officers were paid for their accrued and unused vacation time. The alleged "failure to cooperate with an investigation" stems from the fact that Roland Acevedo – outside counsel to Local 804 – demanded that the appellants each submit to a sworn deposition, but failed and refused to answer basic questions regarding his authority to do so. The appellants informed the Executive Board that they were cooperating with the investigation into payments made for unused accrued vacation and would agree to be questioned at any time by the Executive Board members as provided for in the bylaws. The Executive Board refused. The appellants also offered that former Secretary Treasurer Jim Reynolds speak to Acevedo to explain how the payments were calculated and made. Acevedo agreed, and Reynolds did so. Finally, the appellants informed Acevedo that the other four appellants would consider submitting to a deposition if Acevedo could cite any authority under the bylaws or IBT Constitution. Acevedo never answered.

For these "crimes" of being paid for their unused vacation time and offering to be interviewed by the Executive Board but not an outside attorney, the appellants have been jointly fined $197,872.66, each has been suspended from membership, and each has been barred from office for either four or five years, or until the entire $197,872.66 is repaid, whichever is later.

When you cut through the loaded political rhetoric, this is a see-through case of an incoming union administration smearing an outgoing union administration and abusing their power to make their political competitors ineligible to run for local union office by suspending them for years. The alleged "embezzlement" was nothing more than the outgoing President paying the outgoing officers and staff for their accrued and unused vacation time. The alleged "failure to cooperate with an investigation" stemmed from the fact the Executive Board members refused to talk directly to the charged members and that outside counsel Roland Acevedo, with no legal basis, claimed he has unlimited powers to require Local 804 members to submit to a sworn deposition.

The hearing on these charges did not meet basic standards of fairness and integrity. The appellants repeatedly asked the members of the Executive Board to recuse themselves from the case due to the overwhelming evidence of their bias against the appellants, including their prior statements that the charged parties were guilty of the violations that they were charged with. The Union's outside counsel, Roland Acevedo, testified at the hearing that the Executive Board already believed the charged members were guilty at the time they hired Acevedo. In short, the members of the Executive Board hired an attorney to put together a case against members who they already thought were guilty, then sat as judge and jury to find those same members guilty. It shocks the conscience that the members of the Local 804 Executive Board refused to recuse themselves despite repeated requests from the appellants.

The hearing itself was tainted by other misconduct. Despite the prohibition against having attorneys represent members at internal union hearings, the union's outside counsel, Roland Acevedo, was allowed to present Piccinich's case against the charged members. Acevedo was allowed to offer hours and hours of hearsay testimony. Shockingly, when a hearsay objection was made, the hearing panel allowed Acevedo—the witness who was testifying on behalf of the charging party—to rule on the objection. *See* Peter Mastrandrea Transcript at 38. We are unaware of any legal proceeding of any kind in which a witness for a party has been allowed to rule on an objection. It shows just how fundamentally unfair these proceedings were. Acevedo ruled that "I can refer to any witness I want. Hearsay is admissible." Id. However, when Jim Reynolds tried to present favorable hearsay testimony, he was cut off by the hearing panel and the testimony was dismissed:

> MR. WEIDTMAN: You weren't there. So that's just hearsay then, right?

Reynolds. Tr. at 99.

This exemplifies the complete double-standard in these proceedings. The hearing panel did not even attempt to give a basic appearance of fairness. The charged members were thereby denied their right to a fair hearing under both the Teamster Constitution and federal law. The decision of the Local 804 Executive Board must therefore be overturned.

The Executive Board Members Were Required to Recuse Themselves Because They Were Not Impartial and Had Previously Demonstrated Bias Against the Appellants

Federal law protects the right of every union member to "a full and fair hearing" prior to the imposition of any discipline. 29 U.S.C. § 411(a)(5). It is a fundamental requirement of a fair hearing that the judges be impartial and unbiased. For example, federal law requires that judges recuse themselves from any case in which they have bias or prior knowledge, or in which their impartiality

could even be questioned:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding...

28 U.S.C. § 455.

Similarly, labor arbitration rules provide that an arbitrator can be removed if there is "justifiable doubt as to the arbitrator's impartiality or independence, including any bias... in the result of the arbitration." *See* American Arbitration Association's Labor Arbitration Rules, Para. 15.

The IBT Constitution explicitly incorporates this basic rule of judicial fairness.

> In no event shall any involved officer or member serve on a hearing panel, participate in the selection of a substitute member of a hearing panel, or participate in the decision making process of the trial body. This prohibition shall apply to any proceeding conducted under Article XIX or any other Article of this Constitution.

IBT Constitution, Art. XIX, Sec. 1(a).

The decision states that each appellant "argues that the panel is biased against him merely because the current Executive Board and [former] Executive Board were political rivals." This is completely untrue. The appellants' position is that due to the overwhelming evidence that the hearing panel lacked impartiality and had personal bias against the charged members of the former Local 804 Executive Board, the members of the hearing panel were obligated to recuse themselves from this case. Their refusal to do so requires that the Joint Council overturn the Local 804 Executive Board's decision.

The evidence conclusively shows that the current Executive Board decided that the charged members had violated the Constitution and Bylaws even before the hearing opened in this matter. This evidence comes from the Union's own attorney and lead witness, Roland Acevedo. Acevedo repeatedly testified that the Executive Board retained him because they believed the charged members were guilty:

- "The current Executive Board, when they retained me, thought that the payout violated the IBT Constitution and the Local's Bylaws." (Tim Sylvester Hearing Transcript at 20.)

- "The current Executive Board of Local 804 was concerned that that payout violated the Local's Bylaws and the IBT Constitution" (David Fennell Hearing Transcript at 15.)

- "The current Executive Board thought that the payout violated the Local's bylaws and the IBT Constitution." (Peter Mastrandrea Hearing Transcript at 20.)

This is a shocking admission from the union's hired investigator that the Executive Board had made up its mind on these charges long before the hearing began. The Executive Board's decision brushes away this evidence that they had already judged the appellants' guilt by saying that "no investigation would ever be conducted by any Executive Board if it was not concerned about an expenditure of money or thought that the Constitution and Bylaws of the Union had been violated." This completely misses the point. The issue is not that Executive Board started an investigation based on their opinion that the Constitution and Bylaws had been violated. The problem is that they refused to recuse themselves from hearing the charges despite the fact that their opinion of the case was already biased.

Further evidence of the Executive Board's lack of impartiality are the flyers that they distributed at Local 804 shops during the 2016 IBT delegate election, long before the hearing in this matter occurred. The members of the current Executive Board—who sat on the hearing body—ran on the 804 Strong Slate against the Teamsters United slate, which had members who served on the prior Executive Board. The 804 Strong slate distributed flyers criticizing the prior administration for issuing payments for accrued vacation benefits and claiming that the local bylaws had been violated. "Tens of thousands of dollars from our treasury. Without the 'report to the membership' required by Local 804 bylaws. (We don't remember any notice—do you. But we're looking.)" *See* Tim Sylvester Exhibits 2 and 3.

In the Winter 2016-2017 issue of the *Teamsters Local 804 News,* Eddie Villalta—who led the panel hearing these charges—stated in no uncertain terms that the Executive Board had already decided that the charged members violated the bylaws. In his Letter from the President, Villata wrote, "While we are making progress, there have been unexpected challenges. The foundation of a democratic union is its constitution and by-laws. <u>When we discovered violations by members of the previous executive board, we had no choice but to file charges."</u>

In its decision, the Executive Board does not deny that this article authored by Villalta stating that the Executive Board had already decided that the appellants were guilty appeared in the *Teamsters Local 804 News.* Instead, the Executive Board refused to address it on procedural grounds. But there is nothing that prevented the Executive Board from taking judicial notice of this article, which the Executive Board itself had authored, and doing the right thing by recusing itself. It is as if a federal judge admitted to writing an article finding a defendant guilty ahead of time, but refused to recuse himself when confronted with the article.

The members of the Executive Board who heard and decided the charges have a strong personal interest in seeing the appellants suspended from membership. They wanted to make Sylvester, Reynolds, Fennel, O'Brien and Mastrandrea ineligible to run for office against them in the next Local 804 union election. It is shameful that Local 804 Executive Board has used mammoth fines and long suspensions to eliminate their internal political opposition in this fashion.

<u>The Appellants Did Not Violate the IBT Constitution or Bylaws</u>

Despite three days of testimony, Piccinich failed to meet his burden as the charging party to present reliable, convincing evidence that the charged members violated the IBT Constitution or Bylaws. The evidence showed that the charged members complied with the Constitution and Bylaws when terminated officers and staff were paid for accrued and unused vacation benefits and that they cooperated in good faith with the new Executive Board's intrusive investigation.

A. The Executive Board Improperly Relied on the Testimony of Outside Attorney Roland Acevedo Regarding His Interpretation of the Local 804 Bylaws

The Executive Board relied almost exclusively on the testimony of Local 804's outside counsel, Roland Acevedo. Acevedo was not a fact witness. He was present to argue his interpretation of the Local 804 bylaws. He was clearly present as an attorney to present Piccinich's case—something which is prohibited under the IBT Constitution.

Acevedo is not an impartial observer. He is an attorney hired by the Local 804 Executive Board as a $400-an-hour hired gun to blackball the members of the former Executive Board. Therefore, his testimony should be given little credibility. As noted earlier, he testified that he was hired by the Executive Board to prove what they already believed—that the bylaws had been violated. Acevedo clearly would say whatever the Executive Board wanted him to say in order to get his $400 an hour of member's dues money.

Acevedo's testimony displayed a shocking lack of truthfulness. Acevedo, while under oath, perjured himself by falsely testifying that the charged union members had never replied to his written demands that they present themselves to his office to be interrogated. And he falsely claimed that the Local 804 UPS contract does not allow vacation payouts to terminated employees. These instances will be explored in more detail below. It is notable that the Executive Board's decision does not address these lies from their own star witness – which were pointed out in the appellant's post-hearing brief.

There is a Latin phrase traditionally used by the courts that applies well to Acevedo's testimony: *"Falsus in uno, falsus in omnibus."* It means "false in one thing, false in everything." It signifies that a witness who testifies falsely about one matter is not credible to testify about any matter. Acevedo testified falsely that the charged members had never responded to his letters. It was a blatant lie. Why should anything else that Acevedo said be believed? And why should a dishonest attorney be allowed to interpret the union's bylaws when the bylaws give that power to the Union's President?

B. Paying Outgoing Officers and Staff for Their Accrued and Unused Vacation is Not Embezzlement

The Executive Board found the appellant's guilty of embezzlement, which the decision defines as "the fraudulent appropriation of property by a person to whom it has been entrusted." Therefore, to be found guilty of embezzlement, the appellants would need to have engaged in "fraud." The evidence shows that the appellants did not engage in any fraud.

Black's Law Dictionary defines "Fraud" as follows:

> Fraud consists of some deceitful practice or willful device,
> resorted to with intent to deprive another of his right, or in some manner

> to do him an injury. As distinguished from negligence, it is always positive, intentional. Maher v. Hibernia Ins. Co.,67 N. Y. 292; Alexander v. Church, 53 Conn. 501, 4 Atl. 103; Studer v. Bleistein. 115 N.Y. 31G, 22 X. E. 243, 7 L. R. A. 702; Moore v. Crawford, 130 U. S. 122, 9 Sup. Ct. 447,32 L. Ed. 878; Fechheimer v. Baum (C. C.) 37 Fed. 167; U. S. v. Beach (D. C.) 71 Fed.160; Gardner v. Ileartt, 3 Denio (N. Y.) 232; Monroe Mercantile Co. v. Arnold, 108 Ga. 449, 34 S. E. 176. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Civil Code La. art. 1S47. Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. 1 Story, Eq. Jur.

As can be seen, the appellants can only be found guilty of embezzlement if they engaged in intentional deceit to take money from the local union. But the decision does not point to any evidence of "fraud" or "deceit" by the appellants. In fact, there is no such evidence. It is unrebutted that the appellants performed work for Local 804 instead of taking vacation time, and thus accrued the unused vacation pay. And it is unrebutted that the appellants have a good faith belief that – under law and under the IBT Local 804 bylaws – the local union was required to pay outgoing staff for their unused vacation time. Therefore, the appellants lacked the fraudulent intent that is necessary to find them guilty of embezzlement.

It is important to remember that, in this case, Local 804 was acting as an employer. It owed outgoing officers and staff for their accrued and unused vacation pay. The Executive Board's decision holds that an employer can refuse to pay its terminated workers for their accrued and unused vacation pay and can instead stiff the terminated workers out of this money. This is the kind of anti-worker argument that you expect corporate attorneys to make, not union leaders. The appellants believe that workers must be paid the wages and benefits that they were promised.

New York State Labor Law requires that terminated employees be paid all their accumulated benefits and wage supplements "not later than the regular pay day for the pay period during which the termination occurred." Sylvester Ex. 4 (NY Lab L § 191(3)). The law explicitly includes "vacation" as an accumulated benefit that must be paid to terminated employees. Sylvester Ex. 4 (NY Lab L § 198-c(2)). Failure to pay terminated employees for their accumulated vacation benefits is a misdemeanor violation of New York criminal law. Sylvester Ex. 4 (NY Lab L § 198-c(1)). In case of a violation, "the president, secretary, treasurer or officers exercising corresponding functions shall each be guilty of a misdemeanor." Sylvester Ex. 4 (NY Lab L § 198-c(2)). The officers responsible for failing to pay terminated employees for their accumulated benefits "shall be guilty of a misdemeanor for the first offense and upon conviction thereof shall be fined not less than five hundred nor more than twenty thousand dollars or imprisoned for not more than one year." Sylvester Ex. 4 (NY Lab L § 198-a(1)).

In summary, under New York State law the outgoing Local 804 officers were required to pay each of the terminated officers and staff for their accumulated vacation pay no later than their last regular pay day. If they refused to make the payments, Local 804 could have been fined up to $20,000

for each offense and the local's officers could have faced up to a year of jail time. It is unbelievable that the Local 804 Executive Board has issued a decision stating that the outgoing officers should have stiffed Local 804's workers and violated basic labor laws, thereby subjecting the local union to severe penalties.

In their decision, the Executive Board has improperly relied on evidence and arguments that were not presented by the Charging Party to try to rebut these arguments. The Executive Board now claims that labor law does not require that terminated workers be paid for their earned benefits. It is disappointing that elected Teamster officers would pay attorneys to come up with this anti-worker interpretation of labor laws. Notably, the Executive Board's decision does not point to any evidence that the appellants shared this anti-worker interpretation of labor laws.

The unrebutted evidence is that the appellants believed outgoing Local 804 staff were legally entitled to their accrued and unused vacation pay. They acted in good faith in accordance with this understanding. Therefore, even if you accept the anti-worker interpretation of labor laws that is being advanced by the Local 804 Executive Board, it is clear that the appellants lacked the fraudulent intent that is required for embezzlement. Therefore, the charges must be dismissed.

C. Tim Sylvester Complied with the Union's Constitution and Bylaws When He Approved the Payments to Outgoing Officers and Staff for Their Unused Vacation

Former principal officer Tim Sylvester fully complied with the IBT Constitution and Local 804 Bylaws when he approved the payments for accrued vacation benefits that were made to officers and staff who were terminated as a result of the Local 804 officer's election.

The relevant portions of the Local 804 Bylaws state as follows:

> Article XV, Section 5: Fringe Benefits.
>
> (a) The Local Union Executive Board may, from time to time, provide the terms and conditions of employment for officers, employees and representatives of this organization including, but not limited to, such fringe benefits as vacation with pay...
>
> (b)(1) It is the stated policy of Local 804 that vacation leave should be utilized in the year in which it is earned. However, in the event that this is not possible, an officer or employee may elect to carry over no more than three (3) weeks of vacation in a single year, up to a lifetime maximum of nine (9) weeks of accrued and unused vacation.
>
> (2) Vacation leave carried over, as set forth above, must be used. Except in extraordinary circumstances, as determined by the Principal Officer and reported to the membership, no officer or employee may receive a cash payment in lieu of vacation. If a cash payment as set forth above is made, the rate of pay shall be the rate in effect at the time the vacation was earned.

As can be seen, vacation with pay is a benefit set forth in Article XV, Section 5(a). Article XV, Section 5(b)(1) states that it is the policy of Local 804 that vacation leave should be utilized in the year in which it is earned if possible, but that Local 804 employees can carry over and accumulate up to nine

weeks of accrued and unused vacation.

The purpose of Article XV, Section 5 is clear: to encourage officers and staff to take their vacations if possible, and prevent employees from not taking vacations in order to claim vacation pay as a cash bonus every year. Contrary to the Executive Board's decision, the purpose of Article XV, Section 5 is not to prevent the Union from paying employees the accrued vacation benefits they are legally entitled to if they lose their employment due to a union election.

The Executive Board's decision is based on misreading and taking out of context the passage, "Except in extraordinary circumstances, as determined by the Principal Officer and reported to the membership, no officer or employee may receive a cash payment in lieu of vacation." The plain language of this sentence, as well as its context in Article XV, Section 5, make it clear that it does not apply to terminated employees who must be paid their accrued benefits as a matter of law.

The passage refers to receiving a cash payment *in lieu of* vacation. *In lieu* means "instead." So by its plain language, Section 5(b)(2) applies when Local 804 officers and staff have a choice to do one thing or another—to take a vacation or take a cash payment. In that case, the cash payment can only be given in extraordinary circumstances. But in the present case, terminated officers and staff had no choice and could not take their vacation. The votes were counted on December 15, 2015 and officers and staff were being terminated effective December 31, 2015. They had just two weeks to wrap up all outstanding business. It was *impossible* for them to use their accrued vacation. Therefore, Article XV, Section 5(b)(2), by its plain language, does not apply.

This is how Tim Sylvester—who as principal officer of Local 804 had the sole authority to interpret the Bylaws—understood these provisions of Article XV, Section 5. The bylaws clearly state "The principal officer shall have authority to interpret these By-Laws and to decide all of law thereunder, between meetings of the Local Union Executive Board." Furthermore, Sylvester's understanding of Article XV, Section 5 was consistent with the way prior principal officers had understood this language. It is unrebutted that when Howard Redmond was principal officer, he also paid outgoing officers and staff for their unused accrued vacation benefits without first notifying the membership, and that the expenditure was reported out by the incoming officers at the next general membership meeting. *See e.g.* Sylvester Tr. at 106.

Neither Piccinich nor any of the other members of the current Executive Board filed internal union charges against Redmond or the outgoing officers and staff for receiving their accrued vacation pay upon termination—which presumably they would have done if they truly believed this to be a violation of the bylaws. This is further evidence that the "investigation" and charges were just a cynical political ploy.

Notably, Local 804 was audited by the IBT in approximately 2010, and the vacation payments that occurred at the end of the Redmond administration were reviewed by IBT auditor Dave Smith. *See* Reynolds Tr. at 93-94; Sylvester Tr. at 109-110. It was also brought to Smith's attention that Sylvester had notified members of the expenditure by the Redmond administration at the first general meeting after he assumed office. *See* Sylvester Tr. at 110. After reviewing the Redmond vacation payments, the IBT did not inform Sylvester or Jim Reynolds of any corrections that it believed should be made to the policy of paying terminated employees for their accrued vacation benefits and reporting the expenditure to members at the first general membership meeting of the new administration. *See* Reynolds Tr. at 93-94; Sylvester Tr. at 109-110. In fact, Smith told Sylvester and Reynolds that "there

was no problem with the process." Id. The only directive that Smith made—and which Sylvester and Reynolds followed—was that the dollar amount of vacation pay be calculated based on the employee's pay rate at the time the vacation was accrued instead of at the time the benefit was paid out. *See* Reynolds Tr. at 94-95.

This testimony that IBT auditors approved of the process used by Redmond—and later Sylvester—regarding payments of accrued vacation benefits to terminated employees is unrebutted. It is irrefutable evidence that the appellants were not engaged in any "fraud" or "embezzlement" but were instead following the rules as they had been laid out in the past by the IBT.

The Executive Board's decision ignores all this evidence. Instead, the Executive Board allows the union's outside counsel, Mr. Acevedo, to substitute his own interpretation of the bylaws for everyone else's interpretation. But the bylaws don't give Acevedo this authority. The bylaws give this authority to the principal officer, who was Tim Sylvester. Sylvester faithfully complied with his duties as principal officer based on his good faith interpretation of the bylaws. Sylvester's understanding of Article XV, Section 5 is supported by its language, common sense, the context of New York State Labor Law's requirements, and past application as approved by IBT auditors. It must therefore be deferred to.[1]

D. Tim Sylvester Was Under No Obligation to Seek Approval From the Incoming Executive Board for the Payment of Accrued Vacation Benefits to Terminated Employees

The Executive Board's decision states that Tim Sylvester was required to seek approval from Eddie Villalta prior to authorizing the payment of accrued vacation benefits to terminated employees, citing Article XXII, Section 4(e) of the IBT Constitution. The decision holds that any large expenditure is an "extraordinary expenditure" that must be reported to incoming officers and pre-approved. This is incorrect. Under the IBT Constitution, the payment of accrued benefits to terminated employees does not constitute an "extraordinary expenditure."

In fact, the IBT Constitution specifically excludes "salaries or compensation of officers, organizers and other representatives or staff members" from the definition of "extraordinary expenditures." *See* IBT Constitution, Art. XXII, Sec. 4(e) and Art. VII, Sec. 2(a)(1). Furthermore, Article XXII, Section 4(e) warns outgoing local officers that "Nothing contained herein shall relieve the Local Union of the responsibility to arrange for the payment of financial obligations or benefits previously authorized in accordance with the Local Union's Bylaws."

Article XXII, Section 4(e) of the IBT Constitution, regarding "extraordinary expenditures," states as follows:

> (e) During the period between the date of election and the end of

[1] Acevedo repeatedly claimed that "UPS did not allow vacation payouts" to terminated employees and that, therefore, terminated Local 804 employees should not be compensated for unused vacation. *See e.g.* Sylvester Tr. at 51. This is completely untrue. Article 11, Section 8 of the UPS supplement states that "if an employee retires, resigns or is discharged after he/she has become entitled to the vacation provided in Section 1, then he/she shall receive pay for the vacation due." *See* Sylvester Tr. at 106-107; Local 804 UPS Supplemental Agreement, Art. 11, Sec. 8. This was another of the falsehoods that Acevedo told at the hearing, even though it is easily disproved by looking at the UPS contract.

> the term of office, no extraordinary expenditure of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make such extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure may be considered to be "extraordinary" if: (a) it is not routine or recurring in the operation of the Local Union, such as, but not limited to, those items set forth in Article VII, Section 2(a)(1); (b) it is for an amount greater than the Local Union would normally pay for the particular item in the ordinary course of its business; (c) it establishes new benefits, or increases the amounts of previously authorized benefits, for Local Union officers or employees; or (d) the payment would have a significant adverse effect on the financial stability of the Local Union and/or affect its ability to provide representational services to the membership. Nothing contained herein shall relieve the Local Union of the responsibility to arrange for the payment of financial obligations or benefits previously authorized in accordance with the Local Union's Bylaws, on such terms as necessary to preserve the ability of the Local Union to meet its current financial commitments and provide services to the membership.

As can be seen, Article XXII, Section 4(e), paragraph (a) refers the reader to Article VII, Section 2(a)(1) of the IBT Constitution for examples of "routine" expenditures that are specifically excluded from the requirement of notice to and approval by the incoming administration and the membership. Turning to Article VII, Section 2(a)(1) of the IBT Constitution, one sees that "salaries or compensation of officers, organizers and other representatives or staff members" are specifically listed as "routine expenses" for which outgoing officers do not have to seek pre-approval.

This ends the inquiry. Vacation benefits are "compensation" that is excluded as a "routine" expense from the IBT Constitution's definition of "extraordinary expenditures." The charges should therefore have been dismissed.

However, it should also be noted that the accrued vacation benefit payments are not covered by any of the other clauses in Article XXII, Section 4(e) of the IBT Constitution:

- The payments were not "for an amount greater than the Local Union would normally pay for the particular item in the ordinary course of its business." *See* Article XXII, Section 4(e)(b). Terminated employees were compensated at their proper pay rate for each week of vacation they had accrued.

- The outgoing administration did not "establish new benefits, or increase the amounts of previously authorized benefits, for Local Union officers or employees." *See* Article XXII, Section 4(e)(c). The Bylaws already established that officers and employees were entitled to up to nine weeks of accrued and unused vacation.

- The payments did not "have a significant adverse effect on the financial stability of the Local Union and/or affect its ability to provide

representational services to the membership." *See* Article XXII, Section 4(d). The charging party did not even make this allegation.

The appellants pointed all these facts out to the Local 804 Executive Board in their post-hearing brief. Yet the decision simply ignores these facts in order to reach the pre-determined conclusion that appellants were guilty. We ask that you correct this error and defer to the IBT Constitution instead of ignoring it as the Local 804 Executive Board has done.

E. <u>The Appellants Cooperated with the Local 804 Executive Board's Investigation of Payments for Accrued Vacation Benefits</u>

The Executive Board decided that all of the charged members except for Jim Reynolds violated the Constitution and Bylaws by not appearing at attorney Roland Acevedo's office for sworn depositions. But under cross examination, Acevedo was unable to cite any specific provisions in the IBT Constitution or Local 804 Bylaws giving him this extraordinary power. When asked for his authority, all he could say was "the bylaws." Sylvester Tr. at 74.

The Local 804 Executive Board seems to believe that Acevedo works for the IBT Independent Investigations Officer (formerly the Independent Review Board), who has broad authority to depose members regarding alleged wrongdoing. He does not. Acevedo is simply an outside attorney hired by the current Local 804 Executive Board to smear the former Executive Board. He has no authority under the IBT Constitution or Local 804 Bylaws to demand that Local 804 members submit to sworn depositions.

There is nothing in the IBT constitution that requires members to submit to sworn depositions by outside counsel hired by a local union. This does not appear anywhere among the items listed in Article XIX, Section 7(b) of the IBT Constitution as a basis for internal union charges. The closest provision states that a member can be charged for "Obstructing or interfering with the work of, or unreasonably failing to cooperate in any investigation conducted by a Personal Representative appointed by the General President." Art. XIX, Sec. 7(b)(12). However, Acevedo is not a Personal Representative of General President Hoffa.

Similarly, the Local 804 Bylaws do not include a requirement that members submit to sworn depositions by outside counsel hired by a local union. This does not appear among the items listed in Article XIV, Section 3(a)(2) of the Bylaws as a basis for internal union charges.

In fact, the outgoing officers *did* cooperate with the new Executive Board's investigation and made every effort to cooperate with any reasonable request made by Acevedo. When, in May 2016, Piccinich inquired regarding missing minutes, Tim Sylvester promptly responded to him on behalf of the former Executive Board, stating that all the minutes were left securely in the union hall. *See* Charging Party Ex. 1 at 57.

When Acevedo wrote the members of the former Executive Board stating he was investigating the payment of the accrued vacation benefits, attorney Louie Nikolaidis, who represented them, reached out to Acevedo. Acevedo and Nikolaidis agreed that Reynolds, the union's former Secretary Treasurer, would answer questions on behalf of the former Executive Board members. At the August 18, 2016 questioning of Jim Reynolds, Acevedo admitted that he and Nikolaidis had agreed that

Reynolds would appear on behalf of the members who had received his letters regarding the vacation payouts.

> MR ACEVEDO: I don't care what you're here for. Okay? I summoned him here as part of an investigation and – let me finish. I let you finish.
> MR. NIKOLAIDIS: You haven't summoned him. You never gave him –
> MR. ACEVEDO: That's not true. You agreed to produce him in response to all the demand letters I sent to somebody else.

Charging Party Ex. 1 at 97 (Reynolds Transcript at 53).

Despite this agreement, Acevedo later insisted that the other charged members had to appear before him for sworn depositions. The Executive Board's decision completely ignores this evidence, which was pointed out in appellants' post-hearing brief, and denies that there was such an agreement.

Acevedo's treatment of Reynolds—who was voluntarily appearing and who had not even received a letter demanding that he appear—was abhorrent. Acevedo had claimed that he was investigating the accrued vacation payments and that he would be asking questions "regarding a vacation payout that you received when you left union office." *See* Charging Party Ex. 1 at 45, 47. However, when Reynolds met with Acevedo, it quickly became clear that this was just a witch-hunt to try to dig up any dirt on the former Executive Board. Instead of focusing on the vacation payments, Acevedo asked Reynolds about the printing of the local union magazine (Reynolds Interview Transcript at 44-45), Reynold's laptop computer (Id. at 46-47), and Reynold's car allowance (Id. at 49). When Reynold's attorney objected, Acevedo threatened Reynolds that if he did not answer the question regarding his car allowance, "you are going to be charged for failing to cooperate... So to put yourself at risk would be foolish. Okay? So why don't you listen to the question and then you can go on the record with respect to each question and say I'm not answering it. OK?" (Id. at 97.)

It is outrageous that an attorney hired by Local 804 would threaten a union member, who voluntarily agreed to meet with the attorney to explain vacation payouts, for not answering an unrelated question about a car allowance. Acevedo—and in turn the Local 804 Executive Board—were clearly not operating in good faith. They were just looking for dirt on their political enemies. Yet even after this disturbing turn of events, the charged members continued to cooperate with the investigation.

Acevedo, while under oath, blatantly lied to the hearing board when he stated that the charged union members never replied to his written letters dated August 2, 2016 and October 18, 2016 demanding that they appear for questioning.

> MR. VILLALTA: Mr. Acevedo, two questions, yes or no, did Brother Sylvester respond to the letter dated August 2? Yes or no?
> THE WITNESS: No.
> MR. VILLALTA: What about the letter dated October 18, did he respond? Yes or No?
> THE WITNESS: No.

Sylvester Tr. at 77.

In fact, attorney Louie Nikolaidis had responded to Acevedo on behalf of the appellants, both by phone and in writing. Nikolaidis wrote to Acevedo on October 25, 2016 stating that he was responding to Acevedo's previous letters. See Sylvester Ex. 1. Shockingly, Acevedo withheld Nikolaidis' letter from the hearing panel, never once mentioning it on the five occasions on which he testified to the panel regarding the appellants' alleged "failure to cooperate."

It is worth quoting Nikolaidis' letter to Acevedo in its entirety, because it completely discredits Acevedo's testimony and the Executive Board's finding that the charged members refused to cooperate with the investigation and refused to be questioned by him.

October 24, 2016

Roland Acevedo, Esq.
27 Whitehall Street - 5th Floor
New York, NY 10004

Re: October 18, 2016 Letter to Tim Sylvester

Dear Mr. Acevedo:

My client, Tim Sylvester, has sent me a copy of a letter you sent to him dated October 18, 2016. I note that the letter lists me as having been cc'ed as a recipient, but, to date, I have not received a copy of the letter from you. My understanding is that other former officers of Local 804 have also received a similar letter. I have not received a copy of those letters from you either.

Regarding the substance of your letter, I would first like to correct an inaccuracy. You claim that Mr. Sylvester and other former officers have failed to cooperate with you and refused to come to your office to be questioned. In fact, as you and I agreed to by phone, the former officers voluntarily agreed to have former Secretary-Treasurer Jim Reynolds go to your office to explain how the vacation leave and payment for unused leave was calculated. As Secretary-Treasurer, Reynolds was responsible for making those calculations. You asked Reynolds about the vacation and vacation payout policy in the presence of a court reporter, with me present as counsel for the former officers. I also put you in contact with Mr. Reynolds' immediate predecessor as Secretary-Treasurer, Tony Mangrene. Mr. Mangrene can confirm that the practice followed by Reynolds and the office staff at Local 804 was consistent with the long-standing practice of prior administrations. As can be seen by these actions, the former officers have cooperated with you.

When Mr. Reynolds met with you at your office to answer your questions, I accompanied him as counsel for the former officers. You, as counsel for the local union, did not make any objection to my presence. However, you now allege that the remaining former officers must also

come to your office to be questioned without the presence of their chosen counsel. That is inappropriate. You claim that I cannot represent the former officers because I previously worked for the Local. However, you have not presented any authority for that argument. After examining the issue, I do not believe that my prior representation of the local union creates any conflict regarding the present matter. In addition, the Local Union has waived any argument regarding a potential conflict of interest by allowing me to represent the former officers at the interview you conducted of Reynolds. If you believe that I am incorrect, please provide the relevant authority for why you believe a prohibitive conflict exists in this situation and why you believe the local union has not waived this objection by its prior conduct during the questioning of Reynolds.

Finally, we believe that you, as the Local Union's special counsel, have no authority to compel any local union member to submit to an interrogation concerning potential internal union charges that you are threatening to file against the member. Neither the IBT Constitution nor the Local 804 Bylaws make provisions for any such interrogation by local union counsel nor require cooperation with such interrogation. If you have any authority to the contrary, please provide it and we will consider it.

If you have any questions, please feel free to call me.

Very truly yours,

Louie Nikolaidis

cc: Tim Sylvester

Sylvester Ex. 1.

As can be seen, the charged members informed Acevedo that they were cooperating with the investigation and would consider submitting to depositions if Acevedo could provide any legal authority requiring them to do so. The ball was in Acevedo's court. Yet he failed to reply. There was no other correspondence from Acevedo to the charged members or their counsel. Instead, these internal union charges were filed.

While the union's attorney, Acevedo, was allowed to testify extensively at the hearing regarding the appellants' alleged lack of cooperation with the investigation, the Executive Board refused to allow the appellants' attorney, Louie Nikolaidis, to testify regarding these same events.

The charged members made it clear that they were always willing to speak to the members of the Executive Board in connection with any investigation. *See e.g.* Sylvester Tr. at 116-117; Mastrandrea Tr. at 88-89. It was the members of the Executive Board who refused to cooperate. *See e.g.* Sylvester Tr. at 116-117.

The charged members even said that they would speak directly to Mr. Acevedo if he could present any authority requiring them to submit to his interrogations. *See* Mastrandrea Tr. at 89;

Sylvester Tr. at 117. Tim Sylvester testified as follows:

> Q: Would you have testified before Mr. Acevedo if he had been able to present any authority saying you were required under the Constitution or bylaws to submit to an interrogation by an outside attorney?
>
> A: Absolutely.

Sylvester Tr. at 117.

The appellants cooperated with the investigation into the payments for accrued and unused vacation benefits. It was Acevedo—and the Local 804 Executive Board—who refused to act in good faith and instead tried to bully and intimidate members.

Shockingly, the Executive Board's decision completely ignores all this evidence. You would not learn any of these basic facts regarding the appellants' cooperation with the "investigation" from reading the decision. It can only be concluded that the Executive Board knew this evidence completely undermined its decision, and that it must therefore be swept under the rug in order to reach the results that the Executive Board wanted.

The Charges are Completely Baseless and Must be Dismissed

The Local 804 Executive Board has spent tens of thousands of dollars on a political witch-hunt against the former officers of Local 804. This miscarriage of justice must now come to an end. Despite all the efforts of the Executive Board and its $400-an-hour attorney, the charges against the appellants were not proven. The charging party did not meet his burden of producing reliable, convincing evidence of the alleged violations. Instead, the evidence showed that the former officers of Local 804 complied with the IBT Constitution and Local 804 bylaws when terminated officers and staff were paid for accrued and unused vacation benefits and that they cooperated in good faith with the new Executive Board's investigation.

For these reasons, we request that the Joint Council 16 Executive Board reverse the decisions issued by the Executive Board of Local 804 and dismiss the charges filed by John Piccinich against Tim Sylvester, Jim Reynolds, David Fennell, Pete Mastrandrea and Neil O'Brien.

Fraternally,

Scott Damone