

TO: James P. Hoffa, IBT General President  
FROM: Members of the Independent Review Board  
RE: Proposed Charges against BLET Vice President Richard Radek  
DATE: January 15, 2009

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**I. RECOMMENDATION**

The Independent Review Board ("IRB") refers the below report to the IBT General President and recommends that charges be filed against Richard Radek ("Radek"), Vice President of the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), for embezzlement and for breaching his fiduciary duty by taking over \$6,700 in union money without a union purpose. This sum includes causing the BLET to pay for at least 57 personal meals, totaling \$3,909.29. It also includes causing the BLET to directly pay \$2,865.28 for his home office supplies while at the same time he received a daily At-Home Station Expense Allowance ("At Home Expense Allowance"), which covered, among other things, those supplies for his home office.

## II. SUMMARY

Since 1996, Radek has been a BLET Vice President and a member of the BLET Advisory Board. Effective January 1, 2004, the BLET merged with the IBT and Radek became an IBT member.<sup>1</sup>

As detailed below, since January 2004, Radek breached his fiduciary duty and embezzled BLET funds by causing the BLET to pay for 57 personal meals which had no union purpose. (Exs. 1-27) For example, Radek caused the BLET to pay for at least 40 meals he had alone in his home city. (Exs. 2-4, 6-22, 24-27) The cost of these meals was \$2,363.97. In addition, Radek caused the BLET to pay for an additional 17 personal meals with his family members or girlfriend in his home city. (Exs. 5, 9, 23-27) The cost of those meals was \$1,545.32. There was no union purpose for any of these meals.

In addition to causing the BLET to pay for personal meals, Radek also, between January 2004 and September 2007, when he was directed to stop the practice, caused the BLET to directly pay for his home office supplies by charging them on his BLET credit card, which the union paid, while

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<sup>1</sup> Whether the type of alleged misconduct discussed below occurred prior to the BLET's merger with the IBT is not a subject of this report.

at the same time he received an allowance which covered the cost of his home office supplies.

By his conduct, while an IBT member, Radek appears to have brought reproach upon the IBT, breached his fiduciary duty and embezzled union funds in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution.

### III. JURISDICTION

Pursuant to Article XIX, Section 14(c) of the IBT Constitution, this matter is within the jurisdiction of the IBT General President. Paragraph G(e) of the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") require that within 90 days of the IRB's referral of a matter to an IBT entity, that entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph (I)(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB.

#### **IV. INVESTIGATIVE FINDINGS**

##### **A. Brotherhood of Locomotive Engineers and Trainmen**

On January 1, 2004, the Brotherhood of Locomotive Engineers and Trainmen, headquartered in Cleveland, Ohio, merged with the IBT. (Ex. 28) At that time, the BLET became a division in the IBT's Rail Conference. (Ex. 29) The BLET has approximately 59,000 members in approximately 600 local units known as divisions. (Ex. 30)

##### **B. Richard Radek's Background**

Radek became a member of the BLET in 1974 when he began working as a locomotive engineer for the Chicago and Northwest Railroad. (Ex. 31 at 8-9) In 1976, he became Secretary-Treasurer of the Chicago and Northwest Railroad Division. (Ex. 31 at 9) In 1978, he became the Local Chairman of the Chicago and Northwest Railroad Division. (Ex. 31 at 9) From 1982 to the present, Radek worked for the BLET's Arbitration Department. (Ex. 31 at 9-11)<sup>2</sup> In 1996, Radek was elected an International Vice President of the BLET. (Ex. 31 at 14) Since 1996, Radek has been the Director of the BLET's Arbitration Department. (Ex. 31 at 14)

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<sup>2</sup> From 1982 to 1988, Radek worked at the National Railroad Adjustment Board's Chicago office. (Ex. 31 at 9-10) From 1988 to 2005, Radek worked at the Board's Cleveland office. (Ex. 31 at 9-10) In 2005, Radek was transferred back to Chicago to handle arbitrations and other assignments. (Ex. 31 at 11-12)

In 2007, Radek's salary was \$134,710. (Ex. 30)  
According to the BLET's Form LM-2 for that year, Radek also received allowances of \$5,750. (Ex. 30) Radek also received \$38,015 in reimbursed expenses during 2007. (Ex. 30)

**C. BLET Financial Procedures for Payment of Union Expenses an Officer Incurs**

There are three primary ways the BLET pays for an officer's union related expenses:

**1. BLET Credit Card**

BLET officers, such as Radek, were issued BLET American Express cards to use to charge union expenses, including business travel.<sup>3</sup> The BLET directly paid the monthly bill to American Express. (Ex. 40 at 20-22; Ex. 70 at 23-24) According to BLET policy, within fifteen days after the monthly closing date of their BLET credit card, BLET employees were required to submit a report which stated the union purpose for all charges made on their BLET credit card. (Ex. 32)

As detailed below, Radek embezzled BLET funds when he charged, at least, twelve personal meals on the BLET's credit card thereby causing the BLET to pay for such meals.

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<sup>3</sup> As discussed below, the At Home Expense Allowance covered BLET officers' business expenses in their home cities. Accordingly, such home city business expenses were not to be charged on the BLET credit card which the BLET paid directly.

Radek also embezzled BLET funds when he charged his home office supplies on the BLET credit card when the At Home Expense Allowance he received covered the cost of such home office supplies.

## **2. BLET Reports for Reimbursable Expenses**

BLET officers also submitted to the BLET monthly reimbursable expense reports reflecting any amounts expended for a business purpose which were not charged on the BLET credit card and for which the BLET officer sought reimbursement. (Exs. 6-27) BLET policy required receipts to be submitted for all expenditures over five dollars and stated that the officer must provide when and where the expenditure took place. (Ex. 32) According to the BLET's travel policy, "expenses submitted for reimbursement must be ordinary and necessary to our organization's purpose." (Ex. 32)

Based upon the reports of reimbursable expenses, the BLET issued monthly reimbursement checks to the officers. As detailed below, Radek embezzled BLET funds when he caused the BLET to issue reimbursement checks to him which included payment for the personal meals he improperly claimed as union expenses on his reports of reimbursable expenses. Radek improperly included at least 45 personal

meals on his monthly reimbursable expense reports. (Exs. 1-27)

**3. At Home Station Expense Allowance**

**a. The Allowance**

The BLET paid an At Home Station Expense Allowance to all National Division Officers who were members of the BLET Advisory Board.<sup>4</sup> The allowance was to cover business related expenses incurred in the officer's home city. (Ex. 33) All BLET Advisory Board members received this allowance for every day, including weekends and holidays, such individuals were at their home station. (Ex. 34 at 23-24; Ex. 35 at 21; Ex. 63)

Prior to July 1, 2006, the amount of the At Home Expense Allowance for International Vice Presidents was \$25 per day. (Ex. 36) Effective July 1, 2006, the BLET Advisory Board raised the At Home Expense Allowance to \$50 per day for International Vice Presidents, such as Radek. (Ex. 36; Ex. 35 at 23) The allowance was to pay for union related expenses. The At Home Expense Allowance was not a substitute for salary. Pursuant to Section 47(b) of the BLET Bylaws, salary could only be increased by approval of the BLET Convention delegates. (Ex. 29)

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<sup>4</sup> The Advisory Board consisted of the National President, First Vice President, Secretary-Treasurer and eight Vice Presidents.

Since 1996, Radek has been a member of the BLET Advisory Board. (Ex. 31 at 14) Under BLET policy, as long as an Advisory Board member slept in his bed at his home at night, he was permitted to claim the At Home Expense Allowance for that day. (Ex. 37 at 384; Ex. 35 at 15; Ex. 34 at 24)<sup>5</sup>

Current BLET controller Harold Volpe ("Volpe") explained that the purpose of the At Home Expense Allowance was to cover the Advisory Board member's "incidental business expenses while they're at their home station." (Ex. 40 at 28) In April 2007, Edward Rodzwicz ("Rodzwicz"), who was then the BLET First Vice President and became the BLET President in March 2008, explained that the BLET's At Home Expense Allowance covered "usual and customary expenses such as office expenses. . ." (Ex. 41 at 19, 22)

Under both the law and BLET regulations, BLET funds received for the At Home Expense Allowance could not be used for personal expenses. National Secretary-Treasurer William Walpert ("Walpert") testified that at the June 2006 Advisory Board meeting, at which the amount of the At Home Expense Allowance was increased, he reminded the Advisory

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<sup>5</sup> It appears that when the BLET Convention approved this allowance in 1947, officers had to submit receipts for expenses in order to get the allowance. (Ex. 38) This was also the practice at the time of the 1981 BLET Convention. (Ex. 39) Sometime after 1981, the Advisory Board members began to receive the At Home Expense Allowance without submitting any receipts.



Board members that the "purpose of the at-home allowance was for business purposes." (Ex. 35 at 15) This, of course, was legally required since it was not salary and union monies must be used for a union purpose. 29 U.S.C. §501(a); Noble v. Sombrotto, 525 F.3d 1230 (DC Cir. 2008).

The tax treatment for undocumented expense payments is different than for expense reimbursements supported by receipts. Unlike reimbursed expenses, payments for undocumented business expenses, such as the At Home Expense Allowance, were reported according to Internal Revenue Service rules as taxable income on the Form W-2 the union filed for the individual with the IRS. (Exs. 33 and 66) If an officer submitted receipts, the taxable part of the Home Allowance would be reduced by a corresponding amount. If an officer chose not to submit receipts, he was still required to use the At Home Expense Allowance for union purposes. If no business expenses were submitted for reimbursement, the entire amount of the At Home Expense Allowance would be reported to the IRS as taxable income as the IRS required. (Ex. 44) The fact that the At Home Expense Allowance was taxable did not change the purpose for which it was provided to an officer: to reimburse for union expenses.

**b. At Home Expense Allowance Reports**

Each month each BLET Advisory Board member was required to submit an At Home Expense Allowance Report to the BLET reporting for which days he claimed the At Home Expense Allowance. Based upon these reports, each month the BLET issued a check to the Advisory Board member for the Allowance. If an officer submitted receipts for business expenses in his home city on his expense reports, the BLET would reimburse him. The taxable amount of the At Home Expense Allowance would be reduced by the amount of the direct reimbursement for union expenses in the home city.

According to Radek, prior to July 20, 2005, he was entitled to claim both Chicago and Cleveland as home stations because he had homes and work assignments in both cities. (Ex. 31 at 71-73, 130-131; Ex. 11) Subsequent to July 20, 2005, Radek's home station was only Chicago. (Ex. 31 at 131) According to Radek, after July 20, 2005, while he was in Cleveland, he did not receive the At Home Expense Allowance. Rather, while in Cleveland, he was entitled to claim business expenses for reimbursement. (Ex. 31 at 131)<sup>6</sup>

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<sup>6</sup> At some point subsequent to July 20, 2005, Radek claimed that he was told once again to claim the At Home Expense Allowance in both

#### 4. Reports Radek Filed

For each month, Radek submitted a report to the BLET that documented his use of the BLET credit card for union expenses. (Exs. 6-27) He also submitted a second report for his reimbursable expenses not charged to the BLET credit card. (Exs. 6-27) He submitted a third report for the At Home Expense Allowance indicating for which dates he claimed the At Home Expense Allowance. (Exs. 6-27) Based upon these reports, each month, Radek received a check for his reimbursed expenses and another check for his At Home Expense Allowance. (Exs. 6-27)

Radek acknowledged that, "when you're at your home station you're not supposed to charge [on the BLET credit card] business expenses that you would incur at your home

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Chicago and Cleveland. (Ex. 31 at 72, 137-38; Ex. 37 at 310-311) From August 2005 to March 2007, Radek continued to claim the At Home Expense Allowance in both Chicago and Cleveland. (Exs. 12-57) In an undated handwritten note from Radek to Patti Smith, Walpert's assistant who reviewed Radek's expenses, which was attached to Radek's March 2007 expenses, Radek wrote: "my home allowance applied only in Chicago and I am on expenses in Cleveland, starting this month. It was supposed to be this way since December 2005, but conflicting instructions were given to me. . . ."

Walpert claimed that the BLET did an accounting for when Radek claimed the At Home Expense Allowance while in Cleveland subsequent to July 20, 2005 and determined that the BLET had saved money and therefore Radek was not required to pay back the At Home Expense Allowance amounts he took while in Cleveland after July 20, 2005. (Ex. 35 at 42-44; Ex. 31 at 137-138) In response to a request for documents regarding this analysis, BLET's counsel stated that no such documents existed. (Ex. 45 at 2) As of March 2007, Radek no longer claimed the At Home Expense Allowance when he was in Cleveland.

base." (Ex. 31 at 73) The At Home Expense Allowance covered business expenses in Radek's home city. (Exs. 6-27)

Radek did not have to document his use of the At Home Expense Allowance. This did not relieve Radek of the obligation to use the allowance for union purposes. Under tax regulations, this administrative convenience for him would result in the BLET reporting the At Home Expense Allowance as taxable income. If Radek wanted to avoid taxation on the allowance, he would have to submit receipts for union expenses. He would then be reimbursed. His At Home Expense Allowance would be reduced correspondingly, so the amount being submitted to the Internal Revenue Service as his taxable income would be reduced. (Ex. 31 at 73-74) This did not change the allowance the Advisory Board awarded itself into salary; that would have violated the BLET Bylaws. (Ex. 29)

When Radek submitted a receipt for reimbursement which he wanted to offset against his At Home Expense Allowance, Radek wrote "in lieu of home allowance" on the receipt. (Ex. 31 at 362)

#### **D. Radek Breached His Fiduciary Duty and Embezzled BLET Funds**

As detailed below, it appears that Radek breached his fiduciary duty to the BLET and embezzled approximately

\$3,909.29 when he intentionally caused the BLET to pay for at least 57 personal meals. (Exs. 1-27)<sup>7</sup> It also appears that Radek breached his fiduciary duty and embezzled approximately \$2,865.28 in BLET funds when he intentionally caused the BLET to directly pay for his home office supplies while at the same time he received the daily At Home Expense Allowance, which covered those same supplies. (Exs. 10, 12-15, 17, 19-23, 25-26, 46-57, 59-60, 65)

**1. Radek Breached his Fiduciary Duty and Embezzled BLET Funds when He Caused the BLET to Pay for Meals Alone in His Home City**

Radek caused the BLET to pay for at least 40 meals he had alone in his home city. (Exs. 2-4, 6-22, 24-26) The total cost of those meals was \$2,363.97, an average of \$59.09 per meal. (Exs. 2-4) As discussed below, for 26 of those meals alone in his home city, Radek also improperly offset the cost of such meals against his At Home Expense Allowance. (Ex. 2)

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<sup>7</sup> On three dates, February 13, 2005, October 7, 2005 and June 24, 2006, Radek made two separate charges at the same restaurant. (Exs. 7, 13-14, 19) For example, on June 24, 2006 at 6:41 p.m. Radek submitted a \$23 receipt at Catch Thirty-Five in Chicago which stated "bar". (Ex. 19) Also on June 24, 2006 at 7:48 p.m. there was a \$120 charge at Catch Thirty-Five. (Ex. 19) Radek did not indicate that anyone was with him on June 24, 2006 and noted on the receipts "en route from convention." (Ex. 19)

**a. Radek's Meals Alone in his Home City for Which He Caused the Union to Illegally Pay**

Between February 2005 and September 2006, Radek intentionally caused the BLET to pay for at least fourteen meals he had alone in his home city. (Exs. 3-4, 7-9, 12-15, 19-20, 22) Radek charged twelve of these meals on his BLET credit card. For two of these meals, he submitted receipts to the BLET and received reimbursement. (Exs. 3-4, 7-9, 12-15, 19-20, 22) The total cost of the fourteen meals was \$888.50. (Exs. 3-4, 7-9, 12-15, 19-20, 23)

Radek claimed that eight of these meals were when he was "en route" from the airport in Chicago to his home in Chicago. (Exs. 3, 7-9, 15, 19-20)<sup>8</sup> The cost of the meals for which Radek claimed he was "en route" was \$460. (Exs. 3, 7-9, 15, 19-20)

For example, on February 14, 2005, Radek flew from Chicago to Miami for BLET business. (Ex. 7) Radek was scheduled to arrive back in Chicago on February 18 at 5:24 p.m.. (Ex. 7; Ex. 37 at 513) That night at 10:01 p.m., Radek had a meal at Yanni's Restaurant in Arlington Heights, Illinois, a suburb of Chicago. (Ex. 7; Ex. 37 at 519-520) Yanni's is approximately sixteen miles from

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<sup>8</sup> Radek charged six of these eight "en route" meals on his BLET credit card. (Exs. 7-8, 15) Based upon receipts he submitted for the other two meals, Radek received reimbursement from the BLET for those "en route" meals. (Exs. 9, 19-20)

Radek's home. (Ex. 69) Radek used his BLET American Express card to pay for this \$84 meal for himself. (Ex. 7; Ex. 37 at 513, 520). Radek did not claim that anyone was with him for this meal. (Ex. 7) Radek noted on the receipt, "Return Enroute from Miami". (Ex. 7; Ex. 37 at 516) The BLET paid for this charge. (Ex. 7)

When Radek was questioned generally about having a meal alone in his home city after returning from a business trip he admitted, "ordinarily I don't think you would" be entitled to charge the meal to the BLET. (Ex. 37 at 512) When Radek was specifically asked about the meal at Yanni's on February 18, 2005, Radek responded,

on the 18<sup>th</sup>, when I flew back, I stopped at Yanni's, and I sat there, I think, watching, like, a basketball game or something. I was probably just sitting there until finally I paid the bill and left and went home at whatever time it says this was. 10:00. That's probably what happened.

(Ex. 37 at 518-519; Ex. 7)<sup>9</sup>

As discussed below, Radek claimed that it was the BLET policy to pay for such "en route" meals. (Ex. 64 at 6) Contrary to Radek's claim, when asked about Radek's February 18, 2005 "en route" expense, National Secretary-

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<sup>9</sup> Radek testified that after he arrived in Chicago on February 18<sup>th</sup>, it probably took him until 6:30 p.m. to get out of the airport. Radek testified he went to Yanni's by himself, which was about twenty-five minutes from the airport, spent a couple of hours having a meal and watching the basketball game and then went home. (Ex. 37 at 518-520)

Treasurer Walpert testified it was not the "practice or policy" of the BLET to charge such a meal to the BLET credit card. (Ex. 35 at 127-128; Ex. 7) Similarly, when BLET President Rodzwick was asked about the February 18, 2005 expense, Rodzwick testified that it was not the BLET policy to pay for meals in an officer's home city after he returned from a business trip. (Ex. 34 at 36-37; Ex. 7)

In addition to the eight meals in his home city which Radek claimed were "en route", Radek caused the BLET to pay for at least six additional meals Radek had alone in his home city. (Exs. 4, 12-14, 17, 19, 22) Radek did not indicate any union purpose for those six meals. (Exs. 4, 12-14, 17, 19, 22)<sup>10</sup> Those meals totaled \$428.50.<sup>11</sup>

For example, on Wednesday, September 27, 2006 at 3:07 p.m. Radek had a meal at McCormick & Schmick's in Chicago. (Ex. 22) The meal cost \$157. (Ex.22) Radek used the BLET's American Express card to pay for the meal. (Ex. 22) The BLET paid the American Express bill. (Ex.22) Radek did not indicate on the receipt that anyone was with him nor did he indicate any union purpose for this meal on the receipt. (Ex. 22)

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<sup>10</sup> Radek did not offset these meals against his At Home Expense Allowance, which, given that there was no business purpose for the meals, would have been improper.

<sup>11</sup> Radek charged these six meals on the BLET's credit card. (Exs. 4, 12-14, 17, 19, 22)



In addition, on October 7, 2005, Radek caused the BLET to pay for two charges at Yanni's in Arlington Heights, IL. (Exs. 13-14) Radek did not indicate on either receipt that anyone was with him. (Exs. 13-14) The first charge was at 7:12 p.m. in the amount of \$29. (Ex. 14) Radek charged this on his personal credit card, submitted the receipt to the BLET for reimbursement and was reimbursed. (Ex. 14)<sup>12</sup> The second charge at Yanni's on October 7, 2005 was for \$75 at 8:33 p.m.. (Ex. 13) Radek charged this expense on the BLET's credit card, which the BLET paid. (Ex. 13) Even under Radek's description (Ex. 37 at 564-567), this meal should have been covered by his At Home Expense Allowance and not paid on the union credit card.

**b. Radek's Additional Meals Alone in his Home City Which He Illegally Caused the Union to Pay for Without a Union Purpose**

In addition to the fourteen meals discussed above, between August 2004 and February 2007, Radek caused the BLET to reimburse him for another 26 meals he had alone in his home city. (Exs. 2, 6, 9-12, 14, 16, 18-22, 24-27) There was no business purpose for these meals. The cost of these meals was \$1,475.47. (Exs. 2, 6, 9-12, 14, 16, 18-22, 24-27) Radek then improperly claimed these personal meals

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<sup>12</sup> Radek offset this charge against his At Home Expense Allowance. (Ex. 14)

as business expenses. These claims for reimbursement reduced his At Home Expense Allowance. (Exs. 2, 6, 9-12, 14, 16, 18-22, 24-27) In claiming that the cost of these meals were properly reimbursable, Radek made an affirmative representation that these charges were related to union business and were not personal. Neither the At Home Allowance nor reimbursements covered personal expenses.

For example, on Friday, September 1, 2006 at 9:53 p.m. Radek had a meal by himself at Yanni's. (Ex. 22) The cost was \$115. (Ex. 22) Radek used his personal credit card to pay for this meal and claimed reimbursement for it on his BLET expense report. (Ex. 22) He indicated on the restaurant receipt "in lieu of home allowance". (Ex. 22) Radek did not indicate on the restaurant receipt that any one else was present or the union purpose for the meal. (Ex. 22) Radek claimed that when he sought reimbursement for a meal, it was because the meal was a "business expenditure." (Ex. 37 at 410-411) Radek did not note the union purpose at the time he sought reimbursement. Radek testified that he could not remember the union purpose for this meal and would check his records to determine the union purpose. (Ex. 37 at 405-406, 411) As discussed below, in response to a request from the IRB to provide the union purpose for this meal (Ex. 73), Radek's counsel

acknowledged in a letter this was a "non-business meal."

(Ex. 64 at 2, fn 1)

In another example, on Saturday, December 30, 2006, at 8:31 p.m. Radek had a meal at Don Juan's restaurant in Chicago. (Ex. 25) The meal cost \$51. (Ex. 25) Radek used his personal credit card to pay for this meal. (Ex. 25) He submitted the receipt for reimbursement and claimed it was a union related expense. (Ex. 25) He indicated on the restaurant receipt "in lieu of home allowance". (Ex. 25) Radek failed to indicate on the receipt that any one else was present or what the union purpose was for the meal.

(Ex. 25)

Union money must be spent for a union purpose. There was no union purpose for these meals alone. Radek proffered none. Nor was there a BLEET policy that supported Radek's practice. For example, several BLEET officials, including President Rodzwick, National Secretary-Treasurer Walpert and Controller Volpe, stated what was obvious: that an officer's meals alone in his home city were not a business expense. (Ex. 35 at 28-29, 143-144; Ex. 70 at 48; Ex. 34 at 22-23, 27-28; Ex. 40 at 27-28) Vice President Stephen Speagle testified that a meal alone in an officer's home city could not be offset against the At Home Expense Allowance. (Ex. 71 at 26) In addition, when asked about

meals alone in his home station, Marcus Ruef, who became a BLET Vice President in June 2006, testified, "[m]y understanding is that that's not to be expensed at all." (Ex. 72 at 293-294)

**2. Radek Breached his Fiduciary Duty and Embezzled When He Caused the BLET to Reimburse Him for Personal Meals With Others**

Between April 2005 and February 2007, Radek caused the BLET to pay for at least seventeen meals in his home city with his family members or his girlfriend. (Exs. 5, 9, 23-27)<sup>13</sup> On his monthly reimbursable expense reports, Radek submitted receipts to the BLET for these personal meals which totaled \$1,545.32, an average of \$90 a meal. (Exs. 5, 9, 23-27) He then received reimbursement for such meals. (Exs. 5, 9, 23-27) In seeking reimbursement, Radek was claiming the expenses were for a union purpose. (Exs. 9, 23-27, 32)

For example, Radek intentionally caused the BLET to pay for a meal he had with his daughter at Elliott's

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<sup>13</sup> Radek testified that Renee Trappe ("Trappe") lived with him in Chicago. (Ex. 37 at 577, 579, 585) According to Radek, Trappe was an editor and was not a BLET member. (Ex. 37 at 579, 585-586) Radek caused the BLET to pay for at least three meals he had with Trappe at Yanni's in Arlington Heights, IL. These meals were on October 27, 2006, December 15, 2006 and February 5, 2007. (Exs. 23, 25-27) Radek claimed that Trappe sometimes edited documents for him and on occasion he caused the BLET to pay for her dinner. (Ex. 37 at 579, 585-586) Radek claimed he only did that if there was a "business purpose" which he claimed "would be notated on the receipts." (Ex. 37 at 579; Exs. 23, 25, 27) On the receipt for a meal at Yanni's on December 15, 2006, Radek wrote "R.C. Trappe - Daily Herald." (Ex. 25) The Daily Herald is a suburban Chicago newspaper. (Ex. 68)

Restaurant in Chicago at 6:55 p.m., on Valentine's Day, February 14, 2007. (Ex. 37 at 646-647) The meal cost \$110. (Ex.27) Radek explained he took his daughter to dinner because it was "her wedding anniversary". (Ex. 37 at 647) This obviously was not a union purpose. Yet, Radek submitted the meal receipt on his BLEET reimbursable expense report claiming the meal as a business expense. (Ex. 27) Radek wrote on the receipt "Radek K. Radek In lieu of home allowance." (Ex. 27)

Neither reimbursed expenses nor the At Home Expense Allowance were to be used for non-union purposes. (Exs. 33, 66) Meals with family members in an Advisory Board member's home city unrelated to union business were not union expenses. (Ex. 70 at 48; Ex. 34 at 29; Ex.72 at 293-294; Ex. 40 at 27)

In another example of charging the union for a meal with a family member, on Monday, January 15, 2007, at 6:53 p.m., Radek had a meal with his son at the Olive Garden restaurant in Middleburg Heights, Ohio. (Ex. 37 at 637; Ex. 27) Radek charged the meal on his personal credit card and submitted the receipt to the BLEET for reimbursement. (Exs. 26-27) On the receipt for this meal, Radek wrote, "R Radek K Radek In lieu of home allowance." (Ex. 27) By a check dated March 7, 2007, the BLEET reimbursed Radek for this

expense. (Ex. 27)<sup>14</sup> During his September 15, 2008 IRB sworn examination, Radek testified that he could not remember the reason for taking his son to dinner and would have to "look at the report and get back" to the IRB. (Ex. 37 at 637) There was no union purpose for this meal for which Radek intentionally caused the union to pay.

In addition, Radek had a meal with his brother at Yanni's Restaurant in Arlington Heights, Illinois at 9:11 p.m. on Friday, January 26, 2007. (Ex. 37 at 640-641; Ex.26) The cost was \$100. (Ex. 26) Radek charged the meal on his personal credit card. (Ex. 26) He submitted the receipt to the BLET for reimbursement for this meal. (Ex. 26) On the receipt, Radek wrote, "R. Radek D. Radek In lieu of home allowance." (Ex. 26) As with the January 15, 2007 meal described above, Radek testified that he would "have to look into this one and see" why he took his brother to dinner. (Ex. 37 at 640-641) As detailed below, no explanation of the business purpose for this meal was received as of the date of this report. Union money

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<sup>14</sup> Radek claimed he was in his home city on January 15, 2007 by claiming the \$50 daily At Home Expense Allowance for that day. (Ex. 26) This appears to have been during the period when Radek claimed he was told to claim the At Home Expense Allowance in both Chicago and Cleveland. (see fn 6 above) For purposes of this report, whenever Radek claimed the At Home Expense Allowance he was deemed to be in his home city, either Chicago or Cleveland.

whether through reimbursements or the allowance could not properly be used for a personal expense.

In addition, on New Year's Day, January 1, 2007 at 9:43 p.m., Radek had a meal with his son, Keith, at the Longhorn Steakhouse in Strongsville, Ohio. (Ex. 37 at 618, 637-639; Ex. 26) The cost was \$95. (Ex. 26; Ex. 37 at 637) Radek charged the meal to his personal credit card and submitted the receipt to the BLET for reimbursement. (Ex. 26) On the receipt, Radek wrote, "R. Radek K. Radek In lieu of home allowance." (Ex. 26) In a check dated February 2, 2007, the BLET reimbursed Radek for this meal. (Ex. 26) Radek listed the meal on his BLET reimbursable expense report, thereby improperly claiming it as a union expense. (Ex. 26)

When questioned about this January 1, 2007 expense, Radek speculated that his son, who was never a BLET member, may have done some unspecified work for him that day. (Ex. 37 at 638; Ex. 26) The meal was on New Year's Day which was both a BLET and national holiday.

Walpert, who approved Radek's expenses, testified that he was not aware of any circumstances when a family member of a BLET officer performed services for the BLET. (Ex. 35 at 29) According to Walpert, if an officer's family member performed services for the BLET and then had a meal at BLET

expense, the work such family member did for the BLET would need to be specified. (Ex. 35 at 31) Radek's expense reports contained no such information. (Exs. 6-27) Indeed, the pattern of Radek's abuse suggests his claim that his son was assisting him with union business on a union and national holiday is false.

**3. Radek Charged Home Office Supplies to the BLET Credit Card While at the Same Time He Received the At Home Expense Allowance Which Covered the Cost of These Home Office Supplies**

As discussed above, the At Home Expense Allowance covered business expenses, including home office supplies, for BLET Advisory Board members in their home cities.<sup>15</sup> Despite this, between January 2004 and September 2007, Radek charged approximately \$2,865.28 for home office supplies to the BLET credit card, while he also received his At Home Expense Allowance. (Exs. 10, 12-15, 17, 19-23, 25-26, 46-57, 59-60, 65) He was directed to stop the practice in September 2007. There was no set off against the allowance of the amount the union paid on his behalf for the supplies. (Exs. 10, 12-15, 17, 19-23, 25-26, 46-57,

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<sup>15</sup> National Secretary-Treasurer Walpert and Radek testified that the purchase of capital equipment, such as computers, printers and fax machines, were not covered by the At Home Expense Allowance. (Ex. 37 at 388; Ex. 35 at 26-27) Based upon this, such capital equipment items were excluded from the office expenses at issue in this report.



59-60, 65)<sup>16</sup> This double dipping was intentional. Through Radek's actions, the BLET paid for his home office supplies twice: once directly through the charges on his BLET credit card and also indirectly in the unreduced At Home Expense Allowance paid to Radek.

The At Home Expense Allowance covered expenses an officer incurred in his home city. (Exs. 6-27) According to National Secretary-Treasurer Walpert, home office expenses were "expected to come from [Advisory Board members'] at-home allowance." (Ex. 70 at 44-45) BLET Controller Volpe confirmed this. (Ex. 40 at 26, 28) Rodzwick also testified that the At Home Expense Allowance covered an officer's purchase of office supplies in his home city. (Ex. 35 at 10; Ex. 34 at 23-24; Ex. 72 at 294)

Despite that, between January 2004, when the BLET merged with the IBT, and September 2007 when he was directed to stop the practice, Radek charged approximately \$2,865.28 for his home office supplies on the BLET's credit card, which the BLET paid directly, while at the same time he claimed and received the At Home Expense Allowance which covered home office expenses. (Exs. 10, 12-15, 17, 19-23,

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<sup>16</sup> Radek's home office supplies included the following: computer ink cartridges, binder clips, glue sticks, paper, pens, tabs, binders and ink refills for his Mont Blanc pen. (Ex. 37 at 442-443, 451-452; Exs. 10, 12-15, 17, 19-23, 25-26, 46-57, 59-60, 65)

25-26, 46-57, 59-60, 65)<sup>17</sup> Radek did not have the BLET offset the cost of his home office supplies against his At Home Expense Allowance. (Exs. 10, 12-15, 17, 19-23, 25-26, 46-57, 59-60, 65) As a consequence, Radek intentionally caused the union to pay twice for the same expenses. By his conduct, Radek breached his fiduciary duty and embezzled \$2,865.28 by taking the unreduced At Home Expense Allowance while also causing the BLET to pay that same amount for his home office supplies.

Radek admitted that he used the BLET credit card for his home office supplies. (Ex. 37 at 429, 487) Radek also admitted that home office supplies were business expenses at his home station. (Ex. 37 at 431-432)

As discussed below, in approximately October 2007, after he submitted his September 2007 expense report to the BLET, Radek was directed to stop charging his home office supplies to the BLET credit card and to offset the cost of his home office supplies against his At Home Expense Allowance. (Ex. 37 at 429-430)<sup>18</sup>

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<sup>17</sup> In 2004, 2005 and 2006, Radek improperly charged \$249.36, \$879.45 and \$1,140.54 respectively for home office supplies to the BLET credit card. (Exs. 10, 12-15, 17, 19-23, 25, 46-48, 50-57, 59) From January through September 2007, Radek charged \$595.93 for home office supplies to the BLET credit card. (Exs. 26, 49-60, 65)

<sup>18</sup> In addition to the embezzlement described above, between January 2004 and December 2007, Radek also caused the BLET to pay for at least five undocumented expenses totaling \$918.91 that he charged to the BLET's credit card. (Exs. 6, 13, 17, 25, 76-77) These five

## V. ANALYSIS

The standard of proof for establishing the charge against Radek is a preponderance of evidence. Rules and Procedures for Operation of the Independent Review Board, Para. J(6) ("In order to be sustained, the proposed . . . charges . . . contained in the Investigative Report, must be supported by a preponderance of reliable evidence."); United States v. IBT [Simpson], 931 F.Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F.3d 341 (2d Cir. 1997).<sup>19</sup>

Article XIX, Section 7(b)(3) of the IBT Constitution prohibits embezzlement or conversion of union funds. The standard for embezzlement under federal labor law, 29 U.S.C. §501(c), is instructive. Investigations Officer v. Calagna, Decision of the Independent Administrator at 11 (May 9, 1991), aff'd, United States v. IBT, 777 F.Supp. 1123 (S.D.N.Y. 1991). For Radek to be found to have embezzled BLET funds, it must be established that he acted

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undocumented charges were the following: \$109.52 at the Holiday Inn in Chicago on August 19, 2004 for a meal; \$190.30 on October 7, 2005 at Office Max in Chicago; \$199.95 on March 15, 2006 at The Luggage Source based in New York; \$256.14 at Best Buy in Norridge, Illinois on December 18, 2006 and \$163 on December 15, 2007 at Office Max in Chicago. (Exs. 6, 13, 17, 25, 76-77) Radek did not list these expenditures on any of his expense reports nor did he submit any receipts documenting what the purchase was or the union purpose for the expenditure. (Exs. 6, 13, 17, 25, 76-77) The BLET paid for these undocumented charges. (Exs. 6, 13, 17, 25, 76-77)

<sup>19</sup> In addition, Article XIX, Section 1(e) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence.

with the fraudulent intent to deprive the BLET of its funds. See, United States v. Welch, 728 F.2d 1113, 1118 (8<sup>th</sup> Cir. 1984); Investigations Officer v. Caldwell, Decision of the Independent Administrator at 7 (February 9, 1993), aff'd, 831 F. Supp. 278, 283 (S.D.N.Y. 1993).

Determining whether a union official had the requisite intent to embezzle should be done, "on the basis of 'all of the evidence considered together' and 'in light of all the surrounding circumstances.'" United States v. Welch, supra, 728 F.2d at 1119 quoting United States v. Morissette, 342 U.S. 246, 275-276 (1951). "[I]t is permissible to infer from circumstantial evidence the existence of intent." United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985) (citation omitted).

Radek, who became a union officer in 1976 and a BLET Advisory Board member in 1996, was a fiduciary with respect to BLET funds. 29 U.S.C. §501(a). Any money Radek caused the BLET to spend had to be for a union purpose. Despite these obligations, Radek intentionally engaged in a pattern of causing the BLET to pay for at least 57 personal meals by either using his BLET credit card to pay for the meals or by submitting receipts for such meals to the BLET for reimbursement thereby affirmatively representing that such meals were a union expense. (Exs. 1-27) These meals

included a meal Radek admitted was to celebrate his daughter's wedding anniversary. (Ex. 37 at 647; Ex. 27) There was no union purpose for Radek's personal meals. By intentionally causing the BLET to pay for these meals, Radek breached his fiduciary duty and embezzled \$3,909.29 in BLET funds. (Exs. 1-27)

In addition, Radek breached his fiduciary duty and embezzled BLET funds when he took the At Home Expense Allowance which covered his home office supplies while also causing the BLET to directly pay for his home office supplies by charging them on his BLET credit card. See, United States v. IBT [Vitale], 775 F.Supp. 90, 98 (S.D.N.Y. 1991) (IBT officer embezzled union funds "by having Local 283 pay his FICA tax when that obligation was fully satisfied by the International, of which Vitale was also an employee.") By engaging in this practice, Radek embezzled \$2,865.28.

**A. Radek's Claimed Defenses**

**1. Radek's Claimed Defenses for his Personal Meals Alone in His Home City**

**a. En Route Meals**

With respect to his "en route" meals, Radek claimed that in 2005, the BLET policy was that when he returned from business travel, he was permitted to charge his meals

in Chicago, his home station, until the point when he "actually got home . . .". (Ex. 37 at 520) Radek claimed that more than a year prior to his September 2008 sworn examination, the policy was changed to provide that, "when we get to Chicago station, we're home and you cannot charge your meal, you know, unless there's some special circumstance." (Ex. 37 at 520, 523)

There was no indication that payment for "en route" meals had been the BLET's policy. Radek did not articulate any union purpose for his claimed policy. As discussed above, when National Secretary-Treasurer Walpert and President Rodzwick were asked about Radek's February 18, 2005 "en route" charge at Yanni's in Arlington Heights, IL, they both testified that it was not the BLET policy to pay for such "en route" meals. (Ex. 35 at 127-128; Ex. 34 at 36-37) In addition, Vice President Speagle also testified that the BLET did not pay for "en route" meals in an officer's home city. (Ex. 71 at 33)<sup>20</sup>

With respect to Radek's February 18, 2005 "en route" meal, Radek's counsel asserted in a written submission that Radek specifically discussed that meal with Secretary-

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<sup>20</sup> In addition, Ruef, who became a Vice President in June 2006, and Speagle, who became a Vice President in 2001, each testified that it was always his understanding that a meal alone in an officer's home city could not be offset against the At Home Expense Allowance. (Ex. 72 at 298-299; Ex. 71 at 25-26)

Treasurer Walpert. (Ex. 64 at 6)<sup>21</sup> According to Radek's counsel, Walpert "approved the expense because similar expenses had been approved previously. However, Mr. Walpert stated that he would no longer, after this instance, approve such meals. Mr. Radek does not remember submitting another such expense after this discussion with Mr. Walpert." (Ex. 64 at 6)<sup>22</sup> Radek's memory failed him. He caused the BLET to pay for at least ten "en route" meals in his home city after the February 18, 2005 meal. (Exs. 2, 3, 7, 8, 9, 15, 19, 20)<sup>23</sup>

Even if Radek believed that his "en route" meals alone in his home city were somehow business expenses, the At Home Expense Allowance covered business expenses in an officer's home city. To receive money in addition to the allowance for the same expense would be double dipping. Nevertheless, Radek did not consistently offset the claimed "en route" meal expenses against his At Home Expense Allowance. Rather, of the total of thirteen "en route"

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<sup>21</sup> Radek's counsel also claimed that two other BLET Vice Presidents, Bill Keppen and Giles Halle, were also reimbursed for "en route" expenses. (Ex. 64 at 6)

<sup>22</sup> As noted above, when asked during his sworn examination about this February 18, 2005 expense, Walpert testified that it was not the BLET's practice to pay for such meals. (Ex. 35 at 127-128)

<sup>23</sup> These meals were on March 5, 2005, March 9, 2005, April 11, 2005, April 29, 2005, December 27, 2005, two on June 24, 2006, June 30, 2006, July 14, 2006 and July 23, 2006. (Exs. 8, 9, 15, 19, 20)

expenses for which Radek caused the BLET to pay between January 2004 and July 2006, seven were not offset against his At Home Expense Allowance, five were offset against his allowance and, on the date of one "en route" meal, Radek did not claim the allowance. (Exs. 2, 3, 7-9, 15, 19, 20)<sup>24</sup> Even when offset, without a business purpose he had no right for the union to pay the expense.

**b. Additional Meals Alone in Radek's Home City**

In addition to the "en route" meals alone in his home city, Radek also caused the BLET to pay for an additional six charges alone in his home city. (Exs. 4, 12-14, 17, 19, 22)<sup>25</sup> As discussed above, Radek made two charges on October 7, 2005 at Yanni's in Arlington Heights, IL. (Exs. 13-14) The first charge was at 7:12 p.m. for \$29 and the second charge was at 8:33 p.m. for \$75. (Exs. 13-14)<sup>26</sup> When asked during his sworn examination about the \$75 charge at

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<sup>24</sup> The "en route" meals that were not offset against Radek's home allowance were on the following dates: two on February 13, 2005, February 18, 2005, March 9, 2005, April 29, 2005, December 27, 2005 and June 30, 2006. (Exs. 7-9, 19-20) The "en route" meals that were offset against Radek's allowance were on April 11, 2005, two on June 24, 2006, July 14, 2006 and July 23, 2006. (Exs. 9, 19, 20) On March 5, 2005, the date of another en route meal expense, Radek did not claim the At Home Expense Allowance. (Ex. 8)

<sup>25</sup> These six charges were not offset against Radek's At Home Expense Allowance. (Exs. 12-14, 17, 19, 22) As discussed below, Radek also submitted receipts to the BLET for an additional 26 meals alone in his home city which were offset against his At Home Expense Allowance. (Exs. 2, 6, 9-12, 14, 16, 18-22, 24-27)

<sup>26</sup> Radek offset the \$29 charge at Yanni's against his At Home Expense Allowance. (Ex. 14)



Yanni's, Radek had no explanation why he charged that meal on his BLET credit card. (Ex. 37 at 564-567) In his submission to the IRB, Radek's counsel claimed that Walpert had pre-approved the October 7, 2005 charge at Yanni's. (Ex. 64 at 3) Such approval, even if given, would be meaningless because Walpert had no authority to permit union funds to be used for non-union purposes.

Radek testified that when Walpert specifically approved an expense in Radek's home city, Radek noted that approval on the receipts he submitted to the BLET. (Ex. 37 at 352) Consistent with this testimony, prior to Radek's October 7, 2005 charges at Yanni's, Radek noted on 49 receipts when Walpert had approved expenses in Radek's home city. (Exs. 6-12, 51-57, 78)<sup>27</sup> Yet, Radek made no notation that Walpert approved either of the October 7, 2005 Yanni's receipts. (Exs. 13-14)

## **2. Radek's Claimed Defenses for the Personal Meal Charges for which he Received Reimbursement**

With respect to the personal meals for which Radek caused the union to reimburse him and he then offset against his At Home Expense Allowance, Radek claimed that he did not act improperly because the At Home Expense

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<sup>27</sup> In addition, subsequent to the October 7, 2005 charge, Radek noted on at least 34 receipts when Walpert had approved expenses in Radek's home city. (Exs. 15-22, 24, 26-27, 58-59, 65, 76, 79)

Allowance was equivalent to salary. (Ex. 64 at 3)<sup>28</sup> Radek's claim is in direct conflict with the BLET Bylaws and the facts. As an officer, Radek is presumed to know the Bylaw provisions. The At Home Expense Allowance was not additional salary for Advisory Board members to use as they saw fit. None of them, including Radek, had the power to increase their salary. As noted above, pursuant to Section 47(b) of the BLET Bylaws, the salaries for the BLET National Officers were required to be set at the BLET Convention. (Ex. 29)<sup>29</sup> The Advisory Board was without power to increase salaries without convention approval. (Ex. 29)

The At Home Expense Allowance was merely an administrative convenience that allowed less record keeping for expenses that the BLET was paying on behalf of officers who incurred expenses for a union purpose. As the IRS required, the BLET treated the At Home Expense Allowance as income for tax purposes when an Advisory Board member did not submit receipts for business expenses.<sup>30</sup> This did not

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<sup>28</sup> Radek's counsel also stated, "meal expenses reimbursed in lieu of at home allowance represented no additional or duplicate cost to the BLE-T. Whether the reimbursement came as payment of home allowance or was reimbursed in lieu of it does not change the fact that the BLE-T would have paid the same amount to Mr. Radek." (Ex. 64 at 3)

<sup>29</sup> Between BLET conventions, the salaries for the National Officers can be increased based upon increases "obtained for engineers through the concerted national wage movements." (Ex. 29)

<sup>30</sup> See, IRS Publication 463 (if expense allowance did not require an adequate accounting of the business purpose or the return of excess

transform it from an allowance for union related expenses into salary. (Ex. 44)

After Radek's September 15, 2008 sworn examination, by letter dated October 3, 2008, counsel for Radek and the BLET were asked to provide information regarding the business purpose for fifteen of the meals for which Radek caused the BLET to pay and which are the subject of this report. (Exs. 1 and 45)<sup>31</sup> The BLET did not provide any records demonstrating the union purpose for any of the meals. (Ex. 75)

Radek's counsel's response acknowledged that he caused the BLET to pay for some personal meals, including meals Radek had alone in his home city on May 17, 2005 and September 1, 2006. (Ex. 64 at fn 1) Radek's counsel claimed that Radek believed that it was permissible for him to offset meals with family members against his At Home Expense Allowance. (Ex. 64) That claim only is valid if the allowance was salary which, as noted above, it was not. It was an allowance provided to pay for union related expenses. Indeed, since Radek was claiming the meals as reimbursable non-taxable business expenses, they clearly

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funds, an employer was required to report the allowance amount as wages on Form W-2) (Ex. 44)

<sup>31</sup> The meals included in the IRB's October 3, 2008 letter included the January 1, 15 and 26, 2007 and February 14, 2007 meals with Radek's family members discussed above. (Ex. 45)

had to be for a union purpose. Moreover, that Radek indicated on the receipts "in lieu of home allowance" showed that he did not think that the At Home Expense Allowance was just additional salary awarded in violation of the BLET Bylaws.

Radek's counsel's submission stated that, "Mr. Radek charged only a small handful of non-business meals against home allowance prior to December 2006. . . ." (Ex. 64 at 2, fn. 1) This was inaccurate. Prior to December 2006, Radek requested reimbursement for at least 23 personal meals he had either alone or with a family member in his home city, which were offset against his At Home Expense Allowance. (Exs. 2, 5-6, 9-12, 14, 16, 18-24)<sup>32</sup>

In his submission, Radek's counsel claimed that in late 2006, Walpert told Radek,

that he should offset more of his at home allowance for station expenses -- such as meals -- as that was the intended purpose of the at home allowance. Mr. Walpert did not advise Mr. Radek of any change to the long-standing BLE-T practice of including wives or other family members with such meal expenses when they were present, nor did he state in the conversation that meals claimed in lieu of the at home allowance must be limited to those having a business purpose.

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<sup>32</sup> In addition, prior to December 2006, Radek also caused the BLET to pay for 14 additional personal meals he had alone in his home city. (Exs. 3-4, 7-9, 15, 19-20) These meals, which included eight "en route" meals, were not offset against his At Home Expense Allowance. (Exs. 3, 7, 8, 9, 15, 19-20)

(Ex. 64 at 2)<sup>33</sup> Radek did not claim Walpert told him to seek reimbursement for personal expenses and then offset that against his At Home Expense Allowance. According to Radek's counsel, after this conversation in late 2006, Radek then began to offset his At Home Expense Allowance with personal meal expenses that included his family members. (Ex. 64)<sup>34</sup> Radek, a longtime union officer, had no basis for believing the union should reimburse him for personal expenses.

According to Radek's counsel, in March 2007, Walpert's assistant, who reviewed Radek's expenses, directed Radek to stop seeking reimbursement for meals with family members and then offsetting them against his At Home Expense Allowance. (Ex. 64 at 2) In response to this, according to Radek's counsel, on March 10, 2007 Radek sent a letter to Walpert asking "whether it was required that the at home allowance be used solely for business meals." (Ex. 64) On March 14, 2007, Walpert replied stating that ". . . you may not offset your home allowance with individual and personal

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<sup>33</sup> Radek also claimed that in the past he was permitted to offset meals he had alone against the At Home Expense Allowance. (Ex. 37 at 557)

<sup>34</sup> It appears that Radek began to cause the BLET to pay for meals with his girlfriend and family members in late October 2006. (Ex. 5, 23-27) He also caused the BLET to pay for a meal with his daughter on Saturday, April 23, 2005 at Don Juan's in Chicago. (Ex. 9) On the receipt for this meal, Radek wrote, "R. Radek K. Radek Writing Class." (Ex. 9)

meal expenses." (Ex. 64 at Ex. B) Radek was a long time union fiduciary. This advice was consistent with the requirement that a fiduciary use union funds for a union purpose. This requirement was explicitly set forth in the BLET's January 2004 handout concerning the At Home Expense Allowance which stated "[r]emember that each expenditure you record must qualify under IRS regulations. Your report must be adequately described and supported with documentation, given the transaction and business purpose." (Exs. 42-43) After the March 14, 2007 letter from Walpert, Radek stopped causing the BLET to pay for his personal meals. (Ex. 74) Radek was a fiduciary. He had a special obligation to use the union's money for union purposes. 29 U.S.C. §501.

In his defense, Radek also argued that he did not attempt to conceal that he was charging meal expenses for his family members. (Ex. 64 at 2, fn 1) Radek testified that Walpert and others at the BLET reviewed and approved his expenses. (Ex. 31 at 177; Ex. 37 at 571-572) This claim is irrelevant. In United States v. Dibrizzi, 393 F.2d 642, 645 (2d Cir. 1968), the Court of Appeals held that,

[e]ven if [the officer] may have established that his expenses were, as he claims, authorized and adopted by the union, such does not absolve

him of his crimes; the reach of § 501(c) is not limited to union officers who engaged in stealthy larcenies or devious embezzlements but extends to an officer who 'unlawfully and willfully abstracts or converts to his own use' the funds of a labor organization. When one sends the union a voucher known to be an improper one, and then receives payment of the voucher, the crime is completed.

(citations omitted)

Radek was a fiduciary who intentionally caused the BLET to pay for his personal expenses. This was not a grey area. That others may have been aware of his misconduct does not relieve him of responsibility. See, Morrisey v. Curran, 650 F.2d 1267, 1274 (2d Cir. 1981) (" . . . where a union officer personally benefits from union funds, a court in a §501(b) suit may determine whether the payment, notwithstanding its authorization, is so manifestly unreasonable as to evidence a breach of the fiduciary obligation imposed by §501(a).")

**3. Radek's Claimed Defenses to His Receipt of the Full At Home Expense Allowance Which Covered Home Office Supplies While at the Same Time Charging Such Supplies on the BLET Credit Card**

Radek claimed that he did not know that the At Home Expense Allowance covered the purchase of home office supplies until after he submitted his September 2007 expenses. (Ex. 37 at 429-430, 432, 443) There would have

been no reason to believe these types of home city expenses were not covered by the At Home Expense Allowance. (Exs. 33, 66) According to Walpert, the purpose of the At Home Expense Allowance "is to provide a source for the officers to be able to conduct business from their home." (Ex. 70 at 46) To conduct work from home, the officer may well need supplies. Indeed, during the June 2006 Advisory Board meeting, Walpert instructed the Advisory Board members that a business meal and small office supplies were examples of the type of business expenditures which the At Home Expense Allowance covered. (Ex. 35 at 16; Ex. 41 at 19, 22) Radek attended this June 2006 meeting. (Ex. 35 at 16; Ex. 36)

In addition, Radek's assertion was contrary to the February 2007 memorialization of the At Home Expense Allowance which specifically stated that the Allowance covered, "expenses of maintaining a office with in the officer's residence." (Ex. 33)<sup>35</sup>

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<sup>35</sup> In approximately December 2006, the IRB began an investigation into then BLET President Donald Habs' expenses. (Ex. 67) In response to the IRB's request for a written description of the BLET's At Home Expense Allowance, the BLET produced a document dated February 15, 2007 which memorialized the policy. (Ex. 33) According to this document which was entitled, "Brotherhood of Locomotive Engineers and Trainmen At-Home Station Expense Allowance",

[t]he purpose of the allowance is to reimburse the Officer for usual and customary expenses of maintaining an office within the Officer's residence and also to reimburse the Officer for normal out-of-pocket expenses incurred daily at his or her home city of assignment which relate to business of the Brotherhood.



On August 30, 2007, the BLET Advisory Board adopted a "Policy Statement with Respect to "At Home Station Expense" Allowance." (Ex. 66)<sup>36</sup> This document specified that "Officer's payment of meals for visiting BLET officers and members and others, home office expenses not constituting capital equipment expenditures (e.g. reproduction costs, postage expenses, printer ink, etc.), and any other expenses incurred at his home station which are otherwise not submitted for reimbursement to, and approved by, the BLET Executive Committee" were the type of business expenses the At Home Expense Allowance covered. (Ex. 66)

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Those out-of-pocket daily expenses intended to be covered by the expense allowance include, but are not limited to, the Officer's payment of meals for visiting other BLET officers and members and others, which are not otherwise submitted for reimbursement to, and approved by the BLET Executive Committee. The expense allowance historically has been paid by the Brotherhood without submission of any receipts or other documentation of expenses incurred by the Officer. All expense allowance amounts paid to National Officers are included and reported as income by the Brotherhood and the employee to the extent they are not reported and substantiated as business expenses by the Officers.

(Ex. 33) This document was created in response to a request from the IRB's Chief Investigator. (Ex. 67) According to National Secretary-Treasurer Walpert, this document "included my understanding of what the At Home Station Expense Allowance included." (Ex. 35 at 7; Ex. 70 at 50-51) Volpe, the BLET Controller, was also involved in the preparation of this document. (Ex. 35 at 7-8)

<sup>36</sup> According to Walpert, the difference between the August 30, 2007 document and the February 2007 memorialization was that in the August 30, 2007 statement, ". . . we went into more detail, with examples of what could and could not constitute an expense allowance." (Ex. 35 at 26)

Even after August 30, 2007 when the BLET reaffirmed to all Advisory Board members that the At Home Expense Allowance covered home office supplies, Radek charged home office supplies to the BLET credit card and at the same time also claimed the full At Home Expense Allowance. (Ex. 35 at 6; Exs. 63 and 66) On September 27, 2007, Radek submitted to the BLET three Office Max receipts, dated September 7, 8 and 26, 2007 totaling \$213.88, which he had charged to the BLET's credit card. (Ex. 66) Patti Smith, Walpert's assistant who reviewed Radek's expenses, wrote on these receipts "Take off at home." (Ex. 31 at 177; Ex. 37 at 436, 445)<sup>37</sup> Subsequent to this, Radek stopped charging his home office supplies on the BLET's credit card.

#### V. PROPOSED CHARGE

Based upon the foregoing, it is recommended that Richard Radek be charged as follows:

While a member of the IBT, you brought reproach upon the IBT, breached your fiduciary duty and embezzled union funds in violation of Article II, Section 2(a) and Article

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<sup>37</sup> Radek claimed that he believed this was when he first learned that he could not charge home office supplies to the BLET credit card and that such expenses should be offset against his At Home Expense Allowance. (Ex. 37 at 429-430, 436, 443, 487-488)

XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution,

to wit:

From January 1, 2004 to December 2007, as detailed above, you embezzled BLET funds and breached your fiduciary duty by causing the BLET to pay for at least 57 personal meals which had no union purpose. The cost of such meals was \$3,909.29.

In addition, as detailed above, from January 1, 2004 to September 2007, you embezzled BLET funds and breached your fiduciary duty by receiving your At Home Expense Allowance, which covered the cost of your home office supplies, while at the same time causing the BLET to directly pay \$2,865.28 for your home office supplies.