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July 17, 2014

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The Honorable William H. Webster  
1850 K Street, NW, Suite 1100  
Washington, DC 20006

Executive Board of Joint Council 10  
53 Golfs Town Road  
Manchester, NH 03102

Re: Proposed Charge Against Local 1150  
President and Business Agent Harvey Jackson

Dear Executive Board of Joint Council 10:

Enclosed are the Independent Review Board's (IRB) report and accompanying exhibits concerning Local 1150 President and Business Agent Harvey Jackson. This report is forwarded to you for appropriate action under Section G, paragraphs (d) and (e) of the March 14, 1989 Consent Order entered in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.).

Upon review of the report, if you deem it appropriate, a charge under Article XIX of the IBT Constitution should be filed. You have ninety days within which to file the charge, hold a hearing and forward a final written report to the IRB. Pursuant to paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Copies of hearing transcripts should be furnished to the IRB and to the Chief Investigator.

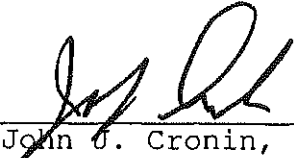
Pursuant to the Consent Order of the United States District Court, S.D.N.Y.  
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

If you decide to reject the IRB's recommendation, you must provide a written explanation with the specific reasons for failing to accept. Within seven days of receipt of this letter, please inform the IRB of the actions planned.

Very truly yours,

Members of the  
Independent Review Board

By:

  
\_\_\_\_\_  
John G. Cronin, Jr.  
Administrator

Enclosures

cc: Bradley T. Raymond, Esq., w/Exhibits  
Charles M. Carberry, Esq., w/Exhibits  
Tara M. La Morte, AUSA, w/Exhibits  
Robert M. Cheverie, Esq., w/Exhibits  
Harvey Jackson, w/Exhibits

TO: Executive Board of Joint Council 10  
FROM: Independent Review Board Members  
RE: Proposed Charge against Local 1150  
President and Business Agent Harvey Jackson  
Date: July 17, 2014

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### **I. RECOMMENDATION**

The Independent Review Board ("IRB") recommends to the Executive Board of Joint Council 10 that charges be filed against Harvey Jackson ("Jackson"), President and a Business Agent of Local 1150, for bringing reproach upon the IBT by embezzling and breaching his fiduciary duty to the Local and its members in violation of Article II, Section (2) (a) and Article XIX, Sec 7 (b)(1), (2) and (3) of the IBT Constitution, and for failing to cooperate with the IRB by giving false and misleading testimony during his IRB sworn examination on May 29, 2014, in violation of Article XIX, Section 14 (i.)<sup>1</sup>.

### **II. JURISDICTION**

Pursuant to Article XIX, Section 1(a) of the IBT Constitution,

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<sup>1</sup> An officer's embezzlement from a labor organization, 29 U.S.C. §501(c), is an act of racketeering under 18 U.S.C. §1961 and therefore is an act which every member is enjoined from committing by the injunction in the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486. (Ex. 1)

this disciplinary matter is within the jurisdiction of Joint Council 10. Paragraph G of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the court-approved Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") (Ex. 2) 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.

### **III. INVESTIGATIVE FINDINGS**

Local 1150, located in Stratford, Connecticut, represents employees of Sikorsky Aircraft. The Local has offices in Troy, Alabama and Jupiter, Florida, where Sikorsky plants are also located. It has 4,844 members. (Ex. 6)

Harvey Jackson became a member of IBT Local 1150 on March 1, 1991. (Ex. 54 at 10-11) In 2001, Jackson was elected President of the Local and has held that office to the present. (Ex. 54 at 20-21; Ex. 6) Jackson's salary in 2013 was \$141,358. (Ex. 6)

#### **A. Jackson Caused The Local To Pay For Personal Items**

As detailed below, Jackson engaged in a pattern of causing

the Local to pay for personal items such as cell phone service for his wife and children, and for electronic equipment and home entertainment system components for his use. In doing so, he embezzled, at least, \$13,000.00 from the Local

**1. Cellular Telephone Charges for Jackson's Wife and Children**

From October, 20, 2009 through December 12, 2011, Jackson used his Local 1150 credit card to pay thirteen bills for cellular telephone service, for his wife and children, totaling \$8,034.56. (Exs. 31; 34; 36; 38-41; 43;45) Jackson gave false explanations for the expenses on receipts he submitted to the Local. The Local paid the charges. During his IRB sworn examination, he claimed he could not recall what some of these charges were for, and changed his description for some of the items purchased from what was on the receipts to other false explanations.

Jackson had a Local credit card for which the statements went directly to the Local. The Local's practice was to pay the credit card bill directly, but it required the individual employee card holder to submit receipts which explained the union purpose for the charges. (Ex. 54 at 99-100, 104-105; Ex. 79, at 10-14) Those bills and receipts were reviewed by the Local's Principal Officer Rocco Calo, or the Vice-President, Richard Rollinson, to be approved for payment. (Ex. 4, at 22-23; Ex. 58, at 22-23)

The following were among the personal charges that Jackson

made and had the Local pay for<sup>2</sup>:

On October 20, 2009, Jackson used his union credit card to pay \$572.96 to Sprint Wireless in Orange, Connecticut for service on PCS account number 203-526-9644, a personal expense<sup>3</sup>. There was no Local phone connected with that number. (Ex. 5) Jackson did not submit a receipt for that purchase. (Ex. 31; Ex. 54, at 103) The Local paid the full credit card bill despite the lack of both documentation and a stated union purpose. (Ex. 31) At his IRB sworn examination, Jackson claimed that the October 10, 2009 expense was "probably" for a new cellular telephone or a "MiFi" device that served as a mobile hotspot for wireless internet service. (Ex. 54, at 101-102)

On December 28, 2009, Jackson used his union credit card to charge \$556.62 for Sprint Wireless at the same store for a personal bill. Jackson submitted a receipt for that expense, on which he wrote its purpose as "equipment". The equipment was unidentified and the Local's need for it went unexplained. The Local paid this bill. (Ex. 34)

On April 19, 2010, Jackson used his union credit card to pay \$561.20 for a personal expense to Sprint Wireless at the same store. Jackson submitted a receipt to the Local for that expense

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<sup>2</sup> There is a chart below which lists additional personal charges for Sprint Jackson caused the Local to pay.

<sup>3</sup> As noted below, Sprint records showed 203-526-9644 was one of four cell phones Jackson used for himself and his family. (Exs. 16-24)

on which PCS account 203-526-9644 was identified. He wrote the purpose for the expense as "equip." (Ex. 36) Again, the equipment was unidentified and the union purpose unexplained. The Local paid this bill. (Exs. 36)

On June 21, 2010, Jackson used his union credit card to pay \$580.38 to Sprint Wireless for a personal expense at the same store. Jackson submitted a receipt to the Local for that expense, writing the purpose for the expense as "equipment". The Local paid this bill. (Exs. 38) The nature of the equipment was not known from the bill. No union purpose was explained. At his IRB sworn examination, Jackson claimed that he was uncertain as to what the expense was for, but stated it would have had to be some kind of "Sprint equipment", such as a "phone card". (Ex. 38; Ex. 54, at 118-121)

On, August 18, 2010, Jackson used his union credit card to pay \$559.11 to Sprint Wireless for a personal expense at the same store. Jackson submitted a receipt for that expense, which had the PCS account as 203-526-9644. Jackson identified the purpose for the expense as "computer hardware". (Ex. 39) Neither the hardware nor the union purpose were identified. The Local paid the bill. (Ex. 39) At his sworn examination, Jackson claimed that the August 18, 2010 expense was "something to do with some hardware that [he] bought to use with a MacBook Pro computer". Jackson could not provide more detail on the \$559.11 expense. He stated

he could not be certain that his expense record was accurate. (Ex. 54, at 127-129)

On October 21, 2010, Jackson used his union credit card to pay \$623.09 to Sprint Wireless for a personal expense at the same store. Jackson submitted a receipt to the local for that expense, which identified the Sprint PCS account as 203-526-9644. He failed to identify in writing what was paid for and the purpose for the expense. According to the Local bookkeeper's handwritten notes, the \$623.09 expense was identified as "purch. equip", an inadequate description. The Local's records did not identify the equipment or the union purpose. (Ex. 40) The Local paid the bill. (Ex. 40) At his sworn examination, Jackson claimed that the \$623.09 expense was for a "receptacle" or an "extender" that would simultaneously charge a cell phone and create a wireless signal. (Ex. 54, at 147-150)

On December 23, 2010, Jackson used his union credit card to pay \$637.44 to Sprint Wireless for a personal expense at the same store. Jackson submitted a receipt to the Local for that expense, which listed the PCS account as 203-526-9644. He identified the purpose for the expense as "software device upgrade". (Ex. 41). The union purpose was not identified, nor was the "software device". The Local paid the bill. (Ex. 41) At his sworn examination, Jackson claimed that he was uncertain why he had written "software device upgrade" on the receipt. He claimed it



was more of an upgrade "associated" with the device he claimed he had purchased for \$623.09 on October 21, 2010, described above. That October expense, he claimed, was for a charging "receptacle" or "extender". (Ex. 54, at 157-159)

On August 24, 2011, Jackson used his union credit card to pay \$579.02 to Sprint Wireless for a personal expense at the same store. Jackson failed to submit a receipt for that expense, or identify the union purpose for the expense, or what was purchased. (Ex. 43) The Local paid the bill. (Ex. 43) At his sworn examination, Jackson claimed that he was not certain what the \$579.02 expense had been for. (Ex. 54, at 151-152)

On December 12, 2011, Jackson used his union credit card to pay \$769.17 to Sprint Wireless for a personal expense at the same store. Jackson submitted a receipt to the local for that expense, which listed the PCS account as 203-526-9644, and identified the purpose for the expense as "hardware computer air card hardware". The union purpose for the expense was not noted. (Ex. 45) The Local paid the charge. (Ex. 45) At his IRB sworn examination, Jackson claimed that the \$769.17 might have been for newer air cards, but that he was not certain<sup>4</sup>. (Ex. 54, at 159-161)

## **2. Account Records Subpoenaed From Sprint**

At the IRB's request, a subpoena was issued to Sprint by the

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<sup>4</sup> Jackson stated that "air cards" are devices that allow computers to gain access to the internet. (Ex. 54 at 121)

Hon. Loretta A. Preska, United States District Judge, Southern District of New York on June 20, 2014 to Sprint. (Ex. 15)

In response to that subpoena, Sprint produced records that showed that the PCS account number 203-526-9644 was one of four telephone numbers included in a monthly bill under account number 316425615 for a customer "H. Jackson" at 189 Valley Avenue, Bridgeport, Connecticut 06606-3749. In addition to number 203-526-9644, the three other phone numbers included under account number 316425615 are 203-449-9001, 203-526-5212 and 203-545-2999. (Exs. 16-24)

In his sworn examination, Jackson had identified the Valley Avenue address as his own. (Ex. 54, at 108) Jackson said his oldest daughter's Sprint cell phone number was 203-449-9001. (Ex. 54, at 137-138) and his wife's Sprint number was "526-5212". (Ex. 54, at 140-141) These were part of the Sprint account for which records were subpoenaed and which Jackson caused the Local to pay for. Jackson stated that Sprint bills for the services he claimed he paid for personally would "originate to" the Valley Avenue address. He claimed that he paid those bills "on line". (Ex. 54, at 139)

Sprint's records indicated that payments on the Local's credit card received for account number 316425615 were for "H. Jackson" at Jackson's Valley Avenue address in the amounts listed on the dates specified below. The payments matched the charges,

including dates, on Jackson's union credit card that the Local paid.

<u>Bill Date</u>	<u>Previous Balance</u>	<u>Charge date</u>	<u>Amount</u>
11/4/2009	\$572.96	Oct 20	\$572.96
1/4/2010	\$556.62	Dec 28	\$556.62
2/18/2010	\$284.15	Feb. 4	\$556.18
5/4/2010	\$561.20	Apr 19	\$561.20
7/4/2010	\$580.38	June 21	\$580.38
9/4/2010	\$559.11	Aug 18	\$559.11
11/4/2010	\$623.09	Oct 21	\$623.09
1/4/2011	\$637.44	Dec 23	\$637.44
4/14/2011	\$602.06	Apr 4	\$934.10
6/22/2011	\$306.49	June 4	\$604.49
9/4/2011	\$579.02	Aug 24	\$579.02
10/17/2011	\$655.07	Oct 4	\$500.80
1/4/2012	\$769.17	Dec 12	\$769.17
		Totaling:	<u>\$8,034.56</u>

(Exs. 14, 16-25)

Jackson had falsely identified these as being made for a union purpose. (Exs. 16-24, 31, 34, 36, 38, 39, 40, 41, 87-90)

**B. Violations of the Local's By-Laws and Policy and Procedures Manual**

Both the By-Laws and the Policy and Procedures Manual of Local 1150 give the Executive Board the authority to purchase or

otherwise acquire property. The members must approve Executive Board purchases for all non-routine expenditures of a substantial nature. (Exs. 11-12) There were no required Executive Board or membership authorizations for Jackson's purchase of audio/video equipment. (Exs. 67-77) Jackson purchased \$5,211.78 of items such as speakers, a DVD player/projector, subwoofers and cameras without the required Executive Board or membership approvals. (Ex. 11; Ex. 53; Exs. 67-77) At his sworn examination, Jackson admitted he knew that membership approval was required for purchases of such items. (Ex. 54, at 30-35)

**C. Electronic Equipment Jackson Caused The Union To Pay For With No Union Purpose**

The IRB conducted a books and records examination of Local 1150 on January 22-23, 2014. (Ex. 9) From the Local's records it appeared there were several pieces of electronic equipment Jackson purchased with his union credit card that were directly delivered to his home. (Ex. 50) According to Jackson, he had extensive experience in radio broadcasting, as an on-air disk jockey and as a sound engineer. (Ex. 54, at 15-18)

The IRB investigators on April 25, 2014 conducted an inventory of Local equipment. (Exs. 10, 60) Jackson and Local 1150 Secretary Treasurer and Principal Officer Rocco Calo were present during the inventory review. They were asked to produce selected items for

visual inspection. Not all items requested to be produced were at the local. (Ex. 60) The following were missing: an Epson MovieMate 60 WSVGA DVD player/projector; six Martin Logan audio speakers; three Martin Logan subwoofers; two Martin Logan Slim speakers; Pioneer Elite Receiver, Sony Receiver and DVD player; MacBook Pro and accessories; Nikon camera and projector screen; Pioneer Elite Blu-Ray player; a Gateway laptop computer; a Sony Multi-disk changer; a Verizon 4G hotspot; a Sharp projector; one pair of Bose Speakers, Bose headphones and a Sony film camera. (Ex. 60; Ex. 81) Jackson and Calo explained that some of this equipment was probably under the control of other union employees off premises. (Ex. 60)

On April 30, 2014, IRB investigators asked Calo to photograph each piece of equipment not present during the review on April 25, 2014, and to state who had been in possession of the items. (Ex. 80-81) On May 2, 2014, the Local sent photographs of all but one of the pieces of equipment that were not at the Local's offices on April 25, 2014. (Exs. 80-81) Some of the photographs failed to identify in whose possession the equipment had been, as was requested. (Ex. 80-81)

As discussed herein, Jackson gave some misleading suggestions for the location of the equipment missing from the Local's premises on April 25, 2014. On that day, he stated that five of the missing Martin Logan audio speakers and a Pioneer receiver "might have been" with Joe Grabinski, another Local employee. When the Local

produced photographs of the equipment that was absent from the Local during the inventory review, much of the missing equipment was no longer attributed to Grabinski. Rather, the Local sent photographs of that equipment and did not attribute it to anyone at the Local. Those few photographs that did attribute possession and use by a Local employee were items Grabinski acknowledged he used for his Local duties. (Ex. 80-81) The photographs of numerous Martin Logan audio speaker systems and amplifiers that the Local produced did not include an explanation for their absence from the Local, nor did the Local identify a location where those missing items had been on April 25, 2014. (Ex. 80-81)

For one piece of equipment, the Local did not produce a photograph, as Calo and Jackson had been asked to do, of a \$900.60 Epson MovieMate DVD player/projector, one of the items Jackson had sent directly to his home from the vendor. As of July 11, 2014, the Local has not provided an explanation for its absence. (Exs. 35, 80-81)

At his sworn examination, Jackson claimed for the first time that the Martin Logan speakers, some of which were still in boxes, had been stored in the Local's truck, and had not been installed at the Local, more than two years after the equipment had been purchased. Two former officers of the Local, Joe Racan, the former Recording Secretary and a former Local Trustee, Mitchell Cairns, both testified that they had never seen any of that equipment in

the truck, or at the Local. (Ex. 56, at 14-18; Ex. 57)

The following equipment was bought by Jackson without authorization and not for a union purpose. Some was delivered to his home, others he picked up at the vendor. None was delivered to the Local.

On March 29, 2010, Jackson used his union credit card to charge \$900.60 to purchase an Epson MovieMate 60 WSVGA DVD player/projector at a Best Buy store. From the invoice it was apparent Jackson had Best Buy ship that DVD player/projector to his home at his Valley Avenue address. (Ex. 35) Jackson did not identify a union purpose on the receipt he submitted for this purchase. The Local's bookkeeper classified the expense as "purch. equip" The Local paid the charge on his credit card. (Exs. 35) This was the missing item for which Calo had not provided a photograph. (Exs. 80-81) Calo, on April 25, stated that he did not know where that DVD player was, but that he and Jackson would look for it. (Ex. 60, at 2)

At his IRB sworn examination over one month later on May 30, 2014, Calo stated that that he still did not know where the Epson MovieMate DVD player/projector was. (Ex. 58, at 83-87) At his IRB sworn examination, Jackson claimed, falsely that he had shown the Epson DVD player/projector to the IRB investigators on April 24-25, 2014. (Ex. 54, at 218-221; Ex. 60) The Epson MovieMate 60 DVD player/projector delivered to Jackson's home has not been produced

nor has a photograph of that piece of equipment been produced as of July 11, 2014. (Exs. 35; 60; 80; 81) There was no Executive Board or membership approval, as required, for the purchase. (Exs. 72-77)

On March 30, 2012, Jackson used his union credit card at a Best Buy store to purchase four Martin Logan audio speakers; one pair cost \$439.98, and the other \$499.98. On that day, Jackson also purchased a Martin Logan 10" Subwoofer audio speaker for \$499.98, and a Pioneer Elite Home Theater Receiver for \$899.08. The total cost for those purchases, including sales tax, was \$2,807.55. Jackson picked up the items at the store. (Ex. 46) He submitted a cash register receipt to the local, which stated the union purpose for the purchases to be "office equipment". (Ex. 46) The Local paid the bill. (Exs. 46, 78) There was no Executive Board or membership approval for the purchase, as required. (Exs. 72-77)

None of these items were at the Local on April 24 or 25, 2014 when the IRB investigators asked Jackson to present them for inspection. (Ex. 60) With respect to the two pairs of Martin Logan audio speakers, Jackson stated "I don't think they are here". (Ex. 60) When the IRB investigators asked Jackson about the Martin Logan 10" Subwoofer audio speaker, Jackson said, "Joe Grabinski might have this. I'll check with him". (Ex. 60) When the IRB investigators asked Jackson about the Pioneer Elite Home Theater



Receiver, Jackson stated: "Joe Grabinski might have this also, I'll check with him". (Ex. 60) As noted below, Grabinski did not have these items.

On April 20, 2013, Jackson used his union credit card to purchase a pair of Martin Logan SLM 4" flat panel audio speakers for \$499.99 each, and a Pioneer Wireless Adaptor for \$149.99, for a total of \$1,149.97. (Ex. 50) Jackson ordered that equipment online, using his union e-mail address. Jackson had the store ship all of the items to his home. (Ex. 50) When Jackson submitted the receipt for this purchase to the local's bookkeeper, he wrote "equipment for conference room" as the stated purpose for the purchase on the invoice. The Local paid the charge. (Ex. 50; Ex. 60) There was no required Board or membership approval for the purchase. (Exs. 72-77)

These speakers were not present in the conference room or anyplace else on Local premises on April 24 and 25, 2014. (Ex. 60) Jackson and Calo both stated that they did not know where the items were and suggested that they were "probably with [Joe] Grabinski". (Ex. 60) Grabinski testified that he did not have, never had and never used this equipment. (Ex. 55, at 32) When Jackson was asked by the IRB investigators why he had written "equipment for conference room" on the invoice, he stated "I don't know. I just put that there". (Ex. 60)

Since 1999 Grabinski had been Chief Health and Safety Steward

for the Local. (Ex. 55, at 6-7) In connection with his job, he used some audio visual equipment. At his IBT sworn examination, Grabinski identified photographs of the electronic equipment he used. (Ex. 55, at 21-25) He stated none of it was the missing items. He said that he had, in his possession, either in the trunk of his car, or in his home garage, audio/video equipment he needed to make training presentations and recruitment presentations at local high schools in the Bridgeport area. He stated that all the equipment he currently had was what he needed. He did not require any additional equipment. (Ex. 55, at 21-25) He stated that on April 26, 2014, Calo requested him to appear at the Local with all of the equipment so it could be photographed. (Ex. 55, at 25) Grabinski identified a photograph of a pair of Bose 301 audio speakers that he had purchased for the Local approximately ten years before; a photograph of an In Focus projector in its travel case; a photograph depicting a projector screen; a Nikon camera and case; and a Sony receiver and DVD player as the equipment he produced and used. (Ex. 55, at 26-41; Ex. 81) He stated that the Pioneer Elite Home Theater Receiver which Jackson had suggested Grabinski had in his possession was not used by him. (Ex. 55, at 39-40; Ex. 81)

During his IBT sworn examination, Grabinski was shown photographs of the absent items Jackson claimed "might" have been with Grabinski. He testified that he had never heard of Martin

Logan speakers, did not recognize the photograph of the pair of Martin Logan Slim speakers Jackson had attributed to him, nor did he recognize the photograph of the seven Martin Logan audio speakers and subwoofer. (Ex. 55, at 26-41," Exs. 80-81). He guessed it was possible he might have seen some of these items at a presentation at the union hall, but he was not certain. Grabinski stated, the equipment Jackson had attributed to Grabinski's use had "nothing to do with [him]" (Ex. 55, at 32-34)

The total cost to the Local of the equipment that was invoiced, and either delivered to Jackson's home or picked up by Jackson, and not produced for inspection was \$5,211.78. There was no union purpose for this equipment. This equipment was not on union premises when an inventory was taken. Its absence was not properly explained. There was no required Executive Board or membership approvals.

#### **1. Jackson Gave False Explanations**

At his IRB sworn examination, Jackson provided several explanations why some of the electronic equipment, such as the Martin Logan audio speakers, had not been present at the Local and not made available for inspection by the IRB investigators on April 24-25, 2014. According to Jackson, none of the speakers had ever been used, because there were additional expenses the Local would have had to incur such as installation costs to use them. (Ex.

54, at 182-183, 206) The speakers were still in their boxes. Jackson explained that during the period of time when many of the speakers had been purchased, there were contractors working on renovations to the Local's building. He feared that some of the equipment might have been stolen. (Ex. 54, at 181) That was why, he stated, that the speakers, which were still in their boxes, were stored either in the truck, or in a locked file room in back of the rear meeting hall. (Ex. 54, at 181) Nothing from the truck or rear room was produced when IRB investigators were on premises doing an inventory.

Jackson, during the inventory review had not explained the speakers had never been used and removed for safekeeping from potentially thieving contractors as he later claimed. (Ex. 60) Jackson claimed at his IRB sworn examination that he had mentioned the Local truck as one of three possible locations, along with Grabinski or French, for some of the missing equipment, (Ex. 54, at 213-215) During the April 24 and 25, 2014 interviews with the IRB investigators neither Jackson nor Calo mentioned that the Local's truck was a possible storage location for this equipment. (Ex. 60) Had either Jackson or Calo done so, they would have been asked to have the truck brought to the local for an inventory inspection. In any case, there was no evidence the equipment was there. (Exs. 56, at 14-18; Ex. 57)

Joe Racan is a member of Local 1150, who from 2002 through

2013 was the Local's Recording Secretary and a Business Agent. (Ex. 57) Racan stated that he had, since March of 2012, driven the Local's truck three or four times. He stated that he had never seen any electronic equipment stored in the truck. He also stated that the truck was stored either at Local 1150, or at another local. (Ex. 57)

Racan was shown photographs of the following items: Martin Logan audio speakers; two Martin Logan audio subwoofers; a Pioneer Elite Receiver; and a pair of Martin Logan Slim speakers. He was also shown an invoice for an Epson MovieMate DVD player/projector. Racan stated that he had never seen any of those items on Local 1150 property. (Ex. 57) Racan also stated that the Local's front conference room was small enough not to need as many speakers as the number depicted in the photos. Racan also stated that the purchase and installation of a sound system in the front conference room was never discussed at an executive board or general membership meeting, or at any other time. (Ex. 57) There was no mention of any sound system for that reason in the minutes. (Exs. 67-77)

Mitchell A. Cairns became a member of Local 1150 in June of 1987. In 2001, he was elected a Trustee, and held that position until 2013. (Ex, 56, at 6-7) At his IRB sworn examination he stated that he had never seen any of the electronic equipment shown in Exhibits 61-64 inside the Local's meeting hall, or in the

archive or storage room Nor had he seen any of the equipment in the Local's front conference room, or inside the Local's truck. (Ex. 56, at 14-18) Cairns further stated that he attended most of the Local's rallies where the truck was present, and had never seen any of the audio equipment used on the truck. Cairns also stated that when the truck was not in use, it was normally empty. (Ex. 56, at 14-18)

## **2. Jackson's Unpersuasive Explanation For Goods Shipped To His Home**

Jackson's stated reason for having deliveries of electronic equipment and computer-related items sent to his home was the carrier was the non-unionized FedEx. FedEx deliveries to the Local's hall were forbidden as a matter of IBT policy. (Ex. 54, at 108-111) Consequently, to get around the FedEx ban, he had the equipment sent to his home as a subterfuge. He claimed that "most" vendors have a policy that they cannot control which shipping company will make the delivery. He was unable to provide specific examples of vendors that had such a policy. (Ex. 54, at 111) Jackson also claimed unless a vendor specifically stated that they would use UPS or US mail, he would have the package delivered to an "alternate" address, such as his home address, in order to avoid delivery problems between FedEx and the Local. (Ex. 54 at 111)

On March 29, 2010, Jackson purchased an Epson MovieMate 60

DVD player/projector for \$900.60 at a Best Buy store and had it shipped to his home. (Exs. 35, 53, 60) On April 20, 2013, Jackson purchased a pair of Martin Logan 4" Slim audio speakers and a Pioneer wireless adaptor for a total of \$1,271.90 at a Best Buy store and had those items shipped to his home. (Exs. 50; 60) In fact, Best Buy used UPS and the United States Postal Service for its deliveries and did not use FedEx. (Exs. 35; 46; 51; 53; 59)

**3. Jackson's Explanation for the Need to Equip the Front Conference Room With A State-Of-The-Art Audio/Video System**

One of Jackson's explanations for the union purpose for buying the audio speakers and other electronics was he was attempting to "recreate" in the union hall's front conference room, the same kind of audio/video system the Local had installed in the larger, rear meeting hall. (Ex. 54, at 181) The rear hall system Jackson was allegedly trying to recreate had not been installed when Jackson made his purchases. It was not until February 15, 2013 that the contractor Tomlinson Hawley Patterson issued a change order to its existing building renovation contract with the Local, which added a \$38,877.59 line item for "Audio/Video System". (Exs. 66, 77) The Local's minutes for its January 16, 2013 General Membership meeting, under "New and Unfinished Business", mention

that "Audio and Video will be next after completion" of upgrades<sup>5</sup>. (Ex. 77, at 2) Four of the Martin Logan speakers, the Martin Logan 10" subwoofer and the Pioneer Elite Home Theater Receiver Jackson bought in March of 2012. Jackson purchased the missing Epson MovieMate 60 DVD Player/Projector in March, 2010. (Ex. 13; Ex. 77) Jackson's explanation was false. No Executive Board or membership minutes showed approval for the equipment Jackson actually purchased in 2010 and 2012.

#### **IV. Analysis**

##### **A. Jackson's Embezzlement**

The IBT Constitution prohibits embezzlement or conversion of union funds. IBT Const. Art XIX, Section 7(b)(3).<sup>6</sup> The standard for embezzlement under federal labor law, 29 U.S.C. § 501(c), is instructive in interpreting the IBT Constitutional provisions. Investigations Officer v. Calagna, Decision of the Independent Administrator at 11 (May 9, 1991), aff'd, United States v. IBT, 1991 U.S. Dist. LEXIS 11256 (S.D.N.Y. August 14, 1991). (Ex. 82) In addition, embezzlement is an act of racketeering all members are enjoined from committing under the Consent Order in United States v. IBT. (Ex. 1; 18 U.S.C. §1961; 29 U.S.C. §501(c)) To

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<sup>5</sup> This reference is the only occasion in which a discussion about the plans for the installation of the audio/video system in the rear meeting hall is noted in any minutes from union membership or executive board meetings. The Local has no record of any approval vote by its membership for the purchase and installation of the audio/video system in either the rear hall or the front conference room. (Exs. 67-76)

<sup>6</sup> The Consent Order expressly enjoins an IBT member from committing an act of racketeering as defined in 18 U.S.C. §1961. Embezzlement of union funds by a union official in violation of 18 U.S.C. §501(c) is an act of racketeering under 18 U.S.C. §1961(a).



find that Jackson embezzled Local 1150 property, it must be established that he acted with fraudulent intent to deprive Local 1150 of its property. See, United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1984) (" . . . under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the union of its funds"); 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 is done, "on the basis of 'all the evidence considered together' and in light of 'all the surrounding circumstances.'" Welch, supra, 728 F.2d at 1119 (quoting United States v. Morissette, 342 U.S. 246, 275-76 (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) (internal citation omitted) The Court of Appeals for the Second Circuit has stated that key factors in determining the issue of fraudulent intent are whether there was authorization from the union for the expenditure and whether there was a benefit to the union for the payments at issue. See, e.g., United States v. Butler, 954 F.2d 114, 118 (2d Cir. 1992). Neither was present here.

Jackson's intent to embezzle can be inferred from his actions, including buying the equipment without the required Executive

Board or membership approvals, shipping it to his home, or picking it up directly, the personal nature of the services and equipment, his false statements and the lack of union purpose for what he purchased. In connection with the payments of his family's cellular phone bills, Jackson caused the Local to pay these personal bills. There was neither union authorization nor union benefit. He falsely claimed these were union related expenses. He lied about these under oath at his sworn examination. Jackson also falsely claimed in the Local records that the expenditures at the Sprint Store were for "office equipment" "computer hardware" "software device upgrades". An inference can be drawn from Jackson's false explanations that he was attempting to conceal personal purchases.

Jackson purchased the electronic equipment that was not in the Local's office on April 24 and 25 without the required Executive Board or membership approvals. There was no valid union purpose for the equipment. It was not used or possessed by Grabinski, the one union employee who actively used audio visual equipment. It was not purchased in an attempt as Jackson claimed to recreate the electronic set-up in the rear hall because that was not in existence at the time of the purchases. Jackson's contemporaneous submissions to the Local lack any description of union purpose, corroborating there was none. Jackson had a personal interest in that type of equipment.

These Local payments Jackson caused to be made to pay for personal services and items, without authorization and union benefit were embezzlements. See e.g. United States v. Lore, 430 F.3d 190 (3d Cir., 2005); United States v. Briscoe, 65 F.3d 576 (7<sup>th</sup> Cir., 1995); United States v. Butler, 954 F.2d 114 (2d Cir., 1992); United States v. Silverman, 430 F.2d 106, 114 (2d Cir., 1970) cert. denied 402 U.S. 953 (1971); United States v. Capanegro, 576 F.2d 973, 979-980 (2d Cir.) cert. denied 439 U.S. 928 (1976) (even authorization by the Union will not absolve a Union official from liability where that individual lacks a good faith belief that the expenditure is for the benefit of the union).

#### **B. Jackson's Failure To Cooperate With The IRB**

Jackson's IRB sworn examination was taken on May 29, 2014. Jackson was represented by counsel. (Ex. 54, at 6) During the examination, Jackson provided false and misleading testimony.

Jackson's failure to provide truthful answers to questions was an unreasonable failure to cooperate with the IRB. It obstructed the IRB in its investigation into whether he had embezzled from the Local in violation of the Consent Order.

The court-approved Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters empower the Chief Investigator,

To take and require sworn statements or sworn in-person examinations of any officer, member, employee, representative, or agent of the IBT, provided that the IRB has given the person to be examined at least ten (10) days advance notice in writing and also provided that the person to be examined has the right to be represented by an IBT member or legal counsel . . . . Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate fully with the IRB.

(IRB Rules, Paragraph H (3) (c)). (Ex. 2)

Additionally, Article XIX, Section 14 (i) of the IBT Constitution provides:

All officers, members, employees, and representatives of the International Union and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Review Board shall be deemed to be conduct which brings reproach upon the Union, and which is thereby within the Review Board's investigatory and decisional authority.

(Ex. 3)

It is well-settled that the failure to cooperate with the IRB is grounds for disciplining IBT members. United States v. Int'l Bhd. Of Teamsters ["Michael E Doe"], IRB Decision dated February 10, 2011. (Ex. 65)

All IBT members are enjoined from embezzling from the IBT, in violation of applicable law and from committing acts of racketeering. (Ex. 1) The questions Jackson failed to answer truthfully related to such activity. Jackson's descriptions of

each of the above-described transactions at the Sprint Store were false. His claim that he did not recognize the phone number that appeared on the receipts from the Sprint Store was false. The records produced by Sprint pursuant to subpoena provided proof of the falsity of Jackson's sworn testimony. The totality of facts surrounding Jackson's purchases of the electronic equipment show his intent to embezzle.

#### **PROPOSED CHARGES**

Based upon the foregoing, it is recommended that Harvey Jackson be charged as follows:

##### Charge One:

While President and Business Agent of Local 1150 you violated your fiduciary duties to the Local and its members, embezzled and converted Local funds and property to your own use and the use of others, and brought reproach upon the IBT in violation of Article XIX, Section 7 (b) (1), (2) and (3) of the IBT Constitution To wit:

Between approximately October 2009 and December, 2011, while President and Business Agent of Local 1150, you embezzled, at least, \$13,000.00 from Local 1150, as described in the charge report.

##### Charge Two:

While President and Business Agent of Local 1150 and the IBT,

you brought reproach upon the IBT in violation of Article II, Section 2 (a) and Article XIX, Section 7(b)(1) and (2) and Section 14(i) of the IBT Constitution and obstructed, interfered and unreasonably failed to cooperate with the duties of the Independent Review Board as set forth in Paragraph G of the March 14, 1989 Consent Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.), to wit:

As described above, on May 29, 2014, you willfully provided false and misleading answers to certain questions concerning your purchases on the union credit card at a Sprint store during your in-person sworn examination conducted pursuant to Paragraph H(3)(c) of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters that involved matters under investigation by the IRB. In doing so, you obstructed and unreasonably failed to cooperate with the IRB in violation of the Consent Order and the IBT Constitution.

Exhibits to the Charge Report concerning Harvey Jackson

Ex.	1 Consent Judgment, dated 3/14/89
Ex.	2 IRB Rules and Procedures
Ex.	3 IRB Constitution (Excerpt)
Ex.	4 Sworn Examination Rick Rollinson 5/29/14
Ex.	5 Local 1150 Ck # 10009 payable to Sprint
Ex.	6 L1150 Lm-2 for 2013
Ex.	7 Dues Record for Harvey Jackson
Ex.	8 IBT Roster (Excerpt)
Ex.	9 Chief Investigator Noctice of Books and Records Exam, dated 1/10/14
Ex.	10 Chief Investigator Noctice of Books and Records Exam, dated 4/11/14
Ex.	11 L1150 By-Laws
Ex.	12 Local 1150 Policy and Procedure Manual (Excerpt)
Ex.	13 Local 1150 Ck # 17669 Upgrade Audio/Visual System
Ex.	14 Schedule- Harvey Jackson-Sprint Charges
Ex.	15 Sprint Subpoena dated 6/20/14
Ex.	16 Sprint Bills to Jackson- 10/1/09 through 10/31/09
Ex.	17 Sprint Bills to Jackson- 12/1/09 through 12/31/09
Ex.	18 Sprint Bills to Jackson- 4/1/10 through 4/30/10
Ex.	19 Sprint Bills to Jackson-6/1/10 through 6/30/10
Ex.	20 Sprint Bills to Jackson-8/1/10 through 8/31/10
Ex.	21 Sprint Bills to Jackson-10/1/10 through 10/31/10
Ex.	22 Sprint Bills to Jackson-12/1/10 throuth 12/31/10
Ex.	23 Sprint Bills to Jackson-8/1/11 through 8/31/11
Ex.	24 Sprint Bills to Jackson-12/1/11 through 12/31/11
Ex.	25 Sprint Payment Record for Harvey Jackson
Ex.	26 Lexis/Nexis Records Harvey Jackson Sprint Phones
Ex.	27 Lexis/Nexis Records Sprint Phone Number (203) 953-8613
Ex.	28 Local 1150 Visa bill for Harvey Jackson Period Ended 6/1/09
Ex.	29 Local 1150 Visa bill for Harvey Jackson Period Ended 7/1/09
Ex.	30 Local 1150 Visa bill for Harvey Jackson Period Eded 10/1/09
Ex.	31 Local 1150 Visa bill for Harvey Jackson Period Ended 11/2/09
Ex.	32 Local 1150 Visa bill for Joe Racan Period Ended 11/2/09
Ex.	33 Local 1150 Visa bill for Harvey Jackson Period Ended 12/2/09
Ex.	34 Local 1150 Visa bill for Harvey Jackson Period Ended 1/1/10
Ex.	35 Local 1150 Visa bill for Harvey Jackson Period Ended 4/1/10
Ex.	36 Local 1150 Visa bill for Harvey Jackson Period Ended 5/2/10
Ex.	37 Local 1150 Visa bill for Harvey Jackson Period Ended 6/1/10
Ex.	38 Local 1150 Visa bill for Harvey Jackson Period Ended 7/1/10
Ex.	39 Local 1150 Visa bill for Harvey Jackson Period Ended 9/1/10
Ex.	40 Local 1150 Visa bill for Harvey Jackson Period Ended 11/1/10
Ex.	41 Local 1150 Visa bill for Harvey Jackson Period Ended 1/2/ /11
Ex.	42 Local 1150 Visa bill for Harvey Jackson Period Ended 2/1/11
Ex.	43 Local 1150 Visa bill for Harvey Jackson Period Ended 9/1/11
Ex.	44 Local 1150 Visa bill for Harvey Jackson Period Ended 10/2/11
Ex.	45 Local 1150 Visa bill for Harvey Jackson Period Ended 1/2/12
Ex.	46 Local 1150 Visa bill for Harvey Jackson Period Ended 4/1/12
Ex.	47 Local 1150 Visa bill for Harvey Jackson Period Ended 7/1/12

Exhibits to the Charge Report concerning Harvey Jackson

Ex.	48	Local 1150 Visa bill for Harvey Jackson Period Ended 11/1/12
Ex.	49	Local 1150 Visa bill for Harvey Jackson Period Ended 12/2/12
Ex.	50	Local 1150 Visa bill for Harvey Jackson Period Ended 5/1/13
Ex.	51	Local 1150 Visa bill for Harvey Jackson Period Ended 7/1/13
Ex.	52	Local 1150 Visa bill for Harvey Jackson Period Ended 1/1/14
Ex.	53	Schedule- Schedule of Purchases from Best Buy
Ex.	54	Sworn Examination of Harvey Jackson, dated 5/29/14
Ex.	55	Sworn Examination of Joseph Grabinski, dated 5/29/14
Ex.	56	Sworn Examination of Mitchell A Cairns, dated 5/30/14
Ex.	57	Affidavit of Joe Racan, dated 7/9/14
Ex.	58	Sworn Examination of Rocco Calo, dated 5/30/14
Ex.	59	Best Buy Shipping Policy
Ex.	60	Memorandum of Inventory Review of Local 1150, dated 4/25/14
Ex.	61	Photograph of Martin Logan Speakers
Ex.	62	Photograph of Martin Logan Subwoofer
Ex.	63	Photograph of Martin Logan Slim Speakers
Ex.	64	Photograph of Pioneer Elite Receiver
Ex.	65	IRB Opinion Re: Michael Doe
Ex.	66	L1150 Check # 17669 \$40,904.49 to Tomlinson Hawley Patterson
Ex.	67	L1150 Executive Board Meeting Minutes 2009
Ex.	68	L1150 Executive Board Meeting Minutes 2010
Ex.	69	L1150 Executive Board Meeting Minutes 2011
Ex.	70	L1150 Executive Board Meeting Minutes 2012
Ex.	71	L1150 Executive Board Meeting Minutes 2013
Ex.	72	L1150 General Membership Meeting Minutes 2009
Ex.	73	L1150 General Membership Meeting Minutes 2010
Ex.	74	L1150 General Membership Meeting Minutes 2011
Ex.	75	L1150 General Membership Meeting Minutes 2012
Ex.	76	L1150 General Membership Meeting Minutes 2013
Ex.	77	L1150 General Membership Meeting Minutes 1/16/13
Ex.	78	NOT USED
Ex.	79	Sworn Examination of Billie Ferris, dated 5/30/14
Ex.	80	Memorandum to file re Photographs received from L1150
Ex.	81	Photographs produced by Local 1150
Ex.	82	Investigations Officer V Calagna
Ex.	83	L1150 Visa Bill for Period Ended 3/1/10
Ex.	84	L1150 Visa Bill for Period Ended 5/1/11
Ex.	85	L1150 Visa Bill for Period Ended 7/1/11
Ex.	86	L1150 Visa Bill for Period Ended 11/1/11
Ex.	87	Sprint Bill for Period Ended 1/31/10
Ex.	88	Sprint Bill for Period Ended 3/31/11
Ex.	89	Sprint Bill for Period Ended 5/31/11
Ex.	90	Sprint Bill for Period Ended 10/31/11