

To: James Hoffa, International General President

From: Joseph E. diGenova, Independent Investigations Officer

Re: Proposed Charges against former Local 186 Officers
William Elder and Douglas Saint

Date: December 5, 2016

I. RECOMMENDATION

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer ("IIO") recommends to the IBT General President that charges be filed against former Local 186 Secretary-Treasurer and principal officer William Elder ("Elder"), and former Local 186 President Douglas Saint ("Saint") for embezzlement of union funds in violation of 18 USC § 501(C), the permanent injunction in United States v. International Brotherhood of Teamsters and the IBT Constitution. In December 2015, they caused the Local to make over \$97,000, in unauthorized severance payments to themselves and two other former Local employees without a union purpose. Elder and Saint embezzled by causing the Local's money to be paid to them and others without authority and not for a union purpose.

II. Jurisdiction

Pursuant to paragraph 32 of the Final Agreement and Order, the IIO designates this as a matter within the jurisdiction of the General President. (Ex.1) Paragraph 32 of the Order requires that within 90 days of the IIO's referral to him, the General President must file with the Independent Review Officer ("IRO") written findings setting forth the specific action taken and the reason for such action. (Ex. 1 at 17) Failure to meet this legal obligation may be found to be an act taken to hinder the work of the IRO in violation of the permanent injunction.

[Ex. 1 at Page 3 Paragraph (2) (D)]

Elder and Saint each took a withdrawal card from membership on December 31, 2015. (Exs. 2, 3) Article XIX, Section 1 (g) of the IBT Constitution provides that former members may be held responsible for their actions while members. (Ex. 4)

III. Investigative Findings

A. LOCAL 186

Local 186, has approximately 1,757 members in various industries within the Santa Barbara, Ventura and Oxnard areas of California. (Ex.5) The Local held an election for officers in December, 2015. (Ex. 6)

B. William Elder

Elder had been the Local's Secretary-Treasurer and principal officer from 1998 to December 31, 2015. (Exs. 5, 7) On December

10, 2015, Elder lost his bid for re-election as principal officer for the term beginning on January 1, 2016. (Ex. 6) Elder had been a member of the Teamsters since July 1975. (Exs. 2, 8) Before being Secretary-Treasurer, Elder had been a Local 186 Business Agent since October 1990. (Ex. 8) Elder was one of two fulltime officers at the local. (Ex. 5) On December 31, 2015, Elder took a withdrawal card from membership. (Ex. 2)

C. Douglas Saint

Saint had been President and a Business Agent of Local 186 from 1998 to December 31, 2015. (Exs. 5, 7) He was one of the two full-time officers at the local. (Ex. 5) On December 10, 2015, Saint lost the Local officer election. (Ex. 6) Before becoming President in 1998, Saint had been an officer of Local 186 from, at least, 1989 through 1994. (Ex. 9) Saint had been a member of the Teamsters since February 1981. (Exs. 3, 7, 8, 9) On December 31, 2015 Saint took a withdrawal card from membership. (Ex. 3)

ELDER'S AND SAINT'S EMBEZZLEMENT THROUGH UNAUTHORIZED SEVERANCE PAYMENTS

In their last weeks in office, after they lost their bid for re-election, Elder and Saint caused the Local to pay themselves and two other local employees \$97,780.50, in unauthorized severance payments. (Ex. 29) The Local had no severance plan in place prior to the election. The incoming board and the members did not approve these extraordinary expenditures as required under

the IBT Constitution.¹ The severance payments paid after the election with no authority served no union purpose.

The IBT put the local into trusteeship in November 1995. (Ex. 10) In a January 1997 memo, the IBT appointed trustee Sergio Lopez, memorialized the rescission of the local's severance policy that had been in effect prior to the imposition of the Trusteeship. (Exs. 10, 11) No written severance policy was found in the Local's Policy and Procedures documents. (Ex. 15) In an IBT audit of Local 186 covering December 2008 through December 2012, the auditor noted

¹ Pursuant to Article XXII, §4(e) of the IBT Constitution: "During the period between the date of election and the end of the term of office, no extraordinary expenditure of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure may be considered to be "extraordinary" if: (a) it is not routine or recurring in the operation of the Local Union, such as, but not limited to, those items set forth in Article VII, Section 2 (a) (1); (b) it is for an amount greater than the Local Union would normally pay for the particular item in the ordinary course of business; (c) **it establishes new benefits, or increases the amounts of previously authorized benefits for Local Union officers or employees;** or (d) the payment would have a significant adverse effect on the financial stability of the Local Union and/or affect its ability to provide representational services to the membership. Nothing contained herein shall relieve the Local Union of the responsibility to arrange for the payment of financial obligations or benefits previously authorized in accordance with the Local Union's Bylaws, on such terms as necessary to preserve the ability of the Local Union to meet its current financial commitments and provide services to the membership."

(Ex. 4) (Emphasis added)

that the Local had no Severance Pay Plan. (Ex. 12 at Schedule E-4)

Andrew Davidson ("Davidson") was on the Executive Board from 2010 to 2015. (Exs. 5, 14, 23, 24, 25) He was Recording Secretary from January 2013 until December 31, 2015 and a Local Trustee from 2010 until December 2012. (Exs. 5, 14, 23, 24, 25) He testified that the board had never voted to approve a severance obligation for full time officers and employees during his period of Board service. (Ex. 13 at 17, 24-27) Ronald Jessa ("Jessa"), who was a Trustee and Executive Board member at the Local from 1998 until December 31, 2015, also testified that during his 18 years as a Board member that the Board had never approved a severance plan or approved severance payments. (Ex. 21 at 6, 28-30, 34, 53) Corroborating Davidson and Jessa, no Board vote on or discussion of a severance policy or plan was reflected in the Executive Board meeting minutes from January 2011 through December 2015. (Exs. 16, 17, 18, 19, 20) For there to have been a severance obligation, the Executive Board needed to adopt it as an additional benefit for employees and disclose it in the minutes. (Ex. 21 at 28-30) Article 16(D) of the Local's Bylaws provided in part:

BENEFITS: The Local Union Secretary-Treasurer may from time to time provide the terms and conditions of employment for officers ... such fringe benefits as

vacations with pay, holidays, sick leave, time off for personal leave, ... as well as any additional compensation and allowances. Any such benefit adopted by the Executive Board shall be specifically set forth in the minutes of the Executive Board Meeting.

(Ex. 26 at 14-15)

Further indicating there was no severance plan in place was past practice. Robert Padilla ("Padilla") was a Business Agent in the local from February 2008 until January 2013. (Exs. 14, 22, 23, 24) On his ending employment, he did not receive any severance payment. (Ex. 22) In addition, also evidencing there was no severance obligation, the Local's Forms LM-2 from 2010 through 2014 did not report any accrued liability for severance as it would have been obligated to do if such an obligation existed. Elder and Saint signed the Form LM-2.² (Exs. 14, 23, 24, 25, 31 at page 8)

The IBT Constitution, Article XXII, §4 (e) provided in pertinent part:

During the period between the date of election and the end of the term of office, no extraordinary expenditure of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make such

² The forms did report an accrued vacation liability.
(Ex. 14)

extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure may be considered to be "extraordinary" if:

- (a) it is not routine or recurring in the operation of the Local Union, such as, but not limited to, those items set forth in Article VII, Section 2(a)(1);
- (b) it is for an amount greater than the Local Union would normally pay for the particular item in the ordinary course of its business;
- (c) it establishes new benefits, or increases the amounts of previously authorized benefits, for Local Union officers or employees; or
- (d) the payment would have a significant adverse effect on the financial stability of the Local Union and/or affect its ability to provide representational services to the membership

(Ex. 4)

The Bylaws imposed the same restrictions.³ (Ex. 26) The severance Elder and Saint paid themselves and the other two employees was an

³ Local 186 Bylaws, Article 17, (E)(7) provided:

During the period between the date of election and the end of the term of office no extraordinary expenditures of Local Union funds shall be made, and no action shall be taken that commits the Local Union to make such extraordinary expenditures in the future, without the approval of the officers-elect and the membership. An expenditure shall be considered extraordinary if it falls within the definition set forth in Article XXII, Section 4(e) of the International Constitution.

(Ex. 26 at 19-20)

extraordinary expenditure under the IBT Constitution as it was a new benefit.

In 2015, Elder and Saint ran for reelection and lost. (Ex. 6) They were notified of their loss on December 10, 2015. (Ex. 6) In letters dated December 15, 2015, and December 22, 2015, the Secretary Treasurer-elect Abel Garcia ("Garcia") reminded Elder of his Bylaw obligation not to award himself and others new benefits through extraordinary expenditures. (Ex. 27) Garcia delivered those letters to the Local's office manager. (Ex. 28 at 9-10)

Without the required authority after December 10, 2015, Elder and Saint caused the Local to make alleged severance payments to themselves, a full-time Business Agent and the office manager. (Ex. 29) Below is a schedule of severance payments made after December 10, 2015, to Elder, Saint, the office manager Dennis Shaw and business agent Carlos Torres. Elder and Saint signed the Local checks that reflected the payments. (Ex. 29)

Name	Date of Payment	Amount	Check #
William Elder	December 28, 2015	\$48,730.50	15354
Douglas Saint	December 29, 2015	\$19,500.00	15360
Dennis Shaw	December 29, 2015	\$25,650.00	15358

Carlos Torres⁴ December 29, 2015 \$3,900.00 15359

TOTAL: \$97,780.50

(Ex. 29)

These payments were all unauthorized. All these checks were negotiated. (Exs. 29, 30) At the time of these post-election payments, the Local had no existing severance policy. After they lost the election the two full-time salaried officers, who signed the checks, in the last days of their terms in office transferred \$97,780.50, in Local funds to themselves and the other two employees without authorization. These payments were "an extraordinary expenditure" made to themselves and the two other full time employees in violation of the IBT Constitution and the Local Bylaws. There was no Executive Board, officers-elect, or membership approval, all of which the Constitution and Bylaws required.⁵ (Exs. 4, 20, 26)

Besides being unauthorized, there was no union purpose for these severance payments the officers awarded themselves and select employees, which increased their compensation as they left office.

IV. ANALYSIS

⁴ Carlos Torres was a Business Agent at the Local in 2015. (Ex. 5)

⁵ The Local did not have any membership meeting in December 2015. (Ex. 13 at 11-13, Ex. 21 at 16-17)

Embezzlement

The prior actions under the Consent Decree are the controlling precedent for interpreting the IBT Constitution, Final Agreement and Order, ¶ 49. (Ex. 1 at 25) The IBT Constitution prohibits embezzlement and conversion of union funds. IBT Const. Art XIX, Section 7(b) (3). (Ex. 4) In addition, pursuant to the Final Agreement and Order, IBT members are specifically enjoined from committing an act of racketeering which includes embezzlement from the union. 18 U.S.C. § 1961(1).⁶ (Ex. 1) The standard for embezzlement under federal labor law, 29 U.S.C. § 501 (c), is instructive in interpreting the IBT Constitutional provision. 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). The federal standard also governed Elder's and Saint's Consent Decree obligation not to commit an act of racketeering. 18 U.S.C. §1961(1).

For Elder and Saint to be found to have embezzled union funds, it must be established that they acted with fraudulent intent to deprive the Union of its funds. See, United States v. Welch, 782 F.2d 1113, 1118 (8th Cir. 1984) (under any test, union officials violate Section 501(c) only when they possess fraudulent intent to

⁶ The Final Agreement and Order provides: "All current and future members, officers, agents ... are permanently enjoined from: (A) committing any act of racketeering activity, as defined in 18 U.S.C. §1961; " (Ex. 1 at P. 3)

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 employee 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, 782 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) (citation omitted)

The Court of Appeals for the Second Circuit held that the two evidentiary factors to be considered 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); United States v. IBT [Kenny, Moreno and Guillory], 2014 U.S. Dist. LEXIS 186808 (S.D.N.Y. 2014), affirmed, 600 Fed. Appx. 8; 2015 U.S. Lexis 774 (2d Cir., 2015). The severance payments Elder and Saint caused to be made were unauthorized. They were not the result of any severance policy obligations the Local had in place prior to Elder's and Saint's 2015 election defeat. Moreover, authorization was not obtained from the Executive Board, Executive Board-elect,

and the members as the IBT Constitution and Local Bylaws required. In addition, before he made the unauthorized payments, Elder was reminded of his Bylaw obligation by the incoming officers. (Ex. 27) Elder's and Saint's violations of the IBT Constitution and Local Bylaws evidenced their intent to embezzle. The payments served no Union purpose. The payments only personally benefited the defeated officers and the two employees.

From all of the circumstances surrounding Elder's and Saint's conduct in signing the severance checks that transferred without authority Union funds to themselves and the two other outgoing employees, their intent to embezzle was evident. Here, Elder and Saint, knowing their re-election bid had failed and despite explicit IBT Constitutional and Bylaw prohibitions against such conduct, after the election results transferred without the required authority, over \$97,000 of Local money to themselves and two others. Elder's and Saint's intent to embezzle was shown by their violations of the IBT Constitution and Local Bylaws which required that any extraordinary expenditures, as defined therein, made by out-going Local officers be approved by the new Executive Board-elect and the members. (Ex. 4) As a new benefit, severance was an extraordinary expenditure. [Ex. 4 at Article XII § 4(e)] Moreover, the Local Executive Board did not approve these payments as the Local Bylaws required in Article 16 (D). (Ex. 26 at 14-15) United States v. IBT [Wilson, Dickens and Weber], 787 F. Supp.

345, 352 (S.D.N.Y. 1992) (“ . . . failure to comply with [the Bylaws] gives rise to an inference of fraudulent intent.”), aff’d, 978 F.2d 68 (2d Cir. 1992). The payments had no benefit to the Local and only benefitted the two former officers and the two former employees.

V. PROPOSED CHARGE

Based upon the evidence discussed in the above Report, it is recommended that the following charge be filed against former Local 186 Secretary-Treasurer and principal officer William Elder and former Local 186 President Douglas Saint:

While Local 186 officers, you embezzled and converted Local 186 funds to your own use, brought reproach upon the IBT, violated Federal law and committed an act of racketeering in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2), (3) and (11) of the IBT Constitution, (Ex. 4) *to wit*:

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