

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President  
25 Louisiana Avenue, NW  
Washington, DC 20001



KEN HALL  
General Secretary-Treasurer  
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April 2, 2012

## **BY UPS GROUND DELIVERY**

Mr. Oswald C. Martucci, Jr.  
1005 Sandy Lane  
Schenectady, NY 12303

Re: Panel Report and Recommendations

Dear Sir and Brother:

You will find enclosed the Report and Recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,

  
James P. Hoffa  
General President

JPH/jlm  
Enclosure

cc: General Executive Board  
Hearing Panel  
Local Union 669  
Roland Acevedo, Esq.  
Independent Review Board  
Charles M. Carberry, Esq.  
Stephen R. Coffey, Esq.

**REPORT AND RECOMMENDATIONS OF  
HEARING PANEL APPOINTED TO HEAR CHARGES AGAINST  
LOCAL 669 SECRETARY-TREASURER AND PRINCIPAL OFFICER  
OSWALD MARTUCCI**

**Introduction**

On or about December 22, 2011, the Independent Review Board ("IRB") issued a report and recommendation to International Brotherhood of Teamsters ("IBT") General President James P. Hoffa that Oswald Martucci, Local 669's Secretary Treasurer and Principal Officer, be charged with embezzlement and breaching his fiduciary duty by converting Local 669's funds to his personal use and by taking travel allowances from the Local without submitting proper or, for approximately one year, any business expense receipts, as was required by the Local's travel policy. The report alleges that between February 2006 and May of 2010, Brother Martucci improperly converted at least \$6,184.00 by submitting false "generic" business expense receipts to Local 669 in order to avoid repayment of unused travel allowances he received and by charging expenses on the Local's credit card for which he had also received travel expense advances. The report further alleges that between July of 2010 and August of 2011, Brother Martucci accepted \$1,950.00 in travel allowances and provided no receipts for what he spent, as was clearly required by the Local's existing policy. The recommended charges allege that by engaging in the foregoing conduct Brother Martucci violated Article II, Section 2 (a) and Article XIX, Sections 7 (b) (1), (2) and (3) of the IBT Constitution and Article XVI, Section 1 (B) and XVIII, Section 2 of Local 669's Bylaws.

General President Hoffa promptly filed the recommended charges, and appointed a Hearing Panel ("Panel") comprised of the following uninvolved members: Chuck Whobrey, President of Local 215; Mike McGaha, President of Local 391 and Joe Gronck, Secretary Treasurer of Local 402. Brother Whobrey was designated to serve as the Panel's chair. The Panel was given the responsibility of hearing the evidence and making a full report to General President Hoffa.

By letter dated January 25, 2012, General President Hoffa notified Brother Martucci that a hearing on the charges was scheduled for March 1, 2012.

The hearing was conducted on March 1, 2012 at the offices of Joint Council 18, located at 890 Third Street, Albany, New York. All parties were present at the hearing, and had the opportunity to submit evidence and testimony, cross examine witnesses and present arguments in support of their positions. The charges were presented by Roland R. Acevedo, Esq.; Brother Martucci was represented by attorney Stephen R. Coffey, Esq. The Panel commends both attorneys for their professional presentations.

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

### **Background**

Local 669 is located in Albany, New York. It has approximately 724 members. It represents drivers and delivery employees in the beverage and bakery industries.

Brother Martucci joined Local 669 in 1988. He was elected to the office of Vice President in 1995, and became a full time employee of the Local in 2000, when he also held the office of President. In 2009, he was appointed to the office of Secretary-Treasurer, the Local's principal officer. He also serves as a Trustee of Joint Council 18 and as a Trustee of the Upstate New York Bakery Drivers Pension Fund. He is the only officer of Local 669 who is also employed by the Local.

### **IRB's Referral**

At all times pertinent to the charges, Local 669's policy concerning business expenses for the Local's officers provided for a travel allowance to be advanced to the officer involved who was then required to provide receipts for expenses incurred and return any unused funds. This policy was adopted in May of 2004. There is no evidence that the Local's Executive Board approved a change in this policy prior to August 22, 2011, when the Executive Board approved what appears to be a "per diem" expense policy. Under this new policy, officers traveling on Union business are paid a specified daily travel allowance which is treated as income to them. They are not required to submit receipts and rebate advanced funds that are not spent.

IRB's report alleges that Brother Martucci violated the Local's 2004 expense policy in a number of respects. Between February of 2006 and May of 2010, he submitted not fewer than 39 inappropriate or fraudulent receipts which he created after the fact to avoid rebating unspent travel allowance funds. These receipts did not identify the establishment at which the expenses were supposedly incurred, who was present, what the expenses were for, what Union purpose existed and, in at least 11 instances, even the dates on which the expenses were incurred. In other instances during this time frame, Brother Martucci allegedly charged expenses on his Union credit card that were covered by the travel allowances he had already received, thus essentially billing the Local twice for the same expenses. In further instances, Brother Martucci submitted receipts for items that were clearly personal in nature as if they were proper Union expenses, using them to avoid or mitigate his obligation under the Union's policy to rebate to the Local unspent funds that had been advanced to him. IRB alleges that the total amount that Martucci improperly converted to his own use during this time frame was \$6,184.00, which includes travel advances he should have rebated to the Local and expenses he charged on the Union credit card that were already covered by his travel advances.

Furthermore, IRB's report alleges that beginning in approximately July of 2010, after IRB had conducted a books and records examination at the Local, the Local began paying officers a purported "per diem" allowance when traveling on Union business. These allowances were treated as income to the officers receiving them, and the officers were not required to document expenditures with receipts. This change in practice was not, however, formally adopted by the Local's Executive Board at that time. The Local's minutes do not reflect formal action on this change until August of 2011. IRB alleges that during the period between July of 2010 and August of 2011, Brother Martucci took travel allowances of \$1,950.00, and provided no receipts documenting his expenses.

### **Additional Evidence and Contentions**

At the hearing, arguments were advanced on Brother Martucci's behalf, including the following:

- That Brother Martucci's submission of so-called "generic" receipts between 2006 and 2010 was pursuant to past practice.
- That Brother Martucci's actions were "mistakes."

- That the Local's actions in converting to a "per diem" program in 2010 were based on advice provided by the IBT's former General Counsel, Robert M. Baptiste, Esq.
- That the conversion to a "per diem" program in 2010 was actually approved by the Local's Executive Board at that time, although it was not memorialized in the minutes. Martucci's testimony on this point is corroborated by the Local's President, Steve Hicks.
- That Brother Martucci is just a "truck driver," which excuses his actions.
- That IRB and the IBT did not challenge the use of "generic" receipts during previous audits.
- That at least some of the expenses covered by "generic" receipts were legitimate business expenses.

### **Analysis and Recommended Conclusions**

Every Union official is obligated to ensure that Union funds are spent solely for the benefit of the Union and its members. This responsibility is enshrined in the law and in the oath every officer takes. Establishing and adhering to sound expense reimbursement policies is only one way in which Union officials are required to fulfill this duty.

Brother Martucci's actions with respect to his travel expenses from 2006 and through 2011 clearly fell short of this standard. From 2004 until August of 2011 the Local's officially adopted policy was to provide travel expense advances and to require officers to submit valid receipts for expenditures or return funds for which valid receipts were not submitted. Between 2006 and 2010, Brother Martucci circumvented this policy by submitting bogus receipts, receipts for items that clearly had no Union purpose and double charging the Local by using the Union's credit card for items that were already covered by his travel advances. Whether or not his actions amounted to "embezzlement," it is clear to us that his actions were inconsistent with his responsibilities as a Union fiduciary. The preponderance of credible evidence supports the charges against him in this regard.

We do not credit Brother Martucci's claim during his sworn examination that he created and submitted bogus "generic" receipts only when he had "lost" the actual receipts. The evidence suggests, and we infer, that he created and submitted false receipts so that he would not have to return unspent funds to the Local as required by the Local's policy. Particularly telling, in this regard, is the fact that these bogus receipts contained virtually none of the details Martucci knew (based on his presence during a 2004 audit conducted by the IBT) that he was supposed to submit when documenting expenses (where the expense was incurred, what it was for, who was present, what the Union purpose was and when it was incurred).

As for the arguments advanced on Brother Martucci's behalf at the hearing before us, we note that they do not change the fact that he did not comply with the Local's established expense policy or the fact that he received and retained funds that he was not entitled to receive and retain under that policy. At best, these arguments could affect our view of the proper penalties for his actions.

While the Local's Executive Board could have established a reasonable "per diem" expense policy for official travel, it did not do so until August of 2011, when the Executive Board's adoption of such a policy first appeared in the Board's minutes. Nevertheless, between July of 2010 and August of 2011, "per diem" allowances were paid to Martucci and other officers despite the fact that a "per diem" program had not been approved by the Executive Board. The point is not whether the officers receiving "per diem" paid taxes on the amounts received. Rather, it is whether the payments were authorized under the Local's policies, which during the time frame involved they were not.

In short, we recommend that the charges that Brother Martucci breached his fiduciary duties in the manner summarized in IRB's report be sustained. As indicated, we do not consider it necessary to decide whether Martucci's actions amounted to embezzlement since we do find that he breached his responsibilities as a fiduciary.

### **Recommended Penalties**

In formulating penalties under the IBT Constitution and under the Consent Decree, we are guided by principles of "just cause." This means we will consider factors such as the nature and seriousness of the offense, the member's prior service and disciplinary record, the member's position in the Union and the existence of any mitigating circumstances. Progressive discipline may be appropriate in some situations.

Although the amount involved in this case is modest in comparison with some of the other cases involving business expense abuses, the charged offenses are nonetheless serious. Brother Martucci is the highest ranking officer of the Local Union. He not only failed to follow the Local's policies with respect to travel expenses, he appears to have consciously evaded them by submitting inappropriate and in a number of instances clearly falsified or manufactured expense receipts.

That said, we are aware of no other instances during Brother Martucci's Union career in which he has been accused of wrongdoing of any kind, and by all accounts he appears to have been a dedicated and effective Local Union leader during his years of service to Local 669.

Penalties imposed in cases involving breaches of fiduciary duty by officers accused of self dealing with Union assets, under the Consent Decree, have ranged from permanent expulsion to more modest suspensions from office and membership. E.g., German Vazquez (March 5, 2010) (suspension from union office and employment for the remainder of the term of office, suspension from membership for one year and restitution); Don Hahs (March 14, 2008) (removal from Union office and employment for the remainder of term of office, one year membership suspension and restitution); Frank Baccaro (June 23, 1992) (permanent prohibition from holding Union office, but no membership suspension); Vincent Trerotola (September 22, 1995) (two year suspension from Union office and membership, and restitution); Thomas Ryan (August 20, 1996) (five year suspension from holding Union office, employment and membership); Michael H. Dickens and Jack Weber (December 23, 1991) (five year suspension from holding Union office, employment and membership); Leroy Nunes (September 6, 1991) (five year suspension for holding Union office and employment, and one year suspension from membership); Arthur L. Busby (April 7, 1997) (three year suspension from holding Union office and employment, and one year suspension from membership); Angela Perrucci (April 15, 1996) (six year prohibition from holding Union office, employment and membership and restitution).

We recommend the following penalties here:

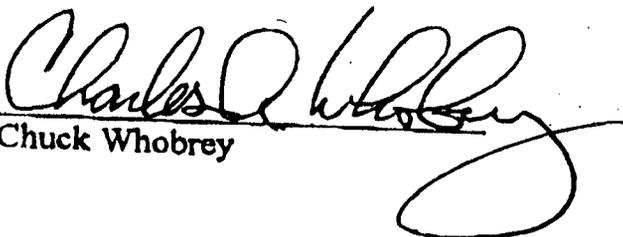
Brother Martucci should be barred from holding any office or employment with Local 669, the IBT or any affiliate of the IBT, including benefit funds, and including any employment as a contractor or consultant, for a period of two years, effective immediately.

Brother Martucci should also be suspended from membership in Local 669, the IBT or any affiliate of the IBT for a period of two years, effective immediately, or until he pays the restitution set forth below, whichever occurs later.

Martucci should pay to Local 669 the sum of \$ 6,184.00 in restitution for the amounts he has been found improperly to have received and retained in the form of expense payments that were provided to, and retained by, him contrary to the Local Union's policies between 2006 and 2010. We do not, however, believe he should be required to repay the Local for the additional \$1,950.00 he received in unapproved "per diem" payments between 2010 and 2011. In this latter regard, it appears that a "per diem" practice was discussed with the Local's officers in 2010, and that it was followed with all officer expense allowances during that time period. We are unaware of any claim that Brother Martucci did not travel legitimately on Union business during this time frame or that he did not incur legitimate business expenses on these occasions for which he should have been reimbursed. It is clear that although this was misguided, he did rely on what he believed was the established "per diem" practice. In these circumstances, it would be unjust to require that he repay this amount over and above the funds he improperly received and retained between 2006 and 2010.

The foregoing suspensions from Union office, employment and membership mean that effective immediately and until the suspensions expire neither Local 669, the IBT nor any entities affiliated with the IBT shall pay Brother Martucci, nor shall he accept, any salary, gratuities, gifts, severance payments, allowances, consulting or other fees, benefit payments or contributions or other compensation of any kind, directly or indirectly, except that he may receive fully vested or accrued pension, vacation or other benefits he has already earned under any existing benefit plans or programs maintained or sponsored by Local 669, the IBT or any affiliates of the IBT, as well as health benefits in accordance with COBRA, provided he is eligible for them under any health plan under which he was covered prior to his recent removal from office.

SO UNANIMOUSLY DECIDED AND RECOMMENDED, on March 30, 2012.

By:   
Chuck Whobrey

By: \_\_\_\_\_  
Mike McGaha

By: \_\_\_\_\_  
Joe Gronek

SO UNANIMOUSLY DECIDED AND RECOMMENDED, on March 30, 2012.

By: \_\_\_\_\_  
Chuck Whobrey

By: Michael M. John  
Mike McGaha

By: \_\_\_\_\_  
Joe Gronek

SO UNANIMOUSLY DECIDED AND RECOMMENDED, on March 30, 2012.

By: \_\_\_\_\_  
Chuck Whobrey

By: \_\_\_\_\_  
Mike McGaha

By: JOE GRONEK  
Joe Gronek