

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



C. THOMAS KEEGEL
General Secretary-Treasurer

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August 29, 2011

BY UPS GROUND DELIVERY

Mr. Paul A. Kenny
6216 Mulberry Place
Simi Valley, CA 93063

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,

A handwritten signature in cursive script that reads "James P. Hoffa".

James P. Hoffa
General President

JPH/brm
Enclosure

cc: Hearing Panel
Roland Acevedo, Esq.
General Executive Board
Local Union 630
Independent Review Board
Charles M. Carberry, Esq.
Fern Steiner, Esq.

**REPORT AND RECOMMENDATIONS OF HEARING PANEL
APPOINTED TO HEAR CHARGES AGAINST LOCAL 630
PRINCIPAL OFFICER PAUL A. KENNY AND LOCAL 630
BUSINESS AGENTS ABRAHAM MORENO AND GARY GUILLORY**

Introduction

On May 12, 2011, the Independent Review Board ("IRB") issued a report and recommendation to International Brotherhood of Teamsters ("IBT") General President James P. Hoffa that Paul A. Kenny, Local 630's Secretary Treasurer and Principal Officer, and Abraham Moreno and Gary Guillory, two of Local 630 Business Agents, be charged with embezzlement and breaching their fiduciary duties by causing Local 630 to pay for food and alcohol consumed by them and others with no union purpose. The report alleges that between January 1, 2007 and October 2010 Kenny embezzled \$168,168, and that between January 1, 2008 and October 2010 Moreno and Guillory embezzled \$39,595 and \$32,217, respectively. The embezzlement is alleged to have occurred in the context of causing Local 630 to pay thousands of dollars for meals and alcohol consumed by the charged members, along with other Union officials and employees, over a period of several years, all without a proper union purpose. The recommended charges allege that by engaging in the foregoing conduct Brothers Kenny, Moreno and Guillory violated Article II, Section 2 (a) and Article XIX, Sections 7 (b) (1), (2) and (3) of the IBT Constitution.

General President Hoffa promptly filed the recommended charges, and appointed a Hearing Panel ("Panel") comprised of the following uninvolved members: Edward Keyser, Administrative Assistant to the General President, Leo Carroll, Recording Secretary and Executive Assistant for Local 916 and Marcus W. King, President of Local 331. Brother Keyser 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 July 8, 2011, General President Hoffa notified Brothers Kenny, Moreno and Guillory that a hearing on the charges was scheduled for August 2, 2011. The hearing was subsequently rescheduled for August 3, 2011, at the request of the attorney representing the charged parties.

The hearing was conducted on August 3, 2011 at the offices of Local 630, located at 750 South Stanford Avenue, Los Angeles, California. 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.; Brothers Kenny, Moreno and Guillory were represented by Fern M. Steiner, Esq.

The following findings and recommendations of the Panel 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 of Charged Members

Paul Kenny

Brother Kenny joined the IBT in 1981. He served as a Trustee of Local 595, prior to that Local's merger with Local 630. He became a business agent for Local 630 in 1989, and became President of Local 630 in 2002. He became Local 630's Secretary Treasurer in 2004, a position he held until he was removed in connection with a trusteeship that was recently imposed on Local 630. The trusteeship was imposed following IRB's recommendations, which were based largely on the same allegations that form the basis for the charges that are before us. He also serves as President of the Food and Drug Council, an organization which assists affiliates of the IBT, the United Food and Commercial Workers and other unions in dealing with employers in the food industry.

Abraham Moreno

Brother Moreno joined the IBT in 1986. He was appointed to serve as a Business Agent for Local 630 in 2007, a position he held until he was removed in connection with the IBT's recent trusteeship over the Local.

Gary Guillory

Brother Guillory joined the IBT in 1975. Prior to July of 2007, he served for several years as Local 630's Recording Secretary. He was appointed to serve as a Business Agent for Local 630 in August of 2007, a position he held until he was removed in connection with the IBT's recent trusteeship over the Local.

IRB's Referral

IRB's May 12, 2011 report alleges that between January 1, 2007, and October 2010 Brother Kenny breached his fiduciary duty to the Union and committed embezzlement by causing Local 630 to pay for at least 668 restaurant charges incurred in the Los Angeles area (where the Local is also located) which had no proper union purpose. The report alleges that the charges were incurred for food and alcohol consumed by Kenny, along with other officers and employees of Local 630, at times when no other persons were present. The total amount of these expenses was approximately \$168,168.

The report further alleges that between January 1, 2008, and October 2010 Brothers Moreno and Guillory similarly breached their fiduciary duties and embezzled funds from Local 630 by causing the Local to pay for restaurant charges (119 in the case of Brother Moreno and 109 in the case of Brother Guillory) incurred in the Los Angeles area for food and alcohol consumed by officers and employees of Local 630, also at times when no other persons were present and for which there was no union purpose. The amounts of these expenses were approximately \$39,595 for Brother Moreno and \$32,217 for Brother Guillory.

The report summarizes a litany of alleged instances in which Brothers Kenny, Moreno and Guillory charged on a Local Union credit card, or otherwise submitted for reimbursement by the Local, expenses incurred at local restaurants for meals and substantial quantities of alcohol. The report alleges that these meals often lasted many hours, and often occurred during normal business hours. The report alleges that Kenny himself caused the Local to pay for approximately \$41,459 in charges for alcohol consumed by himself and other Local Union officials. It cites numerous incidents in which meals and drinks were charged to the Local by each of the charged members in circumstances in which there was no apparent union purpose for the charges.

Among the factors cited in the report for the allegations that the charged members breached their fiduciary duties and embezzled from the Local are the following:

1. The report focuses on meal and related expenses incurred in the Los Angeles area, where the Local Union is also located, on occasions in which only the Local's officers and employees were present. In other words, the charged members were not charged over meal and

expenses incurred when officers or employees were out of town, or when they met with representatives of employers or with rank and file members. In this regard, IBT policies state that it is not proper for a Local Union to pay for "personal meals not involving a union business meeting, unless out of town overnight."

2. On many of the occasions chronicled in IRB's report, the amount of alcohol consumed by Brothers Kenny, Moreno and/or Guillory was objectively and obviously excessive. For example, the report cited records reflecting that on September 14, 2007, Brother Kenny charged the Local for nineteen drinks consumed by himself, another Local officer and a Business Agent. On July 10, 2009, Kenny, for a meal attended by himself and two Business Agents, caused the Local to pay for three bottles of wine, costing \$345. On August 19, 2009, Kenny, for a meal at a Morton's Steakhouse attended by himself and three Business Agents, caused the Local to pay for seven bottles of wine. On March 17, 2010, Kenny, for a meal attended by himself, Moreno and Guillory, charged the Local for thirteen alcoholic drinks; this occurred immediately after Moreno had charged the Local for \$231.45 for a meal and alcohol consumed by Kenny, Guillory and himself. On August 13, 2010, Kenny, at a meal attended by himself and two business agents, including Guillory, caused the Local to pay for five bottles of wine.
3. IRB also cited 130 instances between January of 2007 and April of 2010 in which Kenny charged the Local for food and alcohol consumed by himself and one of the Local's office managers. These included trips to a restaurant located over 24 miles from Local 630. On at least one such occasion, alcohol charged to the Local, alone, cost \$80.
4. IRB cited in its report 47 occasions between January of 2009 and October of 2010 in which Brother Kenny caused the Local to pay for more than one restaurant visit on a single day, with charges incurred for alcoholic beverages at each visit. These visits likewise involved only Kenny himself and Local officers or staff.
5. On at least 18 occasions between 2007 and 2010, Kenny caused the Local to pay charges for restaurant or bar visits attended only by him

and other Local officers or employees – at which only alcohol was consumed.

6. As for Brothers Moreno and Guillory, the report similarly details restaurant and bar charges they allegedly caused the Local to pay for on occasions on which only Local officers and staff were present. The report notes that the receipts maintained by the Local sometimes contained cryptic notations of who was present or that the charges involved “union business.” On others, there is no explanation as to who was present or what the expenses were for. As with expenses submitted by Brother Kenny, there were numerous instances in which under any objective standard excessive amounts of alcohol were consumed and charged to the Local. The total amounts improperly charged by Moreno and Guillory for meals and drinks at visits attended by them and other Local officials and employees were, according to IRB’s report \$39,595 and \$32,217, respectively.
7. The report alleges that the large amounts of alcohol for which Brothers Kenny, Moreno and Guillory caused the Local to pay substantially undercuts any claims that the restaurant and bar visits in question were in any sense for the purpose of conducting union business.
8. The foregoing pattern by which the charged members caused the Local to pay for inappropriate meal and related expenses persisted even after IBT auditor Louis Baniecki advised the Local’s officers in early 2009 that the IBT policies do “not allow [payment for] in-town meals with executive members present or employees of the Local except on rare occasions.” Baniecki’s advice was later memorialized in a letter to the Local from General Secretary Treasurer Keegel. Again, the pattern of charging “in-town” meals, including substantial amounts of alcohol, to the Local persisted despite Brother Kenny’s written conformation to Brother Keegel that the problem had been corrected.
9. The report also notes that in May of 2007, the Local’s Executive Board voted improperly to give Kenny sole discretion to disburse the Local’s funds, which had the effect of allowing Kenny to be the sole person at the Local who authorized the expenditures at issue here.

Additional Evidence and Contentions.

In the hearing before the Panel, Brothers Kenny, Moreno and Guillory offered the following explanations and defenses:

1. That the practice of conducting union business at area restaurants and causing the Local Union to pay for meals and alcohol consumed at these meetings has been of long standing, having started long before Kenny's appointment as Local 630's principal officer;
2. That they were unaware of the General Secretary Treasurer's Financial Administrative and Procedures Manual, and its restrictions concerning "in town" meeting and travel expenses;
3. That they were not trained regarding the IBT's policies concerning "in town" meal and travel expense reimbursements;
4. That the Local has achieved superior contracts in the industries in which its members are employed and the IBT has demonstrated its confidence in Brother Kenny's abilities;
5. That they did not understand the IBT auditor's instructions in early 2009 to have restricted them from conducting union business at local restaurants, particularly when they involved union stewards who were not mentioned by the auditor or in General Secretary Treasurer Keegel's correspondence of May 19, 2009;
6. That officers who participated in the "in town" restaurant and bar visits that are the subject of the charges were in many instances also stewards, and therefore the expenditures were not subject to the restrictions described by the IBT auditor and in General Secretary Keegel's May 19, 2009 letter;
7. That Kenny understood the auditor's instructions to be that the Local should conduct business meals in different area restaurants instead of using the same ones;
8. That conducting union business at local restaurants was appropriate because there were too many distractions and interruptions at the Local Union offices;

9. That "union business" was "always" discussed during the restaurant and bar visits that are the subject of the charges and the IBT has the burden of demonstrating otherwise;
10. That the charged members were in some instances charged with embezzlement for the very same restaurant charges;
11. That Local 630's Executive Board adopted revised policies in November of 2010, placing restrictions and limitations on the amounts for which officers and employees of the Local may be reimbursed for travel and meals [In its report, IRB characterized this action as "too little, too late" and not relevant to whether there was fraudulent intent with respect to charges incurred and paid by the Local before the changes were implemented];
12. That Kenny consulted with the Local Union's CPA, who allegedly told him that the expenditures in question were appropriately charged to the Local Union; and
13. That Kenny never authorized the purchase of "bottles" of wine and that it was the restaurants that converted drinks ordered by the glass into "bottles" for their own internal record keeping.

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. No justification exists for a Union official to supplement her/his compensation by using Union funds for perks or payments for personal expenses which have no legitimate union purpose. Unfortunately, here, the record amply and overwhelmingly demonstrates that Brothers Kenny, Moreno and Guillory have acted as if they are completely oblivious to these responsibilities. The various defenses and explanations they have offered amount to hubris and pettifoggery.

As an initial matter, we stress that it is our view that an occasional expenditure of Union funds for an "in-town" business meal, even one attended only by Union officials and/or Union employees, is not per se inappropriate. Nor, we believe, is it per se inappropriate for Union funds to be expended occasionally

for moderate amounts of alcoholic beverages consumed during a business meal. But, under any objective view of the evidence here, Brothers Kenny, Moreno and Guillory went far beyond anything that could be considered reasonable or appropriate. The evidence indicates that they regularly spent extended periods of time at local restaurants eating and drinking, frequently consuming extreme quantities of alcohol, all at Union expense and in circumstances in which it is impossible to conclude that there a proper union purpose for the expenses.

We flatly reject, in this regard, the conclusory claims by Brothers Kenny, Moreno and Guillory that "union business" was always conducted during all "in town" meals. We further reject the suggestion that it is the burden of the IBT to prove otherwise. After all, these Union officials are responsible for the lack of documentation showing the proper union purpose for each of these meals, and IRB's analysis of the items purchased for consumption by Union officers and employees demonstrates that there was none. Indeed, the evidence overwhelmingly demonstrates that Brothers Kenny, Moreno and Guillory regularly conducted drinking binges during normal working hours, and then improperly caused the Local to pay the expenses they incurred. To the extent they claim there was a proper union purpose for any of these expenses, they must shoulder the burden of proof of showing this with specifics, which they have not done.

Similarly, although the charged members have insinuated that they are being unfairly charged for causing the Local to pay the same restaurant charges, evidence showing that this is the case was not presented during the hearing.

We likewise flatly reject the claim that union business had to be, or appropriately was, conducted in restaurants instead of at the Local Union offices to avoid interruptions and other distractions at the offices. A number of witnesses contradicted the charged members on this point and, obviously, concerns about interruptions or distractions could easily have been addressed by instructing employees at the Local Union offices not to interrupt or distract ongoing business meetings.

We also regard as preposterous the claim that over one hundred trips by Brother Kenny and the Local's office manager to a restaurant 24 miles away from the Local Union were necessary to discuss "union business." Of course, the pervasive consumption of alcohol during these visits convinces us that the "union business" story is not credible.

As for Brother Kenny's contention to the effect that he never authorized the Local to pay for "bottles" of wine, since he only ordered drinks by the glass, we are struck once again by his obvious and complete inability or unwillingness to recognize the point. The documented consumption of alcohol for which Kenny caused the Local Union to pay was objectively excessive, whether measured in glasses or bottles. Needless to say, he has attempted to downplay his own alcohol consumption, testifying for example during his IRB sworn examination "I don't drink - I'll have a glass or two of red wine, yes." The records compiled by IRB during its investigation show much more than "a glass or two."

And, we consider especially deplorable Brother Kenny's efforts to blame IBT auditor Baniecki and General Secretary Treasurer Keegel for misleading him as to what "in-town" meal expenses were permitted. In our view, he got it right early during his IRB sworn examination when he acknowledged that Baniecki "talked about the frequencies of the meals in town." Other witnesses, including of course Baniecki, also remembered it that way. But later, during the same sworn examination, Kenny changed his testimony and claimed that Baniecki actually told him that "the amount of frequency going to the same place, like, I should move around and not be going to the same place as much as I was." Even at this, General Secretary Treasurer Keegel's subsequent letter supports the conclusion that Baniecki told Kenny and the other officers that "in-town" meals were too frequent, and should be rarely submitted for reimbursement," not that they should conduct them at a greater variety of restaurants. In our view, the story that Baniecki only told the officers to spread their "in town" restaurant business around to more establishments was concocted during Kenny's sworn examination and is not credible. Baniecki raised concerns about the inordinate "in town" meal expenses being charged to the Local Union, these concerns were clearly memorialized in General Secretary Treasurer Keegel's subsequent letter, and Kenny chose to ignore them and to misrepresent in a follow up letter to Keegel that they had been addressed.

In the same vein, Brother Kenny's claim that Keegel's letter did not address, and therefore permitted the Local to pay for, "in town" meals with Union officials who happened also to be Union stewards is, in our view, another story concocted after-the-fact and worthy of no credence. The problem that was clearly identified was that it was unnecessary regularly to conduct Union business at area restaurants rather than at the Union offices. The extensive, excessive and unnecessary eating and drinking at Union expense was the obvious point.

Other defenses and explanations offered by Brothers Kenny, Moreno and Guillory are likewise without merit, in our view. Thus, the claim that there is a past practice in the Local of conducting union business at area restaurants and having the Local incur the cost of meals and alcohol consumed at such gatherings is tantamount to a claim that it is permissible to steal from the Local so long as that was the past practice. Equally absurd are protests about inadequate or nonexistent training. Each member of this Panel is an experienced Union official, and none of us can accept the suggestion that stealing from the Union is ever acceptable with or without specific training about acceptable expense reimbursement practices. Nor are we persuaded that Brother Kenny's purported reliance on advice from the Local's CPA justified charging the Local for drinking binges or meals having no union purpose. In this latter regard, Kenny admittedly did not consult with the Local Union's attorney, or the IBT Legal Department, about supposed ambiguities he says existed in Baniecki's instructions or in Keegel's letter. This fact further reinforces our view that his actions were calculated and deliberate. Finally, we agree with IRB that the Local's subsequent adoption of policies somewhat restricting "in town" meal expenses for officers and employees was "too little, too late." Suffice it to say that these policies did not rectify the fact that Brothers Kenny, Moreno and Guillory had already charged the Local for more than \$200,000 of inappropriate meal and alcohol expenses.

Brothers Moreno and Guillory, although they were merely employees and not officers of the Local Union, are nonetheless also culpable for causing Local 630 to pay for meals and alcohol expenses for which there was no legitimate union purpose. At a minimum, they served as Kenny's enablers, undertaking to place some of the drinking binges and other excesses on their own credit cards so that Kenny would not have to charge them on his Union credit card. Either way, they were responsible for many of the inappropriate charges being submitted to and paid by the Local Union.

In short, we recommend that the charges that Brothers Kenny, Moreno and Guillory breached their fiduciary duties and embezzled Union funds in violation of the IBT Constitution, as described above, be sustained.

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.

The charged offenses here are extremely serious, and were committed by experienced Union officials. In the case of Brother Kenny, they were committed by the highest ranking officer of the Local Union. Brothers Moreno and Guillory are somewhat less culpable, but only because they were employed only as Business Agents and were not elected officials. Although we are unaware that any of the charged members have previously faced disciplinary charges under Article XIX of the IBT Constitution, we are struck by the total lack of mitigating circumstances and, in particular, the lack of any evidence that any of them have sought voluntarily to make the Local whole for expenses they improperly caused the Local to expend without proper union purpose.

Although we understand that we are not bound by the penalties imposed in prior disciplinary cases, we note that the range of penalties imposed in prior fiduciary breach/embezzlement cases includes permanent expulsions and suspensions from office and membership.

We accordingly recommend the following penalties here:

1. Brother Kenny should be barred from holding any office or employment with Local 630, the IBT or any affiliate of the IBT, including benefit funds, and including any employment as a contractor or consultant, for a period of ten years, effective immediately. Brother Kenny shall also be fined \$168,168, the amount he improperly caused Local 630 to expend without a proper union purpose. The foregoing prohibition means that effective immediately neither Local 630, the IBT nor any entities affiliated with the IBT shall pay Brother Kenny, 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 630, 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. Prohibited indirect payments would include any, salary, stipend, compensation, benefits or payments from Food and

Drug Council or other entities to which Local 630, the IBT or other IBT affiliates contribute. In addition, Brother Kenny should be suspended from membership in Local 630 and the IBT for a period of five years, effective immediately. This suspension should continue in effect thereafter unless and until he has satisfied the fine referenced above.

2. Brothers Moreno and Guillory should be barred from holding any office or employment with Local 630, the IBT or any affiliate of the IBT, including benefit funds, and including any employment as a contractor or consultant, for a period of five years, effective immediately. Brother Moreno shall also be fined \$39,595, the amount he improperly caused Local 630 to expend without a proper union purpose. Brother Guillory shall also be fined \$32,217, the amount he improperly caused Local 630 to expend without a proper union purpose. The foregoing means that effective immediately, neither Local 630, the IBT nor any entities affiliated with the IBT shall pay brothers Moreno or Guillory, nor shall they accept, any salary, gratuities, gifts, severance payments, allowances, consulting fees, benefit payments or contributions or other compensation of any kind, directly or indirectly, except that they may receive fully vested or accrued pension, vacation or other benefits they have already earned under any existing benefit plans or programs maintained or sponsored by Local 630, the IBT or any affiliates of the IBT, as well as health benefits in accordance with COBRA, provided they are eligible for them under any health plan under which they were covered prior to their recent removal from their Business Agent positions. Prohibited indirect payments would include any salary, stipend, compensation, benefits or payments from the Food and Drug Council or other entities to which Local 630, the IBT or other IBT affiliates contribute. In addition, Brothers Moreno and Guillory should be suspended from membership in Local 630 and the IBT for a period of three years, effective immediately. The suspensions should continue in effect thereafter unless and until they have satisfied in full the respective fines referenced above.

