INTERNATIONAL BROTHERHOOD OF

TEAMSTERS LOCAL 492

(FIRE AND ICE PRODUCTIONS, INC.)

and

BILL KELMAN

AN INDIVIDUAL

(Charging Party)

September 2, 2019

RE: *Case* 28-CB-207136

Rodolfo Martinez, Esq. for the General Counsel

Shane Youtz, Esq. for Respondent.

Roxanne L. Rothschild - Executive Secretary

TO WHOM IT MAY CONCERN:

The following are my exceptions and other pertinent information in answer to Judge Tracy's decision against me in my case against Teamsters Local 492 so that the NLRB

board can come to an equitable, fair and just decision. I respectfully disagree with Judge Tracy's decision as I don't believe she had all the facts of the case as presented and misrepresented by 492.

Please excuse that I am an individual layman and not a trained lawyer in this "exceptions" document or other refined legal matters. 492 is using my dues and the dues of other aggrieved members to defend themselves with their paid counsel against me (and other members). If 492 were operated fairly and members fairly represented, we wouldn't have to go through this legal exercise in the first place.

I have requested the documents/exhibits from my case from NLRB's freedom of information website which have not arrived by post or digitally. Because of this I can't answer to specific exceptions with actual exhibits but will do the best I can with what I believe was presented in court, what was in my initial case and appeal documentation to the best of my knowledge.

Many unlawful labor practices by 492 have occurred, not just in this case but continuously since I first filed my initial case. These labor practices by 492 I believe would impact any subsequent legal actions. I presume, the esteemed Board at the NLRB will see that I receive justice, fairness and equality under established law in this matter.

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DOUBLE ROSTER RULE

I believe Judge Tracy erred in her deciding that 492's double roster rule was NOT a bad rule and served no representational purpose because of the following facts:

1) FOUR VIOLATIONS BY LOCAL 492 OF THE TEAMSTER CONSTITUTION

Local 492 violated the Teamster Constitution in the two instances below:

A) It is perfectly permissible within the Teamster Constitution to work in a Sister Local without any exclusions by paying "dobie dues" or service fees.

B) 492 made a rule that was inconsistent with the Teamster Constitution by making the "double roster "rule that harms a teamster brother.

C) 492 made bylaws/rules that conflicted with the teamster constitution by making the "double roster" rule that is inconsistent with the Teamster's Constitution.

D) Violations of 492's business agent's the Oath of office.

EXHIBIT 1

International Teamster Constitution June 2006

Article XVIII Section 5-6 Page 131.

Employment Within Jurisdiction of Sister Local Union

Section 5.

"When a member of a Local Union continues to work on a full-time basis within its jurisdiction and also obtains employment within the jurisdiction of a sister Local Union, he shall not be entitled nor required to transfer his membership, but he shall pay to the

sister Local Union a periodic service fee (not in excess of the applicable membership dues) established and uniformly required by it from members of other Local Unions working within its jurisdiction. When a member of a Local Union continues to work on a part-time basis within its jurisdiction and obtains full-time employment within the jurisdiction of a sister Local Union, he shall be required to transfer to the sister Local Union and to pay the periodic service fee to his former Local Union. This provision is subject to applicable law."

Nowhere in the IBT constitution does it say that I can't work in another jurisdiction or be penalized for earning a living in a sister jurisdiction. My service fees/ "dobie" dues were paid in full Utah and Montana where the show, for Fire and Ice Productions' "Yellowstone" was shooting. I also paid my dues to New Mexico local 492 in advance. My being singled out and punished for exercising my rights within the rules of the International Teamster constitution were violated by 492 causing financial, emotional and medical harm.

EXHIBIT 2

ARTICLE XVIII, SEC. 5-6

Teamster Local 492 Bylaws Article 27, International Constitution, Page 37

"The Local Union (492) acknowledges that the Constitution of the International Brotherhood of Teamsters supersedes any provisions of these By-Laws herewith or hereinafter adopted which may be inconsistent with such Constitution. The Local Union hereby re-adopts, as its Constitution, such International Constitution, and incorporates herein by Constitution reference, as though fully set forth herein, all such provisions of

such Constitution, as may be interpreted, modified, or amended from time to time, which are applicable to Local Union matters and affairs, and shall perform all duties imposed upon a Local Union by such Constitution."

Local 492's illegal rule supersedes the International's provisions and is inconsistent with the teamster constitution by making using the "double roster rule", violated Article XVIII Section 5-6 Page 131. Employment Within Jurisdiction of Sister Local Union Section 5. (above).

EXHIBIT 3

TEAMSTER INT'L CONSTITUTION page 161-162

Article XXII

LOCAL UNIONS BYLAWS

"Section 1. Each Local Union shall adopt its own separate Bylaws which must comply, and may not conflict, with the provisions of the International Constitution. Said Bylaws shall designate as the principal executive officer the President, the Secretary-Treasurer, or the Recording Secretary."

A third violation of the constitution is that Local 492's illegal double roster rule superseded the International's provisions and is inconsistent with the teamster constitution by making using the "double roster rule", violated Article XVIII Section 5-6 Page 131. This also violated the "Employment Within Jurisdiction of Sister Local Union Section 5.

EXHIBIT 4

TEAMSTER INT'L CONSTITUTION page 2-3

Article I, Section 1

OATH OF OFFICE

All officers of the International Union and affiliated bodies when installed shall be required to take the following oath of office:

PREAMBLE

I, _____ do sincerely promise, upon my honor as a trade unionist and a Teamster, that I will faithfully use all of my energies and abilities to perform the duties of my office, for the ensuing term, as prescribed by the Constitution and Bylaws of this Union. As an officer of this great Union, I will, at all times, act solely in the interests of our members, devote the resources of our Union to furthering their needs and goals, work to maintain a Union that is free of corruption, to preserve and strengthen democratic principles in our Union, and to protect the members' interests in all dealings with employers. I will never forget that it is the members who put me here, and it is the members whom I will serve. I further promise that I will faithfully comply with and enforce the Constitution and laws of the International Union and Bylaws of this Union, that I will, at all times, by example, promote harmony and preserve the dignity of this Union. I also promise that at the close of my official term, I will promptly deliver any money or property of this Union in my possession to my successor in office.

All officers of the 492, Trey White, Walter Maestas and members of the executive board violated their oath of office by initially removing me from 492's film department and making me a member in bad standing, which slandered and libeled me because it wasn't true. Being a member in bad standing occurs ONLY when a member doesn't pay their dues. My dues were paid in full and in advance several months. Furthermore, they made me a group six that put me in, at the alleged illegal infraction's time, in a virtually impossible position to get hired as group 6 (supplemental) was and is a "no man's land" and with no path to get hired or be visible on the union's call-board site which by their own rules, is FAILURE TO INFORM. The union neither protected my interest, represented, nor served me, by not faithfully complying and enforcing the constitution by not enforcing the "Sister local" provisions and making rules superseding the International Constitution. Consequently, I did not work in New Mexico in 2018 nor the beginning of 2019 causing harm to me and my family.

NOTE: Melissa Malcom is in an appointed position with local 492 by Walter Maestas and the members did not put her in that position as the oath declares, meaning she made false statements in the above oath of office. As the NLRB (Katherine Lueng, NLRB agent) is aware it took me eleven months to get the minutes where my situation was discussed by the 492 executive board to examine their reasons for making me a group 6 and consequently my initial NLRB charges. All this is documented in my original evidence in my appeal as well as NLRB files.

2) VIOLATIONS OF CFR 20 1002.38

EXHIBIT 5

"In certain occupations (for example, longshoreman, stagehand, construction worker), the employee may frequently work for many different employers. A hiring hall operated by a union or an employer association typically assigns the employee to the jobs. In these industries, it may not be unusual for the employee to work his or her entire career in a series of short-term job assignments. The definition of "employer" includes a person, institution, organization, or other entity to which the employer has delegated the performance of employment-related responsibilities. A hiring hall therefore is considered the employee's employer if the hiring and job assignment functions have been delegated by an employer to the hiring hall. As the employer, a hiring hall has reemployment responsibilities to its employees. USERRA's anti-discrimination and anti-retaliation provisions also apply to the hiring hall."

As a hiring hall (or even a referral hall), 492 has a responsibility to its members for re-employment ESPECIALLY if it is slow in its jurisdiction and there is no work to be had for a member like myself that is in a lower seniority. As a dues paying member of 492 in good standing (as well as exhausted list (supplemental, casual list), there is an expectation that as a union that takes money for employment services , they are supposed to provide. A reasonable man does not pay dues or fees because of their generosity. They pay union dues/fees because there is a reasonable expectation that the union will provide employment. While at the time of my alleged infraction, there were other members who were not employed and it took Malcolm many months to

open communications with Louisiana and Arkansas. Was this the "commitment to work in New Mexico" that Malcolm wanted? No, it wasn't.

With 492 acting as a defacto hiring hall or referral hall, as well as being an employer as above, they have reemployment responsibilities to it's employees (me) with anti-discrimination and anti-retaliation provisions that apply. (See hiring hall below)

With no work available for me in New Mexico, it is 492's fiduciary responsibility to provide reemployment opportunities for me (and others) which they neglected. When 492's Business agent Melissa Malcom said it would be slow in New Mexico and I told her I was thinking about going to out of state to work which she responded positively. At first I thought, all was good but after I was made a member not in good standing and removed from the "film department", after I found work in Utah in 222's jurisdiction (without any help from 492 which is their duty). In fact, because I was trying to make a living and put bread on my family's table, leaving my family in New Mexico to work in Utah, I was punished by 492 for this, creating a hardship for me when I tried to work in my home state and by being away from my family.

I was discriminated against and retaliated against when I came back to New Mexico to try and find work and made myself available on the 492 call board continuously after working in Utah because I made an NLRB complaint. Not until Ron Schwab IBT Vice President of the thirteen western states stepped in and intervened with the Malcolm was I allowed to work.

DISCRIMINATORY AND ARBITRARY TREATMENT OF MEMBERS/AND NON-MEMBERS

Respectfully, Judge Tracy erred in her decision because I was discriminated against by 492 because, drivers on the 492 exhausted list who paid $750 to be on the list and 3% of their gross wages to 492 to be on the list, still get the benefits of membership including health insurance and pension benefits as well as employment opportunities elsewhere including Utah, which 492 claims to be verboten per their "two roster" rule. Those 492 exhausted list members are on a list generated by 492's film division were free to be "double rostered" and seek employment out of state all while being on the 492 film division's exhausted list, while I was expected to show my commitment to working in New Mexico when there was no work. How is fair, legal and equitable, that a non-member exhausted list has more rights to employment than a 492 member?

The difference is obvious, they were double rostered (on 492 exhausted list) with no problems in contrast to myself, a full 492 member in good standing who pays monthly dues to 492 but I was being punished for working in Utah by having my seniority lowered. The exhausted list members pay no dues while they are working out of New Mexico. but I paid Dobie dues to Local 222 in Utah. All were rostered on Utah's industry experience list as B's in 2017 and A's in 2018. The exhausted list is a "roster"/ list generated by 492's business agent that is listed in the 492 work rules along with the rest of the poorly maintained grouping system installed by the local.

How do I know this?

I lived as a roommate in Park City with three 492 exhausted list members in when I worked in Utah in 2017 on "Yellowstone" (Season 1,Fire and Ice Production Inc.) and two of the three in Season 2, 2018. The third got his own place that year. One was a 222 member and on the 492 exhausted list. The three exhausted list members are:

Harold Martinez (492 exhausted list)

Steve Kaupscinski (492 exhausted list and local 222 member)

Thomas Cordova (492 exhausted list)

Additionally there are several other exhausted list members that have worked in New Mexico and many more that I have heard were members of other non-New Mexico locals:

Christy Chaplin Local 509 South Carolina

Donald Bradley Local 568 Shreveport Louisiana

Additionally others who were double rostered in local 492 and 399.

Rick Ferkins

There were others that Malcolm were fighting with over allowing 492 members into to Oklahoma to work on "Buster Scruggs". Additionally there are a number of local 104 members on the New Mexico exhausted list who seemingly have more rights that a 492 dues paying member. Again, no one is doing anything wrong, but those out-of-state members and exhausted list members have more right than a dues paying 492

member. How does that happen that a dues paying member has less rights than a non-member... or even a member from out-of-state?

Not only these people but I was shown in my hearing in evidence as one of the exhibits, a 222 Utah driver, Dustin Stone, who I worked with at Fire and Ice Productions, on the tv show "Yellowstone" was explicitly on the 492 roster. I spoke with Dustin Stone who told me that to get on the 492 roster, he paid the BA, Moises Ortega $500 in cash in his office for the privilege of being on 492's work roster/list. So an example of a Utah 222 member on the 492 "roster"/list by paying a bribe.

CLARIFICATION

WHAT IS A ROSTER?

According to Merriam-Webster's dictionary the definition of "roster"

1a. roll or list of personnel

b. such a list giving the order in which a duty is to be performed a duty roster

c. the persons listed on a roster

2. an itemized list

This means that exhausted list is a roster and vice versa unless there is some new definition of roster that Malcolm has created. In the 492 work rules, a "Any person on another Teamster roster in the industry is ineligible to be placed or to maintain roster status in New Mexico." A roster is a list. The rule says nothing about grouping or seniority or other qualifier unless Malcolm or Judge Tracy (Tracy with due respect) are

starting to claim a well respected dictionary's definition is wrong. Not only is there no qualifiers in this definition, Malcom is making up rules as she goes which only means that since there is no consistent rules, 492's DUTY TO INFORM its membership is also violated. Additionally, 492's inconsistent application of its own rules, got me kicked out of film department initially because they didn't know that the simplest of union rules, "being a member in not in good standing" only happens when dues aren't paid. In this instance mine were paid in full and in advance. Again, this rule flies in the face of the teamster constitution's SISTER LOCAL clause (above.) and is, as such, arbitrary and discriminatory and a bad rule that serves no representational purpose.

There is no argument that this is a list or "roster" generated by 492's Business agent under a false premise as it used arbitrarily, unevenly and illegally. It is clear that Melissa Malcom didn't know her own rules by initially removing me from the film department and making me a member in bad standing which is , again, only done when a member doesn't pay their union dues. Again, this goes against Judge Tracy finding Malcolm, White and Maestas more credible than I.

I paid my dues in full till December assuming that everything was okay. Then they made me a "Group 6" which is some kind of gray region that makes a member not hirable by not visible on the electronic callboard, a questionable device, devised so that Malcolm could arbitrarily discriminate against members that don't toe the 492 line. But, again, I was made hirable by Ron Schwab VP of IBT over the thirteen western states. He also made others in my same circumstance, hirable by calling transportation coordinators and captains who do the hiring who'd are working in New Mexico and said that I (and the others in group) were a members in good standing and available.

This rule is part of the illegal work rules instituted by 492 that are extra contractual and exclusionary labor practices imposed by employees of Local 492 are **direct violations of established Administrative Case Law, via Administrative Law Judge, Timothy D. Nelson's, precedent-setting, August 27, 1980, Judicial Decision and Order in National Labor Relations Board Cases #27-CB-1277**; which established the lack of contractual /legal authority for General Teamsters Union locals, domiciled in the thirteen Western States, such as Local 492 of New Mexico; to "clear" individuals for work [in union Transportation employment positions on union Motion Picture Productions] by those employers [the Hollywood Studios and /or Independent Motion Picture Production Companies of the Motion Picture Industry];

—because such General Teamsters Unions like 492 (which is mostly a freight local) were not signatory to Studio Transportation Drivers, Local 399's of the International Brotherhood of Teamsters Union in North Hollywood, California]exclusive, August 14, 1947, collective-bargaining agreement with the Signatory Producers of the Motion Picture Industry; the labor contract is known in the Industry as: "the Contractual Agreement between the International Brotherhood of Teamsters Union and the Signatory Producers of the Motion Picture Industry. 492 doesn't have a collective bargaining agreement.

[Page two of the Judicial Decision and Order in N.L.R.B. Case #27-CB-1277, per Westlaw's listing of this case].

PAST CUSTOM AND PRACTICE

Additionally, New Mexico drivers working in Utah has been a "past custom and practice" in New Mexico for 30 years or more according many old time New Mexican teamsters. When it was slow, they'd all go out of state including Utah with no problems at all from previous 492 BAs at the time. Suddenly there is "strict" enforcement of the illegal rules in 492 by Maestas as stated in the testimony.

WHY DOES MY WORKING IN UTAH CAUSE HARM TO NEW MEXICO TEAMSTERS? (TAKING WORK FROM OTHER TEAMSTERS)

Page 11, approx. sentence 20,"Malcom "confirmed" that Kelman had been rostered on Local 222's group A list. Malcom wrote" We, however, can never allow one of our grouped members to take work from other rostered movie workers in another union. I am sure if you were here and found out we let someone from Utah come here and immediately get on the group1 list and take a job you would not appreciate it one bit. There is nothing in local 492's constitution and bylaws that they are representing Utah 222 members. I'm not sure when Malcolm decided she became the business agent for 222, but it is apparent that she is overreaching in her jurisdiction as well as violating the 4th Circuit's ruling (see below McBurney v. Young). According to the business agent from 222, I did everything properly. Additionally, there were not movie drivers for a show as big as Yellowstone. Again, per evidence in my original charges and appeal, I was offered the job by coordinator of the show and not by local 222's list/roster which consequently makes 492 and Judge Tracy's argument faulty.

Point of fact my working in Utah was not a problem for 222. 222 was accommodating wanted to see my work experience as I already had the job "before" going to Utah as a "local hire" by Brittany Alexander, the coordinator on Fire and Ice's "Yellowstone" tv project. I had to pay all my expenses in Utah on top of Dobie Dues and my 492 monthly dues. I submitted my paystubs to show that I was an experienced movie driver that. fit into their system. Before I went to Utah I was told that they barely had one crew that was used to doing non-union movies as is they are a right in a right-to-work state. I could pay dobie dues/service fees (as well as my 492 dues). Melissa Malcom used some twisted logic to point out that I wouldn't be happy if Utah Teamsters came to New Mexico... but as above, there are many teamsters from other locals that work in New Mexico. She is talking out of both sides of her mouth to come up with a false premise. Her inference and mind reading that I wouldn't be happy are wrong. If there was a need for qualified drivers in New Mexico, I would be happy to help my union brothers out who needed the work. In fact, because there was a need for drivers in Utah, Malcolm should have called the business agent to see if she could assist by sending qualified union members (which she finally did five months later to Louisiana and Arkansas- see below) just as there was a need for qualified drivers in Utah.

Again, if Utah had a problem with me they would have filed a grievance on me or found a way to get rid of me in some other way because Utah is a right-to-work state and I was totally within my rights to work there. In fact, the business agent from Utah Local 222 called 492's problems with me an "internal 492 issue" and "he didn't understand" what 492's problem was. Local 492 has no right to interfere with the operations of another local or to read my mind as to how I would feel. Malcolm is wrong and if

someone was qualified to drive in New Mexico, they show have that right subject to Federal and State laws that supersede all Teamster International Laws, Rules and regulations.

MALCOM SENDS 492 MEMBERS TO LOUISIANA AND ARKANSAS

Months after my going to Utah, Malcolm on January 25, 2018, Malcolm finally sent out an email regarding 492 members that were heading to Louisiana and Arkansas. Said the email,"We called to see if they need any more drivers, and the Arkansas BA told us they already have 30 requests to get on their list so they don't need anymore at this time." See the word "list", which according to the dictionary mean is the same as roster. If the logic she used in Utah was used here, there may have been drivers in Louisiana and Arkansas whose jobs were taken by 492 drivers. Why was I punished and the 492 drivers that went to Arkansa and Louisiana not? Five months after I went to Utah, working out of state on someone else's list is approved and my situation it was not. Oh, Utah has a seniority/work experience roster and possibly the others don't? It doesn't make any sense. Again the definition of "roster" is not qualified in 492's work rules. In addition, Malcom should have called the local 222 business agent and say she had qualified 492 members that would work in Utah if 222 didn't have any qualified members. This is a violation of her oath of office as she had the ability to try and get members work in Utah but didn't because she was ignorant, arrogant or didn't care. Either way, it was a violation of her oath of office to look after or at least make an effort to help her members who weren't working. Malcolm discriminated against me violating the 4th Circuit Court's ruling (below McBurney v. Young). (Malcolm email in evidence)

EXHIBIT

Malcom's 492 Louisiana email (already in NLRB evidence) asking members to see if they wanted to work in Louisiana and Arkansas.

EVIDENCE OF 492'S ACCEPTANCE OF PAYMENT; PROOF OF GROUP 2 STATUS

492 Accepted my check for dues with the notation in the check memo for my Group 2 dues. If they objected so much to my being a group two by finally landing me as Group 6, why did they take my check? This is what I believe is an example of "prima facie" evidence. 492 drive for dues revenues outweighs their desire and fiduciary responsibility to represent its members fairly and provide representation and vis a vis reemployment/employment for members. Again, 492 was discriminating against me using a bad rule that serves no representational purpose.

RIGHT AND ABILITY TO MAKE A LIVING

The "double roster" rule again is a bad rule and serves no representational purpose because it prevents my common-law, federally protected civil and constitutional rights to make a living. As there was no work in New Mexico, I had to leave my family to provide for them and not only pay 492 dues but also Local 222 and Local 2 dobie service/ dues when "Yellowstone" was in Montana. I also had to pay my own expenses in Park City, Utah which was not cheap. If I had stayed in New Mexico, there were was no teamster work but as I came back to New Mexico after the show in Utah, I continually put my name on the call board as "available" knowing that if I were a group 2, I could be working

By virtue of Judge Tracy's decision, she has agreed with 492's unilateral decision to deny me work in New Mexico by virtue of their illegal, arbitrary and discriminatory "two roster" rule, denying me my constitutional and common law rights to make a living. Below is attributed to the Pacifica Legal Foundation.

EXHIBIT 6

Per In McBurney v. Young, issued today, the Fourth Circuit Court of Appeals rejected a plaintiff's argument that a Virginia law interfered with his right to engage in his trade, but reaffirmed that this right is protected by the Privileges And Immunities Clause of Article IV (precursor to the Fourteenth Amendment's Privileges or Immunities Clause):

The ability to pursue one's profession or "common calling" is one of the limited number of foundational rights protected under the Privileges and Immunities Clause. Toomer v. Witsell, 334 U.S. 385, 396 (1948); see also United Bldg. & Constr. Trades Council v. Camden, 465 U.S. 208, 219 (1984) ("Certainly, the pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause."). Indeed, "[m]any, if not most, of [the Supreme Court's] cases expounding the Privileges and Immunities Clause have dealt with this basic and essential activity." Camden, 465 U.S. at 219. The Supreme Court has found the following provisions to impermissibly burden an individual's right to pursue a common calling—requiring nonresidents to pay substantially more for annual licenses to trade in goods (Ward v. Maryland, 79 U.S. (12 Wall.) 418 (1870)); requiring nonresidents to pay substantially more to engage in a particular profession (Toomer, 334 U.S. 385); requiring nonresident commercial

fisherman to pay ten times more for commercial fishing licenses (Mullaney v. Anderson, 342 U.S. 415 (1952)); resident-based hiring preferences for employment in the field of oil and gas development (Hicklin v. Orbeck, 437 U.S. 518 (1978)); limiting admission to the practice of law to residents (Piper, 470 U.S. 274); local rule limiting admission to the practice of law within a federal district court bar to individuals who lived in or maintained an office in the state, even if nonresidents could be admitted pro hac vice (Frazier v. Heebe, 482 U.S. 641 (1987)); and limiting admission by motion to the practice of law to residents, even if nonresidents could be admitted by examination (Friedman, 487 U.S. 59). Similarly, in Tangier Sound Waterman's Ass'n v. Pruitt, 4 F.3d 264 (4th Cir. 1993), we held that a Virginia statute "tripling the nonresident commercial fisherman's harverster's license fee" "effects a restriction" on the "right to earn a living." Id. at 265, 266. And in O'Reilly v. Board of Appeals, 942 F.2d 281 (4th Cir. 1991), we held that the county's use of residency as a determining factor in awarding Passenger Vehicle Licenses, which were required for individuals to operate taxi services within the county, burdened nonresidents' rights under the Privileges and Immunities Clause. Article IV Privileges And Immunities Clause prohibits states from discriminating against residents of other states when it comes to the right to earn a living, the Fourteenth Amendment's Privileges or Immunities Clause prohibits your own state from interfering with the same right.

MAGNA CARTA

Section 41 of the Magna Carta (1215)

According to the Magna Carta, common law held:

"All merchants are to be safe and secure in leaving and entering England, and in staying and traveling in England . . . to buy and sell free from all maletotes by the ancient and rightful customs, except, in time of war, such as come from an enemy country [who] shall be detained without damage to their persons or goods, until we or our chief justiciar know how the mer- chants of our land are treated in the enemy country; and if ours are safe there, the others shall be safe in our land." (see http://www.independent.org/pdf/tir/tir_07_1_sandefur.pdf) Common Law Right to Make a Living by Timonthy Sandefur published in The Independent Review.

As a merchant of my own labor, local 492 prevented me from making a living by 492's, illegal,, discriminatory and arbitrary rules. The right to earn a living was and is protected by common law as far back as the Magna Carta. As Melissa Malcolm admitted that it would be slow in New Mexico in our meeting where I filled out the forms to become a Group 2. Was I supposed to not work and consequently not pay my bills and feed myself and my family? I don't see any legal argument that because my union has a rule, I'm supposed to run my savings down and starve due to New Mexico's precarious film and television business at that time and prove my commitment to New Mexico.

HIRING HALL

Page 2, approximately sentence 8-10 of the decision:

"The union denied that it operates a de facto hiring hall but instead maintains a referral list for show and movie production work. The union denies it violated the Act in any respect even assuming it operates a de facto exclusive hiring hall."

Huh? I believe for the following reasons that 492 is wrong and want to waive responsibility to their members as we all have a right to fair representation by NLRB law, rules and regulations. Judge is making assumptions for the union who failed to prove they operate a referral hall and didn't make their case. With all respect, I believe the Tracy's double-speak that doesn't speak to the facts at hand and current law. (more to come below)

EXHIBIT

Bylaws of International Brotherhood of Teamsters Local 492, revised effective January 2017, Article 14A. A1 at page 8 of the bylaws:

It refers to the Local Union as a non-discriminatory hiring hall. There is no evidence of any vote within the bylaws or any other amendment where the local made exceptions for members in the "film department" to be a referral hall. 492 has been primarily a freight local and not a film local thus not referral hall. To the best of my knowledge, the only time this issue has come out is through this case before you at the NLRB

As, at the moment, 492 is a "closed shop" with "the books not open" with a seniority system as well as a non-member Exhausted List/ Casuals/Supplemental list. A "closed shop", means an exclusive work force with exclusive access to work. 492 is

closed from new members joining as with the list of "supplemental", "casual", "exhausted list", and in my case a Group 6.

Just because producers are the final say over who is hired, that does not mean 492 is a referral hall. As an employer, the producer are getting their information on driver's exclusively from 492's call board with each driver vetted by 492 in advance for the proper licenses, medical cards, etc. per 492's list of requirements. It is impossible to get a film driving job without going through the 492 protocol gauntlet or so we've been led to believe by 492. This is not a referral hall as Malcolm due to Maestas' appointment has been "strictly" enforces work rules, but we know this not to be true by these work rules being arbitrarily enforced. Even the exhausted/supplemental list has the same 492 instituted rules and by the payment of $750 and 3% of the worker's gross, 492 becomes a not only an exclusive defacto hiring hall but even further to the point, a "for pay" employment agency for non-members.

According to the local 399 blackbook, article 30... *"In hiring personnel at the location, the Producer will use its best efforts to notify the business agent for the Local Union involved at least seventy-two (72) hours in advance and will consult with said business agent regarding the selection of qualified local hires provided that the Producer will make the final decision."*

This "consulting" has been used to keep various members from working including, John Vanderwagon who won his case against 492 in NLRB Case 28-CB-230790 where Melissa Malcolm threatened Vanderwagon's source of employment as a speciality

equipment operator. Per the NLRB, Malcolm had to issue and apology, again Judge Tracy finds Malcolm credible? It's also incredible, one finds it hard to fathom.

Teamster's local 399 is the only exclusive hiring hall with the only exclusive film charter within the thirteen western states for film and television work of which local 492 abides by their contract as an auxiliary labor force for film/tv shot in New Mexico per NLRB Case 27-CB-2672 and 27-CB-2673. Again, respectfully, Judge Tracy erred in her decision and in fact, the rules that guide 399 and 492 are seemingly purposefully confusing so that various locals can make up their own rules and apply them as various situations come up in their favor and get jobs for their friends and families and keep jobs away from those that are perceived as "troublemakers", "conspiracy theorists" as stated by Malcolm in previous emails and an unattributed anonymous threatening email that 492 didn't disavow (giving tacit approval to this behavior).

492 members are paying monthly dues where there is an expectation by members and the local's fiduciary responsibility to look out for the best interests of its members (as per the teamster oath). That is supposed to be one of the purposes of a labor union. Local 492's business agent Melissa Malcom is wrong and Judge Tracy in her support of 492's denial, that it operates a de facto exclusive hiring hall because as local 492 demands a grouping system as well as criteria for driver material to being a class A driver with certain endorsements which is what a hiring hall does; it qualifies drivers for it's New Mexican work force, just like Utah does in its own experience list.

399's wages and work rules are the standard for film work in the thirteen western states jurisdiction and in fact completely legal 492 is trying to become an exclusive defect hiring hall and take away 399's legal status.

(See Teamster Constitution in evidence)

NLRB Cases 27-CB-1277

SPECIFIC FURTHER EXCEPTIONS

Those statements of agreement, rebuttal and /or references to rebuttal documentation are as follows:

1). Page 4, lines 5-15

THAT, Judge Tracy's acknowledging statement that Local 492 maintains and operates a [illegal] hiring hall, as pertaining to Transportation and Wrangler employment positions in the Motion Picture Industry in New Mexico State, is correct.

However, the operation of that hiring hall vis-à-vis Local 399's longstanding collective bargaining agreement with the Signatory Producer, as well as Judge Nelson's April 2, 1980, Federal Administrative Case Law Decision in NLRB Cases #27-CB-1277 and #27-CB-1277-2, is unlawful.

ADDITIONALLY, Local 492 does NOT have its own collective bargaining agreement [ratified by its own membership] with the Signatory Producers and /or any other union

Producers, whatsoever, because if it did—it would be contrary to Local 399's longstanding agreement, thus, illegal. Hence, via Nelson's decision, Local 492 cannot have a lawful hiring hall.

MOREOVER, a temporary Memorandum of Agreement between Local 492 and a Production Company is not a "valid [collective] bargaining arrangement;"

—or a "valid union-shop or other lawful hiring agreement with an employer [the Signatory Studios and Independent Production Companies of the Motion Picture Industry] covering employees for whom...[General Teamsters Local Unions in the thirteen Western States, such as Local 492 of New Mexico] have been duly designated and selected as their [the Studios and Independent Production Companies] representatives in an appropriate unit such as Local 399's exclusive collective bargaining agreement with the Signatory Producers of the Motion Picture Industry indeed stipulates for Local 399."

Page 2, and FN39, on page 22 of Westlaw's Judicial Review for NLRB Cases #27-CB-1277 and #27-CB-1277-2]. (Exhibit a 7-4, 7-5a, 8-1)

THEREFORE, once again, Local 492 cannot have a lawful hiring hall. Nor, can its employees' operate an unlawful /de facto hiring hall under the false premise—that they are a "non-exclusive" referral hall, when they are only the caretakers of a courtesy-for-producers, movie work list. *

SUBSEQUENTLY, the only justifiable and legitimate procedure an employee of Local 492 of New Mexico [and every other General Teamsters Local Union domiciled in the thirteen Western States], should be following upon each and every inquiry made to their particular Local Union by a Producer and /or Transportation Coordinator in the Motion Picture Industry regarding the availability of "local hires" for possible employment on upcoming Productions in their respective Local's jurisdiction is that the local provide a courtesy movie list for the convenience of the Signatory Producers and /or Transportation Coordinators /Captains of the Hollywood Studios and Independent Production Companies of the Motion Picture Industry; which is supposed to be a non-discriminatory list of the names of those men and women on their Local Union's movie work list who are willing to be employed as a "local" in a Production Driver's position and /or in other Teamster-related positions on a Motion Picture Productions in their particular Local's jurisdiction which is what I did when I got offered a job in Utah local 222's jurisdiction.

In turn, the inquiring Producer and /or Transportation Coordinator is then free to contact the individuals on the General Teamsters Local Union's passed-on movie list of potential future employees—at their own discretion and need (as did the 399 transportation coordinator, Brittany Curry Alexander did for Fire and Ice Productions, "Yellowstone" in Utah that I worked on.) In my case as a Group 6, my name was not passed along on this "list"(Roster), as it wasn't busy in New Mexico at the time of my alleged infraction and when it did start to get busy, I was not on the list (along with others who were dropped to a Group 6).

HOWEVER:

The "referral" list which, in reality, functions as a "mandatory prerequisite" for individuals, from both within and from outside New Mexico State, seeking to become employed in a union Teamster employment position, via the Producers and /or Transportation Coordinators /Captains in the Motion Picture Industry;

—and /or a list which in non-right-to-work State New Mexico which should be open to all individuals, notwithstanding their membership in Local 492 and /or any other General Teamsters Local Union unless and until they become employed on a union Motion Picture in New Mexico State, and subsequently, joining the Teamsters Union becomes mandatory for non-union individuals via State of New Mexico statutory law / New Mexico's status as a non-right-to-work State].

CONSEQUENTLY, officials, representatives and /or employees of Local 492 of New Mexico cannot directly and /or indirectly refer a specific individual group and /or "clique" of drivers /individuals for employment on Productions to any Producer and /or Transportation Coordinator in the New Mexico Motion Picture Industry without engaging in racketeering but as we've seen, this is continuously done.

FURTHERMORE, the only credentials which any individual needs to have in "their possession" and /or "on their person," in order to have their name justly and rightfully listed, displayed and retained on any of Local 492's courtesy-for-producers a, movie work lists in the thirteen Western States, is a current and valid driver's license;

—and if such license happens to be a commercial driver's license, then the individual

holding that license needs to possess a current and valid United States Government Department of Transportation (DOT) health card signed by a licensed medical doctor.

THEREFORE, any and all prerequisite conditions, requirements, regulations and /or rules, additional to the lawful possession of a current and valid driver's license and /or current and valid commercial driver's license and DOT health card; which are imposed upon any individual seeking to gain and /or hold onto any of the aforementioned Teamster-related employment a positions on a Motion Picture Production, anywhere in the thirteen Western States, by an employee of a General Teamsters Local Union, including Local 492 of New Mexico; are fraudulent and illegal upon their face.

Again, a list of the names of those men and women on Local 492's Industry Experience Roster(s) must be passed on to the Producers and Transportation Coordinators in the Motion Picture Industry in a non-discriminatory manner; without regard to one's union membership, motion picture production work experience, seniority grouping, job classification or type and /or certain specific state-issued driver's license;

Once an individual's name has been placed on the courtesy-for-producers movie work list of a General Teamsters Local Union domiciled in a state which has effected a tax incentive plan(s) for the Studios and Independent Production Companies of the Motion Picture Industry, such as New Mexico State;

—it then becomes the responsibility of the individual seeking to gain and /or hold onto a Teamster-related employment position on a Motion Picture Production in such state, to transfer his /her driver's license to the state-issued driver's license from that same

such state in which he /she hopes to become employed; in order to become a "rebatable" person or individual, "eligible" for employment on a Production in such state—in the eyes and minds of an individual's future employers: the Producers and Transportation Coordinators of the Studios and Independent Production Companies]. At the moment, New Mexico tax and revenue only requires a New Mexico driver's license.

An employee of a Production Company whose future incurred labor costs (wages) can be partially reimbursed via the ongoing tax incentive plan(s) of a corporate state government, such as the State of New Mexico.

2). Page 4, lines 19-27

Melissa Malcolm became the Local 492 Business Agent for the Motion Picture Industry in New Mexico State, not because of her personal integrity and /or knowledge of the true and correct issues or 492, 399 or international rules and law regarding the non-legal status of General Teamsters Local Unions in the thirteen Western States, including Local 492 of New Mexico, to refer, hire, dispatch and /or employ individuals on Motion Picture Productions in the West; She was hired as an appointment by Walter Maestas without any input from the members of 492's film department.

—vis-à-vis those Local Unions' non-signatory status to Local 399's longstanding collective bargaining agreement with the Signatory Producers—a status adjudicated in Federal Administrative Case Law, via NLRB Cases #27-CB-1277 and #27-CB-1277-2;

Malcolm [and /or others at the Union] who are administrating the paperwork regarding temporary Memorandums of Agreement with transiently named Production Companies are only doing so because most employees for such companies continue to gladly forfeit their Producer responsibilities to dispatch, hire and /or employ individuals in Teamster-related employment positions on union Motion Picture Productions in New Mexico which is their right as producer, which were attended to by themselves, via a passed-on, courtesy-for-producers, movie work list from General Teamsters Local Unions in the thirteen Western States]

Local 492 of New Mexico has no bylaws regarding the Motion Picture Industry, whatsoever, as a consequence of its non legal status as a referral /hiring hall, as pertaining to the Motion Picture Industry in New Mexico State.

The referral list(s) which Malcolm references are illegal because Local 492 does not lawfully maintain those courtesy-for-producers, movie work list(s) in the previously discussed just and proper, lawful manner.

SUBSEQUENTLY, Malcolm, White, Maestas and 492 are indeed making decisions—including final decisions, as to who works and /or who does not work on Motion Picture Productions in New Mexico, as exemplified by certain past and /or present designated singled-out-for-exclusion and /or blackballed individuals, such as myself as

what has happened over the two years while I was legally working in Utah on the tv show "Yellowstone" for Fire and Ice Productions and excluded from all work in New Mexico by the lowering of my seniority status.

3). Page 4, Footnote 7

THAT, the inclusion of New Mexico State as one of the thirteen Western States in Local 399's contractual agreement with the Signatory Producers, as provided in paragraph 30 of the "Distant Location Conditions and Wages" section of the 399 Blackbook contract;

—does not convey, in any way, whatsoever, the contractual and /or legal authority for employees of Local 492 of New Mexico, such as Melissa Malcolm, to operate and maintain a second hiring hall in the thirteen Western States for Teamster /399-related employment positions in the Motion Picture Industry.

Hence, Local 492's alleged referral /hiring hall for the Motion Picture Industry in New Mexico State is—in reality, an illegal but de facto hiring hall, as certain informed individuals in the Motion Picture Industry, including, and most significantly, many Local 399 members unequivocally know that hall to be.

4). Page 4, Footnote 9

The fact that Judge Tracy found Melissa Malcolm's testimony at the hearing "credible" because, "she [Malcolm] testified in a clear and logical manner," does not—in any way,

whatsoever, mean what Malcolm said was true and correct even though Malcolm repeatedly made false statements.

5). Page 5

THAT, Local 492 has no contractual /legal authority, whatsoever, to impose grouping classifications on individuals employed in Teamster-related employment positions in the Motion Picture Industry. AND, to this point.

6). Page 6

As repeatedly discussed, temporary Memorandums of Agreement with transiently named Production Companies do not lawfully circumvent, abrogate and /or supersede Local 399's exclusive contractual legal Right, via its longstanding collective bargaining agreement with the Signatory Producers, to operate and maintain the only exclusive referral /hiring hall, as pertaining to Transportation, Wrangler and other lawfully created 399 employment positions in the Motion Picture Industry in the thirteen Western States;

—a legal hiring hall which can lawfully impose exclusionary prerequisite conditions, requirements, regulations and /or rules on individuals seeking to gain and /or hold onto union transportation, wrangler, location, animal training, mechanical, food preparation / cooking (chefs) or warehouse employment positions in the Motion Picture Industry; as pertaining to its own membership and /or upon other individuals seeking to gain one of the above said union employment positions on a union Motion Picture Production within its own home jurisdiction in the surrounding Los Angeles county;

—and /or upon other individuals seeking to gain union membership in Local 399 on a union Motion Picture Production elsewhere in California and /or in the other twelve named Western States and /or in any other state or province within the United States of America or Canada];

—and /or to dispatch and /or refer individuals on its call board /movie list, to union Motion Picture Production Locations in the thirteen Western States;

CONSEQUENTLY, an inferior-in-law (to Local 399's collective-bargaining agreement (CBA)) Memorandums of Agreement with transiently named Production Companies;

AND, a copy of Local 399's Black Book [CBA] does not contractually, legally and /or lawfully, allow officials, business representatives, employees-members of Local 492 of New Mexico, such as Melissa Malcolm, to operate and /or maintain an exclusive or "non-exclusive," illegal and /or de facto [referral] / hiring hall for the Motion Picture Industry in New Mexico;

WHICH Consequently nullifies arbitrarily regulatory powers that usurps my Federal, State and Common Law /constitutionally Protected Rights /Rights, to make a living for myself in Teamster-related employment positions on Motion Picture Productions in New Mexico State and /or elsewhere.

7). Page 7

Dobie dues are a common fee to pay when working in other jurisdictions; these dues are paid on a monthly basis to both one's home Teamsters Local—and the visiting

my commitment to New Mexico. What is the logic here? Become homeless to show my commitment to work exclusively in New Mexico and become a burden on the state social services rolls?

These teamster union jobs are coveted because they are lucrative which no film Driver or Wrangler working by way of courtesy-for producers movies list(s) in the thirteen Western States and /or elsewhere can say are consistent employment unless by way of blood, connections or other quid pro quo. Even if, in the unlikely, rare event a Production Driver is able to stay continually employed on Motion Picture Productions for decades to come—which the vast majority of drivers will never have; How does this demonstrate my (or other individual's) commitment to work exclusively in New Mexico;" make any logical sense? Of course now, that its busy in the state with the new film incentives, there are more available jobs but when this situation started where my seniority was taken away, this was the case.

The "double roster rule" has always been Local 399's rule and not a 492 rule. 492 orginally made up the rule and used to discriminate against those not in the "North Valley 40", 492 members from long time New Mexico families that wanted to protect their jobs from outsiders. I had originally paid my transfer fees from 399 back in 2007 when I also joined IATSE 480 and stayed on 492's hiring list without a single call even when it was busy that year.

This rule which contractually /legally only Local 399 can lawfully enforce on its own membership, via it longstanding status as the "sole" representative for the International Teamsters Union in the [November 29, 1926, or August 9, 1937, and August 14, 1947,

and henceforth, every three years thereafter, up and until this present time in September, 2019] exclusive collective bargaining agreement with the Signatory Producers of the Motion Picture Industry;

—to abrogate my rights as a citizen and Local 492 member, Common Law /Federally Protected Constitutional Rights, to Provide a Living for himself [and his family] by seeking to gain Transportation, Wrangler [and /or other 399-related] employment positions on Motion Picture Productions in New Mexico State;

—via their unjust, wrongful and unlawful imposition upon me of a fraudulent and illegitimate, post-July, 2017, seniority grouping de-classification /status as a Group Six Motion Picture Production Driver on Local 492's illegal Group Six [non-existent] Industry Experience Roster; which is an unlawful imposition which corporate executives for signatory /union or union Motion Picture Production Companies have concertedly agreed with Malcolm and Maestas to impose upon me, via equity [transitory Memorandums of Agreement (MOA)

with the above said employees for the corporate entity of Local 492 of New Mexico]; a fraudulent and illegitimate elevation of the inferior-in-status of law MOA(s), to ostensibly the same legal status as Local 399's contract with the Signatory Producers, to all unsuspecting and uniformed individuals;

—a rule used to obstruct, exclude and /or fence-me out altogether, a dues paying member,
from future employment in the New Mexico Motion Picture Industry, via Malcolm and

Maestas' unjust and wrongful declassification of my pre-August, 2017, working status as a Group Two Motion Picture Production Driver, daily accruing time toward my illegal three-year requirement as a group two driver before I could become a coveted Group One Production Driver on Local 492's Group One Industry Experience Roster;

[a coveted position because, after a obtaining a Group One classification /status, a Local 492 member. supposedly, but not alway—no longer has to wait until other individuals and /or other individuals with greater seniority have been called for work / are working on Productions in New Mexico, before he /she can be immediately employed on a New Mexico Production];

FURTHERMORE, just by questioning the justice, fairness, equality [and /or lawfulness] of the "double referral rule;" a rule which has it origins in Local 399's longstanding legal "single roster rule;"

AND, a punitive instrument which since [August, 2017] / January 1, 2018, had successfully rendered me, "ineligible to work" in a Group 6 status 492 New Mexico jobs, until, Ronald Schwab, intervened on my the behalf and from what I'm told, approximately six other Local 492 Motion Picture Production Drivers, in March, 2019, via his encouragement to others, to no longer punish these singled-out-for-exclusion, 492 dues paying, movie Drivers;

Schwab had called Local 399, Hollywood Studio Transportation Coordinators and /or Captains working in New Mexico on upcoming Motion Picture Productions— that

myself and others on the Group Six Roster were worthy of being hired on future Productions as we were qualified, dues paying members.

8). Page 8

THAT, Local 492's written equity agreements (MOA's) with Production Companies, whose employees have agreed (agree) to not hire an individual in a Transportation, Wrangler and /or other Teamster /399-related employment positions on their Productions, unless such an individual's name is listed and displayed on one of the Local's illegal Industry Experience Rosters—is contrary to Established Federal Administrative Case Law;

AND, THAT, is precisely why Melissa Malcolm contradicted her initial testimony to Judge Tracy regarding [Judge Nelson's, April, 1980, present-setting ruling] the lawful status of being able to hire individuals—"off of the streets" for the above named employment positions on a union Motion Picture Production in New Mexico State.

THAT, the enforcement of Local 492's "double roster rule" by Malcolm is strictly arbitrary, as documented.

THAT, the origins of the illegal double roster rule [for General Teamster Union Local] and /or the legal single roster rule of Local 399 do not trace back to 2015—but decades earlier, as meticulously documented in this affidavit.

Respectful to Judge Tracy, Local 492's MOA's do not supersede the ruling of her predecessor, Judge Timothy Nelson; nor do such de facto agreements supersede, in

any way, whatsoever, the one true contract for only legal hiring /referral hall for Teamster-related employment positions in the thirteen Western States: Local 399's collective-bargaining agreement with the Signatory Producers of the Motion Picture Industry.

It seems that Judge Tracy is unaware of Local 399's longstanding status as the only legal hiring / [referral] hall and /or legal, exclusive hiring /referral hall for Transportation, Wrangler and /or other Teamster /399-related employment positions in the thirteen Western States; and /or Judge Timothy Nelson's precedent-setting, April, 1980, ruling sustaining this fact.

There are more facts and information that weren't introduced that could've been and should be introduced and may introduced in the future in a civil or criminal case, however, I don't have a lawyer paid for by my members dues. I'm sure more material and information will be coming that may not necessarily be timely in my case but other NLRB, EEOC and IRB cases coming up against 492.

My hopes is that you members of the esteemed NLRB board can see through Judge Tracy's decision is based on 492's misrepresentation of the facts, smokescreens and casting libelous dispersions on me. I apologize for this being done as a layperson and might not have the proper layout, format or style. I reserve all my legal rights to pursue further legal actions in this matter. If the need be that this case is reopened with new information, showing 492's distain for lawful rules, I would like to request it. Thank you for your attention and seeing this case to a fair, just and equitable decision.

Sincerely,

Bill Kelman