

To: Andris J. Silins, General Secretary-Treasurer
United Brotherhood of Carpenters and Joiners of America
101 Constitution Ave. N.W.
Washington D.C. 20001

APPEAL OF THE DECISION OF THE TRIAL COMMITTEE

In the Matter of: Michael V. Draper and Michael McCarron
Charges: UBC Constitution sections 51(A)(4), (6), and (12)

Statement of the Case:

On or about June 28, 2013, Michael Draper ("Draper") filed 14(D) charges against Mike McCarron ("Mike"), alleging violations of the United Brother of Carpenters ("UBC") Constitution section 51(A)(4), (6) and (12). Mike McCarron was the Executive Secretary Treasurer of the Southwest Regional Council ("SWRCC" or "Regional Council"). The charging document alleges that Mike McCarron charged the Southwest Training Fund ("Training Fund") over market value rents which benefited himself and the Southwest Regional Council. The trial in this matter was held at the UBC's International Training Center in Las Vegas, Nevada on September 9-12, 2013. At trial Mike McCarron argued that he did not charge above market rate rents and that he and the Regional Council did not benefit from the rents between the Training Fund and the Regional Council. Mike argued that the heart of this matter boiled down to a personal dispute between him and his brother and General President Doug McCarron. On September 24, 2013, the Trial Committee, consisting of General Executive Board members Frank Spencer (chairman), Dave Tharp and James Smith, in their decision found Mike guilty of the charges. The penalty imposed upon Mike is expulsion from the UBC.

Mike McCarron appeals the September 24, 2013, decision of the Trial Committee. Mike asserts that he did not receive a fair trial. The trial committee ignored key pieces of evidence presented in Mike's case in chief. The Trial committee's decision in this matter is based on a cursory overview of the evidence presented by Mike Draper. The decision of the Trial Committee made numerous unsupported assertions as the basis for its guilty verdict. Accordingly the decision of the Trial Committee should be overturned.

The Grounds Relied Upon in Support of Mike McCarron's Appeal are as follows:

First: The allegation that Mike McCarron used the Southwest Training Fund's "confidential budget" information is false. No evidence was offered into the record stating the Training Fund's budget was confidential. There was no evidence offered stating who should or should not have access to the budget. There is no evidence showing how Mike would have accessed the

Training Fund's budget. There was no direct evidence stating that Mike actually used the training fund's budget for any purpose. Furthermore, there was no evidence offered as to whom the training fund's budget would be kept confidential from and why. The two trustees that testified were not asked by Draper about the confidentiality of the training fund's budget. This assertion that the training fund's budget is confidential appears contradictory considering the Training Fund's financial information is available through the various filings with federal agencies. This assertion in the Trial Committee's decision is not supported by the evidence.

Second: Mike did not concoct a scheme to overcharge the Training Fund on certain lease agreements to inflate his salary, expenses and the Regional Council's financial position. The Trial Committee's reliance on this theory is not supported by the evidence. Mike understands that Draper and company had to come up with some sort of story, but alleging that Mike reverse engineered a scheme to bilk the TF out of \$4.7 million dollars over a five year period, all while never receiving a raise during this time period, declining bonuses, and having lower expenses than two members of his executive committee (Hal Jensen and Randy Thornhill) is wildly ridiculous. The Trial Committee erred in basing its decision on this allegation for the following reasons:

- A. Mike McCarron's paystubs from 2008 through 2012 show he did not receive a raise. Mike did not determine his salary. His salary was inherited from the former EST, Jim Bernsen. Mike would receive a salary increase or raise when So. Cal. Carpenters received raises. The raise would be based on the dollar or percent increase negotiated for So. Cal. Carpenters during various contract negotiations.
- B. The LM-2s offered by Mike, reflect the amount of his expenses from year to year. The LM-2s are put together by a team of accountants and other personnel, if there was a problem with Mike's expenses and receipts it would have been caught long ago. The correct inference is there was never a problem with Mike's receipts and expense reports.
- C. The trial committee stated in a footnote that Mike did not turn in receipts or substantiate his expenses for an unspecified time period. It was an error to include this fact in the decision if the Trial Committee did not rely on it, as stated in the footnote. There is no credible evidence offered to support this footnote, because it is based on the testimony of Mike's former chief of staff (Justin Weidner), who now works for Doug McCarron. Weidner's credibility should be called into question. Furthermore, Draper did not offer any testimony or documents from the SWRCC accounting department indicating there was ever any issue or problem with Mike's expenses.
 - i. A new witness, previously unknown to Mike, has come forward to say that in the days following the institution of the emergency supervision, at least 5 to 7 trash cans full of documents were being wheeled out of the of the Freemont Street building By Regional Council representative and taken to a mobile

shredding unit in front of the building. Those documents probably contained all of Mike's receipts and expense reports. Why else would cans full of documents be shredded immediately after the SWRCC is placed under Emergency Trusteeship.

- D. There was no evidence presented to show that the fair market values of the leases were inflated at the time the lease agreements between the Regional Council and the Training Fund were executed. This is contradictory to Draper's theory that Mike concocted a scheme to overcharge the Training Fund. The trial committee stated that Mike should have renegotiated the leases when property values declined. This assertion by the Trial Committee contradicts the "reverse engineering" scheme.
- i. The theory of Drapers' case centered on the reverse engineering scheme. This theory was refuted by Mike at trial and it is improper that the Trial Committee, in its decision, filled in the gaping holes in Drapers case, despite a lack of credible evidence and zero documentary evidence that Mike set the market rents and that the rents were inflated at the time the leases were executed.
- E. The Trial Committee completely ignored the fact that there is another entity responsible for the lease agreements. The Director of the training fund, Ed Ripley, had a duty to negotiate and oversee the leases that the training fund entered into. If leases need to be re-evaluated or updated, the director bore the same responsibility to do so as Mike McCarron did. A key piece of evidence that Mike produced at trial, which was redacted from the record, is that the trustees of the Training Fund delegated this responsibility to the Training Fund's Director.
- F. The trial committee did not receive any documentation or witness testimony other than Justin Weidner and Randy Sowell as to how Mike McCarron actually determined lease amounts. Mike offered documentary evidence showing that Randy Sowell, director of real estate, and his assistant Carmen Visser determined the fair market value of the rents. These documents were ignored by the trial committee. Mike McCarron was going to use emails to impeach the testimony of Randy Sowell, however he was threatened with criminal sanctions if he did so. Mike refrained from using relevant evidence in his trial for fear of retribution. This fact is further explained in reason number seven of this appeal.
- i. The Trial Committee in its decision asserted that Mike's predecessors obtained appraisals or had some method of obtaining fair market value for lease agreements. Mike McCarron did not obtain appraisals for the leases, because Randy Sowell handled this task. Randy would call commercial brokers or use his background in real estate to come up with the appropriate fair market value rents for the leases between the Training Fund and the SWRCC. Again, Mike intended to introduce emails showing that Randy Sowell suggested that a yearly increase of 3% based on the CPI is within

- market standards, as well as other emails showing that he determined the amount of the rental agreements. Mike refrained from using this information.
- ii. The Trial Committee completely overlooked the March 2006 memo from Randy Sowell to Mike and the Executive Committee of the Regional Council. Randy compiled a portfolio of Regional Council properties and made recommendations regarding the properties and leases. One of the recommendations was that appraisals not be performed unless a special issue warrants an appraisal.
- G. The Trial Committee's assertion that Mike McCarron withheld information from fellow trustees is unfounded. This assertion is based on testimony of Peter Aylward, who works for Doug McCarron. Peter discussed a real estate transaction where the Regional Council purchased property from a Pension Fund and this fact formed the Trial Committee's basis that Mike was very familiar with ERISA rules. Mike's counsel on cross examination impeached the testimony of Peter, when he admitted that Randy Sowell was Mike's designated representative on that particular transaction. So how could Mike know all the "ins and outs" of that transaction if Peter and Randy were the ones handling it. Furthermore, the inference can be drawn that if Randy was Mike's designated representative for his transaction that he (Randy) handled all other property related transactions for the Regional Council.
- i. The Trial Committee also noted that Mike had in his possession a report that discussed ERISA and prohibited transactions. The Trial Committee's discussion of this document on page four of its decision is misleading, because the report is dated May of 2012. The trial committee's wording is unfair, because it insinuates that the report had been around for a long time, when in fact it had not. The document was given to the trustees of the Training Fund after May 2012.
- H. The Trial Committee's assertions that the Training Fund began to ensure compliance with ERISA in late 2011 is somewhat misleading. It was December 2011. The Trial Committee failed to include the fact that appraisals of the properties were not obtained until summer and late 2012, and that analysis of the appraisals was not finalized until May 2013. Furthermore, the issue was only raised, because two other Training Funds (Hawaii and Kansas City were audited by the Department of Labor - no charges have been filed in connection with those audits).
- i. The Trial Committee's assertion that Mike sought to delay the communication of the appraisers finding is not supported by the evidence. McCarron did not send any email indicating such, nor did he direct Justin Weidner to do so.
 - ii. The Trial Committee's assertion that Mike delayed payment of the rent overages is not supported by the evidence. The rent overages were determined by Peter and as soon as his analysis of the final amount was sent to the Regional Council Mike directed the money be paid that very day. The

Trial Committee's assertion on page 5, bottom of the first paragraph is false. There is no evidence or testimony by Peter to show that the rent analysis he performed was delayed in any way.

- I. The Trial Committee ignored relevant evidence that Mike's payment of the overages to the Training Fund was proper. As EST of the Regional Council Mike can conduct day to day business of the council, repaying the training fund is an allowable function. No current member of the executive committee testified in Draper's case in chief. This should have been a very troubling fact for the Trial Committee. Former committee member Michael Olds testified that the executive committee members were aware of the issues with the lease agreements, and this fact is reflected in the executive committee minutes.

Third: The next leap in Draper's theory of the case is the lease scheme inflated the financial position of the SWRCC. The Trial Committee erred in its decision that the over market lease values inflated the financial position of the SWRCC. The SWRCC is worth approximately \$240 million dollars. To say that \$4.7 million dollars or a little over a million dollars a year, (2008-2012) in the form of incorrect lease amounts, bolstered the Regional Council's financial position is unfounded. The trial committee asserts that the SWRCC experienced "large operating losses" and in doing so has again ignored evidence to the contrary. There was no "operating loss." The use of this term is misleading. Due to the great recession, there was a large decline in "carpenter hours." This is reflected in the LM-2s, offered by Mike, which show that due to the growing number of out of work carpenters, the Regional Council received fewer contributions. The decline in Carpenter hours was out of the control of the Regional Council and Mike. The Regional Council decreased its expenses and had enough reserved cash and investments on hand to maintain its operations during the Great Recession. In fact in 2009, the Regional Council had approximately \$150 million in cash and investments. These facts and supporting documentation were improperly ignored by the Trial Committee in its decision.

Draper did not offer any evidence to suggest that the rent payments bolstered the finances of the Regional Council or that the repayment of the above market rents to the training fund place a strain on the Council's finances. There was an argument that the Regional Council was "deficit spending." There is no prohibition against deficit spending, in fact most RCs across the brotherhood were deficit spending during the tough economic times. The SWRCC never filed a notice of hardship with the DOL. The SWRCC was in a good position, and it had enough cash and investments on hand to get it and its members through the lean times, allowing the council to maintain a similar level of service to its members. The trial committee completely ignored Mike McCarron's supporting documentation on this point, notably the LM-2s and the Regional Council Trustee Reports.

Fourth: The Draper's theory that Mike is a "micromanager" is a false. The Trial Committees' use of this assertion in its decision is improper. Curtis Conyers testified that Mike McCarron never told the board anything. That does not sound like a micromanager. Secondly, all of the

documents offered by Draper do not list Mike McCarron on them. The couple emails and other correspondence offered, do not even list Mike McCarron as a recipient. If he was a micromanager, he would be a recipient or "cc'd" on all correspondence. The assertion that Mike did not want to use his email is false. It is a well known that Mike is not computer savvy. If a person needed Mike, they would call him on the phone, or speak with his assistant Justin Weidner.

Fifth: The Trial Committee's has erred in its decision to hold Mike solely responsible for the lease agreements between the training fund and the regional council. Mike as EST to the Regional Council does not have a duty to update the trustee's of the training fund with regard to the lease agreements. The trial committee has completely ignored the fact that the training fund's director Ed Ripley, who was present at all board meetings, had the duty to update the board in regard to the leases. In fact the board delegated all duties regarding lease agreements to the director. Mike offered a key piece of evidence supporting this assertion that was redacted from the record. If leases were expired or rents were overvalued, then the director of the fund has the responsibility to update the leases or renegotiate. The director did not do this. It also is very concerning that not a single labor trustee, or the Training Fund Director or its administrator testified in support of Draper's case. The Trial Committee should have found this fact very troubling. To base its decision largely on the testimony of Justin Weidner, is patently unfair.

Draper's case relies on Justin Weidner, who was helping Mike in the beginning and told others that the charges were "bullshit" and that "the brothers were fighting¹." Then Justin immediately goes to work for Doug and becomes the star witness in Draper's case. Justin testified to all sorts of custom and practices as if he was rehearsed by Draper or general counsel. No personnel from the SWRCC accounting department, executive committee member, Training Fund employees or trustees testified for Drapers' case.

Sixth: Wayne Catalano, testified for Mike McCarron. Wayne is a labor trustee for the Training Funds. He testified that it is a common practice to enter into leases with a 10 year term. The leases offered by Draper show lease terms of five or ten years. Many of the leases were already in existence prior to the time period in question (2008-2012). Some leases were operating on a month to month basis, under terms set forth in 1990². Even if an appraisal was obtained for the execution of new leases entered into between the Training Fund and the Regional Council in 2005, 2006, 2007 and 2008, since the leases were for five or ten years, when the economy fell off a cliff causing property values to decline everywhere, the appraisal would not have mattered.

The trial committee improperly and unfairly placed the responsibility for updating the leases solely on Mike McCarron. Again, the Trial Committee failed to account for the Training Fund's director Ed Ripley and his duties in regards to lease agreements. Additionally, there are

¹ The term "Brothers" refers to Mike McCarron and his older brother Doug McCarron who is General President of the Carpenters Union.

² Two leases from the 1990s were signed by Doug McCarron.

fourteen trustees that oversee the Training Funds operations. To hold Mike McCarron solely responsible is grossly unfair.

The cross examination of Wayne by Draper was improper and lacked foundation. Draper asked if Wayne knew that the Training Fund was paying double fair market value for the Tucson property. Wayne did not know. Draper's question was misleading because he provided no evidence that rent amount was not at fair market value when the lease agreement was first executed. It is this type of questioning and reliance on "smoke and mirrors" that form the basis of Draper's case. He does not provide the year, lease term or show the witness evidence of the double rent. There are many other instances of Draper manipulating the evidence. Another critical issue overlooked by the Trial Committee was the lack of evidence offered by Draper showing what the values of the rents were when the leases were executed. Additionally, coupled a yearly three percent increase tied to the Consumer Price Index for lease agreements longer than a year is an industry standard. The Trial Committee's blind acceptance of Drapers case and complete oversight of the evidence put forth by Mike is extremely unfair.

Seventh: Mike McCarron's trial was inherently unfair. Mike was not able to secure the testimony of witnesses relevant to his defense. Mike was prevented from using and entering relevant documents into the record to support his position. Draper for his case in chief had access to any and all documents he needed, yet under the UBC Constitution, Mike has no recourse for obtaining relevant documents for his defense that were not already in his possession.

- A. During Mike's trial witness tampering occurred. The Trial Committee labeled it "intimidation." Mike's closing argument indicated that it was tampering. The witness in question was Ben Rodriguez. He received a phone call from Danny MacDonald³. The phone conversation was recorded. Dan MacDonald asked Ben if he knew what questions he was going to be asked. He further inquired about what Ben was planning to testify to. In a 30 minute conversation, Danny told Ben not to testify. Danny then implied that he might try to get Ben a job or some work with the Regional Council.
 - i. Another concerning fact is that Danny MacDonald knew that Ben Rodriguez was on the witness list. Ben was put on the witness list late Monday afternoon. The only people that knew this were the Trial Committee and Draper. How did Danny MacDonald find out that Ben was on the witness list. Danny called him the next day and said "I heard you are on the witness list.: The inference here is that Draper or the Trial Committee was communicating with non-related council employees to gain the upper against Mike.
- B. The fact that the trial committee did not find the witness tampering egregious, as indicated in its decision, is mind blowing. The inference is that certain Regional Council employees were told not to testify for Mike McCarron or they would suffer

³ Dan MacDonald, is Doug McCarron's "de facto" son. Doug has been a father figure to him since he was born.

the consequences. This fact even extended to retired members. Mike had many supporters, but they declined to testify for him, because they would lose their jobs at the Regional Council if they did. In fact, three individuals supported Mike from the beginning and lost their jobs as a consequence. This struck fear into the hearts of Brotherhood employees wanting support Mike at the risk of losing their job. One retiree, Marty Dalquist, was contacted by Doug McCarron in which Doug berated Mike for over an hour and was evasive in his conversation with Marty when pressed on the fact. Marty testified to this in court.

- C. John Decarlo was receiving copies of the Daily Transcripts. An email was forwarded to Mike's wife's email address and it showed that John Decarlo received the transcript. This is inherently unfair, to have the UBC's general counsel who has a role in this case to be reviewing the transcripts. There is no provision in the UBC constitution that allows for this.
- D. Draper introduced an email that appears to have been tampered with. The Trial Committee ignored Mike's comparison of the email at exhibit 45 with other emails introduced by Draper. First, the email does not bear the same font as other emails. The header of the email is different, because it is missing the large bold name above the line at the top of the email. The arrow or "horizontal v's" that appear to the left of the email indicate that it was forwarded to another user or computer, where it was then cut and pasted into a word processing program so the contents could be manipulated. You can see where the label "original message" appears in the middle of the page, yet the email is missing the word "Forwarded" that should appear above. This is a forwarded email as indicated by the horizontal V's on the left side of the email. This email was manipulated in a word processing program, and the manipulated contents were cut and pasted back into the original email.
 - i. Two sources, who are afraid to reveal their identities for fear of retaliation, indicated to Mike and his supporters that falsified documents would be submitted in this matter.
 - ii. The theory of Draper's case rested heavily on a scheme to reverse engineer the rent amounts by looking at the Training Fund's budget. This email at exhibit 45 was the only piece of evidence to support this theory. The email has been tampered with. Mike McCarron never checked the JATC budget to see what it could afford.
- E. Another witness that was going to testify on Mike's behalf was Pat Conner, who retired from the UBC general counsel's office. Pat worked on the lease agreements and would have testified that Randy Sowell determined the fair market values of the rents and other terms. Pat received a letter from Charles Davant of the law firm Williams and Connolly on or after September 7, 2013 (two days before the start of the hearing). Pat Conner was so shook up by the letter that he was afraid to testify for Mike.

- F. Mike McCarron also received a letter from Charles Davant, which he received Tuesday September 11, 2013, during his UBC trial. The letter threatened Mike with criminal sanctions. Mike would not have acquiesced to such a threat; however, the letter was directed to his daughter. The letter was sent to her home address and also sent to Mike McCarron's wife's personal email. The letter stated that if Mike used any emails, which he obtained in his capacity as EST of the Regional Council that he and his daughter would be subject to criminal and professional sanctions. This caused Mike McCarron to remove relevant emails from his case in chief and to not use dozens of other emails for impeachment purposes. This letter influenced his decision not to testify at the hearing. It was apparent that the trial committee, and UBC were not going to give him a fair hearing, so he made a decision, during the hearing, to mitigate his losses. Mike McCarron was intimidated by the UBC from providing relevant documents in his case in chief and from testifying at his own trial.
- G. Mike was prevented from entering documents at trial that would have impeached the testimony of Randy Sowell and Justin Weidner.
- i. The emails would show Randy Sowell and his assistant Carmen Visser determined the rent amounts for the various leases and the terms of each lease.
 - ii. Another email from October 2012, discussing the lease issues with the training fund and what the trustees need to do.
 - iii. Mike McCarron was threatened with criminal sanctions if he introduced these documents into evidence. His daughter was threatened with criminal, professional sanctions, and a host of other threats as well. It is clear the motive behind the threatening letter was done to gain the upper hand in this trial.

Eighth: These charges are the result of a personal dispute between Doug and Mike McCarron. At trial the dispute was asserted to the trial committee and documentary evidence supporting this assertion was produced to the trial committee. The personal dispute forms the basis for the scheme that has been concocted against Mike McCarron to push him out of the Brotherhood, all due to a bitter personal dispute between him and his brother Doug. Many innocent people have been fired over his matter. The trial committee heard testimony from a few of these individuals. The Trial Committee's decision where it discusses Yasmin Aguillar and alleged ties to MS-13 is irrelevant and inflammatory. Ms. Aguillar had been Decarlo's receptionist since 2000. For 13 years there was never an issue with her, until she witnessed the scheme against Mike. She is a mother of three, who is out of work and will probably have an incredibly difficult time finding a job due to the vengeful claims the UBC has made against her. There was absolutely no intimidation or threats from Mike McCarron to any member of the Regional Council. The only person who has been threatened is Mike McCarron.

Mike and Doug's relationship has been strained since December 16, 2011. Mike found out that Doug's girlfriend received a \$66,000.00 raise, which was unmerited. Doug tendered his letter of resignation to Mike for his local 1506 officer and delegate positions. Mike did not accept the resignations. Their relationship as brothers was non-existent. Their working

relationship was tense and Doug excluded Mike from Carpenters business meetings and functions.

Doug and Mike's mother passed away on May 21, 2013, there was fighting within the McCarron family over their mother's estate. Mike is a trustee to his late mother's estate since 2004. Doug believed he had taken been taken off the trust as a trustees. Doug was never a trustee. Doug called Mike and him if he [Mike] removed him as trustee. Mike said that he did not. Doug called Mike a liar, and accused Mike's wife of stealing from the estate. Doug wanted the estate liquidated, but Mike wanted to keep the properties that were a part of their mother's estate. The fight continued and during funeral services for their mother, Doug told Mike, "You're done."

Doug caused his mother to become involved in the insider ULLICO deal. This issue came out during the fight over her estate. In 2005, John DeCarlo gave Mike a box and bag of information and told him to hold on to it, because it was information about Doug and their mom's investment in ULLICO. On or about May 28, 2013, Mike asked DeCarlo about the ULLICO transaction. Mike reminded Decarlo about the ULLICO boxes and that there may be evidence of crime in there. Either May 29th, or May 30, 2013, DeCarlo told Mike that if he did not back off on the ULLICO issue, Doug was going to go after him for the lease agreements between the Regional Council and the Training Fund. That is exactly what happened.

Conclusion:

The charges are inherently unfair, because they were motivated by a personal dispute between Mike and Doug McCarron. The decision of the Trial Committee was rendered in error and is deficient based on the above eight reasons. Mike McCarron did not receive a fair trial as discussed above. Accordingly, Mike McCarron requests that the decision of Trial Committee be overturned and the penalty of expulsion vacated.



Mike McCarron

SUBSCRIBED and SWORN before me on the
____ Day of _____, Year 2013

NOTARY PUBLIC
My Commission Expires _____

*Doc attached
Certif. case*

