

To: James P. Hoffa, IBT General President
From: Members of the Independent Review Board
Re: Proposed Charges against Local 522 Benefit Fund
Trustees Robert Moore and Robert DeLoatch and Former
Benefit Fund Trustee Albert Olin
Date: March 11, 2003

I. RECOMMENDATION

The Independent Review Board ("IRB") refers the below report to the IBT General President recommending that Robert Moore ("Moore"), Robert DeLoatch ("DeLoatch") and Albert Olin ("Olin"), who were the Trustees of the Local 522 Benefit Funds, be charged with bringing reproach upon the IBT and violating their duties as fiduciaries of IBT-affiliated Benefit Funds by allowing the Local 522 affiliated Benefit Funds to pay large, unsupported administrative and other expenses to the Local.¹ By their conduct it appears that Moore, DeLoatch and Olin violated Article II, Section 2(a) and 2(b)(2) and (7) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution.²

¹ On January 27, 2003, the IRB issued a report recommending that Local 522 be placed in Trusteeship. The IBT placed the Local in Trusteeship effective March 10, 2003.

² Article II, Section 2(b) of the IBT Constitution entitled "Union Fiduciary's Code of Ethics" provides:

[a]ny member who serves as a fiduciary of an employee benefit plan covering members or employees of the International or any of its subordinate bodies shall pledge to follow the following Code of Ethics with respect to his or her service as a fiduciary to the

As detailed below, between January 1996 and October 2002, Local 522 received a total of at least \$1,478,849 directly and indirectly in improper payments from the Local's five affiliated Benefit Funds. (Exs. 1 and 5) In January 1996, a third party administrator was retained to administer each of the five Benefit Funds. After that time, the Benefit Funds paid \$1,291,548 directly to the Local for alleged administrative services. (Ex. 1) In addition to the direct payments from the Benefit Funds to the Local, as detailed below, the Benefit Funds also improperly paid a portion of the Local's rent, telephone expenses and building expenses thereby reducing the Local's expenses. From February 1996 through January 2002, these payments totalled \$187,301. (Exs. 2-5) As detailed below, without

plan:

* * *

(2) The fiduciary shall exercise his or her duties with respect to the plan with the care, skill, prudence, and diligence under the circumstances that a prudent person familiar with such matters would use acting under similar circumstances.

* * *

(7) The fiduciary shall not cause the plan to incur unreasonable administrative or other expenses not necessary for the establishment or operation of the plan, in accordance with established law.

These provisions were added to the IBT Constitution during the 1996 IBT Convention. By memorandum dated August 28, 1996, these provisions, among other amendments, were distributed to all IBT affiliates advising that these provisions were in effect. (Ex. 10) These Constitutional provisions were consistent with the obligations of Benefit Fund Trustees pursuant to ERISA. 29 U.S.C.

the improper payments made between January 1996 and December 31, 2001, the Local would not have had any assets and would have had a deficit of \$1,006,969. (Ex. 6)³

As detailed below, Benefit Funds Trustees DeLoatch, Moore and Olin did not know basic information about the direct and indirect payments from the Benefit Funds to the Local. (Ex. 21 at 27-31; Ex. 22 at 27-30; Ex. 78 at 15-17) The Trustees knew that Benserco, Inc. ("Benserco") administered each of the Benefit Funds. (Ex. 21 at 24-27; Ex. 22 at 25-26; Ex. 78 at 23, 28-30) There were no written cost sharing agreements between the Local and any of the Benefit Funds. There were no records showing that the Trustees or other Local employees performed administrative services for the Benefit Funds. (Ex. 21 at 19-21; Ex. 22 at 21-22, 26-27; Ex. 78 at 18-19, 21, 24-25) Given the obligations of the third party administrator, there would have been no reason for Local personnel to perform services on behalf of the Benefit Funds. In addition, the evidence did not support the percentage of time the accountant claimed Local personnel allegedly spent on Benefit Funds work.

As fiduciaries of the Benefit Funds, Trustees DeLoatch, Moore and Olin were required to ensure that the Benefit Funds paid only reasonable administrative and other expenses. Nevertheless, the Trustees did not know how the payments from the

§ 1104(a), 1106 and 1108(b)(2).

³ This analysis was based upon the Local's Form LM-2 filings. The 2001 Form LM-2 was the most recent filing.

Benefit Funds to the Local were calculated. (Ex. 21 at 27-31; Ex. 22 at 27-30; Ex. 78 at 15-17)

As detailed below, it appears that Benefit Funds Trustees DeLoatch, Moore and Olin brought reproach upon the IBT and breached their fiduciary duties when they allowed the Benefit Funds to pay unreasonable administrative and other expenses in violation of Article II, Section 2(a) and 2(b)(2) and (7) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution.

II. SUMMARY

Local 522 is located in Jamaica, New York and represents approximately 1,800 members who worked as lumber drivers, warehousemen, handlers and roofers in the New Jersey and greater New York metropolitan areas. (Ex. 7)⁴ Although headquartered in New York, Local 522 is a member of Joint Council 73 in New Jersey.

There are five Benefit Funds affiliated with Local 522: the Local 522 Pension Fund ("Pension Fund"), the Local 522 Welfare Fund of Greater New York ("Welfare Fund"), the Local 522 Welfare Fund of New York and New Jersey ("Welfare Fund of NY and NJ"), the Local 522 Pension Plan - Roofers Division ("Roofers Pension Fund") and the Local 522 Independent Roofing and Sheet Metal Crafts Welfare Fund ("Roofers Welfare Fund") (collectively

⁴ The Local also had a satellite office in Elizabeth, New Jersey.

"Benefit Funds").

From approximately 1995 through January 2001, Olin was a Trustee of the Local's five Benefit Funds. (Ex. 78 at 11; Ex. 71) Since January 1999, DeLoatch, Local 522's President, has been a Trustee of each of the five Benefit Funds. (Exs. 161-162, 168; Ex. 21 at 12) Since January 2001, Moore, who was hired as a business agent in March 2000, has been a Trustee of the Benefit Funds. (Ex. 22 at 4-5, 15-16; Exs. 35, 71 and 152) Since October 2002, Moore has been the Local's principal officer.

Prior to January 1996, Local employees administered the Benefit Funds and the Benefit Funds reimbursed the Local for such services. In January 1996, Benserco was retained as the third party administrator for the five Benefit Funds. As detailed below, pursuant to its written contract with the Benefit Funds, Benserco provided complete administrative services to the Funds including maintaining an office for the Funds, maintaining all Funds records and answering inquiries from participants. (Ex. 8) Between January 1996 and August 2002, the Benefit Funds paid Benserco a total of approximately \$1,541,935 for third party administration. (Ex. 9)

Despite the contract with Benserco for administrative services, as detailed below, each month each of the affiliated Benefit Funds paid Local 522 for administrative services Local employees allegedly performed. Since July 1999, each year the Benefit Funds reimbursed 37% of the Local's total payroll costs

including all salaries, FICA tax payments, health and welfare contributions and contributions to four pension funds on behalf of Local employees. (Exs. 13 and 81) Between January 1996 and October 2002, these payments for alleged administrative services totalled more than \$1,291,548. (Ex. 1) Although Benserco and the Benefit Funds entered into a written agreement requiring Benserco to provide comprehensive administrative services, Benserco was only paid approximately \$274,587 more for administrative services than the Local received for administrative services allegedly performed on the Benefit Funds' behalf during the same period. (Exs. 1, 9 and 14)

In addition to the direct payments from the Benefit Funds to the Local, the Benefit Funds indirectly subsidized Local expenses without any apparent justification.⁵ Although the Benefit Funds were not located in the Local offices after January 1996, since that time the Benefit Funds have paid a portion of the Local's rent, telephone expenses and building expenses in addition to the direct payments from the Benefit Funds to the Local. (Exs. 2-5) Since July 1999, the Benefit Funds paid 34% of the Local's rent and building expenses and 33% of the Local's telephone bill. (Exs. 13 and 81) Since January 1996, these indirect subsidies totalled \$187,301. (Exs. 2-5)

There were no written cost sharing agreements between

⁵ As detailed below, these indirect subsidies were based upon the alleged time Local employees reportedly performed administrative work for the Benefit Funds.

the Local and any of the Benefit Funds describing any administrative services Local employees performed. Indeed, Trustees DeLoatch, Moore and Olin did not know how the payments from the Benefit Funds to the Local were calculated. (Ex. 21 at 28-31; Ex. 22 at 27-31; Ex. 78 at 15-17) For example, Olin testified:

Q: . . . How is it calculated that the pension fund pays part of your salary?

A: I have no idea.

Q: How do you know that they pay part of your salary or that they did?

A: That's what I was told. I never seen the document, how much they paid or how they paid.

(Ex. 78 at 15-16)

The evidence, including the testimony of DeLoatch, Moore, Olin and the Local's other employees, demonstrated that the Local's employees did little, if any, work for the Benefit Funds. Rather, DeLoatch, Moore and Olin and the Local's other employees referred members with health and welfare and pension questions to Benserco. (Ex. 21 at 21-22; Ex. 22 at 24-26; Ex. 23 at 12-13, 16; Ex. 78 at 28; Ex. 30 at 9-11) Benserco was obligated to answer these questions pursuant to its comprehensive contract with the Benefit Funds. (Ex. 8)

Despite the IBT's issuance of at least two communications cautioning that cost sharing agreements with Benefit Funds must be well documented, the Trustees continued to

allow the Benefit Funds to make payments for alleged administrative services without any time records to support the payments.⁶ Given the lack of documentation showing what and how frequently administrative services were performed for the Benefit Funds, the large payments from the Benefit Funds were unreasonable.

The amount of the direct payments from the Benefit Funds to the Local for alleged administrative services and the indirect subsidies from the Benefit Funds to benefit the Local were calculated based upon "surveys" the accountant prepared which included time percentages Local personnel allegedly spent on Fund matters. (Exs. 13, 24-27, 81, 171-173)⁷ Trustees Moore and Olin testified that they never saw the accountant's allocation records. (Ex. 22 at 30; Ex. 78 at 16-17) Moreover, these surveys appear to be shams. The surveys were not supported by any records showing that the Local employees performed work

⁶ In a June 12, 2000 written advisory from IBT General Secretary-Treasurer C. Thomas Keegel ("Keegel") which was issued to all Locals, the IBT cautioned that cost sharing agreements must be carefully monitored and documented. (Ex. 16) In addition, Keegel also issued a manual entitled, "Local Union Financial and Administrative Policies and Procedures" which referenced the June 12, 2000 advisory and stated that Local Executive Boards must approve cost sharing agreements. (Ex. 18)

⁷ Since July 1999, the payments from the Benefit Funds to the Local have been based upon the accountant's survey dated July 1999. This was when his last survey was allegedly conducted. (Ex. 28 at 60-61) Robert M. Levine ("Levine"), the accountant for the Local and the five Benefit Funds, claimed that a new survey was planned but was delayed based upon construction at the Local's offices and the IRB investigation. (Ex. 28 at 4, 63-64)

for the Benefit Funds.⁸ In addition, an analysis of DeLoatch's work reports for July through December 19, 2002, showed that he attributed approximately 12% of his time to Benefit Funds matters. (Exs. 33 and 155)⁹ In contrast to this, the survey the Local's accountant allegedly conducted attributed 50% of DeLoatch's time to Benefit Fund work. (Ex. 81) The accountant's figure was used to calculate the payments from the Benefit Funds. The Trustees allowed a conflict to exist in that the accountant who calculated how much the Local was owed was also the accountant for the Benefit Funds with an obligation to ensure the payments to the Local were justified.

III. JURISDICTION

8 During his sworn examination, the Local's accountant claimed that in the absence of any records regarding work performed for the Benefit Funds, he and his staff interviewed Local employees to determine the amount of time spent performing work for the Benefit Funds. (Ex. 28 at 39-45, 49-50, 54, 56-57) The accountant had no records of any such interviews. (Ex. 28 at 39-45, 49-50, 54, 56-57) Nor could he identify which employees were interviewed. (Ex. 28 at 39-45, 49-50, 54, 56-57) Furthermore, several Local employees testified that they had not been interviewed about their Funds work since 1996. (Ex. 21 at 20-21, 31-32; Ex. 30 at 19; Ex. 23 at 22-23)

9 Prior to July 2002, when the IRB sworn examinations were conducted, DeLoatch and Moore, who were full-time business agents in addition to being Benefit Fund Trustees, prepared work reports for the Local which reflected conversations with members about benefits but did not state how long these conversations lasted or whether they involved anything more than referring them to Benserco or were about collective bargaining issues not properly chargeable to the Funds. (Exs. 31 and 32) After the IRB sent sworn examination notices to the Local's officers and business agents, in July 2002 DeLoatch and Moore began to attribute time to their activities. (Exs. 33 and 34)

Pursuant to Article XIX, Section 14(c) of the IBT Constitution, this matter is within the jurisdiction of the IBT General President. Paragraph G(e) of the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") require that within 90 days of the IRB's referral of a matter to an IBT entity, that entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB.

IV. INVESTIGATIVE FINDINGS

A. Background

1. Former Benefit Funds Trustee and Local 522 Principal Officer Michael Ianniello

In January 1999, Michael Ianniello ("Ianniello") was appointed the Local's principal officer. (Exs. 60 and 168)¹⁰ Beginning in at least 1993, Ianniello was a Trustee of the Benefit Funds. (Ex. 19 at 8-9)

Ianniello is the son-in-law of Anthony Baratta ("Baratta"), the former underboss of the Luchese La Cosa Nostra Family. See, United States v. Liborio Bellomo, James Ida et. al, 176 F. 3d 580 at 594 (2d Cir. 1999) (Ex. 19 at 19) In 1989,

¹⁰ Ianniello was appointed principal officer after the IRB permanently barred John Ferrara, the prior principal officer, from the IBT based upon his knowing association with members of

Ianniello was hired as an auditor for the Local. (Ex. 19 at 4, 7) Ianniello, who had no prior experience working for a labor organization and had never worked for a Local 522 employer, claimed that he obtained his Local job after he answered an ad in a newspaper for the auditor position. (Ex. 19 at 5-6) In approximately 1991, Ianniello became a Local 522 officer. (Ex. 19 at 4-8)

After obtaining records concerning payments from the Benefit Funds to the Local, in July 2002, the Chief Investigator conducted sworn examinations of the Local's officers regarding such payments. (Ex. 62) Ianniello was the last person scheduled to testify on July 3rd. (Ex. 62) After all the other officers were questioned about the payments from the Benefit Funds to the Local, without explanation, Ianniello, the Local's principal officer and a Trustee of the five Benefit Funds, failed to appear for his sworn examination on July 3, 2002. (Ex. 63) His sworn examination was rescheduled for July 16, 2002. (Ex. 64) Again, Ianniello failed to appear without explanation. (Ex. 65) In the past, he had appeared for such testimony. (Exs. 19 and 20) Ianniello knew that as a result of his failure to appear he would be barred from the IBT and lose his \$124,000 per year job. (Ex. 7)

Based upon IRB-recommended charges, Joint Council 73 permanently barred Ianniello from the IBT. (Exs. 17, 68 and 69)

the Luchese La Cosa Nostra family. (Ex. 59)

By letter dated January 10, 2003, the IRB found the Joint Council's decision not to be inadequate. (Ex. 169)

2. Benefit Funds Trustee and Local 522 Principal Officer Robert Moore

After principal officer Ianniello failed to appear for his sworn examination, effective October 1, 2002, business agent Robert Moore, date of birth September 17, 1963, was appointed Secretary-Treasurer and principal officer. (Ex. 22 at 4; Ex. 70)¹¹ Moore was not a Local officer prior to being appointed principal officer.

In March 2000, Ianniello hired Moore as an assistant business agent. (Ex. 22 at 4-5) Moore was not a Local 522 member before being hired. (Ex. 22 at 5) Moore had no experience as a business agent or union officer before he was hired. According to Moore, after he met Ianniello's cousin, Anthony Cuomo, and told him that he had been a Teamster, Cuomo referred him to Ianniello. (Ex. 22 at 6, 32-33, 35-36)¹²

According to the minutes of a January 8, 2001 Executive Board meeting, Moore, then a Local 522 business agent, was appointed a Trustee of the Roofers Welfare Fund, the Roofers Pension Fund and the Welfare Fund of NY and NJ. (Ex. 71) In

¹¹ Effective October 1, 2002, Moore was paid \$2,000 per week. (Ex. 70)

¹² From 1989 until 1994, Moore had been a member of Local 819 located in Maspeth, New York. (Ex. 22 at 6-7) In 1994, Moore became a manager at Coffee Distributing Corporation where he had worked while a Local 819 member. According to Moore, he continued as a manager until 1999 when he went to work for TCM, a

addition, beginning in March 2001, Moore appeared in the minutes of the Pension Fund and Welfare Fund Trustees meetings as a Trustee of those Benefit Funds as well. (Ex. 35)

3. Benefit Funds Trustee and Local President Robert DeLoatch

Robert DeLoatch, date of birth October 29, 1949, became the Local's President in July 2001. (Ex. 21 at 10; Ex. 37 at 3; Ex. 72) In 2001, DeLoatch's compensation from Local 522 was \$51,300. (Ex. 7)

DeLoatch joined Local 522 in 1980. (Ex. 21 at 5) In 1985, he transferred to IBT Local 807 where he worked for Liquid Carbonics. (Ex. 21 at 5-6) In April 1993, Ferrara hired DeLoatch as a full-time business agent and he transferred back to Local 522. (Ex. 21 at 7-10) In May 2001, DeLoatch was appointed Recording Secretary. (Ex. 21 at 11) In July 2001, he was appointed President. (Ex. 21 at 9-10)

Since at least January 1999, DeLoatch has been a Trustee of all five Benefit Funds. (Ex. 21 at 12; Ex. 168)¹³

4. Former Benefit Funds Trustee Albert Olin

In 1960, Olin, date of birth February 2, 1932, became a

management company. (Ex. 22 at 7-8)

¹³ The minutes of the January 11, 1999 Executive Board meeting stated that DeLoatch was appointed a Trustee of each Benefit Fund except the Local 522 Welfare Fund. (Ex. 168) This omission appears to have been an oversight in the minutes. Beginning with the February 10, 1999 minutes, the Welfare Fund meeting minutes reflected that DeLoatch was a Trustee. (Ex. 61)

member of Independent Roofers Local 275. (Ex. 78 at 4-5) In 1977, Local 275 merged into Local 522. (Ex. 78 at 4-5) In 1993, Ferrara hired Olin as a business agent, a position he held until his retirement in February 2001. (Ex. 78 at 6-8) In approximately 1995 or 1996, Olin was appointed a union officer. (Ex. 78 at 7)

In February 2001, Olin retired from Local 522 and took a withdrawal card. (Exs. 79-80) However, in approximately July 2001, Olin deposited his withdrawal card. (Ex. 29) Between approximately July 2001 and June 2002, Olin was the Local's Recording Secretary. (Exs. 72, 75-76) Since his retirement, Olin has worked part-time for the Local. (Ex. 78 at 12-13; Exs. 72 and 82)

In addition to his union positions, in approximately 1995 Olin was appointed a Trustee of the Roofers Pension Fund and Roofers Welfare Fund. (Ex. 78 at 11) According to the minutes of a June 12, 2000 Executive Board meeting, Olin was appointed a Trustee of the Welfare Fund of NY and NJ. (Ex. 66)¹⁴ Olin continued as a Trustee of each of the Benefit Funds until January 2001. (Exs. 35 and 152)

B. Administration of the Local 522 Benefit Funds

¹⁴ It appears that at this time Olin was also appointed a Trustee of the Pension Fund and the Welfare Fund. The minutes of the Pension Fund and Welfare Fund meetings from June 21, 2000 through December 13, 2000 reflected that Olin was a Trustee of those Funds. (Exs. 67, 73-74)

1. Before January 15, 1996

Prior to January 15, 1996, all five Benefit Funds were located at the Local 522 offices in Jamaica, New York and Local employees administered the Benefit Funds. (Ex. 30 at 6-7; Ex. 86 at 22-23) The Benefit Funds reimbursed the Local for administrative services each month. (Ex. 28 at 14)¹⁵

Prior to Benserco being retained as the administrator of the Benefit Funds, the Local's clerical employees kept time logs detailing the time spent performing work for the Benefit Funds. (Ex. 171) As detailed below, after Benserco was retained, they stopped keeping such time sheets. (Ex. 28 at 15-16; Exs. 26 and 172)

2. Administrative Services Contract with Benserco

Effective January 15, 1996, the five Benefit Funds entered into an administrative services contract with Benserco. (Ex. 8) According to DeLoatch, Ferrara, who was a Trustee of the Benefit Funds at the time, "did that transaction." (Ex. 21 at 25-26) Ferrara signed the administrative services agreement on behalf of each of the five Benefit Funds. (Ex. 8)

Pursuant to this agreement, Benserco provided comprehensive administrative services to the five Benefit Funds. (Ex. 8) Under the agreement, Benserco's responsibilities included, but were not limited to, the following: "provide and

¹⁵ For example, for the period from August 1, 1995 through January 31, 1996, the five Benefit Funds paid 55.61% of the

maintain a well-equipped office to handle the business of the Fund[s]"; "provide and maintain a properly trained staff . . . for the establishment and maintenance of an effective administrative operation;" "promptly respond to oral and written communications received from participants;" "determine eligibility according to the rules and records of the Fund;" "distribute claim forms and provide for eligible participants to obtain benefits after approval by the Trustees;" "provide participants with information on their eligibility status and such other information as the Trustees have directed the Fund to provide;" "assist the Trustees in the preparation and distribution of booklets and other information to be distributed to the participants and arrange for its distribution;" and "maintain all files having to do with business of the Funds."

(Ex. 8) After Benserco was retained, letters were sent to employers and the Funds' participants instructing them that any questions concerning the Benefit Funds should be directed to Benserco. (Ex. 89)

After Benserco was retained, the Funds' offices were moved to Benserco's offices located at 2185 LeMoine Avenue in Fort Lee, New Jersey. (Ex. 86 at 21-22; Ex. 8) The five Benefit Funds no longer had offices at Local 522. (Ex. 28 at 21, 23) After Benserco was hired to administer the Benefit Funds, Local 522 terminated six employees. (Exs. 87 and 91)

Local's total payroll costs. (Exs. 24 and 88)

From January 1996 through August 2002, the Benefit Funds paid Benserco a total of \$1,541,935 for "third party administration." (Exs. 9, 92-126)

C. The Benefit Funds Made Unreasonable Direct and Indirect Payments on Behalf of the Local After Benserco was Retained

1. Direct Payments for Alleged Administrative Services

Despite the comprehensive administrative services contract with Benserco, after January 1996, the five Benefit Funds continued to make monthly direct payments to the Local for administrative services Local employees allegedly performed for the Benefit Funds. Since January 1999, the Benefit Funds paid 37% of the Local's total payroll and payroll costs including salaries, taxes and all benefit contributions the Local paid on behalf of its employees. (Ex. 13)¹⁶ As detailed below, in 1996, 1997, 1998, 1999, 2000, 2001 and for January through October 2002, the net payments from the five Benefit Funds to Local 522 for alleged administrative services were \$235,427, \$203,981,

¹⁶ According to a July 1995 survey, the Benefit Funds paid 55.61% of the Local's payroll; effective July 1, 1996 the Funds paid 43.50% and effective July 1, 1997 the Funds paid 43.34% of the Local's total payroll costs. (Exs. 24, 26-27)

During the period from February 1, 1996 through October 31, 1998, the five Funds paid Local 522 a total of \$14,700 each month for alleged administrative services. (Ex. 147) Effective November 1, 1998, the total monthly amount was increased to \$16,100. (Ex. 148) Effective February 1, 2000, the total monthly amount the five Funds paid the Local was decreased to \$12,100. (Ex. 149)

\$209,850, \$208,146, \$118,893, \$183,305 and \$131,946 respectively. (Exs. 1, 120, 127-146, 174-177) This totalled \$1,291,548. (Ex. 1)

Despite these large payments, as Moore admitted, none of the Local's employees were involved in administering the Benefit Funds. (Ex. 22 at 25) According to DeLoatch, Moore and Olin, they discussed health and welfare and pension issues with members when they visited shops. (Ex. 21 at 20; Ex. 22 at 23-25; Ex. 78 at 23-24)¹⁷ As discussed below, prior to the IRB's sworn examination notices to the Local's officers, none of them kept any records establishing any time spent doing this. (Ex. 21 at 18-20; Ex. 22 at 21-22, 27; Ex. 78 at 24)

Moreover, the Trustees and the Local's other employees each testified that their response to member inquiries regarding the Benefit Funds was merely to tell members to call Benserco or Benefit Services. (Ex. 21 at 21-22; Ex. 22 at 25; Ex. 78 at 23-24, 38-39; Ex. 85 at 11-12; Ex. 83 at 19-20; Ex. 84 at 24-25)¹⁸ For example, when Olin was asked what percentage of his time was spent performing Benefit Funds work when he was a business agent, he responded:

[l]et's see, that's - this is really a tricky question because it's very hard to determine how

¹⁷ DeLoatch also testified that he visited the Benserco office two or three times each month to deliver delinquent contribution checks that he picked up from employers. (Ex. 21 at 22)

¹⁸ Benefit Services was the medical claims payor for the Welfare Funds. (Ex. 154)

much time is spent for the fund, how much time is spent otherwise, because with the kind of shops we service - that I service, the guy asks me for the telephone number for the fund.

I give him the telephone number for the Fort Lee office and that's all for that. This is technically a second, so I don't put that down. I just put down that I spoke to brother so and so and gave him the number of the fund office, that's it. This I do in my car.

(Ex. 78 at 23-24)¹⁹ As detailed below, although Olin testified that it took him "a second" to provide the Benserco telephone number to members with Benefit Fund questions, the accountant's survey attributed 65% of his time to Benefit Fund work. (Ex. 81)

The Local's clerical employees also testified that they immediately directed all inquiries concerning Benefit Funds matters to Benserco. (Ex. 23 at 12-17; Ex. 30 at 9-11; Ex. 86 at 27-28)²⁰

¹⁹ Although Olin testified that he completed work reports (Ex. 78 at 19-20), no such reports were produced.

²⁰ For example, P. Ferrara, testified as follows:

Q: . . . Currently if a member were to have a problem with getting a payment for a medical procedure or any problem with their insurance or with their pension, who do they call?

A: Well, most of them call Local 522, and we should really make a recording, because as soon as they call, we say excuse me, please call 1-800-458-5513, they'll give you all the information you need to know.

Q: That's Lemoyne Avenue?

A: Yes. Because, number one, half the time we're so tired of the phone calls. I mean, we should really just press a button and have a recording, because they

The minimal amount of time allegedly spent on Benefit Funds work was evident from the recent work reports DeLoatch and Moore prepared. For the period from January 2000 through June 2002, DeLoatch's and Moore's work reports did not reflect the amount of time they spent performing any activity. (Exs. 31 and 32) In July 2002, after the Chief Investigator sent sworn examination notices to the Local's officers (Ex. 62), DeLoatch and Moore began listing the amount of time they reportedly spent speaking to members about Benefit Fund matters and picking up and delivering delinquent Fund contribution checks. (Exs. 33 and 34) An analysis of DeLoatch's work reports from July 2002 through December 19, 2002, reflected that he attributed only approximately 12% of his time to Benefit Funds related work. (Ex. 33 and 155)²¹ Similarly, an analysis of Moore's recent work reports, showed that he attributed only approximately 10.2% of his time to Benefit Fund work. (Exs. 34 and 156)²²

always seem to call the local. They say, my father is sick and he needs to go to the doctor. I'll say please call 1 800 458-5513. We don't even speak to them about it.

(Ex. 23 at 15-17)

²¹ During this period, DeLoatch attended a weeklong Benefit Funds conference in Toronto from September 23 to 27, 2002. (Exs. 33, 155) When calculating his time percentage, this whole week was attributed to Benefit Funds matters. (Ex. 155) If this time was omitted, DeLoatch's recent work reports attributed approximately 7.5% of his time to Benefit Funds work. (Ex. 155)

²² During this period, Moore attended a Benefit Funds conference in Canada for four days from September 23 to 26, 2002. (Exs. 34 and 156) When calculating his time percentage, his

2. The Benefit Funds' Indirect Payments on the Local's Behalf

In addition to the Benefit Funds directly paying the Local for alleged administrative services, the five Benefit Funds also paid a percentage of the rent for the Local's offices, a percentage of the expenses for the Local's offices and a percentage of the Local's telephone bills. From February 1996 through January 2002, these indirect subsidies totalled \$187,301. (Exs. 2-5)

The Pension Fund owned the building where the Local's offices were located. (Ex. 28 at 71-72) There was no lease agreement governing the Local's occupation of this building. (Ex. 28 at 20; Ex. 36) Prior to January 1996 when Benserco was retained, the Pension Fund received \$67,881 in annual rent. (Ex. 28 at 19; Ex. 24) After Benserco was retained in January 1996, the Benefit Funds moved to Benserco's office in Fort Lee, New Jersey. (Ex. 28 at 21, 23) They were no longer located at the Local. (Ex. 28 at 21, 23) At that time, the rent paid to the Pension Fund for the offices in Jamaica was reduced by \$37,581 to \$30,300 per year. (Ex. 28 at 32; Exs. 25 and 147)

Even though the Benefit Funds were no longer located in the Local's offices, each month since January 1996, the Benefit

attendance at the conference was attributed to Benefit Funds matters. (Ex. 156) If this time was omitted, Moore's recent work reports attributed approximately 6.6% of his time to Benefit Funds work. (Ex. 156)

Funds paid a portion of the rent for the Local's offices. (Exs. 2, 129, 132, 135, 138, 141, 144) Since July 1999, the Benefit Funds paid 34% of the Local's rent. (Exs. 13, 81, 141 and 144)

In addition, the Pension Fund paid the telephone bills for the Local and all the building expenses for the Local's office. (Ex. 28 at 11, 81; Exs. 3 and 4) The building expenses included carting, exterminating, taxes and cleaning. (Exs. 4, 129, 132, 135, 138, 141, 144) Every six months, at the end of January and at the end of July, the Local's accountant calculated the telephone expenses and building expenses and directed that the Local and each Benefit Fund reimburse the Pension Fund for a portion of the telephone expenses and building expenses. (Exs. 3, 129, 132, 135, 138, 141, 144) The percentage each Fund and the Local paid was based upon the time percentages created in the alleged surveys. Since July 1999, the Benefit Funds have paid 33% of the Local's telephone expenses and 34% of the Local's building expenses. (Exs. 13, 138, 141, 144)

According to the accountant, the Benefit Funds paid a portion of the Local's rent, building expenses and telephone expenses based upon the work the Local employees allegedly performed for the Benefit Funds. (Ex. 28 at 11-12, 35-38) However, there were no records demonstrating work Local employees performed for the Benefit Funds.

Without the direct and indirect payments from the Benefit Funds, the Local would have had no assets and would have

had a deficit of over \$1,000,000. (Ex. 6)²³

D. The Benefit Fund Trustees Breached Their Fiduciary Duties

DeLoatch, Moore and Olin breached their fiduciary duties under ERISA and the Code of Ethics for Benefit Fund fiduciaries in the IBT Constitution. The Trustees knew Benserco administered the Benefit Funds. They knew that the Local employees, including themselves, did minimal work for the Benefit Funds. Nevertheless, the Trustees allowed the Benefit Funds to make large payments to the Local for alleged administrative services. These payments were unreasonable. In addition, despite written advisories from the IBT, the Trustees did not maintain records documenting work allegedly performed for the Benefit Funds. Indeed, in breach of their fiduciary duties, the Trustees did not know basic information about the payments from the Benefit Funds to the Local for alleged administrative services.

For example, DeLoatch, a Trustee of all five Benefit Funds since January 1999, testified as follows:

²³ An estimate of the Local's financial condition without the direct payments and indirect subsidies from the Benefit Funds was calculated using the Local's Form LM-2s for the years 1996 through 2001. (Exs. 1-7, 91, 157-160) The 2001 Form LM-2 was the latest LM-2 filed. In this analysis, the \$1,159,602 in total net payments paid to the Local for administrative services from the Benefit Funds between January 1996 and December 31, 2001 was deducted from the Local's total receipts. (Exs. 1, 6-7, 91, 157-160) In addition, the Local's expenses were increased by \$185,384, the total amount of the Benefit Funds' payments for the Local's rent, telephone and building expenses from January 1996 through December 2001. (Exs. 2-7, 91, 157-160) Based upon this analysis, as of December 31, 2001, the Local would have had no assets and would have had a deficit of \$1,006,969. (Ex. 6)

Q: If you know, do the local funds reimburse the local for expenses incurred by Local 522 in administration of the funds?

A: I don't understand that.

Q: Do the local funds pay out any money on a regular basis to the local for expenses the local, be it local employees or the local, pays out that are used towards the funds?

Mr. Glanstein: Do you want to consult with me again?

The Witness: Yes.

Q: Let me ask it this way. As a trustee, as a union trustee, are you aware of any monthly amount that goes from the local funds to the local?

A: No.

Mr. Glanstein: Do you want to consult?

The Witness: Yes.

Q: My question, let me rephrase it. I'd asked you if you are aware of whether or not the local's funds pay any amount on a regular basis to the local and you answered no; and then we went off the record so you could consult with counsel. Let me ask you again. Are you aware of any amount of money that's regularly paid by the funds to the local?

A: At the trustee meetings, I believe, Robert Levine allocates that, yes.

* * *

Q: . . . let me ask you, are you aware of whether or not monies flow from the funds to the local?

A: Monies flow from the fund to the local.

Q: Do the local funds pay the local for any services or anything the local does -

A: Pays our funds, yes.

Q: What is that for?

A: I guess the pension funds and stuff like that.

Q: What does the pension funds and health and welfare funds pay the local for?

The Witness: I have to see you outside.

Mr. Glanstein: Can we take another break, please?

Mr. Savci: Okay.

Q: Let me ask you this way, Mr. DeLoatch, do the benefit funds, health and welfare, do they make any regular payments to Local 522?

A: Yes.

Q: What is that for?

A: For us, I guess, the delegates - when we serve shops and we go out and we explain to the members, whenever they ask us a question about the welfare.

Q: Do you know how much that amount is on a monthly basis?

A: I don't know how much the allocation that Robert Levine gives those figures.

(Ex. 21 at 27-30)

Olin, who was a Trustee between 1995 and 2001, found out that the Benefit Funds paid a portion of his salary from "the girls at the office." (Ex. 78 at 16) He did not know what percentage of his salary the Benefit Funds paid. (Ex. 78 at 22) In addition, he did not know who made the decision to have the Benefit Funds pay a portion of the Local's salaries. (Ex. 78 at 16)

Moore claimed that ". . . [t]he union bills the certain entities, whether it's the pension, the welfare, for work that we do as a union member doing, I guess partial of their work, pension question, welfare question and then they get reimbursed."

(Ex. 22 at 27-28) However, the union did not "bill" the Benefit Funds for any specific services Local employees allegedly performed. Nor were there any records of any such work being performed. Rather, based upon the accountant's surveys, the Benefit Funds paid a percentage of the Local's total payroll costs and expenses. (Exs. 13, 24-27)

Despite their obligation to ensure that the Benefit Funds did not incur unreasonable expenses, DeLoatch, Moore and Olin did not know how the payments from the Funds to the Local were calculated other than that the Local's accountant made the calculations. (Ex. 21 at 31; Ex. 22 at 28-31; Ex. 78 at 15-17, 32)²⁴ For example, Moore testified as follows:

Q: Do you have any idea of how the allocation is figured out by the accountants, specifically?

A: No, I don't, I have no idea.

(Ex. 22 at 30)²⁵ During his sworn examination, Olin testified:

²⁴ As detailed below, the accountant's alleged surveys were shams unsupported by any documentation. In addition, Trustees Moore and Olin did not review the accountant's allocation records. (Ex. 22 at 28-31; Ex. 78 at 15-17)

²⁵ Moore further testified as follows:

Q: To your knowledge, does your local, does Local 522 have a cost sharing agreement, a written cost sharing agreement in place?

A: I wouldn't know about that.

Q: As a trustee of the funds, are you aware of such an agreement?

A: No, I'm not.

Q: . . . How is it calculated that the pension fund pays part of your salary?

A: I have no idea.

Q: How do you know that they pay part of your salary or that they did?

A: That's what I was told. I never seen the document, how much they paid or how they paid.

(Ex. 78 at 15-16)

The Trustees maintained no time records showing that they or the Local's other employees performed alleged administrative services for the Funds. As detailed above, the Trustees each testified that in response to members with Benefit Funds questions, they provided Benserco's telephone number. For example, Olin testified as follows when questioned by the Local's attorney:

Q: As a trustee, did they [members] ever want to discuss those problems beyond that with you and not just say we want to go to the 800 number?

A: No, because the questions they will be asking me, I don't have the answers anyway, that's why I refer them to Benefit Services because, first of all, they have a fund where the guy is current in his dues, you know, all this stuff. So, they scrutinize these people when they call Benefit Services.

(Ex. 78 at 38-39) Indeed, as Olin testified, individual Benefit Fund Trustees were not equipped or authorized to inform a member of

Q: Do you know, is a percentage of your salary as a business agent allocated, meaning, is part of your salary reimbursed by the funds or is it included in any calculation that you're aware of?

A: I don't know how the accountant does his calculations.

his eligibility for benefits. Benserco and the Fund actuaries were responsible for making these assessments. (Ex. 28 at 24-25)

The practice of not maintaining records documenting any time spent performing work for the Benefit Funds was inconsistent with the IBT's June 2000 Advisory which required that all cost sharing arrangements between the Local and its Funds be "objectively justified." (Ex. 16) The IBT's Advisory stated:

It has come to the attention of the International Union that some Local Unions and other Affiliates may not be in compliance with provisions of federal law that strictly limit the circumstances in which ERISA plans (such as Health & Welfare and Pension Plans) can make payments to a Local Union or other Affiliate for services such as rent, claims administration, bookkeeping and the like.

The Employee Retirement Income Security Act (ERISA) is the federal law which regulates Health & Welfare and Pension Plans. ERISA prohibits these plans from paying for services provided by a Local Union or other Affiliate except in very limited circumstances. Many Local Union officers also serve as Plan trustees. Violations of these ERISA provisions can lead to serious civil and criminal penalties. The Independent Review Board has also cited improper payments from Plans to Local Unions and to individual Local Union officers as grounds for recommending both trusteeship and charges against the officers involved.

While cost-sharing agreements are not prohibited, they must be fully documented and objectively justified. This generally means a careful study of the arrangement that conclusively demonstrates that any payments the ERISA Plan makes to the Local Union are for necessary services at a reasonable cost.

(Ex. 16)

Although as discussed above, DeLoatch and Moore kept work reports, prior to the Chief Investigator sending out sworn

(Ex. 22 at 31)

examination notices, they did not attribute any time to each activity. (Exs. 31-32)²⁶ It would have been simple for them to keep time records showing any work they did for the Benefit Funds for a brief period on these same work reports along with the entries for their activities. Only after the IRB sworn examination notices were sent did DeLoatch and Moore begin to attribute time to their activities. As detailed above, such records demonstrated that their claimed conversations with members during which they instructed members to contact Benserco took little time.

In approximately October 2000, the IBT issued a Manual "Local Union Financial and Administrative Policies and Procedures." (Ex. 18) Section 31 of this Manual set forth requirements concerning the sharing of administrative expenses with Benefit Funds. (Ex. 18) This section referred to the above-referenced June 12, 2000 advisory concerning sharing administrative expenses and stated, "[w]e urge you to read the advisory very carefully" (Ex. 18) This Manual further stated,

If your Local Union is sharing administrative expenses with one or more of your Local Union's Benefit Funds, it is imperative that you have a scientific study of the cost sharing arrangement made each calendar year. The cost sharing agreement must be approved by both the

²⁶ In response to the Chief Investigator's request for such work reports, the Local provided work reports for DeLoatch for January 1, 2000 to December 19, 2002 and for Moore from March 1, 2000 to December 10, 2002. (Exs. 31-34) No work reports were provided for Ianniello or Olin.

Local Union Executive Board and the Board of Trustees for the Benefit Fund.

If your Local Union is sharing administrative expenses with a Local Union Benefit Fund(s), please insert a copy of the latest agreement and the approval behind this tab. Also insert a copy of each of the scientific studies used to support the allocation percentages used.

(Ex. 18) According to the minutes of a June 5, 2001 Local 522 Executive Board meeting, this Manual was discussed. (Ex. 150) DeLoatch and Moore attended this meeting. (Ex. 150)²⁷ With respect to Section 31 which addressed cost sharing, according to the minutes of the June 5, 2001 meeting, Ianniello stated,

Local Union 522 has a cost sharing arrangement with the benefit funds. This agreement will be reviewed year to year to check if there are any necessary changes to the percentages calculated in this arrangement. The Secretary-Treasurer will communicate with the accountants to ensure proper allocations are being made. . . .

(Ex. 150) According to the minutes, a motion was then passed to approve this policy. (Ex. 150) There was no written cost sharing agreement between the Local and the Benefit Funds. (Ex. 28 at 11)²⁸ Although Ianniello stated that the cost sharing would be

27 Although at this time Moore was a business agent and not a union officer, he attended Executive Board meetings. (Ex. 150; Ex. 22 at 14) At the time of this meeting, Moore was a Benefit Fund Trustee. (Exs. 35, 77, 152-153)

28 In an August 16, 2002 letter to the Chief Investigator, the Local's then attorney stated that 1987 correspondence between the United States Department of Labor and the Local's attorney concerning the settlement of the DOL's claims concerning the Benefit Funds' payment of administrative fees to the Local constituted a written cost sharing agreement. (Ex. 15) However, this correspondence did not represent any agreement between the Funds and the Local. (Exs. 11-12) Moreover, this correspondence

reviewed year to year as the Manual instructed, the last survey the accountant conducted was in July 1999 and, as discussed below, that survey appears to be a sham. (Ex. 28 at 60-61) Moreover, after the June 5, 2001 meeting, the Executive Board meeting minutes through December 2, 2002 did not reflect any discussion of the cost sharing between the Local and the Benefit Funds. (Ex. 151)²⁹

E. The Accountant's Surveys Appear to be Shams

The amount of the Benefit Funds' payments to the Local for administrative services as well as the amounts the Benefit Funds paid for the Local's rent, building expenses and telephone expenses were calculated using the time percentages the accountant created in the alleged surveys. (Ex. 28 at 11-16)³⁰ However, Moore and Olin testified that they never saw the

was written in 1987 prior to the retention of the third party administrator for each of the Funds nine years later in January 1996. (Exs. 8, 11-12)

²⁹ The minutes of the meetings of the Board of Trustees of the Benefit Funds contained the Trustees' approval of the alleged surveys and allocations the accountant created. (Exs. 163-166) As detailed below, the accountant's surveys appear to be shams unsupported by any documentation. Moreover, it appears that only the summaries of the surveys were presented to the Board of Trustees of the Funds. (Ex. 28 at 17-18, 41-42; Exs. 163-166) These summaries did not contain the percentage of time attributed for each employee for Benefit Funds work. (Exs. 13, 26-27)

³⁰ In connection with the alleged surveys, time percentages were created for each Local employee. (Ex. 81) These time percentages were then aggregated in proportion to each employee's salary to come up with a single percentage to be used to allocate all payroll costs between the Local and its Funds.

accountant's cost sharing analysis. (Ex. 22 at 30; Ex. 78 at 16-17) Moreover, as detailed above, the three Trustees did not know how the accountant allocated expenses between the Local and the Benefit Funds. (Ex. 22 at 28-31; Ex. 78 at 15-17, 32; Ex. 21 at 28-31)

In any event, the accountant's surveys appear to be shams. These alleged surveys were not supported by any documentation. They were inconsistent with the testimony of Local employees that they merely referred members with Benefit Funds questions to Benserco. In a further indication that the surveys were false, the time percentages attributed to Benefit Funds work for the Local's officers did not change after Benserco was retained. Nor did these time percentages change at all during subsequent surveys.³¹ In addition, the few records available, such as DeLoatch's and Moore's recent work reports, were also inconsistent with the alleged surveys.

Levine prepared surveys in July 1995, January 1996, July 1996, July 1997 and the last survey was prepared in July 1999. (Exs. 13, 24-27) A strong indication that these surveys were false was that even after Benserco took over administration of the Benefit Funds, the time percentages for the Local's officers and business agents attributed to Funds work did not change. (Exs. 81, 167, 171-

(Exs. 13 and 81; Ex. 28 at 35-37)

³¹ The time percentages for the clerical employees did change after Benserco was retained and changed once more in a subsequent survey. (Ex. 167)

173)³² Moreover, these time percentages stayed the same from January 1996 through July 1999, the date of the last survey. (Exs. 81, 167, 172-173) For example, according to the July 1995 survey which was conducted prior to Benserco being retained, 65% of Olin's time was attributed to Benefit Funds work. (Exs. 167 and 171) After Benserco was retained as the administrator for the Benefit Funds, the surveys continued to attribute 65% of Olin's time to Benefit Funds work. (Ex. 167) In addition, in each of the surveys since 1995, 50% of DeLoatch's time was attributed to Benefit Funds work. (Exs. 81, 167, 171-173)³³ There were no documents to support these claims.³⁴ These unvarying percentages supported an inference that they were not based upon actual work which would have obviously varied even slightly over the years.

The Local's accountant claimed that since the Local would not provide time logs showing the amount of time spent performing Benefit Funds work, interviews of the Local's employees were

32 Levine claimed that after Benserco took over the administration, the union officers and business agents continued to "service the members, answering questions of eligibility, dealing with the benefit payments and levels of benefit. They represent to me they pick up checks from delinquent employers and other matters along those same lines." (Ex. 28 at 24) Levine acknowledged that the Local officials did not have the authority to determine a member's eligibility for benefits. (Ex. 28 at 25)

33 DeLoatch was not included in the January 1996 survey. (Ex. 25)

34 In addition, according to each of the surveys since July 1995, Ianniello spent 45% of his time doing work for the Benefit Funds. (Exs. 81, 167, 171-173)

allegedly conducted. (Ex. 28 at 39-40, 56-57) With respect to the July 1999 survey, the accountant testified as follows:

Q: Do you have notes of any of the interviews that were conducted?

A: No, we have no other papers in our file regarding interviews.

Q: Who was interviewed?

A: I don't know.

(Ex. 28 at 57) Significantly, several Local employees testified that since 1996 when Benserco was retained, the accountant did not interview them about their work. (Ex. 21 at 20-21, 31-32; Ex. 30 at 15, 19-21; Ex. 23 at 22-23)³⁵ For example, DeLoatch testified as follows:

Q: Have you ever been asked to keep such a document [a time log which reflected time worked for the Benefit Funds]?

A: Back in '96, the CPA came to us and questioned us about how many hours did we think we worked for each, like you're asking now.

Q: That's Levine, Levine and Myerowitz?

³⁵ Olin testified that he spoke to the accountant one time about the time he spent working for the Benefit Funds. He estimated that this conversation took place between three and five years before his 2002 sworn examination. (Ex. 78 at 18) Clerical employee Reid testified that she was interviewed about her work a few years ago. (Ex. 86 at 31-35)

In response to a request from the Chief Investigator, the Local provided time records for six days that clerical employee Indra Surujpaul completed in 2002 and one time sheet clerical employee Patricia Ferrara completed in 2002. (Exs. 38 and 39) Ferrara did not attribute any work to the Benefit Funds. (Ex. 39) Surujpaul listed minimal time for Benefit Fund work. (Exs. 38 and 40) It appears that these forms may have been completed for a planned survey. However, the survey was not conducted. Indeed, Surujpaul kept the forms in her desk and did not show them to anyone. (Ex. 30 at 15-22)

A: Levine, yes.

Q: It was the last time you did that?

A: Last time.

Q: Have you had any conversations with anyone since?

A: About this time study here?

Q: Where you've been interviewed or surveyed about how much time you spend for the funds, how much time you spend for the union and your daily activities of an employee of the local?

A: No.

(Ex. 21 at 20-21) Yet in the July 1999 survey the accountant still attributed 50% of DeLoatch's time to Fund work. (Ex. 81)³⁶ How the accountant could determine what work was performed for the Benefit Funds in the absence of any records documenting such work and without interviewing the Local employees was unexplained.

Furthermore, the percentages in the alleged surveys were inconsistent with available records. For example, the accountant's records claimed that DeLoatch spent 50% of his time on Benefit Funds work. (Ex. 81)³⁷ However, this was contradicted by the time he attributed to Benefit Funds work on his recent work reports. (Exs. 33, 155) An analysis of DeLoatch's work reports from July 2002 through December 19, 2002, reflected that he attributed only

³⁶ Moore, who was hired as a business agent in March 2000, was never interviewed about his work. (Ex. 22 at 5, 30)

³⁷ When asked during his July 2002 sworn examination to quantify the amount of time he spent doing work for the Benefit Funds, Local 522 President DeLoatch testified, "I would say half and half probably; depending on if they call me at night. I have shops that, they call me up to 10:00 at night. So average, it's hard to say." (Ex. 21 at 20)

approximately 12% of his time to Benefit Funds related work. (Ex. 33 and 155)

Moreover, by allowing the Local's accountant to also be the accountant for each of the Benefit Funds, the three Trustees deliberately left the Funds unprotected. The Local's accountant determined how much the Benefit Funds paid the Local without any independent check by an unconflicted accountant.

V. PROPOSED CHARGES

Based upon the foregoing, it is recommended that Robert DeLoatch, Robert Moore and Albert Olin be charged as follows:

A. Robert DeLoatch

While an officer and member of Local 522 and a Trustee of the Local 522 Pension Fund, the Local 522 Welfare Fund of Greater New York, the Local 522 Welfare Fund of New York and New Jersey, the Local 522 Pension Plan - Roofers Division and the Local 522 Independent Roofing and Sheet Metal Crafts Welfare Fund you brought reproach upon the IBT and violated your fiduciary duties in violation of Article II, Section 2(a) and 2(b)(2) and (7) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While a Trustee of the five Local 522-affiliated Benefit Funds from January 1999 to the present, you caused the Benefit Funds to pay unreasonable administrative expenses to

Local 522 which were not necessary for the establishment or operation of the Benefit Funds. In addition, you caused the Benefit Funds to pay unreasonable rent expenses, building expenses and telephone expenses on behalf of Local 522. These expenses also were not necessary for the establishment or operation of the Benefit Funds.

B. Robert Moore

While a member of Local 522 and a Trustee of the Local 522 Pension Fund, the Local 522 Welfare Fund of Greater New York, the Local 522 Welfare Fund of New York and New Jersey, the Local 522 Pension Plan - Roofers Division and the Local 522 Independent Roofing and Sheet Metal Crafts Welfare Fund you brought reproach upon the IBT and violated your fiduciary duties in violation of Article II, Section 2(a) and 2(b)(2) and (7) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While a Trustee of the five Local 522-affiliated Benefit Funds from January 2001 to the present, you caused the Benefit Funds to pay unreasonable administrative expenses to Local 522 which were not necessary for the establishment or operation of the Benefit Funds. In addition, you caused the Benefit Funds to pay unreasonable rent expenses, building expenses and telephone expenses on behalf of Local 522. These expenses also were not necessary for the establishment or

operation of the Benefit Funds.

C. Albert Olin

While an officer and member of Local 522 and a Trustee of the Local 522 Pension Fund, the Local 522 Welfare Fund of Greater New York, the Local 522 Welfare Fund of New York and New Jersey, the Local 522 Pension Plan - Roofers Division and the Local 522 Independent Roofing and Sheet Metal Crafts Welfare Fund you brought reproach upon the IBT and violated your fiduciary duties in violation of Article II, Section 2(a) and 2(b)(2) and (7) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While a Trustee of the five Local 522-affiliated Benefit Funds from 1995 to January 2001, you caused the Benefit Funds to pay unreasonable administrative expenses to Local 522 which were not necessary for the establishment or operation of the Benefit Funds. In addition, you caused the Benefit Funds to pay unreasonable rent expenses, building expenses and telephone expenses on behalf of Local 522. These expenses also were not necessary for the establishment or operation of the Benefit Funds.

EXHIBITS TO REPORT CONCERNING
LOCAL 522 BENEFIT FUND TRUSTEES

- Ex. 1 Schedule of Net Payments for Administrative Services from the Benefit Funds to the Local for the period from January 1996 through October 2002
- Ex. 2 Schedule of Rent Payments to the Local 522 Pension Fund for the Local's premises from February 1996 through January 2002
- Ex. 3 Schedule of Payments for the Local's Telephone Expenses from February 1996 through January 2002
- Ex. 4 Schedule of Payments for the Local's Building Expenses from February 1996 through January 2002
- Ex. 5 Schedule of Total Indirect Payments the five Benefit Funds made on behalf of the Local from January 1996 through January 2002
- Ex. 6 Analysis of the Local's Financial Condition without the Direct and Indirect Payments from the five Benefit Funds
- Ex. 7 2001 Form LM-2 for Local 522
- Ex. 8 Contract between Benserco, Inc. and the five Benefit Funds
- Ex. 9 Schedule of Payments from the five Benefit Funds to Benserco from January 1996 through August 2002
- Ex. 10 August 28, 1996 Memorandum to all IBT Affiliates
- Ex. 11 February 3, 1987 Letter from the United States Department of Labor to the Trustees of the Local 522 Pension Fund
- Ex. 12 January 28, 1987 Letter from Richard Greenspan, Esq. to the United States Department of Labor
- Ex. 13 January 14, 2000 Letter from Robert Levine to Michael Ianniello enclosing July 1999 Survey Results

- Ex. 14 Schedule Comparing Payments by the five Benefit Funds to the Local and to Benserco for Administrative Services
- Ex. 15 August 16, 2002 letter from Joel Glanstein to Chief Investigator
- Ex. 16 June 12, 2000 IBT Advisory
- Ex. 17 Independent Review Board's Report of Proposed Charges concerning Michael Ianniello
- Ex. 18 Excerpts from October 2000 IBT Manual "Local Union Financial and Administrative Policies and Procedures"
- Ex. 19 Sworn Examination of Michael Ianniello dated October 29, 1993
- Ex. 20 Sworn Examination of Michael Ianniello dated December 12, 1996
- Ex. 21 Sworn Examination of Robert DeLoatch dated July 2, 2002
- Ex. 22 Sworn Examination of Robert Moore dated July 2, 2002
- Ex. 23 Sworn Examination of Patricia Ferrara dated August 8, 2002
- Ex. 24 October 2, 1995 Letter from Robert Levine to John Ferrara enclosing July 1995 Survey Results
- Ex. 25 January 1996 Summary of Survey Results and Schedules
- Ex. 26 January 2, 1997 Letter from Robert Levine to John Ferrara enclosing July 1996 Survey Results
- Ex. 27 October 13, 1997 Letter from Robert Levine to John Ferrara enclosing July 1997 Survey Results

- Ex. 28 Sworn Examination of Robert Levine dated December 23, 2002
- Ex. 29 Dues Printout for Albert Olin
- Ex. 30 Sworn Examination of Indra Surujpaul dated July 2, 2002
- Ex. 31 Robert DeLoatch's Work Reports from January 2000 to June 2002
- Ex. 32 Robert Moore's Work Reports from March 2000 to June 2002
- Ex. 33 Robert DeLoatch's Work Reports from July through December 2002
- Ex. 34 Robert Moore's Work Reports from July through December 2002
- Ex. 35 Minutes of the March 14, 2001 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 36 December 10, 2002 Sworn Statement from Robert Moore
- Ex. 37 Excerpt from Sworn Examination of Robert DeLoatch dated October 29, 1993
- Ex. 38 2002 Time Sheets for Indra Surujpaul
- Ex. 39 2002 Time Sheet for Patricia Ferrara
- Ex. 40 Analysis of 2002 Time Sheets Indra Surujpaul Completed
- Exs. 41-58 Blank
- Ex. 59 IRB Decision concerning John Ferrara
- Ex. 60 Local 522 General Membership meeting minutes dated January 13, 1999
- Ex. 61 Minutes of the February 10, 1999 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey

- Ex. 62 June 20, 2002 Letter from Chief Investigator Scheduling the sworn examinations of Local 522's officers
- Ex. 63 Transcript of Michael Ianniello's failure to appear on July 3, 2002
- Ex. 64 July 9, 2002 Letter from Chief Investigator to Michael Ianniello
- Ex. 65 Transcript of Michael Ianniello's failure to appear on July 16, 2002
- Ex. 66 Minutes of the June 12, 2000 Executive Board meeting
- Ex. 67 Minutes of the June 21, 2000 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 68 Joint Council 73 Decision on the Charges against Michael Ianniello
- Ex. 69 January 7, 2003 letter from Joint Council 73 to the Independent Review Board
- Ex. 70 Local 522 Executive Board meeting minutes dated October 1, 2002
- Ex. 71 Local 522 Executive Board meeting minutes dated January 8, 2001
- Ex. 72 Local 522 Executive Board meeting minutes dated July 16, 2001
- Ex. 73 Minutes of the September 13, 2000 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 74 Minutes of the December 13, 2000 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 75 June 10, 2002 Letter from Albert Olin

- Ex. 76 Local 522 Executive Board meeting minutes dated July 1, 2002
- Ex. 77 Minutes of the September 21, 2001 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 78 Sworn Examination of Albert Olin dated July 3, 2002
- Ex. 79 Local 522 Executive Board meeting minutes dated February 5, 2001
- Ex. 80 May 15, 2001 letter from Joel Glanstein concerning Albert Olin
- Ex. 81 Schedules for the July 1999 Survey
- Ex. 82 Local 522 Executive Board meeting minutes dated October 21, 2002
- Ex. 83 Sworn Examination of Thomas A. Caruso dated July 2, 2002
- Ex. 84 Sworn Examination of Stephen Martinez dated July 2, 2002
- Ex. 85 Sworn Examination of Freddie Williams dated July 2, 2002
- Ex. 86 Sworn Examination of Anya Reid dated July 2, 2002
- Ex. 87 1995 Form LM-2 for Local 522
- Ex. 88 Schedules for the August 1, 1995 through January 31, 1996 Reconciliation
- Ex. 89 February 14, 1996 Minutes of Board of Trustees meeting for the Pension Fund, Welfare Fund of Greater New York and Welfare Fund of New York and New Jersey
- Ex. 90 August 22, 1996 Letter from John Ferrara to IBT
- Ex. 91 1996 Form LM-2 for Local 522
- Ex. 92 1996 Form 5500 for Local 522 Pension Fund

- Ex. 93 1997 Form 5500 for Local 522 Pension Fund
- Ex. 94 1998 Form 5500 for Local 522 Pension Fund
- Ex. 95 1999 Form 5500 for Local 522 Pension Fund
- Ex. 96 2000 Form 5500 for Local 522 Pension Fund
- Ex. 97 2001 Form 5500 for Local 522 Pension Fund
- Ex. 98 2002 Cash Disbursements from Pension Fund
Showing Payments to Benserco
- Ex. 99 1996 Form 5500 for Welfare Fund of Greater
New York
- Ex. 100 1997 Form 5500 for Welfare Fund of Greater
New York
- Ex. 101 1998 Form 5500 for Welfare Fund of Greater
New York
- Ex. 102 1999 Form 5500 for Welfare Fund of Greater
New York
- Ex. 103 2000 Form 5500 for Welfare Fund of Greater
New York
- Ex. 104 2001 Form 5500 for Welfare Fund of Greater
New York
- Ex. 105 2002 Cash Disbursements from Welfare Fund
of Greater New York Showing Payments to Benserco
- Ex. 106 1996 Form 5500 for Roofer's Welfare Fund
- Ex. 107 1997 Form 5500 for Roofer's Welfare Fund
- Ex. 108 1998 Form 5500 for Roofer's Welfare Fund
- Ex. 109 1999 Form 5500 for Roofer's Welfare Fund
- Ex. 110 2000 Form 5500 for Roofer's Welfare Fund
- Ex. 111 2001 Form 5500 for Roofer's Welfare Fund

- Ex. 112 2002 Cash Disbursements from Roofers Welfare Fund Showing Payments to Benserco
- Ex. 113 1996 Form 5500 for Roofers Pension Fund
- Ex. 114 1997 Form 5500 for Roofers Pension Fund
- Ex. 115 1998 Form 5500 for Roofers Pension Fund
- Ex. 116 1999 Form 5500 for Roofers Pension Fund
- Ex. 117 2000 Form 5500 for Roofers Pension Fund
- Ex. 118 2001 Cash Disbursements from Roofers Pension Showing Payments to Benserco
- Ex. 119 2002 Cash Disbursements from Roofers Pension Showing Payments to Benserco
- Ex. 120 2000 Checks from five Benefit Funds to Local 522
- Ex. 121 1997 Form 5500 for Welfare Fund of NY and NJ
- Ex. 122 1998 Form 5500 for Welfare Fund of NY and NJ
- Ex. 123 1999 Form 5500 for Welfare Fund of NY and NJ
- Ex. 124 2000 Form 5500 for Welfare Fund of NY and NJ
- Ex. 125 2001 Cash Disbursements from Welfare Fund of NY and NJ Showing Payments to Benserco
- Ex. 126 2002 Cash Disbursements from Welfare Fund of NY and NJ Showing Payments to Benserco
- Ex. 127 Schedule of 1996 Net Payments from the five Benefit Funds to Local 522 for Alleged Administrative Services
- Ex. 128 Excerpts from 1996 Local 522 Cash Receipts and Disbursements Journal
- Ex. 129 Six Month Reconciliation Letters for the periods August 1, 1995 to January 31, 1996 and February 1, 1996 to July 31, 1996 with schedules

- Ex. 130 Schedule of 1997 Net Payments from the five Benefit Funds to Local 522 for Alleged Administrative Services
- Ex. 131 Excerpts from 1997 Local 522 Cash Receipts and Disbursements Journal
- Ex. 132 Six Month Reconciliation Letters for the periods August 1, 1996 to January 31, 1997, February 1, 1997 to July 31, 1997 and August 1, 1997 to January 31, 1998 with schedules
- Ex. 133 Schedule of 1998 Net Payments from the five Benefit Funds to Local 522 for Alleged Administrative Services
- Ex. 134 Excerpts from 1998 Local 522 Cash Receipts and Disbursements Journal
- Ex. 135 Six Month Reconciliation Letters for the periods February 1, 1998 to July 31, 1998 and August 1, 1998 to January 31, 1999 with schedules
- Ex. 136 Schedule of 1999 Net Payments from the five Benefit Funds to Local 522 for alleged Administrative Services
- Ex. 137 Excerpts from 1999 Local Cash Receipts and Disbursements Journal
- Ex. 138 Six Month Reconciliation Letters for the periods February 1, 1999 to July 31, 1999 and August 1, 1999 to January 31, 2000 with schedules
- Ex. 139 Schedule of 2000 Net Payments from the five Benefit Funds to Local 522 for alleged Administrative Services
- Ex. 140 Excerpts from 2000 Local 522 Cash Receipts and Disbursements Journal
- Ex. 141 Six Month Reconciliation Letters for the periods February 1, 2000 to July 31, 2000 and August 1, 2000 to January 31, 2001 with schedules
- Ex. 142 Schedule of 2001 Net Payments from the five

Benefit Funds to Local 522 for alleged
Administrative Services

- Ex. 143 2001 Checks from five Benefit Funds to Local
- Ex. 144 Six Month Reconciliation Letters for the periods
February 1, 2001 to July 31, 2001 and August
1, 2001 to January 31, 2002 with schedules
- Ex. 145 Schedule of 2002 Net Payments from the five
Benefit Funds to Local 522 for alleged
Administrative Services
- Ex. 146 2002 Checks from five Benefit Funds to Local
- Ex. 147 January 11, 1996 Letter from Robert Levine to
Funds Trustees
- Ex. 148 Excerpts from Cash Receipts and Disbursements
Summaries for 1999
- Ex. 149 January 14, 2000 Letter from Robert Levine to
Michael Ianniello
- Ex. 150 Local 522 Executive Board meeting minutes dated
June 5, 2001
- Ex. 151 Local 522 Executive Board meeting minutes for:
August 6, 2001, September 10, 2001, October 1,
2001, November 5, 2001, December 17, 2001,
January 7, 2002, February 14, 2002, March 4,
2002, April 1, 2002, May 13, 2002, July 29, 2002,
August 3, 2002, September 9, 2002, October 21,
2002, November 18, 2002 and December 2, 2002
- Ex. 152 Minutes of the March 14, 2001 Board of Trustees
meeting for the Roofer's Welfare Fund and the
Roofer's Pension Fund
- Ex. 153 Minutes of the August 22, 2001 Board of Trustees
meeting for the Roofer's Welfare Fund and the
Roofer's Pension Fund
- Ex. 154 July 17, 1989 Contracts between Benefit Services
of PA and the Welfare Fund, the Welfare Fund of
New York and New Jersey and the Roofer's Welfare
Fund

- Ex. 155 Analysis of Robert DeLoatch's Work Reports
- Ex. 156 Analysis of Robert Moore's Work Reports
- Ex. 157 1997 Form LM-2 for Local 522
- Ex. 158 1998 Form LM-2 for Local 522
- Ex. 159 1999 Form LM-2 for Local 522
- Ex. 160 2000 Form LM-2 for Local 522
- Ex. 161 Minutes of the January 19, 1999 Board of Trustees meeting for the Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey
- Ex. 162 Minutes of the February 10, 1999 Board of Trustees meeting for the Roofer's Pension Fund\ and the Roofer's Welfare Fund
- Ex. 163 January 22, 1997 Board of Trustees meeting minutes for Local Pension Fund, Welfare Fund and Welfare Fund of New York and New Jersey (Letters from participants containing personal health information are not included)
- Ex. 164 December 10, 1997 Board of Trustees meeting minutes for Local Pension Fund, Welfare Fund, Welfare Fund of New York and New Jersey, Roofer's Welfare Fund and Roofer's Pension Fund (Letters from participants containing personal health information are not included)
- Ex. 165 December 9, 1998 Board of Trustees meeting minutes for Local Pension Fund, Welfare Fund of Greater New York, Welfare Fund of New York and New Jersey, Roofer's Welfare Fund and Roofer's Pension Fund (Letters from participants containing personal health information are not included)
- Ex. 166 March 15, 2000 Board of Trustees meeting minutes for Local Pension Fund, Welfare Fund of Greater New York and Welfare Fund of New York and New Jersey, Roofer's Welfare Fund and Roofer's Pension Fund (Letters from participants

containing personal health information are not included)

- Ex. 167 Schedule of Time Percentages Attributed to Local Employees
- Ex. 168 Minutes of the January 11, 1999 Local 522 Executive Board meeting
- Ex. 169 January 10, 2003 Letter from Independent Review Board to Joint Council 73
- Ex. 170 Blank
- Ex. 171 Accountant's Schedules for the July 1995 Survey
- Ex. 172 Accountant's Schedules for the July 1996 Survey
- Ex. 173 Accountant's Schedules for the July 1997 Survey
- Ex. 174 1996 Checks from five Benefit Funds to Local 522
- Ex. 175 1997 Checks from five Benefit Funds to Local 522
- Ex. 176 1998 Checks from five Benefit Funds to Local 522
- Ex. 177 1999 Checks from five Benefit Funds to Local 522
- Ex. 178 Local 522 check number 9791
- Ex. 179 Local 522 check number 9792

Washington, DC 20001
(202) 434-8080
Facsimile (202) 434-8084
Corruption Hotline (800) CALL IRB

FD-568
FD-569
FD-24

Chief Investigator:
Charles M. Carberry, Esq.
17 Battery Place, Suite 331
New York, NY 10004

Administrator:
John J. Cronin, Jr.

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Washington, D.C. 20006

August 26, 2003

James P. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

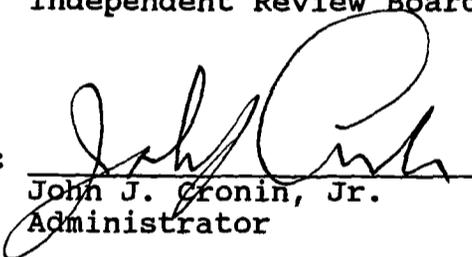
Re: Decision and Sanctions Against Local 522 Benefit
Fund Trustees Robert Moore and Robert DeLoatch
and Former Benefit Fund Trustee Albert Olin

Dear Mr. Hoffa:

The Independent Review Board has reviewed your decision of July 24, 2003, in the above captioned matter and finds the decision to be not inadequate.

Very truly yours,

Members of the
Independent Review Board

By: 
John J. Cronin, Jr.
Administrator

cc: Patrick J. Szymanski, Esq.
Andrew W. Schilling, Esq.
Dan Kane, Sr., Trustee, Local 522
Robert Moore
Robert DeLoatch
Albert Olin

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO



OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

July 24, 2003

VIA UPS 2ND DAY AIR

Mr. Robert Moore
12 Beryl Lane
Farmingdale, NY 11735

Mr. Robert DeLoatch
48 Eastern Parkway
Newark, New Jersey 07106

Mr. Albert Olin
5700 Arlington Ave., #15G
Riverdale, NY 10471

Re: IRB Referral of Charges Against Local Union 522 Benefit
Fund Trustees Robert Moore and Robert DeLoatch and
Former Benefit Fund Trustee Albert Olin

Dear Sirs:

You will find enclosed the report and recommendations of the Panel, which conducted the hearing on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions and hereby adopt them as my own.

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

Fraternally yours,


James P. Hoffa
General President

JPH/lmb

Enclosure

cc: Dan DeSanti, International Vice President
Dan Kane, Sr., Trustee, Teamsters Local Union 522
Hearing Panel
Teamsters Joint Council 73
Independent Review Board

IRB REFERRAL OF CHARGES AGAINST ROBERT MOORE, ROBERT DELOATCH AND ALBERT OLIN

I. INTRODUCTION

On March 11, 2003 the Independent Review Board ("IRB") referred to General President Hoffa an investigative report and recommended charges against Local 522 Benefit Fund trustees Robert Moore and Robert DeLoatch and former benefit fund trustee Albert Olin. The charge alleges that Brothers Moore, DeLoatch and Olin brought reproach upon the Union and violated their duties as fiduciaries by allowing the benefit funds "the Funds" affiliated with Local 522 to make improper payments to the Local from January 1996 until December 31, 2001. Specifically, the IRB alleges that Moore, DeLoatch and Olin violated Article II, Sections 2(a), 2(b)2 and 7, and Article XIX, Sections 7(b)(1) and (2) of the International Constitution.

Pursuant to his authority under Article XIX, Section 11(a), the General President appointed a hearing panel consisting of Edward Keyser (Chairman), Ernie Soehl and George Geller. A properly noticed hearing was held on April 10, 2003 in Jamaica, New York. International Representative Dan Kane submitted into evidence the investigative report and exhibits compiled by the IRB in support of the charges against Brothers Moore, DeLoatch and Olin. Moore spoke in his own defense and submitted himself to questioning by the Panel members. DeLoatch attended, but did not speak and Olin did not attend the hearing.

II. THE CHARGES

Moore, DeLoatch and Olin are charged with breaching their duties as fiduciaries by allowing the five benefit funds affiliated with Local 522 to improperly make payments totaling \$1,478,849 to Local 522. Direct payments to the Local totaled \$1,291,548 for salaries of Local employees for time spent administering the Funds. Additionally, the Funds made indirect payments of \$187,301 to the Local for rent, building maintenance expenses and telephone bills. The charges also state that had the Funds not made the payments to Local 522, the Local would have been \$1,006,969 in debt.

III. PANEL FINDINGS

Robert Moore was a trustee for three of the five benefit funds affiliated with Local 522. He became a trustee in June, 2001. Moore was hired as a Business Agent for the Local in March, 2000 and later became an Executive Board member and the Local's Secretary-Treasurer. Robert DeLoatch became a trustee for the Funds in January, 1999. He has also served as an Executive Board member and as President of the Local. Albert Olin was a trustee from 1995 until January, 2001, and served on the Executive Board of the Local. Brother Olin retired in February 2001.

Until 1995, Local 522 employees administered the benefit funds. However, in January 1996 a third party administrator (Benserco) was hired to administer the Funds. The Local let six employees go and began paying Benserco to perform the work that had been done by the six employees. Benserco is not located in the Local 522 offices; rather it has its own separate offices. After contracting with Benserco, Local 522 members were directed to call a toll free phone number for answers to questions regarding Fund eligibility and benefits. According to a Local employee, the Local received several calls a day from members regarding fund matters and all of them were referred to Benserco.

The IBT has sent notices to all Locals regarding the need to carefully document cost sharing agreements with benefit funds in order to comport with the law. However the Trustees in this case did not appear to follow any of them. Despite the fact that there is no cost sharing agreement between Local 522 and any of the benefit funds, the Funds continued to pay the Local for time that Local officers and employees, including Moore, DeLoatch and Olin claim they spent discussing the Funds with members. The Funds paid 37% of the Local's total payroll costs. In addition, even though no Fund business was being conducted in the Local 522 offices after Benserco was hired, the Funds continued to pay for 34% of the Local's rent and building maintenance expenses as well as 33% of the Local's phone bill.

The Funds made payments for salaries based on a time survey prepared by the accountant. The most recent survey was completed in 1999. According to the survey, 65% of Olin's time was attributed to Fund work

after Benserco was hired, and 50% of DeLoatch's time was attributed to Fund work. From July 2002 until December, 2002 (after the IRB began its investigation) DeLoatch and Moore kept written time sheets in order to account for their time. According to these time sheets, DeLoatch spent only 12% of his time on Fund work and Moore attributed only 10.2% of his time to benefit work. Nonetheless, the Funds were paying 50% of their salaries.

IV. ANALYSIS

As fiduciaries of the Funds, Moore, DeLoatch and Olin had a duty to know how the Fund was spending money, why it was spending money and whether or not the expenses were necessary and justified. All three had a duty to act prudently in making decisions – including seeking out information, weighing all factors and acting with the best interests of the Funds at the forefront. It is clear that the Funds continued paying Local 522 expenses after the third party administrator was hired. It is also clear that without such payments, the Local would have run a very large deficit, perhaps as high as \$1,000,000 according to the IRB report. By permitting the Funds to subsidize the operations of the Local Union, the charged parties were not properly performing their fiduciary duties.

Because DeLoatch and Olin did not testify at the hearing, the Panel has only the evidence submitted in the IRB report on which to make a decision regarding their culpability. Olin was a trustee before Benserco was hired. Therefore, he certainly should have been aware that contrary to the accountant's survey, he was not spending 65% of his time on fund work after hiring Benserco. The fact that the Funds were continuing to pay the Local (directly or indirectly) for services and space even after the transition was made to the third party administrator should have raised some red flags.

DeLoatch held office in the Local and was a member of the Executive Board. Therefore, it was his responsibility to know how the Local's officers and employees were being paid. As a fiduciary, he should have in the very least had knowledge of where the Funds were spending money, how much was being spent and why. However, along with Olin and Moore, he relied upon outdated material and chose not to fulfill his obligation to ensure that all transactions were proper.

Moore contended that he was not a trustee for very long and that he relied upon the advice of his accountant. The Panel finds both of these defenses to be lacking. Although Moore was only a trustee for a year and a half before the investigation began, he became the principal officer of the Local and should have taken the initiative to find out how the Local was paying his salary and its expenses. As is true with the other two charged, Moore should have taken the initiative to find out where the Fund's money was being spent.

Although it can be reasonable for a person to rely on an expert's advice, Moore relied on the advice of an accountant who worked for both the Funds and the Local. He also never requested an updated time allocation survey. Moore did not hire an outside auditor at any point. Even though the past President had been removed from office, according to Moore's own testimony, he continued to follow the former President's lead in dealing with the Funds. Although Moore claims that he tried to change the system after taking office, the Panel finds this to be disingenuous because he did not do anything until after an investigation had already started.

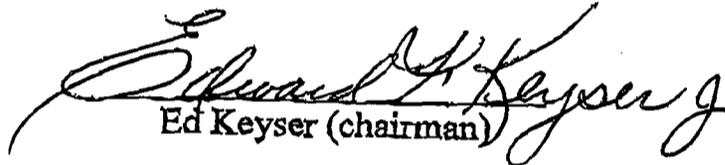
V. RECOMMENDATION

The Panel believes that Olin, Moore and DeLoatch violated Article II, Sections 2(a), 2(b)2 and 7, and Article XIX, Sections 7(b)(1) and (2) of the International Constitution. At best, they chose to remain ignorant in making decisions and overseeing the Funds, at worst they knew the Local relied upon the money from the Funds and decided not to take action to stop the flow of money.

The Panel recommends that Olin, Moore and DeLoatch be suspended from IBT membership for three (3) years. During this time, it is further recommended that Olin, Moore and DeLoatch not be allowed to contract with Local 522, the IBT or any other IBT affiliate or its sponsored employee benefit plans; that they not be allowed to seek or accept money or other compensation for any goods and services from Local 522, the IBT or any other IBT affiliate or IBT sponsored employee benefit plan other than receipt of vested benefits to which they may otherwise lawfully be entitled by reason of prior participation in an IBT sponsored benefit plan or plans. In addition, Olin, Moore and DeLoatch are prohibited from having any contributions made on their behalf to any IBT-affiliated benefit funds by

Local 522 or any other IBT-affiliated entities unless they are employed at the craft and are entitled to such benefits under a collective bargaining agreement. Finally, they are also barred from holding office with Local 522 or any other IBT affiliated entity for a period of five (5) years.

7-23-03
Date


Ed Keyser (chairman)

Date

Ernie Soehl

Date

George Geller

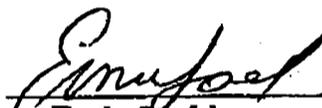
Local 522 or any other IBT-affiliated entities unless they are employed at the craft and are entitled to such benefits under a collective bargaining agreement. Finally, they are also barred from holding office with Local 522 or any other IBT affiliated entity for a period of five (5) years.

Date

Ed Keyser (chairman)

7-1-03

Date



Ernie Soehl

Date

George Geller

FROM :
07/03/2003 15:10 FAX 202 624 6884

FAX NO. :2127418616
IBT LEGAL DEPT.

Jul. 08 2003 10:03AM P6
006

Local 522 or any other IBT-affiliated entities unless they are employed at the craft and are entitled to such benefits under a collective bargaining agreement. Finally, they are also barred from holding office with Local 522 or any other IBT affiliated entity for a period of five (5) years.

Date

Ed Keyser (chairman)

Date

Ernie Soehl

7-3-03
Date



George Geller