

years following the expiration of their two-year suspension from the IBT. Sanctions were also imposed upon all of the Respondents' benefits.

The penalties imposed were voluntarily stayed pending review of my Decision by the Honorable David N. Edelstein. My Decision was then submitted to Judge Edelstein by way of Application XCIX. On March 5, 1993, Judge Edelstein issued an Opinion and Order in this matter. See United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. March 5, 1993).

Judge Edelstein affirmed my determination that the Investigations Officer had proven the charges against all eight Respondents. Judge Edelstein also affirmed the penalty imposed as to Respondents Burke and Wolchok. However, Judge Edelstein vacated and remanded for reconsideration that portion of my Decision imposing a penalty upon Respondents Abrego, Ottman, McKay, Cahill, Brechner and Simmons. These six Respondents argued before Judge Edelstein that the penalty imposed upon them (the same as imposed upon Burke and Wolchok) was unduly harsh because Burke and Wolchok were found guilty of additional charges in connection with the improper loan to Burke. As stated by Judge Edelstein at pp. 23-24 of his Opinion and Order:

A group of Respondents in the same matter, with similar mitigating circumstances but differing degrees of culpability, received the same penalty

On remand, the Independent Administrator may conclude that, in light of the seemingly greater wrongdoing perpetrated by Mr. Burke and Mr. Wolchok, Messrs. Abrego, Ottman, McKay, Cahill, Brechner and

Simmons should be accorded a more lenient penalty. Alternatively, the Independent Administrator may conclude that in light of the level of culpability of each of the Respondents and other mitigating evidence, a uniform penalty is warranted.

I provided counsel for Respondents Abrego, Ottman, McKay, Cahill, Brechner and Simmons, as well as the Investigations Officer, the opportunity to make a submission in light of Judge Edelstein's remand. Counsel for the Respondents made such a submission and the Investigations Officer wrote to me indicating that he would defer to any decision made by me on the remand.

RESPONDENTS' SUBMISSION

In the remand submission, counsel for the Respondents informed me that subsequent to my October 1, 1992, Decision, Abrego, Ottman, McKay, Cahill, Brechner and Simmons had been duly nominated for officer positions in Local 917 and/or 868. Those Respondents, however, voluntarily withdrew their candidacies. As explained by counsel, this was done so that the Locals would "not be required to be thrown into chaos in the event" the six Respondents were elected and Judge Edelstein then affirmed my Decision.²

As of January 1, 1993, Cahill, Simmons and Abrego retired and began receiving their retirement benefits.³ McKay now works as a Business Agent and Ottman now works as an office manager for the

² Burke and Wolchok also withdrew their candidacies.

³ Burke and Wolchok also retired and began receiving benefits.

Union.⁴ Brechner continues as a rank-and-file member of Local 868 working as an automobile salesman at Dale Oldsmobile.⁵

On remand, McKay, Ottman and Brechner ask that their penalties be tailored so as not to interfere with their current employment.

RECONSIDERATION OF THE PENALTIES IMPOSED

As Judge Edelstein properly highlighted in remanding this matter, although Burke and Wolchok were charged with additional wrongdoing, Abrego, Ottman, McKay, Cahill, Brechner and Simmons received the same penalty as did Burke and Wolchok. That these six Respondents should have received a lesser penalty (commensurate with their lesser culpability) is now clear. Accordingly, I vacate the earlier penalty imposed on these six Respondents and impose, instead, the following penalty.

For a period of two years, Abrego, Ottman, McKay, Cahill, Brechner and Simmons are barred from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship positions. These six Respondents may, however, retain their IBT membership.

During the two-year period in which these six Respondents are barred from holding any officer or trusteeship positions they shall also be barred from working, in any capacity, with IBT-affiliated

⁴ It is unclear from the remand submission whether McKay and Ottman are working for Local 917, Local 868, or both.

⁵ Brechner had earlier served as a Vice President of Local 868 while working as a car salesman.

entities. Stated another way, during this two-year period, Respondents may only obtain employment with non-IBT-affiliated entities.⁶

What this means in regards to Respondents' current employment is that Brechner, as a member of Local 868, may continue working as a car salesman with Dale Oldsmobile. During the applicable two-year period, however, McKay (business agent) and Ottman (office manager) must forfeit their employment with the IBT-affiliated entities for which they work. This restriction is consistent with other similar penalties that I have previously imposed. See Investigations Officer v. Ross, Decision of the Independent Administrator (March 1, 1993); Investigations Officer v. Caldwell, et al., Decision of the Independent Administrator (February 9, 1993). Without such a restriction, I would be inviting IBT-affiliated entities to dole out patronage positions to members upon whom I have imposed employment disabilities.

As for these six Respondents' employee benefits, consistent with my ruling in Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT, 753 F.Supp. 1181 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), I will not alienate any vested benefits of Respondents. However, any contributions made by any IBT-affiliated entity to sustain benefits on behalf of these

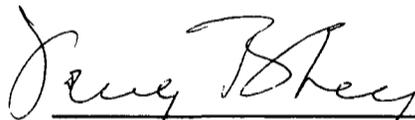
⁶ During this two-year period, these six Respondents shall also be prevented from holding any positions such as job steward, shop steward, or the like.

six Respondents as a result of their having served as officers or trustees of IBT-affiliated entities must cease during the two-year disability period. The six Respondents may use their personal funds to continue any particular benefits.

Finally, given that these six Respondents were found culpable of the underlying charges, they still are not entitled to have any of their legal expenses paid by any IBT-affiliated entity. See, e.g., United States v. Local 1804-1, 732 F.Supp. 434, 437 (S.D.N.Y. 1990).

VOLUNTARY STAY

I will stay the imposition of these penalties pending review of this Supplemental Decision by Judge Edelstein, which I will submit to him by way of Application.



Frederick B. Lacey
Independent Administrator

Dated: March 25, 1993