

To: Anthony Rumore, President, Joint Council 16  
From: Members of the Independent Review Board  
Re: Proposed Charges Against Local 813 Member Vincent Feola  
Date: September 21, 1998

---

**I. RECOMMENDATION**

The Independent Review Board ("IRB") refers the below report to Joint Council 16 for the purpose of initiating charges against Local 813 member Vincent Feola for continuing as a member of the Local and collecting union benefits as an employer ineligible for membership, and for bringing reproach upon the IBT and violating the IBT Constitution and Local 813 Bylaws by failing to cooperate with the IRB by refusing to answer questions at his April 16, 1998 sworn examination.

**II. INVESTIGATIVE FINDINGS**

**A. Background**

An investigation has been conducted into allegations of wrongdoing by Local 813 member Vincent Feola. The Local 813 Investigations Officer, appointed pursuant to the settlement of the federal civil RICO suit against Local 813, referred the initial allegation to the IRB.

Vincent Feola is currently a member of the IBT and Local 813. Local 813 records list Feola as working for Swift Sanitation. Feola's dues and employer paid benefit

contributions to the Local 813 Health and Welfare, Pension and Severance Funds were paid through February 1998. (Ex. 1 ).

Swift Sanitation, Vincent Feola's father, Frank Feola, and a Swift employee, Louis Cervello, were named in two New York State felony indictments. (Ex. 2). Swift Sanitation and Swift's president, Frank Feola, were charged in one indictment with forgery in the second degree, criminal possession of a forged instrument in the second degree, tampering with public records in the first degree, offering a false instrument for filing in the first degree and falsifying business records in the first degree. A separate indictment charged Cervello with the same offenses. The indictment alleged that, among other things, Swift, its president, Frank Feola, and Cervello acting in concert committed forgery with the intent to defraud by altering a sanitation waste disposal ticket to allow a Swift sanitation vehicle to gain entry to a city-owned waste site.

Frank Feola's three children, Vincent Feola, Anthony Feola and Joanne Feola are shareholders of the company. Vincent Feola is a Vice President of Swift who signed the current collective bargaining agreement between Swift Sanitation and Local 813. (Ex. 3).

On March 13, 1998, a Notice of Sworn Examination was sent to Vincent Feola by overnight express mail scheduling his sworn examination for March 25, 1998. At the request of Feola's counsel, the examination was adjourned twice, first to April 3, 1998 and finally to April 16, 1998.

**B. Vincent Feola is an Employer Ineligible for IBT Membership**

Vincent Feola ("Feola") testified that he is a member of the IBT and Local 813 and that he is a Vice President of Swift Sanitation. As a Vice President, Feola testified that he is

responsible for the day to day management of Swift including soliciting business, collections, supervising employees and occasionally driving a truck. (Ex. 4 at 8,14-15). Feola testified that his father, who is 82 years old, was not really involved in the day-to-day management of Swift other than occasionally speaking to a customer by phone. (Id at 15). Moreover, Feola apparently signed all agreements on behalf of Swift Sanitation including the collective bargaining agreement with Local 813. He testified that his salary is \$1,700 a week, well above the salary provided for in the collective bargaining agreement under which he was a member. (Id at 16). Further, Feola was one of the three employer trustees of the Local 813 Pension and Insurance Fund (Id. at 13). Feola testified that in addition to himself and his brother, Swift employed four drivers who were Local 813 members. He testified that his sister and two other female clerical employees of Swift Sanitation were not members of any union. Feola also employed a yard mechanic who was not a member of Local 813. According to an application for a carting license filed August 30, 1996, with the NYC Trade Waste Commission, Swift Sanitation owned seven vehicles involved in carting (packers and backloaders) and three additional company automobiles. (Ex. 5). Feola's duties at Swift Sanitation were managerial and consistent with that of an employer.

Local 813 Business Agent Jaime Rodriguez testified in his May 7, 1998 sworn examination that he signed the current collective bargaining agreement on behalf of Local 813 which Feola signed for Swift Sanitation. Rodriguez testified that while he was the assigned business agent to Swift Sanitation from December 1996 through May 1997 he visited the company over a dozen times and never saw Feola engaged in the trade of truck driving. (Ex. 6 at 25-27). He further testified that he considered Feola an employer who

supervised and managed employees of Swift and confirmed that Feola represented Local 813 employers as a trustee on the Health, Welfare and Pension Fund. (Id at 18). After Rodriguez's testimony, Local 813 Trustee, Eugene Maney, and Sylvester Needham, the business agent then assigned to Swift Sanitation, claimed in an interview with the Local 813 Investigations Officer that Feola drove a truck at least three days a week thereby qualifying for union membership as a person engaged in the trade under Section 4.03 of the Local 813 Bylaws. (Ex. 7).

Section 4.03 of the Local 813 Bylaws stated:

The jurisdiction of this Local Union shall also include any person who owns or leases and operates a vehicle and/or performs work within any craft or industry within the jurisdiction of this Local Union, whether known as "owner-driver," "owner-equipment driver," "self-owner," "jobber" "peddler," "bobtailer" or the like, and it shall be within the discretion of the Executive Board whether to accept such persons as members. The seniority of such persons shall be separate from and subordinate to the seniority of regular members.

The IBT Constitution interprets an owner-operator as an individual who owns or leases equipment from his employer and has a contract with a third party which is then subject to union approval. Article II, Section 2(c)<sup>1</sup> of the IBT Constitution requires an

---

<sup>1</sup> Article II, Section 2(c) of the IBT Constitution states:

The foregoing provision shall apply with equal force to so-called "vendors" and "owner-equipment drivers." A "vendor" is a person who purchases products and sells the same on his own behalf. An "owner-equipment driver" is a person who, in connection with his employment, uses equipment sold or leased to him by his employer or equipment which he has purchased independently but which he uses in whole or in part in the service of his employer. When such persons apply for membership in the International Union, the Local Union and the International Union shall have the right and authority as a condition precedent to membership to approve or disapprove any contract pertaining to such form or similar form of employment.

The IBT General Counsel's office maintained there was no International interpretation of this constitutional provision. (Ex. 8).

owner-operator member who enters into a contract with an employer and uses equipment“ in whole or in part in the service of his employer” to have the contract prevailing wage approved by the Local when the owner-operator applies for membership in the union. The IBT Constitution does not envision a contract between an alleged owner-operator member who employs others who are members of the Local and the Local union as bargaining adversaries which is the case here. Feola is not an owner-operator as envisioned by the IBT Constitution because he has entered into a contract not with a third party but with the union itself. Feola and other employers similarly situated, as adverse to the Local, cannot comply with the condition of membership in Article XIV, Section 3 of the IBT Constitution which provides in part:

Every member, by virtue of his membership in the Local Union, authorizes his Local Union to act as his exclusive bargaining representative with full and exclusive power to execute agreements with his employer governing terms and conditions of employment and to act for him and to have final authority in presenting, processing and adjusting any grievance, difficulty or dispute arising under any collective bargaining agreement or out of his employment with such employer in such a manner as the Local Union or its officers deem to be in the best interests of the Local Union, all subject to Article XII and other applicable provisions of the International Constitution relating to such matters.

**C. Feola's Failure to Cooperate with the IRB**

Feola admitted in his sworn deposition that Swift Sanitation, in addition to his father and Louis Cervello, were under indictment in New York courts for allegedly acting in concert to use a forged sanitation disposal ticket to gain entrance into a New York City waste dump.

Feola testified that Swift hauled waste from New York City Housing sites which involved picking up waste from the site, receiving a timed sanitation waste disposal ticket for a city owned dump site and then dumping at the city owned site within the time period designated by the sanitation waste disposal ticket. Feola testified that the driver of the truck was responsible for obtaining this ticket when he picked up waste from the site.

Feola refused to answer two questions: whether Cervello altered the sanitation waste disposal ticket with his knowledge and whether he had knowledge that anyone else, including Swift officers, had personal knowledge that Cervello may have been using altered or forged dump tickets. (Ex. 4 at 45-49). Feola refused to answer these two questions invoking the Fifth Amendment Right against being a witness against himself. After each refusal, the examiner advised Feola that failure to answer these questions could result in a recommendation that disciplinary charges be filed against him for failure to cooperate with the IRB.

The Chief Investigator scheduled a sworn examination of Feola to investigate his knowledge of his company's involvement in this alleged felony criminal activity associated with the carting industry which in New York and Long Island has historically been dominated by corruption, racketeering and organized crime. Part of organized crime dominance of this industry has been through illegal activities such as dumping. Pursuant to a Consent Judgement entered in US v. Private Sanitation Industry Association of Nassau/Suffolk Inc. et al., CV-89-1848 on January 4, 1994, Local 813 was placed into a federal civil RICO trusteeship and an Investigative Officer was appointed. The IRB has recommended, based upon referrals to the IRB Chief Investigator by the Local 813

Investigative Officer, charges against 37 members of Local 813. For instance, the Chief Investigator recommended charges against member Dennis E. Hickey who refused to answer questions at a sworn examination concerning a federal RICO indictment which alleged a racketeering conspiracy involving his carting companies and stemmed from a New York State felony conviction for bribery of public officials in Islip, New York, to facilitate illegal dumping. (Ex. 9). It appears that Feola brought reproach upon the IBT for failing to answer questions which directly inquire into his employee's involvement in a criminal activity regarding the carting industry with IBT members, his management of the company and his involvement of his company and employees in a criminal activity regarding the carting industry. Feola refused to answer two key questions which bear on the eligibility of his company to obtain a carting license from the NYC Trade Waste Commission.

Charges have been upheld against union members who asserted their Fifth Amendment privilege and refused to answer questions during their sworn examinations. United States v. IBT [Calagna], No. 88 Civ. 4486 (DNE), slip op. at 6-7 (S.D.N.Y., August 14, 1991). (Ex. 9). In a prior case in which a member applied for a stay of a sworn examination, District Judge Edelstein wrote,

**[b]ecause the actions of the IRB and its Investigations Officer do not constitute state action, the Fifth Amendment privilege against self-incrimination is inapplicable to Hickey as a defense against appearing before the Investigations Officer. Moreover, should Hickey elect to invoke the Fifth amendment during his sworn examination before the Investigations Officer, this invocation will expose him to charges of bringing reproach upon the union for obstructing the IRB's and the Investigations Officer's investigation, and endanger his status as a member of the IBT. (See Memorandum and Order in United States v. IBT, No. 88 Civ. 4486 (DNE)(S.D.N.Y).**

By refusing to answer questions during his sworn examination, it appears that while an IBT member Feola violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) and Section 14(i) of the IBT Constitution by obstructing, interfering and unreasonably failing to cooperate with the duties of the IRB as set forth in Paragraph G of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.).

### III. PROPOSED CHARGES

Based upon the foregoing, it is recommended that Joint Council 16 charge Vincent Feola as follows:

#### Charge One

While a member of Local 813 and the IBT, you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) and Section 14(i) of the IBT Constitution and obstructed, interfered and unreasonably failed to cooperate with the duties of the Independent Review Board as set forth in paragraph G of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y), to wit:

On April 16, 1998, you willfully and without justification refused to answer questions during your in-person sworn examination pursuant to paragraph H.3(c) of the Rules and Procedures of the Independent Review Board for the International Brotherhood of Teamsters.

Charge Two

While an employer, including being an employer representative on the benefit funds, you brought reproach upon the union and violated your oath of membership by maintaining a sham membership in violation of Article XIV, Section (3); Article II, Sections (2)(a) and (c); and Article XIX, Section(7)(b)(2) of the IBT Constitution, to wit:

You are an employer ineligible for membership in the union pursuant to Article XIV, Section (3) and Article II, Sections (2)(a) and (c) of the IBT Constitution.

**EXHIBITS TO REPORT REGARDING VINCENT FEOLA**

- 1 Record of dues and employer contributions to the Local 813 Health and Welfare, Pension and Severance Fund on behalf of Vincent Feola.
- 2 New York State felony indictments dated February 3, 1998 against Frank Feola, Louis Cervello and Swift Sanitation.
- 3 Collective bargaining agreement between Swift Sanitation and IBT Local 813 dated May 12, 1997 and May 15, 1997.
- 4 Sworn IRB examination of Vincent Feola dated April 16, 1998.
- 5 Swift Sanitation's application for a carting license to the New York City Trade Waste Commission dated August 30, 1996.
- 6 Sworn IRB examination of Jaime Rodriguez dated May 7, 1998.
- 7 Memorandum of Local 813 Investigative Officer John Skala.
- 8 Letter dated June 2, 1998 from IBT Deputy General Counsel David L. Neigus to IRB Chief Investigator Charles M. Carberry.
- 9 Copy of report recommending charges against former IBT Local 813 member Dennis E. Hickey dated December 4, 1996.