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INVESTIGATIONS OFFICER,

Claimant,

v.

JOHN F. LONG,

Respondent.

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DECISION OF  
THE INDEPENDENT  
ADMINISTRATOR

The Investigations Officer filed three charges against John F. Long ("Long"), former Secretary-Treasurer of Local 804 in Long Island City, New York.<sup>1</sup> The three charges are printed in full below.

CHARGE ONE

While an officer of Local 804, [Long] acted unlawfully, brought reproach upon the IBT, violated [his] oath of office and breached [his] fiduciary duties to the members by taking money in return for influencing the financial investments of Local 804 in violation of Article II, Section 2(a) and Article XIX, Section 6(b) of the IBT Constitution, to wit:

In 1981, while Secretary-Treasurer of Local 804, [Long] agreed with Jesse David Hyman ("Hyman") that [Long] would unlawfully influence Local 804's funds to be invested through Penvest, Inc. ("Penvest"). It was agreed that, in return, [Long] would receive money for influencing Local 804's funds to be invested through Penvest. In or about February 1981, [Long] unlawfully influenced Local 804 to invest \$100,000 of Local 804's funds through Penvest. In or about February 1981, [Long] took approximately \$2,000 from Hyman in return for

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<sup>1</sup> Long retired and received a withdrawal card from IBT Local 804 on May 3, 1988. See Investigations Officer Post-Hearing Memorandum at p. 1.

influencing Local 804 to invest Local 804's funds through Penvest. This violated New York Penal Law § 180.25.

Furthermore, in or about March 1981 [Long] unlawfully influenced Local 804 to invest \$50,000 of Local 804's funds through Penvest. In or about June 1981 [Long] took approximately \$1,000 from Hyman in return for investing Local 804's funds through Penvest. This was also in violation of New York Penal Law §180.25.

#### CHARGE TWO

While an officer of Local 804, [Long] brought reproach upon the IBT, violated [his] oath of office and breached [his] fiduciary duties to the members by taking money in return for influencing John Mahoney,<sup>2</sup> former Secretary-Treasurer of IBT Local 808 and Union Trustee of Local 808's Pension Fund, regarding the financial investments of Local 808's Pension Fund in violation of Article II, Section 2(a) and Article XIX, Section 6(b) of the IBT Constitution, to wit:

In 1982, while Secretary-Treasurer of Local 804, [Long] agreed with Hyman that [Long] would influence John S. Mahoney ("Mahoney"), then Secretary-Treasurer of Local 808 and Union Trustee of Local 808's Pension Fund, to invest Local 808's pension funds through Penvest. It was agreed that if [Long was] helpful in getting Hyman a pension fund account, [Long] would receive money. In 1982, [Long] told Mahoney that he might want to do business with Hyman. In approximately 1982, after Mahoney agreed to deal with Hyman, [Long] took approximately \$5,000 from Hyman in return for speaking with Mahoney about doing business with Hyman.

In approximately December 1982, while [Long was] Secretary-Treasurer of Local 804, [he was] asked by Hyman to influence Mahoney not to remove Local 808's pension funds from Penvest. In approximately December 1982 [Long] influenced Mahoney not to remove Local 808's pension funds from Penvest. In approximately December

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<sup>2</sup> Mahoney was separately charged by the Investigations Officer. Mahoney resolved his charges by agreeing to resign all of his positions with all IBT entities. Mahoney also agreed never to hold membership in IBT Local 808 or participate in any of the affairs of that Local. Limitations were also imposed on his employee benefits. This Agreement was approved by the Honorable David N. Edelstein on May 1, 1992.

1982 [Long] took approximately \$2,000 from Hyman in return for influencing Mahoney not to remove Local 808's pension funds from Penvest.

CHARGE THREE

While an officer of Local 804, [Long] acted unlawfully, brought reproach upon the IBT, violated [his] oath in office and breached [his] fiduciary duties to the members by unlawfully receiving money from an employer as payment for assisting the employer to avoid unionization and arranging a sham contract between the employer and IBT Local 804 in violation of Article II, Section 2(a) and Article XIX, Section 6(b) of the IBT Constitution, to wit:

In or about 1981, while Secretary-Treasurer of Local 804, [Long] assisted Emgee Pharmaceuticals, Inc. ("Emgee") to avoid unionization by an AFL-CIO local and arranged a sham contract between Emgee and Local 804. In return for assisting Emgee to avoid unionization by the AFL-CIO local and arranging the sham contract, [Long] received approximately \$5,000 from Gary Lichter, a principal of Emgee, through Hyman.

A hearing on these charges was conducted before me. Neither Long nor a representative on his behalf appeared.<sup>3</sup> This was despite the fact that Long received and signed the return receipt

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<sup>3</sup> On April 22, 1992, I received a letter from Lawrence Vincent Kelly, Esq., advising me that he represented Long in this matter, and that Long would not appear at the hearing on the following day because Long planned to "shortly file" a lawsuit challenging my jurisdiction to hear the charges against him. I responded to Mr. Kelly's letter on that same day informing him that the hearing would proceed with or without Long. On that same day, I also received a copy of a letter from Assistant United States Attorney Steven C. Bennett. Mr. Bennett's letter highlighted for Mr. Kelly the fact that the United States Court of Appeals for the Second Circuit had already ruled that I possessed jurisdiction over both present and former IBT officers to hear and decide disciplinary charges filed against them by the Investigations Officer. See United States v. IBT, 905 F.2d 610, 622 (2d Cir. 1990). See also, United States v. IBT, 745 F. Supp. 189, 192 (S.D.N.Y. 1990). Long has yet to file any papers challenging my jurisdiction.

for the Notice of Hearing. Notwithstanding Long's decision to ignore these proceedings, this matter was heard in his absence.

Having reviewed the evidence presented and the Investigations Officer's post-hearing memorandum, I find that the Investigations Officer has met his just cause burden of proving all three charges against Long by a fair preponderance of the evidence. See United States v. IBT, 754 F. Supp. 333, 337-338 (S.D.N.Y. 1990) ("[T]he Investigations Officer must establish just cause at a disciplinary hearing by a fair preponderance of the evidence.").

#### **I. IBT Constitutional Provisions**

The charges against Long implicate two provisions of the IBT Constitution. Article II, section 2(a), the IBT oath of membership, provides that each IBT member shall "conduct himself in a manner so as not to bring reproach upon the Union . . . ." Article XIX, section 6(b), sets forth a non-exhaustive list of charges which may be brought against IBT members and officers, which include:

(1) Violation of any specific provision of the Constitution, Local Union By-laws or Rules of Order, or failure to perform any of the duties specified thereunder.

(2) Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.

## II. The 1988 Indictment

The evidence introduced by the Investigations Officer at the hearing before me consisted primarily of evidence presented at the jury trial in United States v. John F. Long, SSS 87 Cr. 943 (DNE). That trial arose out of a 1988 indictment (IO-3),<sup>4</sup> which charged Long and Mahoney with participating in a racketeering enterprise consisting of nine racketeering acts.

Investigations Officer's Charge One tracks the allegations of Racketeering Act One in the Long-Mahoney indictment, Charge Two tracks Acts Two and Three, and Charge Three tracks Act Five. Following the jury trial, Long and Mahoney were convicted of conspiring to participate and participating in, the racketeering enterprise.<sup>5</sup> In 1990, Long's conviction was overturned. See, United States v. Long, 917 F.2d 691 (2d Cir. 1990) (IO-5). After the reversal, the government chose not to retry Long. Investigations Officer's Post-Hearing Memorandum at p. 3, n. 6.

The Investigations Officer argues that the reversal of Long's conviction by the Court of Appeals has no bearing upon the resolution of his charges against Long, since the reversal was based upon the admission of expert testimony concerning organized crime, improper cross examination of character witnesses and

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<sup>4</sup> The Investigations Officer's exhibits are referred to as "IO" followed by the exhibit number and page reference, if appropriate.

<sup>5</sup> Long was also convicted on several substantive counts including extortion, making false declarations before the grand jury, perjury and filing false federal income tax returns. IO-4 (jury verdict forms).

certain aspects of the jury charge. Investigations Officer Post-Hearing Memorandum at p. 3, n. 6. I agree with the Investigations Officer's position.

My task is to determine whether the Investigations Officer has sustained his just cause burden after independently considering and weighing all of the Investigations Officer's proofs. That Long's criminal conviction did not withstand appellate scrutiny is not part of the analysis.<sup>6</sup>

### III. Charge One -- Background

This charge alleges that Long took approximately \$3,000 in bribes from Hyman for influencing IBT Local 804 to invest approximately \$150,000 of Local 804 funds in Penvest. Penvest is a pension fund management company. Long, supra, 917 F.2d at 694; IO-8 at p. 329. Hyman is a dentist who was convicted of extortion and loan sharking in 1985, and thereafter became the government's key witness in the criminal case against Mahoney and Long. Hyman had previous associations with labor union dental plans. Long, supra, 917 F.2d at 693. See generally, IO-8. The following summary of events is based on Hyman's testimony at Long's criminal trial.

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<sup>6</sup> I recognize, however, that had Long's conviction not been reversed, I would have been entitled, under the doctrine of collateral estoppel, to bar Long from contesting the charges against him, since those charges are essentially the same as those resolved at his criminal trial. See United States v. IBT, 725 F. Supp. 162, 167 (S.D.N.Y. 1989), aff'd, 905 F. 2d 610, 620-622 (2d Cir. 1990).

In 1979, while Long was the Secretary-Treasurer of Local 804, he was introduced to Hyman. IO-8 at pp. 322-325. Hyman's introduction to Long was arranged by Jimmy Rotundo ("Rotundo"). Id. Hyman described Rotundo as "a made member of the DeCalvacante [Organized Crime] Family of New Jersey." Id. at p. 320. During their first meeting, Hyman gave Long Rotundo's regards and told Long that Rotundo "would appreciate anything he (Long) could do for us or for me." Id. at p. 324. Hyman also said that "they would all make money together." Id. After this initial meeting, Long, Hyman and Rotundo met approximately six times between 1979 and 1984 "concerning topics that [they] were involved in together . . . ." Id. at p. 325.

Hyman told Long that if Long deposited Local 804's pension fund monies with Penvest, he would receive a one percent cash kickback for the value of the deposited money. Id. at p. 332; 341-342. On February 4, 1981, Long gave Hyman a \$100,000 Local 804 check to be invested with Penvest. Id. at pp. 332-339; IO-26 (photocopy of the February 11, 1981, check). Soon thereafter, Hyman gave Long \$2,000 in cash, twice the promised amount, to "encourage him to do it further." Id. at p. 341.

Approximately eight or nine months later, Hyman gave Long \$1,000 for causing Local 804 to invest an additional \$50,000 with Penvest. Id. at pp. 342-343; IO-27 (photocopy of the May 26, 1981, check). Thereafter, Hyman was supposed to receive an additional \$100,000 from Long, but Hyman did not "press" him for the money

because Hyman's offices were raided by the Federal Bureau of Investigations ("FBI"). Id. at p. 353; IO-49. After the raid, Hyman "just stayed away from everybody." Id.

**A. The Merits -- Charge One**

I find Hyman's testimony regarding the Penvest investments and the kickbacks to Long to be credible. In making this finding of credibility, I am guided by several factors. First, Hyman testified at Long's criminal trial pursuant to a cooperation agreement entered into with the government. IO-8 at p. 295. In return for his "truthful" testimony, the government agreed to make Hyman's sentencing judge aware of his cooperation. Id. Thus, Hyman, a married man and a father of three children (id. at 293), had a strong motivation to tell the truth. Moreover, the jury at the criminal trial must have found Hyman credible as they found Long guilty of receiving the kickbacks in relation to the Penvest scheme. IO-4.

I also find it highly significant that Hyman's testimony was corroborated by the Investigations Officer's other proofs, including two Local 804 checks executed by Long that were deposited into the Penvest account (IO-26; IO-27), and statements intercepted by the FBI pursuant to a court-ordered wiretap at Hyman's offices. See generally IO-46 through 54. These conversations establish a clear financial link between Long and Hyman.

Accordingly, I find that Long did in fact receive approximately \$3,000 from Hyman in exchange for causing Local 804

to invest approximately \$150,000 in Penvest. It is self-evident that by engaging in such conduct, Long has brought reproach upon the IBT. A Local Union officer simply cannot make decisions on how to invest the rank-and-file's pension monies based upon his receipt of kickbacks. Such conduct is reprehensible. See generally, Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator at p. 26 (May 22, 1991), aff'd, United States v. IBT, 777 F. Supp. 1123 (S.D.N.Y. 1991), wherein it was stated:

Officers of IBT Locals must understand that their Local Union coffers are not their personal piggy banks that can be cracked open whenever it serves their personal benefit. The Local's assets belong to the Local's members.

In addition, Long's actions violate the clear prohibition found in Section 180.25 of the New York Penal Law. That section provides as follows:

A labor official is guilty of bribe receiving by a labor official when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions, or duties as such labor official.

Accordingly, I find that the Investigations Officer has satisfied his just cause burden of proving Charge One against Long.

#### **IV. Charge Two - Background**

In this charge, the Investigations Officer alleges that Long, in return for money, used his established relationship with Mahoney and Hyman to influence Mahoney to invest Local 808's pension funds

with Penvest. Once again, the following summary of events is drawn primarily from Hyman's testimony at Long's criminal trial.

Long told Hyman that he (Long) had spoken to Mahoney and told him that Hyman would be contacting him to discuss pension fund dealings. IO-8 at p. 356. Thereafter, Mahoney and Hyman had two meetings. During the second meeting, Hyman told Mahoney that he would receive a one percent kickback for investing Local 808's pension funds with Penvest. Id. at pp. 357-362.

In March of 1982, Mahoney arranged for \$751,555.96 of Local 808's pension funds to be invested with Penvest. Id. at pp. 368-374; IO-33 (a check payable to the Trustees of Local 808's Pension funds that is endorsed as "Payable to Penn Vest [sic], Inc.").

Long knew that subsequent to his introduction of Hyman to Mahoney, that Mahoney was investing Local 808 pension funds with Penvest. Long also knew that in return, Mahoney was receiving kickbacks from Hyman. IO-8 at p. 382. In fact, soon after Hyman gave Mahoney his kickback money, he gave Long \$5,000 "[f]or introducing [Mahoney] and vouching for [him] in [his] dealings with John Mahoney." Id. at p. 380. Hyman told Long that "this was the money [he] had promised [Long] for helping him get another pension fund account." Id.

In November of 1982, Mahoney asked Hyman to return all Local 808's monies invested with Penvest. IO-9 at pp. 451-452; IO-40 (November 24, 1982, letter from Mahoney to Penvest); IO-18 at p. 3967 (testimony of Mahoney); IO-39 (phone message for Hyman from

Mahoney dated 11/24 stating "he's sending a registered letter out today -- he's calling everything up.").

Thereafter, Hyman, in an attempt to prevent Mahoney from pulling Local 808's funds out of Penvest, asked Long to convince Mahoney to leave the money alone. IO-9 at pp. 453-454. Long agreed to speak with Mahoney. IO-9 at p. 454.

In early December 1982, after Long had spoken with Mahoney, Hyman met with Mahoney and Long and Mahoney agreed to keep Local 808's money in Penvest. At that meeting, Hyman gave Mahoney \$5,000 "[t]o insure that he would keep the pension fund in Penvest." IO-9 at pp. 456-462. Long, for arranging the meeting, was given approximately \$2,500 in cash from Hyman for "the effort that he had put forth on [Hyman's] behalf with John Mahoney in insuring that [Hyman] would maintain control of the pension funds . . . ."

**A. Charge Two -- The Merits**

This charge focuses on Long taking approximately \$7,500 in return for influencing Mahoney's investment of Local 808's pension funds with Penvest.

I find Hyman's testimony in connection with these events to be credible. In making this determination, I once again rely on Hyman's cooperation with the government. I also rely on the jury's finding that Long influenced Mahoney to make an initial investment in Penvest and that Long influenced Mahoney not to subsequently withdraw the Penvest investment. IO-4. In addition, Hyman's

testimony is also corroborated by the Investigations Officer's other proofs.

A copy of the Local 808 check to Penvest for \$751,555.96 has been produced. IO-33. In addition, I have reviewed Mahoney's letter to Penvest demanding the return of the Local 808 investment and a telephone message slip from Mahoney to Long regarding the withdrawal. IO-39; IO-40. Still further, Mahoney himself testified that he called Hyman seeking a return of the money. IO-18 at p. 3967.

Four conversations intercepted by the court-authorized wiretap of Hyman's offices also corroborated Hyman's testimony. During the first conversation, recorded on December 6, 1982, Hyman was overheard telling an associate that he was waiting for cash needed for his meeting with Long and Mahoney. IO-47. In the second and third conversations, also intercepted on December 6, 1982, Hyman was overheard telling two different associates that "[t]oday I take care of the union, I gotta go to, uh, Long Island City to meet two union guys." IO-46. Hyman then stated that "I'm going to, uh, I'm going to [meet] Johnny Long, John Mahoney . . ." Id.

It has already been established that Long's receipt of kickbacks in return for investing his Local's pension funds with Penvest was reproachful conduct. I find it just as reproachful that Long took bribes for influencing a fellow Local Union Officer, Mahoney, to invest Local 808's funds in Penvest in exchange for kickbacks. Long's introduction of Mahoney to Hyman and his

intervention with Mahoney on Hyman's behalf only served to spread the cancer of greed and self-dealing that had already infected Long. It cannot be overstated -- Union officers cannot use their members' funds for their own personal gain. Such conduct will not be tolerated. Union officers must be particularly sensitive when dealing with pension monies.

Accordingly, I find that the Investigations Officer has proved Charge Two.

**V. Charge Three -- Background**

This charge once again involves Hyman and Long. Also included is Gary Lichter ("Lichter") who was the Executive Vice President of Emgee Pharmaceutical Corporation ("Emgee") during the relevant time period. IO-15 at pp. 1854-1855 (trial testimony of Lichter in United States v. Long). It is alleged that in 1981 Long received \$5,000 through Hyman for assisting Emgee in avoiding unionization by an "AFL-CIO local" by arranging a sham collective bargaining agreement between Local 804 and Emgee. The following summary is based on both Hyman's and Lichter's testimony at Long's criminal trial.

In the Summer of 1980, an AFL-CIO local organizer was attempting to unionize Emgee employees. IO-15 at pp. 1857-1860. Lichter was opposed to Emgee's unionization and contacted Hyman to seek his assistance in preventing it. Id. at pp. 1857-1861; IO-9 at pp. 539-541. In response, Hyman told Lichter not to "worry

about it, that [he] would handle it for him." IO-9 at p. 540. See also IO-15 at p. 1861.

Hyman then contacted Long and asked Long "if he could assist me in chasing this organizer and telling the union individual who came to organize that [Long] was a friend of [Lichter]." IO-9 at p. 541. Long told Hyman that he knew the organizer and not to "worry about it, I'll take care of it." Id. at 542.

Long told Hyman that it would require approximately \$10,000 "to keep the Union out." IO-9 at p. 545. Thereafter, Hyman told Lichter that it would cost about "\$7,500, \$8,500" to "arrange for him to get a sweetheart contract." IO-9 at pp. 545-546; IO-15 at pp. 1863-1864. Lichter eventually paid cash to Hyman in two installments. IO-9 at p. 546 (Hyman recalls receiving approximately \$8,500); IO-15 at pp. 1863-1869 (Lichter recalls a payment of \$20,000). In turn, Hyman gave Long \$5,000 of the money he received from Lichter and told Long that "this is for the Emgee Pharmaceutical contract we're finalizing with my friend Gary Lichter." IO-9 at p. 547.

Long then caused a sweetheart contract to be prepared between Local 804 and Emgee. IO-9 at p. 551. Hyman testified that the sweetheart contract "was prepared with the intent that if we had to sign and enter into a formalized contract we would . . . . But as long as we had accomplished what we wanted to, that we kept all the unions out of there and nobody was bothering [Emgee], there was no reason for [Lichter] to sign it . . . ." IO-10 at p. 570.

Hyman then took Lichter to meet with Long at Long's office. IO-9 at pp. 547-548; IO-15 at pp. 1871-1881. During the meeting, Long told Lichter that:

[E]verything has been taken care of, my union problems have been resolved . . . that we have a contract between the Union and . . . Emgee. But that I should never, ever show it to any of my employees.  
[IO-15 at p. 1876.]

Thereafter, the efforts to unionize Emgee ceased. IO-15 at pp. 1861-1883; IO-10 at pp. 570-571.

**A. Charge Three -- The Merits**

As with Hyman's testimony in connection with Charges One and Two, I also find his testimony regarding the Emgee scheme credible. I make the same finding with respect to Lichter. Like Hyman, Lichter also entered into a cooperation agreement with the government pursuant to which he could benefit only if he provided truthful testimony. IO-15 at pp. 1850-1851. I also find it significant that the jury found Long guilty in relation to the Emgee scheme. Thus, the jury must have believed Hyman and Lichter. In addition, both Lichter's testimony and Hyman's testimony were corroborative of each other.<sup>7</sup>

Long's receipt of \$5,000 from Emgee in return for preventing its unionization by having Local 804 enter into a sham collective bargaining agreement, constituted a breach of Long's fiduciary

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<sup>7</sup> I do not find it material under these circumstances that Hyman recalled receiving \$8,500 from Lichter, while Lichter recalled paying \$20,000. What is relevant is that both men recalled that a substantial sum was paid and received.

duties, violated his oath of office and brought reproach upon the IBT.

One of the primary objectives of the IBT is "to impress upon [its] membership, employers and the public that it is to the advantage of all concerned that workers be organized." IBT Constitution, Article I, Section 2. The IBT is also committed "to safeguard, advance and promote the principle of free collective bargaining . . . ." Id. That Long would prevent the unionization of Emgee for his own personal gain is contrary to the fundamental goals of the IBT. Using one's Union office "for personal financial advantage -- playing both sides of the street -- is a conflict of interest that corrupts and weakens the national labor movement." United States v. Cody, 722 F.2d 1052, 1057 (2d Cir. 1983), cert. denied, 467 U.S. 1226, 104 S.Ct. 2678, 81 L.Ed.2d 873 (1984).

The Investigations Officer also asserts that Long's conduct violated Section 302 of the Labor-Management Relations Act of 1959, 29 U.S.C. §186. Reliance on Section 186 has proved helpful in resolving employer payment cases in the past. I have previously found that Section 186 is best interpreted as a prohibition on the receipt of direct tangible benefits such as cash gifts, by Union representatives from employers. See Investigations Officer v. West and Watson, Decision of the Independent Administrator (February 13, 1992); Investigations Officer v. Wells, Decision of the Independent Administrator (March 17, 1992), aff'd, United States v. IBT, 88

Civ. 4486 (DNE), slip op. (S.D.N.Y. April 7, 1992). Section 186 was clearly violated here.

The payment from Emgee to Long by way Hyman was made "to influence [Long] in respect to . . . his actions, decisions, [and] duties as [an] officer or employee of such labor organization." 29 U.S.C. §186(a)(4). See also, United States v. Pecora, 798 F.2d 614 (3d Cir. 1988) ("It is immaterial . . . whether the purpose of the payoff scheme is to maintain a non-unionized workforce, or to preserve the employer's relationship with a union that he prefers dealing with."). Long's violation of Section 186 serves as an independent basis for finding that he has brought reproach upon the IBT.

Accordingly, I find that the Investigations Officer has also satisfied his just cause burden of proof with respect to Charge Three.

#### **VI. The Penalty To Be Imposed**

Long has committed three acts of wrongdoing which strike at the very heart of the IBT as a labor organization. Long has demonstrated a willingness to play fast-and-loose with the retirement funds of the IBT's rank-and-file in return for a few thousand dollars in his own pocket. He has also demonstrated that for a price, he will stand in the way of the unionization of employers. Such conduct shall not be tolerated and is deserving of the most severe sanction available to me -- lifetime banishment

from the IBT. Accordingly, by virtue of this Decision, Long is permanently barred from the IBT.<sup>8</sup> His resignation shall, therefore, be treated as irrevocable and permanent. Long shall never again be permitted to hold any position, paid or unpaid, in the IBT or any IBT-affiliated entity, nor shall he ever draw any money or compensation therefrom:

#### **VII. Benefits**

Sanctions impacting upon Long's employee benefits (including pension, health and welfare benefits), to the extent they exist, are in order. See Investigations Officer v. Senese, 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 1992 (2d Cir. 1991).

As is always my practice, I provided Long the opportunity to submit a schedule of his benefits as well as a memorandum on the issues raised in imposing sanctions touching upon those benefits. Despite Long's decision to ignore the proceedings before me and not to submit a schedule of benefits or a benefits memorandum, I am still empowered to impose sanctions impacting upon his employee benefits to the extent they exist.

The first category of benefits to address consists of those administered by both IBT-affiliated persons or entities, on the one

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<sup>8</sup> A lifetime suspension would have been appropriate for any one of the three charges standing alone.

hand, and non IBT-affiliated persons and entities on the other. In the past I have characterized such benefits as "Third-Party Plans." If Long is a participant in any Third-Party Plan, I direct that the IBT and any affiliate that may contemplate making payments, not make, or discontinue making, payment of IBT related funds to such Third-Party Plans on Long's behalf. This ruling, however, shall not interfere with Long's right to receive benefits which have already vested in such plans.

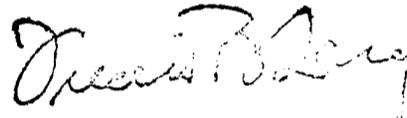
Second, to the extent that the IBT or any IBT affiliated entity contemplates making payments of any benefits to Long which are under their exclusive control (including bonuses and Local controlled severance plans), they are hereby directed not to make such payments.

Finally, it is well settled that Union officials charged with and subsequently found to have committed misconduct may not have their legal fees paid for by the Union. See, e.g., United States v. Local 1804-1, 732 F. Supp. 434, 437 (S.D.N.Y. 1990). Although Long would not appear to have accrued any legal expenses in his defense, as he has neither appeared before me nor submitted any response to the charge against him, Long may not have any legal fees in connection with this charge, if any exist, paid for by the Union.

**VIII. Application To Judge Edelstein**

Given the severity of Long's reproachful conduct, and given Long's refusal to participate in the process, I will not stay this Decision. It is clearly within the best interests of the IBT and Local 804 to prevent Long's possible return to the Union. The penalties imposed herein shall take effect immediately.

Notwithstanding the fact that I have not voluntarily stayed this Decision, I will submit it to the Honorable David N. Edelstein for his review and approval by way of Application in accordance with the procedure set forth in the Consent Order.



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Frederick B. Lacey  
Independent Administrator

Dated: June 11, 1992