
INVESTIGATIONS OFFICER,
Claimant,

vs.

GEORGE VITALE,
Respondent.

SUPPLEMENTAL OPINION OF
THE INDEPENDENT ADMINISTRATOR

On December 18, 1990, I issued a decision in the above captioned matter in which I found that the Investigations Officer had satisfied his just cause burden of proving five¹ charges which had been filed against George Vitale ("Vitale"). As a penalty I imposed the following:

- Charge One - Suspended from union affiliation for five years.
- Charge Two - Suspended from union affiliation for one year, to run concurrently with the five year suspension imposed on Charge One.
- Charges Three and Four - Suspended from union affiliation for one year to run concurrently with the five year suspension on Charge One and the one-year suspension on Charge Two.
- Charge Seven - Suspension from union affiliation for a period of six months, to run concurrently with the five year suspension on Charge One, and also concurrently with the suspensions imposed on Charges Two, Three and Four.

I stayed my decision and the penalties imposed pending Judge Edelstein's review of my decision, which, I indicated, would be submitted to him for consideration by way of Application. I

¹ One of the original seven charges against Vitale, Charge Six, was withdrawn by the Investigations Officer prior to the hearing. On another of the original charges, Charge Five, I ruled that the Investigations Officer had not met his burden.

further recognized that the only matter left to be considered is whether I should impose sanctions impacting upon Vitale's benefits, including pension, health and welfare benefits. I had imposed such sanctions in the matter of Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd., United States v. IBT (Application XVI), slip op. (S.D.N.Y. December 28, 1990). See also Investigations Officer v. Salerno, et. al., Supplemental Decision of the Independent Administrator (January 7, 1991).

Submissions on this issue were received from Vitale, the Investigations Officer, the IBT, and the Government. Having reviewed these submissions, the following determination is rendered regarding Vitale's benefits.

Vitale is a participant and beneficiary in the following plans:

1. Teamsters Affiliates Defined Benefit Pension Plan.
2. Central States Southeast and Southwest Areas Pension Plan.
3. Retirement and Family Protection Plan of the IBT.
4. Group Insurance Plan of the IBT.
5. IBT Travel and Accident Plan.
6. Michigan Teamsters Joint Council #43 Severance Pay Fund.
7. Vacation Pay Plan.

A. The Teamsters Affiliates Defined Benefit Pension Plan; the Central States Southeast and Southwest Areas Pension Plan; the IBT Retirement and Family Protection Plan; and the Michigan Teamsters Joint Council #43 Severance Pay Fund

The Investigations Officer does not challenge Vitale's receipt of the following four benefits: the Teamsters Affiliates Defined Benefit Pension Plan; the Central States Southeast and Southwest Areas Pension Plan; the IBT Retirement and Family Protection Plan; and the Michigan Teamsters Joint Council #43 Severance Pay Fund. This is consistent with my decision in Senese wherein I concluded that while the Consent Order does not preclude the termination of health and welfare benefits, I did not have jurisdiction over benefit plans that are not exclusively controlled by the IBT or an IBT-affiliated entity. Given that such plans involve non-IBT trustees and participants, I found that I did not have jurisdiction over such plans and could not require them to discontinue payment of such benefits to Senese. I also recognized the Supreme Court's prohibition on the preclusion of vested pension benefits. See Guidry v. Sheet Metal Workers National Pension Fund, 110 S. Ct. 680 (1990). However, in order to protect the assets of Senese's Local and prevent that Local's association with a member of organized crime (Senese), I directed the Local and any IBT-affiliated entity that may have contemplated doing so, to discontinue making payment of union funds to any health, welfare, or employee benefit plan on Senese's behalf.

While Vitale was not found to be a member of organized crime, he was found to have: "double-dipped" into his Local Union treasury for payment of an expense already paid by the International; to have attempted to transfer to himself a Local owned Lincoln Town Car in violation of his Local's Bylaws; to have brought reproach upon the IBT by virtue of his two prior criminal convictions; and to have violated his duty as the Secretary-Treasurer of Local 283 when he signed and caused a false LM-2 to be filed in 1987. Given the seriousness of Vitale's offenses, and following the same reasoning as adopted in Senese, I find that union assets may not be squandered on Vitale during his period of suspension. Thus, I direct Local 283, and any other IBT-affiliated entity that may contemplate doing so (including, of course, the IBT itself), to cease making contributions during Vitale's suspension, to the Teamsters Affiliated Defined Benefit Pension Plan; the Central States Southeast and Southwest Areas Pension Plan; the IBT Retirement and Family Protection Plan; and the Michigan Teamsters Joint Council #43 Severance Pay Fund on his behalf.

B. The Group Insurance Plan of the IBT; and the IBT Travel And Accident Plan

Vitale's submission is unclear as to whether the Group Insurance Plan of the IBT and the IBT Travel and Accident Plan require continuing payments or funding from the IBT or another IBT-affiliated entity. Following the same reasoning as above, to the extent these plans do require such further funding, I direct that

the IBT or any other IBT affiliated entity that may contemplate doing so, cease making contributions to these plans during the period of Vitale's suspension. The IBT does not challenge this approach. Memorandum of the IBT With Respect To The Independent Administrator's Authority To Terminate A Member's Pension And Health And Welfare Benefits, at pp. 6-9.

C. Vacation Pay

Vitale describes his right to accrued vacation pay as follows:

Mr. Vitale, as a 30-year employee, is entitled to six weeks's vacation per annum from the Local. He accrues vacation at a rate of 1/12 of his annual entitlement for each month worked into the new vacation year. The 1/12 increment accrued each month becomes earned or vested at the end of the month it is accrued. Mr. Vitale has not taken any of the six weeks of vacation he has earned in 1990. An employee who terminates for any reason is entitled to be paid for unused earned vacation. (An employee must use -- or will lose -- earned vacation by the end of the year following the year in which it was earned.)
[Vitale's submission concerning benefits at p.2]

Vitale is entitled to his accrued 1990 vacation pay, given that he has worked through the year and has not taken any vacation. While I do have the authority to prevent the Local from conferring further benefits upon Vitale, I do not, in this situation, view it as proper to deny Vitale his earned compensation, which, in this instance, takes the form of accrued vacation pay for the year.

The Investigations Officer suggests that "there should be certification from the Local and a statement under oath from Vitale

that he took, as he claims, no 1990 vacation in 1990." So that there is no confusion regarding payment of this accrued vacation allowance, I direct Local 283 and Vitale to cooperate with the Investigations Officer in this regard.

The Investigations Officer further urges that, "the accrued vacation should be used by the Local as a set-off against the monies Vitale embezzled through his FICA scheme. The Local's board has a duty to recoup the embezzled monies." I agree with this approach and order that it be done. The Local is to advise me within ten days hereof that this has been done.

D. Attorney's Fee

Lastly, we have the issue of Vitale's attorneys' fees. The Local cannot pay for Vitale's defense of charges on which he has been found culpable. U.S. v. Local 1804-1, 732 F. Supp. 434, 436 (S.D.N.Y. 1990). The Local may pay for Vitale's legal fees in defending those charges on which he has been exonerated. This is consistent with the approach taken in Morrissey v. Segal, 526 F. 2d 121 (2d Cir. 1975), wherein the United States Court of Appeals for the Second Circuit held that a union could reimburse certain pension fund trustees for defending against charges as to which were eventually dismissed, but could not reimburse the trustees on those charges which they were eventually found liable.

In this matter, seven charges were originally filed against Vitale. One of the charges (Charge Six) was dismissed prior to the

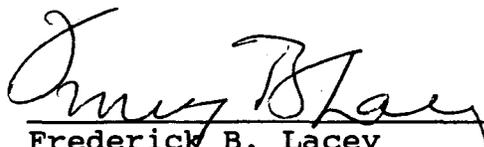
commencement of the action. On another Charge (Charge Five), I found that the Investigations Officer failed to satisfy his just cause burden. Thus, the Local can, if it wishes, pay the reasonable legal costs associated with Vitale's defense of Charges Five and Six.²

To further this end, I ask that Vitale's attorney submit to me within fourteen days a Certification of Services detailing the time devoted to representing Vitale on Charges Five and Six. If Vitale's attorney finds it difficult to segregate the time actually spent defending each charge, the certification should reflect a good faith estimate of the percentage of the total time devoted to defending each charge.

In Charge Two Vitale was charged with attempted embezzlement of a union car in violation of the IBT Constitution and the Local Union By-laws. While I found that the Investigations Officer had failed to prove an embezzlement as contemplated under 29 U.S.C. 501(c), I did find that Vitale's actions constituted an attempted violation of the Local Union By-laws and the IBT Constitution. Vitale now suggests that since "the attempted embezzlement portion of that charge was not proved, Vitale is entitled to seek payment of attorney's fees for his successful defense of that portion of the charge, . . ." Vitale's Submission Concerning Benefits at p.4. Vitale's suggestion is without merit. The fact that I rejected one

² Even though Charge Six was withdrawn, I am assuming that Vitale's attorney devoted some time negotiating with the Investigations Officer regarding the withdrawal of this charge.

theory of culpability advanced by the Investigations Officer on Charge Two is not significant. Simply stated, Vitale was found culpable on Charge Two and thus cannot recoup his attorneys' fees from the Local on that charge.



Frederick B. Lacey
Independent Administrator

Date: February 21, 1991.