

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	88 CIV. 4486 (DNE)
	:	
Plaintiff,	:	APPLICATION CXII BY THE
	:	INDEPENDENT ADMINISTRATOR
	:	UNDER THE CONSENT ORDER
v.	:	DATED MARCH 14, 1989 -
	:	AGREEMENTS BETWEEN THE
INTERNATIONAL BROTHERHOOD	:	INVESTIGATIONS OFFICER AND
OF TEAMSTERS, CHAUFFEURS,	:	BARRY FEINSTEIN
WAREHOUSEMEN AND HELPERS	:	
OF AMERICA, AFL-CIO, et al.	:	
	:	
Defendants.	:	

Application is made by the undersigned as Independent Administrator for ruling by the Honorable David N. Edelstein, United States District Judge for the Southern District of New York, on the Agreement entered into between the Court-appointed Investigations Officer, Charles M. Carberry, on the one hand, and IBT Local 237 President¹, Barry Feinstein ("Feinstein"), on the

¹ Feinstein is also President of IBT Joint Council 16, a Trustee of the Joint Council 16's Pension Fund, a Member of the Policy Committee of the Eastern Conference of Teamsters, a Trustee of the Eastern Conference Pension Fund, and on a leave of absence from his position as Director of the IBT's Public Employees' Trade Division. Feinstein, who was admitted to the Bar of the State of New York in 1961, also serves in a number of public positions, in addition to his Union activities. Feinstein is a member (having been appointed by Governor Mario Cuomo) of the Metropolitan Transportation Authority Board. He is also a member of the Governor's Committee on Fiscal and Economic Priorities, an advisory group to the Governor on financial concerns and options. Feinstein is also a member of the New York City Mayor's Management Advisory Task Force. He also serves as the Chairman of the New York State Public Employee Conference, a lobbying group representing major public employee organizations in New York State. Feinstein is also a

(continued...)

This Agreement seeks to resolve the matter of Investigations Officer v. Barry Feinstein. The Agreement, with a copy of the charges annexed thereto, is submitted herewith.

INTRODUCTION

On September 15, 1992, the Investigations Officer filed four charges against Feinstein. The first charge alleges that Feinstein misappropriated Local's 237's funds by causing the Local to lease him an apartment in New York City and pay expenses in connection with that apartment. The second charge alleges that Feinstein wrongfully secured interest free loans from Local 237 on four occasions. The third charge alleges that Feinstein improperly received an allowance for unreimbursed expenses when, in fact, those expenses were fully reimbursed to him. Lastly, Feinstein was charged with claiming and receiving more money than he was entitled to for accrued vacation pay in 1991.

Having been advised by Feinstein's counsel (Paul J. Curran, Esq.) and the Investigations Officer (Charles M. Carberry, Esq.), that the hearing in this matter would take two days to complete, I scheduled it to be heard on December 15-16, 1992. Just prior to the hearing, counsel advised me that an Agreement had been reached purporting to resolve the four charges against Feinstein.

¹(...continued)

Trustee with the New York City Employees Retirement System. Lastly, Feinstein serves as the Secretary to the Municipal Labor Committee, a group of New York City public employees' union which formulates policies regarding labor-management issues.

sed counsel that I could not approve any Agreement . fair evaluation of the evidence to be presented by both s. I had, up to that point, only reviewed pre-hearing oranda from counsel. The disciplinary hearing went forward on December 15, 1992, and was completed the following day.² At my suggestion, counsel had agreed to forego the traditional form of direct examination of witnesses in favor of introducing testimony by a detailed offer of proof through counsel, which was then adopted as true and accurate, or modified accordingly by each witness. Witnesses were then cross-examined by opposing counsel.

By letter dated January 12, 1993, I notified the Investigations Officer and Feinstein's counsel that I would not approve the Agreement as I found it unacceptable in relation to the alleged wrongdoing.

Subsequently, Feinstein unsuccessfully attempted (through application and motion to Your Honor and the United States Court of Appeals for the Second Circuit) to compel approval of the Agreement, or in the alternative, to enjoin me from continuing the hearing. See United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. January 26, 1993) (denying Feinstein's request for a

² As Your Honor is aware, at a pre-hearing conference before me on December 10, 1992, Feinstein's counsel, Mr. Curran, moved for my disqualification. I denied his motion orally on that same day. On December 11, 1992, Mr. Curran filed an Application with Your Honor requesting my disqualification. That same day Your Honor ruled that Mr. Curran was not entitled to so apply to Your Honor and that he could make his "recusal" motion before Your Honor should he appeal my Decision.

y retraining order and order to show cause); United States
IT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. January 29, 1993)
(denying Feinstein's petition for a stay); United States v. IBT,
93-6026, slip op. (2d Cir. February 4, 1993) (denying Feinstein's
request for a stay and dismissing Feinstein's appeal).

When I contacted the parties to reschedule the hearing, I was
informed that there would be no need to continue the hearing as the
parties had submitted all of their proofs during the preliminary
proceedings. Accordingly, a post-hearing briefing schedule was
set.

Thereafter, the Investigations Officer submitted to me yet
another version of a proposed Settlement Agreement that had been
entered into with Feinstein. For the reasons explained herein, I
have approved this Agreement and respectfully request that Your
Honor do the same.

I. THE AGREEMENT

A. Permanent Resignation

While the original Agreement rejected by me contemplated only
a one-year suspension for Feinstein (during which he could continue
to negotiate certain contracts without pay), the current Agreement
provides (at par. 3(a)) that "upon or before approval of this"
Agreement by Your Honor Feinstein shall "permanently resign from"
his membership with Local 237 and the IBT as well as from the
following positions: President of Local 237; President of IBT Joint

Council 16; Trustee of Joint Council 16 Pension Fund; Member of the Policy Committee of the Eastern Conference of Teamsters; Trustee of the Eastern Conference of Teamsters Pension Fund; and Director of the IBT Public Employees' Trade Division. As set forth in the Agreement (at par. 3(b)) Feinstein "hold[s] no other elected or appointed offices of any kind, paid or unpaid, in the IBT or any of its affiliated entities including Local 237, or with any pension, health and welfare or other benefit funds or other such entities affiliated with the IBT."

B. Benefits

The original Agreement made no provision for benefits. Pursuant to the current Agreement, Feinstein consents to forego any right to any employee benefits except those that have been prepaid and vested, or those that he may continue to maintain with his own funds. In addition, Feinstein is relinquishing any claim or right to receive vacation pay now totalling \$79,204.30.

C. Reimbursement

The original Agreement contemplated that Feinstein would reimburse the Local's general fund \$65,000 by delivering to the Local \$32,500 in cash or check and by executing a \$32,500 Note to be paid on or before January 15, 1995, with interest at the rate of 6% per anum.

The current Agreement calls for Feinstein to pay \$25,000 to the Local's general fund "upon or before approval" of the Agreement by me. Combined with the vacation pay that Feinstein is giving up, the Local will benefit in an amount in excess of \$100,000.

D. Resolutions

The original Agreement required Feinstein to support four significant Resolutions designed to preclude the alleged wrongdoing from ever reoccurring. These Resolutions have been adopted, and according to Feinstein's counsel's March 8, 1993, letter to me, are in full force despite my having authorized their rescission after I had rejected the original Agreement. The Resolutions are summarized as follows:

1. The first Resolution eliminates all involvement by Local 237 with payments for any long-term housing or related expenses for any Local 237 officer. The apartment in question has been given up by the Local and the Local has taken possession of the furnishings. ✓
2. The second Resolution eliminates the practice of allowing participants in Local 237's "vacation bank" to restore accrued vacation pay to the vacation bank once a cash payment thereon has been made. On December 17, 1991, at a meeting of the Local 237 Executive Board, Feinstein presented to the Board and the Board adopted a Resolution in which the Board agreed to take the necessary steps to present this change in practice as an amendment to Local 237's bylaws and affirmatively recommend its adoption by the membership. ✓
3. The third Resolution requires the Local 237 Board to complete an LM-2 form and publish it annually in the Local's newspaper. Included in that publication will be all compensation paid to any officers or employees of Local 237, identified by ✓

individual, including a total for each individual's reimbursed expenses. In addition, Local 237's LM-2 form will include a separate line item for Local 237's contingent liability regarding its practice of allowing its members to bank their accrued vacation pay. As a public employee Union, Local 237 has no LM-2 filing requirements.

4. The final Resolution establishes the policy of Local 237 that any pay raise for any officer of Local 237 must be approved by the Executive Board in accordance with the bylaws by a formal written Board Resolution.

II. APPROVAL

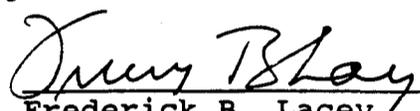
Given Feinstein's permanent resignation, the reimbursement of over \$100,000 in funds, and the Resolutions which have been adopted, I believe the current Agreement adequately addresses the alleged wrongdoing and accordingly I have approved it.³

III. CONCLUSION

It is therefore respectfully requested that Your Honor execute the attached Agreement on the line provided. This will, in effect, serve to have this Agreement "so ordered" by the Court. Thereafter,

³ While the Investigations Officer claims that \$304,821 was spent by the Local on apartment-related expenses, it may be contended that a portion of those expenses benefited the Union by affording Feinstein a place to stay in New York while attending to Union-related matters. While Charge Two alleged an "interest fee loan," the principal of that "loan" was repaid by Feinstein to the Local. As for Charge Three, the Investigations Officer notified me by letter of December 18, 1992, that he "would not have charged Count Three" had he known at the time that Feinstein had in fact reported he reimbursed expense allowance as income on his tax returns. Charge Four alleges a \$13,000 benefit to Feinstein. This is more than compensated for by the "pay-back" in excess of \$100,000.

it is respectfully requested that a member of Your Honor's staff
file the fully executed original Agreement with the Clerk.



Frederick B. Lacey
Independent Administrator

Dated: April 8, 1993

(b) I hold no other elected or appointed offices of any kind, paid or unpaid, in the IBT or any of its affiliated entities including Local 237, or with any pension, health and welfare or other benefit funds or other such entities affiliated with the IBT (collectively "IBT entities").

(c) I have entered into this Agreement on the understanding that the Investigations Officer will not pursue the attached Charges against me. This Agreement does not constitute either an admission or denial of the Charges.

(d) As part of the settlement of the Charges, I agree to permanently resign and retire from all of the positions referred to in paragraph 3(a) above, upon or before approval of this agreement by the Hon. David N. Edelstein, United States District Judge. ✓

(e) Upon my resignation and retirement, I will receive no benefits, gratuities, or gifts of any kind from the Local or any IBT entity except I may claim my pension or health and welfare and annuity benefits that are (i) prepaid and vested as of the effective date of my resignation, or (ii) that I may pay for from my own money. Upon my resignation and retirement no further contributions may be made on my behalf by Local 237 or by any IBT entity to any pension, health and welfare, annuity, job training, trust fund or other benefit plan. In settlement of the claims made in the Charges filed in connection with my activities as President of Local 237, I expressly waive, for all time, any claim or right to accrued vacation pay, now totalling \$79,204.30. }

(f) After the effective date of my resignation and retirement as set forth in paragraph 3(d) above, I will not

hold, seek, or accept election or appointment to any office, paid or unpaid, in any IBT entity nor will I hold, seek, or accept any employment, consulting or other similar relationship of any kind with any IBT entity. After the effective date of my resignation and retirement, I will never again seek or accept membership in the IBT or any IBT entity.

In addition to waiving, as set forth in paragraph 3(e) above, any claim to accrued vacation pay which now totals \$79,204.30, I also agree to pay in cash or by check in settlement of the claims made in the Charges an additional \$25,000 to the general fund of Local 237 by delivering said amount to Local 237 upon or before approval of this agreement by the Independent Administrator.

4. I agree that this Agreement will be submitted to the Independent Administrator for his review and approval. If approved by the Independent Administrator, I understand he will submit it to the District Court for that Court to enter it as an Order and only upon entry of such Order will this Agreement become effective and binding upon the parties hereto.

5. The Investigations Officer makes no representation as to any action that may be taken by the Independent Administrator or the Court with respect to this Agreement. In the event that either the Court or the Independent Administrator does not approve this Agreement, I may elect to have the Charges determined and to contest, if I decide to do so, any determination reached by the Independent Administrator or the District Court.

6. This Agreement is not effective until the appropriate Order is entered by the District Court.

[Handwritten signature]
BARRY FEINSTEIN

Sworn to before me this
30 day of March, 1993

[Handwritten signature]
NOTARY PUBLIC

ANN T. RIBAUDO
Notary Public, State of New York
No. 41-4977806
Qualified in Queens County
Certificate Filed in New York County
Commission Expires 2-19-95

Agreed:

[Handwritten signature]
CHARLES M. CARBERRY
Investigations Officer

March 31, 1993

Approved:

[Handwritten signature]
FREDERICK B. LACEY
Independent Administrator

April 8, 1993

SO ORDERED

DAVID N. EDELSTEIN
United States District Judge

April __, 1993

by conducting yourself in a manner to bring reproach upon the IBT and by violating your oath to the IBT;

TO WIT: beginning on or about 1984 and continuing through 1991, you caused Local 237 to pay your personal expenses including rent on an apartment in your name at 300 East 57 Street totaling \$166,131; cable television bill for that apartment from 1984 through 1991 totaling \$10,056; the salary for an employee to clean the apartment from 1984 through 1991 totaling \$56,157; gratuities for the building and garage staff totaling \$1,200; furnishings and related expenses in an amount of, at least, \$59,757 and use of a garage from 1988 through 1991 of \$11,520.

CHARGE TWO

You further violated Articles II, § 2(a) and XIX, § 7(b) of the IBT Constitution by acting in a manner to bring reproach upon the IBT, by breaching your fiduciary duties to the members and by illegally receiving interest free loans from Local 237;

TO WIT:

- A. From July 1987 to December 1987, you borrowed \$24,300.
- B. From January 1, 1988 to December 1988, you borrowed \$25,041.
- C. From May 1990 to December 1990, you borrowed \$30,000.

D. From January 1991 until December 1991, you borrowed \$20,000.

CHARGE THREE

You further violated Articles II, § 2(a) and XIX, § 7(b) of the IBT Constitution by embezzling and converting to your own use the money and property of Local 237, by breaching your fiduciary duties to the Local's members, by conducting yourself in a manner to bring reproach upon the IBT and by violating your oath to the IBT;

TO WIT: From 1985 through 1991 you received an allowance of \$73,000 for unreimbursed expenses when any expenses you submitted were fully reimbursed.

CHARGE FOUR

You further violated Articles II, § 2(a) and XIX, § 7(b) of the IBT Constitution by embezzling and converting to your own use the money and property of Local 237, by breaching your fiduciary duties to the Local's members, by conducting yourself in a manner to bring reproach upon the IBT and by violating your oath to the IBT, to wit:

In 1991 you were paid \$148,060 by the local for 55 weeks of vacation that you claimed you never used and instead accrued. You have claimed that you previously were paid by the local \$79,341.10 for 34.46 weeks of this alleged unused vacation in 1987, 1988 and 1990. Again you also claim to have

repurchased this vacation from the local in 1987, 1988 and 1990 for the same price that the local paid you. You improperly then caused the local in 1991 to buy it back from you for \$92,766.32 which was \$13,425.22 more than the local had originally paid you for it.

Dated: New York, New York
September 15, 1992

Very truly yours,

Charles M. Carberry
Charles M. Carberry
Investigations Officer

cc.: Frederick B. Lacey, Esq.
Steven C. Bennett, Esq.
Richard N. Gilberg, Esq.
Andrew Fisher, Esq.
Robert Baptiste, Esq.

9182C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

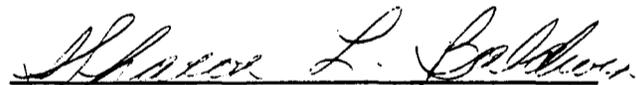
UNITED STATES OF AMERICA,	:	88 CIV. 4486 (DNE)
	:	
Plaintiff,	:	
	:	
v.	:	AFFIDAVIT OF SERVICE
	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN:	:	
AND HELPERS OF AMERICA, AFL-CIO,	:	
et al.	:	
	:	
Defendants.	:	

Sharon L. Baldwin hereby deposes and says:

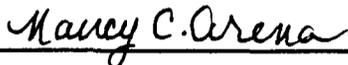
1. I am a secretary in the office of Frederick B. Lacey, Independent Administrator. On April 8, 1993, I caused to be delivered via UPS NEXT DAY AIR to the Honorable David N. Edelstein one executed original and two copies of Application CXII and one executed original and two copies of the Agreement between the Investigations Officer and Barry Feinstein.

2. I also caused a copy of Application CXII along with the enclosures to be delivered via UPS NEXT DAY AIR to:

Richard N. Gilberg, Esq.
Steven C. Bennett, AUSA
Charles M. Carberry, Esq.
Paul J. Curran, Esq.


Sharon L. Baldwin

Sworn to and subscribed
before me this 8th day
of April, 1993



NANCY C. ARENA
A Notary Public of New Jersey
My Commission Expires May 30, 1995