

TO: The Executive Board, Local 2727
FROM: Members of the Independent Review Board
RE: Proposed Charges against William A. Ferchak, former
Secretary Treasurer of Local 2727
DATE: October 5, 1993

An investigation was conducted into the activities of William A. Ferchak in connection with allegations of his embezzlement and conversion of funds of Local 2727 while he was its Secretary Treasurer. As a result of that investigation, the IRB has forwarded to the Executive Board of Local 2727 proposed charges as outlined below.

INVESTIGATION

Local 2727, located in Louisville, Kentucky, represents employees in the aircraft mechanics and maintenance field throughout the United States. Local 2727 is the successor to Local 608. Local 608 had been placed in Trusteeship by the IBT in 1988. William Genoese was appointed as Trustee and Ferchak was appointed as Assistant Trustee of Local 608. Local 608 went out of Trusteeship in September 1990 when Local 2727 was issued a revised charter. (Ex. 1 & 2) Ferchak was nominated for the position of Secretary Treasurer and Principal Officer of the newly revised Local 2727. He was elected and assumed office on November 1, 1990. (Ex. 3 & 4)

Ferchak served as the Secretary Treasurer of Local 2727 from November 1, 1990 until December 1992. (Ex. 5 & 6)

The Chief Investigator's Office conducted a books and records examination at Local 2727 on July 22 and 23, 1993. The examination of the records of Local 2727 determined that the local paid for Ferchak's expenses at the Holiday Inn, Louisville, Kentucky. His expenses for lodging and meals at this hotel were billed directly to Local 2727 by the hotel. The records of the local reflected that the local paid these Holiday Inn bills. Ferchak as Secretary Treasurer and the local's President Thomas Dobbins were the signatories on most of these checks. (Ex 7, 8 & 9) Ferchak kept his home residence in Maryland while he remained Secretary Treasurer at local 2727. Ferchak did not reimburse the Local for his expenses.

Listed below are the totals for the years 1991, 1992 and 1993 as reflected in the books and records of the local.

<u>Year</u>	<u>Lodging</u>	<u>Meals</u>
1991	\$ 4,638.77	\$ 1,836.70
1992	5,376.12	1,717.98
1993	<u>607.43</u>	<u>268.24</u>
	\$ 10,622.32	\$ 3,822.92

There were no Executive Board minutes at Local 2727 when the examination was conducted by this office in July 1993. The newly elected officers reported the absence of the minutes when they

assumed office and their lack of knowledge as to the cause thereof.

Ferchak presently holds a withdrawal card from Local 2727 and is receiving an IBT pension. His withdrawal card was issued by Local 2727 on August 18, 1993. (Ex. 10) The IBT Constitution at Article XIX, Section 1 (g) provides for the continuing jurisdiction for filing charges after issuance of a withdrawal card.

The records of Local 2727 reflected a series of resolutions, adopted by the Executive Board on April 11, 1991. There were no accompanying Executive Board minutes for these resolutions. These resolutions indicate that Ferchak while an officer at Local 2727 was also an employee of IBT Local 732 in New York. He was employed by Local 732 as a Business Agent. His time, salary, benefits and expenses incurred were to be apportioned between the two locals, according to the resolutions. (Ex. 11) These resolutions do not reflect any authorization to pay Ferchak's living expenses in Louisville, Kentucky. Moreover, such an authorization would be beyond the power of the local board. See, Morrisey v Curran, 650 F. 2d 1267, 1274 (2d Cir. 1981)

William Evans an International Auditor visited the local in July 1991 and issued a report. (Ex. 12) Evans reviewed the hotel bills and indicated in his report that the authority for the hotel expenditures was questionable.

THE APPLICABLE LAW

The IBT Constitution forbids embezzlement or conversion of union funds. See Ex. 13 at Article XIX, Section 7(b) (3). The evidence reflects that Ferchak embezzled \$14,445.24 from the local in connection with personal expenses incurred in the rental of a hotel room and board expenses.

For a charge of embezzlement to be proven it must be established that Ferchak acted with fraudulent intent to deprive the local of its funds. See, United States v Welch, 728 F. 2d 1113, 118 (8th Cir 1989) ("under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds."); Investigations Officer v Caldwell, Ad Dec at 7 (February 9, 1993) (authorizing improper payment of officers' legal fees constituted embezzlement); Investigations Officer v Vitale, Ad Dec at 9-10 (December 18, 1990), aff'd United States v IBT, 775 F. Supp. 90 (SDNY 1991), aff'd in relevant part, 948 F. 2d 1278 (2d Cir. 1991). Intent can be inferred from circumstantial evidence. See Investigations Officer v Caldwell, Ad Dec at 7.

"Authorization from and benefit to the union are the controlling lodestars to determine whether a defendant acted with the fraudulent intent to deprive the union of its money." United States v Butler, 954 F. 2d 114, 118 (2d Cir, 1992). Here the record demonstrates that the board and lodging expenses benefitted only Ferchak, not the local. The hotel room was maintained at members' expense based on Ferchak's personal

decision to maintain his primary residence far from the local's office and continue his second job in New York. This type of embezzlement has been addressed previously. In Investigations Officer v Nunes, Ad. Dec. (September 6, 1991), aff'd, United States v IBT, 88 Civ. 4486 (DNE) (SDNY, November 8, 1991) aff'd 91-6300, slip op. (2d Cir. March 27, 1992) a local official and International Representative who lived in Oregon and worked in California charged the IBT for per diem expenses for his time in California because he claimed he was away from home. The Independent Administrator found this taking of union funds to subsidize a decision to dwell too far to commute to be an embezzlement. The opinion noted "union funds cannot be wasted to cater to the personal whims of Union officials when they choose to maintain homes far away from their official bases of operations." Id. at 6. Here Ferchak who was a local union officer whose offices were located in Louisville, Kentucky chose to maintain his residence in Maryland. (Ex. 14) It was never revealed to the members that Ferchak was not going to be a full-time employee of Local 2727 or that they would subsidize his housing in Kentucky.

Ferchak's hotel room and related expenditures in Louisville were purely personal benefits. The expenditures in connection with the hotel room were for Ferchak's use. See, Ray v. Young, 753 F. 2d 386, 390 (St Cir. 1985) ("union officer benefits... from the expenditure of union funds to purchase things for his personal use....") The hotel room provided Ferchak a home in

Kentucky for his personal benefit. See, United States v. Ottley, 509 F.2d. 667, 671-2 (2d Cir. 1975) ("some expenditures are so clearly personal in nature that such a claim [of union benefit] is scarcely credible.")

Ferchak's violation of fiduciary duty is additional evidence of Ferchak's fraudulent intent. See, Investigations Officer v. Morris, Ad Dec at 23 (May 22, 1991). Ferchak breached his fiduciary duties to the local's members by spending local money for his personal benefit. See, United States v. Local 560 IBT, 780 F.2d 267, 284 (3d Cir. 1985), cert denied, 106 S. Ct. 2247 (1986) (union officials are fiduciaries); Morrisey v Curran, 650 F.2d 1267, 1274 (2d Cir. 1981) (union official breaches fiduciary duty when funds are spent for his benefit and such expenditures are manifestly unreasonable as a local officer). Ferchak had a duty to hold the local's money and property solely for the benefit of the organization. By causing the local to spend money for his benefit, he violated his fiduciary duty. See, Farrington v. Benjamin, 468 F. Supp. 343, 350-51 (E.D. Mich. 1979)

PROPOSED CHARGES

It is recommended that the following proposed charges be filed against William A. Ferchak. While an officer of Local 2727 you breached your fiduciary duties to the members, embezzled and converted union funds to your own use and brought reproach upon the IBT in violation of Article II, Section 2 (a) and Article XIX, Section 7(b) (1), (2) and (3) of the IBT Constitution by

engaging in a pattern of financial wrongdoing, to wit:

While serving as Secretary Treasurer of Local 2727 from November 1990 to December 1992 you caused your personal lodging and meals expenses to be paid by the local in the amount of \$14,445.24.

EXHIBITS TO IRB REPORT CONCERNING LOCAL 2727

- Ex. 1 Memo from Robert C. Downing to Debbie Medeiros dated October-5-90.
- Ex. 2 Memo from Gary S. Witlen to Weldon Mathis, General Sec/Treas dated October-30-90.
- Ex. 3 L 2727 LM-2 for the time period of November-1-90 thru December-31-90.
- Ex. 4 Bylaws of Local 2727
- Ex. 5 L2727 LM-2 for 1991.
- Ex. 6 L2727 LM-2 for 1992.
- Ex. 7 1991 Lodging and Meal Expenses incurred for William A. Ferchak.
- Ex. 8 1992 Lodging and Meal Expenses incurred for William A. Ferchak.
- Ex. 9 Jan 1993 Lodging and Meal Expenses incurred for William A. Ferchak.
- Ex. 10 Letter from William J. Rodgers to the Chief Investigator's Office dated September-2-93. Enclosed with this letter are a Withdrawal Card and Teamsters Affiliates Pension Fund Check for William A. Ferchak.
- Ex. 11 Resolutions adopted by the Executive Board on April-11-91.
- Ex. 12 International Auditor's report dated July-12-91.
- Ex. 13 A copy of the IBT Constitution Article XIX, Section 7 (B)(3) Violation.
- Ex. 14 Sworn Examination of William A. Ferchak dated September 17, 1992.