INVESTIGATIONS OFFICER, Claimant, v. DAVID L. REARDON, Respondent.	DECISION OF THE INDEPENDENT ADMINISTRATOR

The Investigations Officer charged David L. Reardon ("Reardon"), Secretary-Treasurer of International Brotherhood of Teamsters ("IBT") Local 563 in Appleton, Wisconsin:

> [W]ith bringing reproach upon the [IBT] by giving false testimony under oath in the criminal trial of Local 563's then Secretary-Treasurer, Dennis Vandenbergen ["Vandenbergen"], who was convicted in 1990 in Federal Court of using Local 563 money to make illegal campaign contributions.

Reardon was also charged with bringing reproach upon the IBT by embezzling funds from his Local in connection with the illegal campaign contribution scheme.

A hearing was held before me and post-hearing submissions were received.[1] Having reviewed the evidence and the submissions of

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[1] In December of 1991 an Agreement was entered into between Reardon and the Investigations Officer designed to resolve the charges. The Agreement contemplated a three-month suspension from the IBT for Reardon. On January 7, 1992, I wrote to the Investigations Officer and Mr. Reardon's attorney that:

> While I am obviously in no position to determine if Mr. Reardon is guilty of the charges, it is my opinion that . . . this settlement is not likely to be approved

(continued...)

the parties, I find that the Investigations Officer has failed to meet his just cause burden of proving by a preponderance of the evidence Charge I (giving false testimony), but has met his burden on Charge II (embezzlement). 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 disciplinary hearings by a fair preponderance of the evidence.").

I. The IBT Constitutional Provisions

The charges against Reardon implicate two provisions of the IBT Constitution. First, Article XIX, Section 6(b), which sets forth a non-exhaustive list of grounds for bringing disciplinary charges is implicated. That list includes:

> (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 International Union.

Second, Article II, Section 2(a), is also implicated. This section, which contains the oath of office mentioned in Article XIX, Section 6(b)(2), mandates that all members shall conduct themselves "at all times in such a manner as not to bring reproach upon the Union . . .."

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[1](...continued)
by [the Honorable David N. Edelstein, U.S.D.J., S.D.N.Y.]

> Accordingly, I am returning the Agreement to you . . . and I will set the matter down for a hearing . . ..

II. Background

In 1990, Vandenbergen, then Secretary-Treasurer of Local 563, was charged in a one-count indictment, brought in the United States District Court for the Eastern District of Wisconsin, alleging conversion of Union funds to the benefit of a local political campaign on behalf of a mayoral hopeful Dorothy Johnson in violation of, inter alia, 18 U.S.C. 501(c). IO Ex. 3.[2] Following a jury trial, Vandenbergen was found guilty. IO Ex. 6. He was subsequently sentenced to a six-month term of imprisonment, followed by six months "in a community confinement center pursuant to work release." IO Ex. 8. Vandenbergen was also ordered to pay a $5,000 fine and restitution to Local 563 in the amount of $2,100. Id. Lastly, pursuant to 29 U.S.C. §504(a), Vandenbergen was barred from participating in Union activities for a period of five years. Id.

The relevant facts underlying the Vandenbergen scheme are set forth in the government's memorandum, IO Ex. 5, submitted in connection with Vandenbergen's sentencing. Portions of that memorandum are reprinted below:

> I. Review of Factual Basis For Conviction.
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> In the spring of 1987, the defendant [Vandenbergen] publicly endorsed his friend, Dee Dyer, for judge in Outagamie County Circuit Court . . .. He wrote a letter to his union membership asking for their support . . .. He pointed out that union funds could not be used to support political candidates, but asked the membership to

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[2] The Investigations Officer's exhibits are referred to as "IO Ex.," followed by the exhibit number, and page reference if appropriate.

contribute with their own funds . . .. With the exception of the defendant and his best friend David Reardon, no executive board member contributed any money.

The next year, the defendant publicly endorsed Appleton Mayor Dorothy Johnson for reelection . . .. After she finished second in the primary and after her opponent lead the city council in rejecting Teamster contracts, the defendant became a member of the Mayor's reelection committee. Once again, he wrote the Teamster members asking for their support . . .. This time, he did not ask for financial contributions.

Instead, the defendant implemented a money-laundering scheme to use union funds for campaign contributions. At the March 9, 1988, monthly executive board meeting, which included a special session on upcoming elections . . ., the defendant had the board members vote themselves "bonuses." The bonuses were then to be used for individual campaign contributions.

The amount of each bonus was $300. The amount of each campaign contribution was $300.

The seven executive board members had never before voted themselves a "bonus." With the exception of the contributions of the defendant and Reardon to Dee Dyer, none of the board members had ever made a campaign contribution in excess of $100.

After the March 9 meeting, the defendant wrote to other labor representatives, soliciting support for Johnson and pointing out that members of the Teamsters had "committed" to put money towards the campaign.

The defendant stated that the bonuses were a legitimate reward for extra work performed during the previous year on the new union hall project, a golf outing, and a parade. But the following facts undermined the credibility of this statement.

1. The bulk of the work on the new union hall was overseen by an eight-member "building committee," four of whom were executive board members. Only the four executive board members on the committee received bonuses.

2. In December of 1987, just three months before the supposed need for bonuses, the board members were given pay increases.

3. The golf outing and parade were held every year and board members were compensated for any lost work time while at these events.

4. The board members were paid monthly salaries based on an average of 12 hours a month work -- approximately $150 a month. But the two monthly meetings constituting the board work lasted only an average of four hours a month.

5. Board member Peter James Ready missed six of twelve executive board meetings before the bonus was voted upon; Richard Knorr missed four of nine general membership meetings in the year prior (no meetings were held during three summer months); Floyd Wadel missed three of the nine meetings. All still received the full monthly pay.

When dictating the minutes of the March 9 executive board meeting to secretary Patricia Haferbecker, the defendant admitted that the bonuses were a sham and were for the purpose of circumventing state election laws. He said the board members were going to use the bonuses for campaign contributions to Dorothy Johnson. Prior to the defendant's disclosure, Haferbecker did not know that the union could not directly contribute to the campaign.

The defendant later told secretary Doris Schwark not to mail the bonus checks to the board members. (The usual method of payment to board members was to type the name and address of the recipient on the check and place the check in an envelope with a "window" showing the name and address.) Schwark was told that each board member would be coming to the union hall to exchange a campaign contribution check for a bonus check. She was not to give out the bonus check until she received a contribution check.

Since the bonus checks were to be a part of a hand exchange, instead of mailed, they contained no addresses.

The bonus checks were dated April 1, 1988, but typed and signed March 31, 1988. Board members George Evers and Gary Timm came to the union hall on the 31st to exchange checks . . .. Also on the 31st, the defendant took the bonus checks for Board members Richard Knorr and Peter James Ready and exchanged them for contribution checks . . .. The defendant then took these four checks and his own and hand delivered them to the weekly Johnson campaign strategy meeting, held the evening of the 31st.

The five checks were deposited together by the campaign on April 1. . ..

Board members Floyd Wadel and David Reardon exchanged[3] their checks the week of April 4, 1988 . . .. On April 7, these checks were hand delivered to the campaign committee via messenger . . .. The checks were deposited together April 8 . . ..

The mayor was reelected April 5.

On April 19, the campaign committee treasurer, Jeffry Knezel, sent the defendant a letter, thanking him for the donations from the Teamsters. . . On April 20, the city council approved the Teamster contracts. On April 21, the defendant solicited, and later received, a PAC contribution from the International Teamsters PAC fund. . . In soliciting the PAC contribution, the defendant said the Mayor's reelection saved the union at least $24,000 in binding arbitration costs.

II. Statements and Testimony of Defendant and Other Board Members

The defendant and the six other board members all denied that there was a plan to circumvent state election laws. Each claimed to have acted individually. It is the position of the government that these statements and testimony were false. Besides the evidence reviewed above, the government points to the following particulars.

1. The defendant has repeatedly stated that the idea of using the bonuses for contributions did not arise until his argument with Pat Haferbecker a week and one-half after the March 9 board meeting. But Ready and Knorr told the grand jury that using the bonuses for contributions were all a part of the election discussions on March 9. Also, in a letter written to labor leaders regarding the March 9 meeting, the defendant said that members of the union had "committed" financial resources for the mayor.

2. The defendant told agents May 8, 1990, that only George Evers brought his check to the union hall. But it became undisputed at trial . . ., that Timm and Wadel also had brought their contributions to the union.

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[3] The characterization that Reardon "exchanged" his bonus check is not technically accurate. See discussion supra, at pp. 16-17.

> 3. The defendant told agents and testified at trial that he did not keep track of what the others did with their bonus checks. He and the other board members also denied any exchange of checks. But the physical evidence alone . . ., establishes the exchange. The bonus checks simply could not have been mailed to the board members since the checks contained no addresses.
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> 4. David Reardon told agents and later testified in great detail regarding events at the special election meeting in Appleton on March 9, 1988. He stressed that no one discussed using the bonuses for contributions. But Reardon was in Arizona on March 9, 1988.
> [IO Ex. 5 (emphasis supplied) (citations to government's trial exhibits omitted).]

As touched upon in the government's memorandum, at Vandenbergen's trial Reardon testified on direct examination that although he arrived late, he was present at the March 9, 1988, meeting when the $300 "bonus checks" were discussed and approved. As the government revealed on cross-examination, however, Reardon was not at the March 9 meeting at all, but rather was in Arizona on Union business.

The relevant portions of Reardon's direct testimony at the Vandenbergen trial follow:

> A. I was in an organizing campaign that evening and came late to the board meeting.
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> Q. Do you know what time?
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> A. Oh, eight-thirty to nine o'clock, in that area.
>
> Q. Now, there was some discussion that you became aware . . . at the board meeting relative to a bonus, is that correct?
>
> A. Yes.
>
> Q. Were you present for that discussion? I mean, were you present when the bonus was discussed?
>
> A. No.

Q. How did you become aware of the fact that such activity had occurred?

A. When I arrived at the executive board meeting late.

Q. And how did you find out about it, do you remember?

A. I don't recall exactly who, but one of the executive board officers told me that I was going to be receiving a $300 bonus.

Q. Do you recall why or anything of that nature?

A. I asked why and he said for all the additional time that the executive board had spent.

Q. And did you make any response?

A. I said, thank you.
[IO Ex. 4B at pp. 222-223.]

On cross-examination, the following exchange developed:

Q. Now, has everything you told us the truth today?

A. Absolutely.

Q. You wouldn't make anything up just to help Mr. Vandenbergen, would you?

A. No, I would not.

Q. Sir, let me show you Government Exhibit 41 and could you explain to me how come you put in for vouchers for being in Phoenix on March 9th? Are those records that the government seized pursuant to its subpoena showing that you were in Phoenix, Arizona, or Scottsdale, Arizona, on March 9th, 1988?

A. It appears that on March 7th, Monday, there was an airfare and on March 13th.

Q. Didn't you fly to Phoenix?

A. Have I been in Phoenix?

Q. Weren't you in Phoenix on March 9th, 1988, according to that record?

A. Yes.

Q. So everything you just told us wasn't the truth, right?

A. No. I told you the way that I recalled it.

Q. And you recalled wrongly, correct? I mean do you remember now being in Phoenix on March 9th and not at this meeting?

A. No.

Q. So if I show you the hotel bill and some other bills that you ran up while you were in Phoenix, that would surprise you?

A. It surprises me to the fact that I'm trying to recall something that happened two years ago. I told you to the best of my knowledge what I recalled.

Q. Let me show you Government Exhibit 42, which is your charge plate results that were also a business record from the union. It shows you billed a dinner in Arizona on March 9th, didn't you?

A. Yes.

Q. So you really weren't at that meeting with labor on March 9th, you were in Arizona, right?

A. Well, I'm in lots of meetings; and if I misconstrued one of the meetings, I apologize. To the best of my recollection I told you what I know the truth is.

Q. You come down here on a very important proceeding to tell us what happened on March 9th; and it turns out you were in Phoenix on March 9th, isn't that the truth?

A. Well, if I made an error two years later, then I apologize.

Q. Do you recall being in Phoenix on March 9th?

A. No.

Q. Do you have any reason to question the veracity of these records, Government Exhibits 41 and 42?

> A. I was sent to an organizing seminar in Arizona. I honestly don't recall what dates. From looking at this, I would have to agree with you that I was there from the 7th to the 13th. In that case then I'm off by a few days, and I apologize for being off. The truth is still the truth.
>
> Q. How can the truth be that you were at a meeting on March 9th when you were in Arizona?
>
> A. You're trying to ask me to recall over two years ago. . .
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> [IO Ex. 4B at pp. 246-248.]

When Reardon appeared before the Investigations Officer for his in-person sworn examination, he acknowledged that he was in Arizona during the March 9, 1988, Executive Board meeting and that during the Vandenbergen trial there was "a certain degree of confusion [in his] mind about that." IO Ex. 2 at p. 81. During the hearing before me, Reardon also confirmed that he was in Arizona during the meeting and that his recollection was skewed during the Vandenbergen trial. T81-1 to 2[4] ("I never put the two dates together."); T83-2 to 20 ("At that point, I was relying on my memory."); T77-13 to 23 ("I assumed I must have come late, because I have come late, on occasion. I thought it must have happened to me prior to me getting there.").

III. The False Testimony Charge

There is no question that at Vandenbergen's trial Reardon testified on direct examination that he was present at the March 9,

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[4] All transcript references are to the March 9, 1992, transcript of the hearing before me. The first reference is to the page number and the second reference is to the line numbers. In this case "T81-1 to 2" refers to page 81, lines 1 through 2.

1988, Executive Board meeting. There is also no question that that testimony was not the truth because Reardon was in Arizona on March 9, 1988. Given the circumstances here, however, this is not enough to sustain a finding that Reardon brought reproach upon the IBT by giving false testimony during the Vandenbergen trial.

In resolving this matter, the federal perjury statute, and the case law developed thereunder, offer some guidance. 18 U.S.C. §1621 provides that one is guilty of perjury if one "willfully and contrary to [one's] oath states or subscribes any material matter which he does not believe to be true . . .." See also, 18 U.S.C. §1623. As stated in Dale v. Bartels, 552 F. Supp. 1253, 1263 (S.D.N.Y. 1982), aff'd in part and rev'd in part, 732 F.2d 278 (2d Cir. 1984):

> Perjury requires a mens rea . . .. Mistaken conclusions, or unjustified inferences testified to negligently, or even recklessly, are not a crime.

With the background developed here, I cannot find that Reardon "willfully" gave false testimony regarding his attendance at the March 9 meeting. Rather, I find that at the Vandenbergen trial Reardon testified "negligently, or even recklessly," believing, albeit mistakenly, that he was at the March 9 meeting. I make this finding with the following thought foremost in mind -- the truth would have served Reardon better.

Reardon's testimony that he attended the March 9 meeting was consistent with a statement he gave to the government prosecutors prior to the Vandenbergen trial at a time when he himself was also a target of the government's investigation. T67-17 to T71-9.

Certainly, if there was any way for Reardon to distance himself from the March 9 meeting by placing himself thousands of miles away from the meeting in another state, it would seem that he would have seized the opportunity to do so. In addition, it would seem that at trial Vandenbergen's attorney, who was also representing Reardon when he was a target, T54-16 to 18, would have verified Reardon's March 9 whereabouts before putting him on the stand to testify about his knowledge of the March 9 meeting.

Simply stated, it served no one's interest for Reardon to lie at the Vandenbergen trial. By testifying that he was present at the March 9 meeting, Reardon prejudiced himself by linking himself to the wrongdoing. In addition, as the Investigations Officer charge proves to be the case, Reardon opened himself up to an allegation of perjury. Vandenbergen certainly did not benefit by Reardon's testimony.[5] In fact Vandenbergen's credibility was damaged in the jury's mind because his witness, Reardon, appeared to be a liar once his actual whereabouts were disclosed. There could have been no question in anyone's mind, if indeed there was a willful intent to lie, but that the government would reveal Reardon's actual whereabouts to the jury. During its

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[5] Reardon himself acknowledged this at the hearing before me:

> Q. How in the world could it have helped Dennis Vandenbergen's case, in your mind, even if what you testified to as being accurate had happened?
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> A. It would have been better if I would have been in Arizona. It wouldn't. It would have been better if I had been in Arizona.

[T78-20 to 25].

investigation, the government seized the Local's records, including those travel records showing Reardon in Arizona on March 9. T72-8 to T73-1.

For these reasons, it would defy logic to find that Reardon willfully lied at Vandenbergen's criminal trial. Thus, the Investigations Officer's first charge against Reardon must fall.

IV. The Embezzlement Charge

At the heart of the Investigations Officer's second charge is the allegation that Reardon embezzled Local 563 funds by participating in Vandenbergen's "scheme to funnel illegal campaign contributions from the Local's funds totalling $2,100 to the Committee to Re-Elect Appleton Wisconsin Mayor Dorothy Johnson."

That there was such a scheme cannot be disputed given the jury's guilty verdict in Vandenbergen's criminal trial. In this connection, the comments of Judge J. P. Stadtmueller at Vandenbergen's sentencing are revealing:

> Mr. Dennis H. Vandenbergen, on October 25th of last year you were found and adjudged guilty following a jury trial as to a single-count indictment charging you with conversion of union funds to the benefit of a local political campaign in violation of Title 29 of the U.S. Code, Section 501(c), and Title 18 of the U.S. Code, Section 2.
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> * * *
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> I think, suffice it to say, in light of the jury's verdict, that there is no question but that the matter of your guilt or innocence in this case was really driven by the factual underpinnings of the case as opposed to the matter of how either the government or counsel on your behalf construed the application of section 501(c) to the underlying facts in this case.

Implicit, I believe, in the jury's verdict is an absolute rejection of your view and the view of your fellow board members that those $300 checks that you received in March and early April of 1988 constituted bonuses. Rather, the jury took the broad view going all the way back to your prior involvement on behalf of a local candidate, albeit a judicial candidate as opposed to a mayoral candidate, in which you specifically drew to your membership's attention the fact that the union as such could not make a direct contribution to the candidacy. And the candidate, of course, was Dee Dyer who was running for judge in 1987.

However, there are a number of facts, and I'm not going to take the time this afternoon to go into all of them because the trial record stands on its own foundation, but the reality is when Mayor Johnson began to run into a problem after her coming in second in the primary to a candidate who apparently was significantly opposed to your union's efforts with regard to negotiations and contracts and the like, that the union began to take a more active role in Mayor Johnson's reelection, including your serving as a member of her campaign team for a lack of a better description.

The record at trial more than amply demonstrated that you were solidly behind Mrs. Johnson in her reelection effort, and that is evident by the correspondence, by the support, by your endeavors to rally the membership behind her candidacy.

But unlike the early endeavor with Dee Dyer's campaign, there wasn't any solicitation directly in your communications with your membership for campaign funds, it rather sought support. Now, I suppose in many minds' eye that that would be viewed as an indirect solicitation for funds. But there was really no mention made per se as was unlike the case with the Dyer campaign seeking solicitation of funds per se from the membership.

But when you got into the March board meeting and against the backdrop of the reality that the board members had been paid an increase in their salaries, granted, it was a de minimis amount, nonetheless, that had been addressed at the end of the prior year as well as the complete undercutting of the board's position with regard to the payment of bonuses for having done extra work with regard to the building project that was ongoing as well as some of the other adjunct activities that the union was involved in simply were not borne out by what had transpired earlier.

In addition, the reality is that the timing of the payment of these $300 bonuses was integrally and inextricably intertwined with Mayor Johnson's reelection campaign. Most of the money, some $1,500, was actually in her campaign treasury a matter of days before the election; and two of the board members' checks were deposited in her account, that is, the campaign account, within a matter of a day or two following the election.

And although your wise and competent counsel has suggested that the jury really made no finding with regard to the legitimacy, if you will, of the bonuses, I suggest from my having observed the testimony and the jury's verdict that the fact is that they, as does the court, saw through that endeavor as nothing more than a very, very unfortunate misguided effort that turned into what has resulted in a criminal conviction. And to suggest that these payments really were paid as a consequence of extra work and as a true earned bonus is simply belied by the other operative facts of the case.

* * *

And that's what we're -- this case is really about; that is, the misapplication of union funds for the benefit of a political candidate in a manner that is otherwise prohibited and proscribed by law. And that was a fact that even you as the union officer responsible for the day-to-day activities of the union recognized only a short year before the activities that gave rise to this particular case.

> And it may well have been and probably was in the union's best interests to have Mayor Johnson reelected. But that in no sense or manner in either the jury's eyes or this court's eyes allows a union board or union official to take matters into their own hands and come up with a scheme or artifice to convert those precious union dollars to the treasury of a political candidate, whether the candidate was pro-union or anti-union or something else. It is simply prohibited by law in the manner in which these funds were converted . . . .
> [IO Ex. 6 at pp. 2-7 (emphasis supplied).]

It is now settled that to sustain a charge of embezzlement, the Investigations Officer must show that a respondent acted with "fraudulent intent to deprive the Union of its funds." United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1989). See also

Investigations Officer v. Vitale, Decision of the Independent Administrator, at pp. 9-10 (December 18, 1990), aff'd, United States v. IBT, 775 F. Supp. 90 (S.D.N.Y. 1991), aff'd, in relevant part, No. 91-6154, slip op. at 4 (2d Cir. October 31, 1991). It is also settled that it is permissible to infer, from circumstantial evidence, the existence of intent. Vitale, Decision of the Independent Administrator at p. 11, citing, United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985).

Reardon participated in Vandenbergen's scheme to funnel the Local's funds to a political campaign and in so doing he acted with "fraudulent intent to deprive [Local 563] of its funds." While Reardon did not attend the March 9, 1988, meeting at which Vandenbergen's scheme was apparently hatched, he did receive a $300 bonus which was eventually funnelled to the Mayor Johnson's campaign. T43-2 to T47-13. Any suggestion by Reardon that the relationship between the $300 contribution and the $300 bonus was purely coincidental is rejected.

Reardon places emphasis upon the fact that, unlike others on the Executive Board, he did not physically "exchange" a personal check made payable to the Mayor Johnson campaign for his bonus check. Reardon Post-Hearing Memorandum at pp. 16-17. See also, T46-12 to 20. Reardon received his $300 bonus check on or about March 31, 1988. On or about April 5, 1988, he wrote a $300 personal check to the Johnson campaign. On or about April 8, 1988, he cashed his bonus check. T46-1 to T47-13. The fact that Reardon did not physically exchange a campaign check for a bonus check does

not absolve him from his participation in the campaign contribution scheme. The fact is that within days of receiving a bonus check, Reardon contributed the exact amount to the Johnson campaign. As stated by Vandenbergen's sentencing judge:

> [T]he reality is that the timing of the payment of these $300 bonuses was integrally and inextricably intertwined with Mayor Johnson's reelection campaign.
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> * * *
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> And to suggest that these payments really were paid as a consequence of extra work and as a true earned bonus is simply belied by the other operative facts of the case.
> [IO Ex. 6 at pp. 5-6.]

Finally, I did not find Reardon to be a credible witness on this issue.

Accordingly, I find that Reardon did embezzle Union funds in connection with Vandenbergen's campaign contribution scheme and brought reproach upon the IBT by doing so.

V. The Penalty To Be Imposed

Consistent with my prior decisions involving financial wrongdoing, it is necessary and appropriate to suspend Reardon from the IBT. As stated in Investigations Officer v. Nunes, Decision of the Independent Administrator, at p. 25 (September 6, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. November 8, 1991), "financial wrongdoing, no matter what the guise, will not be tolerated." There are mitigating factors, however, to be considered.

The underlying scheme was the brainchild of Vandenbergen, not Reardon. Moreover, Reardon did not even participate in the March 9, 1988, meeting where the scheme was discussed. While Reardon was a knowing participant in the scheme, he was just one of the many executive board members who went along with Vandenbergen's plan. I am also not unmindful that the amount involved here, $300, is relatively small.

Taking all of this into consideration, I suspend Reardon from the IBT for a period of two years. Thus, Reardon is to remove himself from all of his IBT-affiliated Union positions (including membership in the IBT and, of course, his position with Local 563) and draw no money or compensation therefrom, or from any other IBT-affiliated source, for the period of his suspension. Given that restitution to the Local has already been ordered in connection with Vandenbergen's sentencing, no further action is needed to recoup the monies wrongfully taken from the Local.

In addition, I will impose sanctions impacting upon Reardon's employee benefits (including pension, health and welfare benefits).[6] 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). Consistent with my ruling in Senese, I will not alienate any of Reardon's vested benefits. See also Guidry v. Sheet Metal Workers

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[6] Reardon's counsel wrote to me indicating that Reardon participates in the Central States Southeast And Southwest Areas Health And Welfare And Pension Funds and The Teamsters Affiliates Pension Plan.

National Pension Fund, 1210 S. Ct. 680 (1990). However, I direct that Local 563 and any other IBT-affiliated entity that may contemplate doing so, not contribute to any plan, fund, or benefit program on Reardon's behalf during his period of suspension. Reardon may, if he wishes, use his personal funds to maintain any of his benefits during his suspension.

In addition, Reardon may seek reimbursement from his Local or the IBT for one-half of his legal costs in defending the charges against him because the Investigations Officer did not sustain his burden of proof on the first charge regarding the false testimony. Reardon must personally bear the other half of the costs as the Investigations Officer did meet his burden with respect to the second charge regarding the campaign contribution scheme. See Investigations Officer v. Vitale, Supplemental Opinion of the Independent Administrator, at pp. 6-8 (February 21, 1991) (union officer permitted to seek reimbursement from union local only for portion of legal fees expended to defend those charges on which he was ultimately exonerated). See generally, United States v. Local 1804-1, Intern. Longshoremen's Ass'n, 732 F. Supp. 434, 437 (S.D.N.Y. 1990) (a union may not pay legal fees on behalf of union officers charged with and found to have committed misconduct).

Within ten days of this Decision, Reardon's counsel is to provide the Investigations Officer and me with an affidavit setting forth all costs and fees associated with the defense of the Investigations Officer's charges against Reardon.

VI. Conclusion

I will voluntarily stay this Decision and the penalties imposed pending Judge Edelstein's review. To that end, I will submit this Decision to Judge Edelstein by way of Application.

Frederick B. Lacey
Independent Administrator

Dated: May 15, 1992