

-----X
 :
 INVESTIGATIONS OFFICER, :
 :
 Claimant :
 :
 -v- :
 :
 RANDOLPH LEIDL :
 :
 Respondent. :
 :
 -----X

AFFIDAVIT AND AGREEMENT

STATE OF NEW YORK)
) SS.:
 COUNTY OF NEW YORK)

RANDOLPH LEIDL, being duly sworn, deposes and says, and agrees as follows:

1. The Investigations Officer, Charles M. Carberry, appointed pursuant to the Consent Order entered March 14, 1989 in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (DNE) (SDNY) (the "Consent Order") has filed charges against me pursuant to the Consent Order (the "charges"). A copy of the charges is annexed as Exhibit A and incorporated herein by reference.

2. I make this affidavit and agreement (the "agreement") to resolve the charges. This agreement does not constitute an admission of the charges.

3. I represent and agree to the following:

(a) I am a member of the International Brotherhood of Teamsters ("IBT") and a member of IBT Local Union 239;

(b) I am a member of the Executive Board of Local 239, and hold the office of Recording Secretary of Local 239; I am also the fund administrator of the Local 239 Welfare and Pension Funds;

(c) I currently hold no other elected or appointed offices of any kind, paid or unpaid, in the IBT or any of its affiliated entities including Local 239, or with any other pension, health and welfare or other benefit plans or other such entities (collectively "IBT Entities");

(d) I currently receive no salary, allowances, or remuneration of any kind from any IBT Entities other than the positions described in Paragraph 3(b);

(e) I shall resign, effective March 6, 1991, as an officer of Local 239, as fund administrator of the Local 239 Welfare and Pension Funds and from any other positions as an officer or employee of any IBT Entity; BSP RP

(f) From the effective ^{date} ~~date~~ of my resignation forward, I will not hold, seek or accept election or appointment to any office, paid or unpaid, in any IBT Entities nor will I hold, seek or accept any employment, consulting or other similar relationship of any kind with any IBT Entity;

(g) This agreement is permanent.

4. I have entered into this agreement on the understanding the Investigations Officer agrees he will not pursue the charges annexed as Exhibit A or other charges arising out of the facts underlying those charges.

5. I understand the Investigations Officer's agreement is limited to the charges described above and he expressly reserves the right to pursue charges against any other officer or entity of the IBT or Local 239, arising out of the allegations contained in the charges or any other investigations.

6. I agree 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 United States District Court for the Southern District of New York for that court to enter as an order.

7. I understand the Investigations Officer makes no representation as to the determination of the Independent Administrator or the court with respect to this agreement.

8. I have made this agreement after consultation with my attorney and I fully understand its terms.

9. I have authorized my attorney to transmit this agreement, signed by me, to the Investigations Officer. When it

signed by the Investigations Officer, he will submit it to the Independent Administrator for approval.

Randolph Leidl
RANDOLPH LEIDL

Sworn to before me
this 4th day of ~~November~~, 1990
December (64)

Barbara T. Gwert
NOTARY PUBLIC

BARBARA T. GWERT
Notary Public, State of New York
No. 20-4968857
Qualified in Nassau County
Commission Expires June 30, 1992

Agreed:

Charles M. Carberry
Charles M. Carberry
Investigations Officer

Approved:

Frederick B. Lacey
Frederick B. Lacey
Independent Administrator

SO ORDERED:

David N. Edelstein
David N. Edelstein
United States District Judge

| | | |
|--------------------------------|---|---------------|
| -----x | : | |
| INVESTIGATIONS OFFICER, | : | |
| | : | |
| Claimant, | : | |
| | : | |
| -v- | : | <u>CHARGE</u> |
| | : | |
| RANDOLPH LEIDL, | : | |
| (Local 239, East Meadow, N.Y.) | : | |
| | : | |
| Respondent. | : | |
| -----x | : | |

You are hereby advised the Investigations Officer has charged you with the violations listed below, committed while you were Recording Secretary of Local 239, East Meadow, New York, in accordance with the powers granted to him pursuant to Section F. (COURT APPOINTED OFFICERS), Paragraph 12(A) of the order entered in United States v. International Brotherhood of Teamsters, et al., 88 Civ. 4486 (DNE) (SDNY) on March 14, 1989. A copy of the order is enclosed.

The time and place for the hearing of this matter will be determined by the Independent Administrator, Frederick B. Lacey, and he will notify you accordingly.

You are charged as follows:

Charge 1

1. Violating Article II, section 2(a) and Article XIX, section 6(b)(2) of the International Brotherhood of Teamsters ("IBT") Constitution, by conducting yourself in a manner to bring reproach upon the IBT; and

2. Violating Article XIX, section 6(b)(3) of the IBT Constitution, by embezzling and converting to your own use and

the use of others union funds; and

3. Violating Article XIX, section 6(b)(1) of the IBT Constitution and Article VI of the Constitution and Bylaws of IBT Local 239 by terminating without authority a trust fund consisting of union funds;

TO WIT, in or around 1988, while Recording Secretary of Local 239, you conspired and participated in a scheme with other officers of Local 239 to embezzle and convert to your own use and the use of others approximately \$835,000 from the Retirement Plan for Employees of Local 239 (the "Plan"), a trust fund consisting of contributions made from local money on behalf of the Local's salaried officers and employees. Pursuant to this scheme, money from this fund was improperly distributed to you, other members of the board and employees of Local 239.

The Plan was established pursuant to a decision of the executive board of Local 239 at a meeting held in or around December, 1962. At that meeting, the executive board authorized the president of Local 239 to replace the then-existing Local 239 Severance Fund with a "qualified Pension Plan with approval by Internal Revenue." At that meeting, the president was authorized to "proceed with the formulation, establishment and approval by Internal Revenue, of a Pension Plan for officers and employees of the Union... ."

Pursuant to this decision of the board, and the bylaws of Local 239, the Plan was established in or about early 1963. From

then-accrued assets to be given to the following officers and employees in approximately the following amounts:

| <u>Name</u> | <u>Position</u> | <u>Amount</u> |
|-------------------|-----------------|---------------|
| Gerald Corallo | President | \$158,275.75 |
| John Spada | Sec.-Treas. | 170,267.61 |
| Eugene Ciner | Vice Pres. | 145,894.65 |
| Michael Maddaloni | Trustee | 54,924.92 |
| John Mastando | Trustee | 52,964.33 |
| Randolph Leidl | Rec. Sec. | 42,985.05 |
| Florence Jacobs | Employee | 67,101.39 |
| Joanne McDougall | Employee | 15,494.63 |
| Fran Mart | Employee | 126,697.63 |
| Donna Emmeluth | Employee | <u>428.27</u> |
| | TOTAL | \$835,034.23 |

You participated and approved this improper distribution of assets from the Plan knowing that such a termination of the Plan was prohibited by the Local 239 Bylaws. This improper distribution was not for the benefit of Local 239 and its membership and served no legitimate interest of the local, but instead was solely for your personal benefit and the benefit of the other board members and employees who were given money pursuant to this scheme.

Charge 2

You are further charged with:

1. Violating Article II, section 2(a) and Article XIX, section 6(b)(2) of the IBT Constitution, by conducting yourself in a manner to bring reproach upon the IBT; and

2. Violating Article XVIII, section 6(b) and Article XIX, section 6(b)(1) of the IBT Constitution by continuing to hold office in Local 239 and remaining in its employ after you received your improper distribution from the Plan and were ineligible to hold office or employment in Local 239;

3. Violating Article XIX, section 6(b)(3) by embezzling and converting to your own use and the use of others union funds, by continuing to receive salary and other benefits, including but not limited to raises granted to the board in conjunction with the termination of the Plan, after you had ceased to be eligible to hold office in or be employed by Local 239.

TO WIT, on or after September 29, 1988 you received your distribution from the Plan in the approximate amount specified in Charge 1, effective July 1, 1988. Thereafter you remained in office and continued to receive salary and benefits from Local 239 although you were no longer entitled to hold office or be employed by the union.

The Plan, and its appurtenant trust, had been submitted by Local 239 to the Internal Revenue Service ("IRS") for approval as a tax exempt pension plan. The IRS issued such approval on or about June 13, 1963.

Article XVIII, section 6(b) of the IBT Constitution, provides as follows:

A member, including a Local Union officer, who is receiving pension benefits from any pension plan shall be considered to have retired. A retired Local Union officer shall not be eligible to hold any office or

position he occupies by virtue thereof, as of the effective date of his retirement. Nor shall a retired Local Union officer be eligible to hold any other office or employment with his Local Union. A withdrawal card shall be issued to any member, including a Local Union officer, who has retired, except that a member who continues to work at the craft, excluding employment with his Local Union, shall be required to retain active membership.

Under this provision of the IBT Constitution you were not entitled to hold office in or be employed by Local 239 after July 1, 1988, the effective date of your distribution from the Plan.

Despite this explicit provision of the IBT Constitution, you continued to hold office in and to be employed by Local 239. You did not take a withdrawal card as required by the IBT Constitution. The other members of the board who received distributions also wrongfully continued in office, receiving salary and benefits. You did not cause a withdrawal card to be issued to the other members of the board who also became ineligible to hold office when they received their distributions from the Plan.

Although you were ineligible to remain in office or to be employed by Local 239, you and the other members of the executive board did so and received salary and other benefits to which you were no longer entitled from Local 239. After May 10, 1988, that salary included a raise of 16% which the board approved for itself and the other employees of the local. From July 1, 1988 to date your knowing and continuing receipt of such salary and benefits when you were no longer eligible to hold office or employment with the union was not for the benefit of Local 239

and its membership, but instead was solely for your personal benefit.

Charge 3

You are further charged with:

1. Violating Article II, section 2(a) and Article XIX section 6(b)(2) of the IBT Constitution by conducting yourself in a manner to bring reproach upon the IBT; and

2. Violating Article XIX, section 6(b)(3) of the IBT Constitution by embezzling and converting to the use of John Spada union funds;

TO WIT, you and other members of the executive board of Local 239 caused to be paid to John Spada approximately 10 weeks salary in the guise of "severance" pay after he resigned as a paid officer and employee of Local 239. At the time you and the other members of the board caused this payment to be made to Spada, you knew he already had received a "severance" benefit from the local, based on his tenure as an officer and employee when he received his distribution from the improperly terminated Plan.

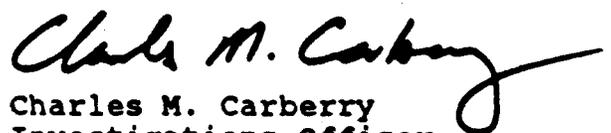
Spada was the Secretary Treasurer of Local 239. On or about May 18, 1990 Spada resigned, effective May 31, 1990 from his position as Secretary Treasurer. On or after May 31, 1990 you and the other members of the executive board caused to be paid to Spada a severance payment of at least 10 weeks salary, based upon his years of employment by the local. At the time you authorized this payment, you knew Spada had already received approximately

\$170,267 upon the termination of the Plan. This payment represented contributions made with union funds based on his tenure with the local as of July 1, 1988. You also knew that, to compensate Spada for the alleged "loss" of union contributions on his behalf to the discontinued Plan, he had been given a 16% salary increase in May 1988 in lieu of further Plan contributions.

The additional payment of 10 weeks salary to Spada as "severance pay" when he resigned, amounting to approximately \$13,455, was based upon the same time period as his distribution from the Plan in 1988 and the period thereafter, when he received the 16% increase in lieu of further contributions to the Plan.

This double payment to Spada served no legitimate interest of Local 239 or its membership, but instead was solely for his personal benefit.

Very truly yours,



Charles M. Carberry
Investigations Officer
599 Lexington Avenue
30th Floor
New York, New York 10022
(212) 326-3920

Dated: New York, New York
September 28, 1990

cc: Frederick B. Lacey, Esq.
James T. Grady, Esq.
Edward T. Ferguson, Esq.