

While officer[s] of Local 27 [Respondents] acted in a manner to bring reproach upon the IBT, violated [their] fiduciary duties to the members and violated [their] oath, in violation of Article II, section 2(a) and Article XIX, sections 6(b)(1) and (2) of the IBT Constitution.

TO WIT, while officer[s] of Local 27 [Respondents] willfully disregarded [their] fiduciary duty to investigate and to act with respect to allegations and evidence that Pasquale Crapanzano and Liborio "Robert" Crapanzano until recently the Secretary-Treasurer and President, respectively, of Local 27 were members of La Cosa Nostra.¹

Pasquale "Patsy" Crapanzano and Liborio "Robert" Crapanzano had been identified in public reports and by the press as members of La Cosa Nostra. [Respondents] deliberately failed to investigate or to act in connection with the allegations of their membership in organized crime.

II. THE IBT CONSTITUTIONAL PROVISIONS

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

¹ Robert Crapanzano is Patrick Crapanzano's brother. Pasquale Crapanzano is Patrick's father.

themselves "at all times in such a manner as not to bring reproach upon the Union"

III. BACKGROUND

Patrick Crapanzano has been Local 27 Vice President and member of its Executive Board for "twelve or thirteen years." IO-3,² pp. 5-6. He was appointed President of the Local in November of 1991, succeeding his brother Robert Crapanzano. T151-16 to 25.³ Patrick is Robert Crapanzano's brother and Pasquale Crapanzano's son. IO-3, pp. 7-9.

Louis Lanza has been a member of Local 27 for "approximately thirty-six years." IO-4, p. 3. He has been Vice President of Local 27 since October 5, 1991, Recording Secretary for eight or nine years prior to that, and, before that, a Trustee for over ten years. Id. at pp. 4-5. Thus, by virtue of holding these positions, Lanza has been a member of the Local 27 Executive Board for over twenty years. Lanza stated that he has spent more time with Robert Crapanzano during his term in office than he has with his wife and his family. IO-4, p. 36. In fact, he has spent "seven days a week, seven nights a week for the last eleven years . . . with Bobby" Id.

² Citations to the Investigations Officer's numbered exhibits are referred to as "IO."

³ All transcript references are to the January 14, 1992, hearing before me. The citation refers to the transcript page number followed by the line number. In this instance, "T151-16 to 25" refers to transcript page 151, lines 16 through 25.

Pasquale "Patsy" Crapanzano, former Local 27 Secretary-Treasurer and Executive Board member, permanently resigned from the Local and the IBT pursuant to an October 7, 1990, Agreement with the Investigations Officer which served to resolve disciplinary charges filed against him. See IO-8. Pasquale was charged with bringing reproach upon the Union by being a member of La Cosa Nostra (sometimes hereinafter "LCN") and improperly accepting monies from employers of Local 27 members. Id.

Liborio "Robert" Crapanzano, former Local 27 President and Executive Board member, permanently resigned from the Local and the IBT pursuant to a November 20, 1991, Agreement with the Investigations Officer. See IO-10. Robert was charged with bringing reproach upon the Union by being an LCN member.

IV. ISSUE PRESENTED

The issue here is whether Respondents were aware of the allegations of Pasquale's and Robert's mob ties and; if they were, what they did to fulfill their duty to investigate these allegations and remedy them.

Respondents argue that the Investigations Officer cannot base charges upon their failure to investigate Pasquale's and Robert's organized crime ties because Pasquale and Robert were never proven to be organized crime members, because Pasquale and Robert had already resigned from the Union, and because Pasquale and Robert were not parties to this proceeding. Respondents' Post-Hearing Memorandum at pp. 2-9. Thus, they argue, "the Investigations

Officer cannot prove and substantiate the charges against the Respondents." Id. at p. 6.

It is important to distinguish the issue of Respondents' duty to investigate and act from the issue of whether the underlying allegations against Pasquale and Robert Crapanzano are true. At the hearing, the Investigations Officer offered a Declaration (IO-23) and testimony by Bruce Mouw ("Mouw"), an FBI agent with over 20 years of experience in investigating organized crime. IO-23, ¶ 1. Mouw claimed expert knowledge of activity within the Gambino Organized Crime Family of La Cosa Nostra. Id. at ¶ 2. Mouw's Declaration and testimony, if accepted as credible, would support the allegation that Pasquale and Robert Crapanzano are members of the Gambino Family. Respondents object to the introduction of this evidence included in the Mouw Declaration and asked that it be rejected. See Respondents Post-Hearing Memorandum at pp. 2-8. However, as I stated in Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator (May 22, 1991) at p. 24, aff'd, United States v. IBT, 777 F. Supp. 1123 (1991), when the issue involved the failure of a Local's executive board to investigate allegations that a Local Union officer, Nicholas Grancio, was an organized crime member:

This argument misses the point. I do not, and need not, determine whether the Investigations Officer's allegations surrounding Grancio's organized crime connections have been proven. The respondents are not charged with "knowingly associating" with Grancio. Rather, the evidence regarding Grancio's organized crime ties is offered to show that responsible officers of Local 707 should have been on notice of allegations concerning the activities of Grancio and they should have investigated the truth of these matters.

Similarly here, Respondents are not charged with "knowingly associating," with Pasquale and Robert Crapanzano and the latter are not charged at all; and thus, I need not address the Investigations Officer's evidence of their organized crime activities. As a preliminary matter, all I need decide is whether Respondents were on notice of allegations concerning Pasquale and Robert Crapanzano's organized crime ties.

A. Respondents' Knowledge Of The Allegations

Patrick Crapanzano stated that he became aware of allegations concerning his father's (Pasquale) and brother's (Robert) organized crime ties in 1984 or 1985 when he read about them in the Miami Herald. T153-20 to T154-11. Patrick also heard of allegations of their LCN connections in 1989; again, he stated that he had read them in the newspaper. T160-5 to 17. Patrick was also aware that the Investigations Officer had filed charges against Pasquale and Robert for being members of organized crime (T161-17 to 23), and that the Investigations Officer had produced documents alleging Pasquale and Robert were members of La Cosa Nostra. T175-10 to T177-6. Moreover, Patrick was aware that Robert Crapanzano resigned his IBT positions rather than face the Investigations Officer's charges alleging that Robert was a Gambino Family member. T185-2 to 22. Patrick was also aware that the charge alleging that

his brother Robert was an LCN member was printed in The International Teamster magazine.⁴ T185-23 to T186-2.

Lanza stated at the hearing before me that he became aware of the allegations of Pasquale's and Robert's LCN ties in "1983 or 1984," and that Patrick Crapanzano had mentioned it to him after reading a newspaper article in Miami. T206-2 to 13. Lanza also remembers reading about Robert's organized crime ties in the Staten Island Advance, a Staten Island daily newspaper, in 1983 or 1984. T211-16 to T212-7.

Lanza also testified that he was again made aware of the allegations of Pasquale's organized crime membership on October 17, 1991, when an article was shown to him by a representative of the Investigations Office at his sworn in-person examination. T215-25 to T216-12. Lanza also stated that he had read the charges against both Pasquale and Robert in The International Teamster magazine. T217-18 to 23. Lanza also indicated that he was aware of the allegations against Pasquale contained in an August 1989 article which was published in "New York Newsday." T222-18 to T223-1.

Respondents have not disputed the fact that they were aware of the numerous allegations of Pasquale's and Robert's LCN ties, in fact, they both admitted it.

⁴ The charges against Pasquale and Robert alleging that both had organized crime ties were published in the October 1990 issue of The International Teamster magazine at p. 22.

B. Respondents' Investigative Efforts

Despite possessing knowledge of the allegations concerning Pasquale's and Robert's membership in organized crime, Lanza made clear during his sworn in-person examination that he had no discussions about the allegations, and felt strongly that there was no reason for him to bring the allegations to the attention of his fellow Local 27 Executive Board members. The following excerpt is lifted from Lanza's October 17, 1991, testimony in a deposition taken by the Investigations Officer:

Q. Did you ever raise any issue with the [Local 27 Executive] Board about any allegations of organized crime membership or connections or role with the Crapanzanos?

A. There would be no reason for me to.

* * *

Q. The question was a broad question whether at any time -- whether you have any recollection of Local 27 having any discussions with regard to organized crime connections with the Crapanzanos.

A. Any discussions?

Q. Yes.

A. I had no discussions.

Q. Did you ever ask the Board to have any discussions about it?

A. There would be no reason.

Q. Did you ever ask the Board to investigate it or to look into it?

A. No.

Q. To your knowledge, was there ever any discussion at the Board of looking into any question of connections with organized crime or anything of that nature with the Crapanzanos?

A. I will repeat, there would be no reason to.

Q. You said you read articles in S.I. Advance, who lives in Staten Island, a great big series. Didn't they mention the Crapanzanos?

A. He just showed me an article about my uncle and I don't believe that article. I am not saying -- what I am saying is there would be no reason for me to ask anything about a newspaper's clipping being reputed in the so-called -- in the newspapers. I have to take what I know as factual in my mind and apply it.

Q. After seeing any articles, did you ever ask the Crapanzanos if any of that was factual?

A. No.

Q. Did you ever ask the Board to make an inquiry as to whether any of that material that came to your attention was factual?

A. No. Again, I repeat, I don't see no reason for that.

Q. You have a recollection of hearing things over the years about the Crapanzanos?

A. Not hearing, just what I see in the one or two articles that are in the paper.

Q. Like Staten Island Advance?

A. Or the Teamster magazine.

Q. Recently?

A. Yes.

Q. Again the same answer, you have not asked the Board to look into any of this?

A. That's right, I haven't.

Q. Do you have any recollection of having any discussions with Robert Crapanzano at the time of this Florida thing, where he brought you up to date on what his problems were down there and the fact that there were allegations of organized crime links brought against his family?

Do you have some recollection of discussions?

A. The only recollection I have with Bobby is when I received the Subpoena to go to Florida and Bobby told me to always tell the truth. That's the only conversation that we had.
[IO-4, pp. 26-29. (Emphasis supplied)]

Lanza's deposition testimony is unequivocally clear -- Lanza was aware of the allegations of Pasquale's and Robert's LCN membership and felt there was no pressing need to bring it to the attention of the Local 27 Executive Board. Not only that, Lanza told the Investigations Officer he "had no discussions" at all about the allegations.

At the hearing before me, Lanza, contrary to his deposition testimony, and for the first time, described what he considered to be his "investigation" of the allegations surrounding the Crapanzanos LCN ties. Lanza indicated that he checked the Local's financial reports, minutes and cash disbursement books and found everything in order. T206-12 to T208-9. In addition, and without providing any specifics of any of the conversations, Lanza stated that he spoke with the Local 27 Pension Funds' accountant, Bernie Block, and the Funds' attorney, Harvey Goldstein. T207-16 to 23.⁵ To complete his investigation, Lanza stated that he asked

⁵ In his testimony before me, Goldstein stated that never gave Lanza or Patrick Crapanzano any legal advice on the issue. T50-18 to T54-8. Goldstein also said that he conducted no investigation into the allegations of Robert Crapanzano's LCN ties. T52-12 to 24. The Investigations Officer contends that Respondents cannot be permitted to hide behind the "advice of counsel" defense. Investigations Officer Post-Hearing Memorandum at pp. 16-17. As there is no evidence in the record that even rises to the level of legal advice, I need not ever reach this issue. As noted, Goldstein was never counsel to Respondents, nor did he conduct an investigation into the allegations at issue in this case. Block did not testify at the hearing, nor did he submit an affidavit attesting to any conversation he may have had with Lanza.

Pasquale's son and Robert's brother, Respondent Patrick Crapanzano, about the allegations. Lanza stated that Patrick told him that he had asked both men if they were members of La Cosa Nostra and that they had denied membership. T208-3 to 9.

It is noteworthy that Lanza told the Investigations Officer during his sworn examination, and prior to any charges being filed against him, that he "had no discussions" at all about the allegations of the Crapanzanos' mob ties, and then at the hearing before me, after the charge was filed, he indicated that he had undertaken extensive investigative efforts. Thus, I find Lanza's testimony before me not credible and I must reject it.

Even if I were to have assigned his testimony any weight, I find Lanza's purported investigative efforts wholly lacking. I am not persuaded that a cursory review of the Local's books is an effective way to investigate the possibility of organized crime influence in one's Local. Moreover, asking Patrick about his brother's and father's organized crime ties falls far short of an adequate investigation. Lanza's purported investigative efforts were simply not designed to discern the truth of the allegations.

Likewise, Patrick's testimony during his sworn in-person examination before the Investigations Officer on May 29, 1990, demonstrated that, despite his being aware of the allegations of his father and brother's "soldier" status, he did not act. When asked by the Investigations Officer about certain allegations pertaining to Robert's connection with organized crime, the following ensued:

A. I was aware there was a publication.

Q. That Robert was connected with organized crime, right?

A. I was aware of the publication that Robert --

Q. Regardless of the truth or falsity of it, there was a publication?

A. Yes.

Q. Did you bring that to the attention of anybody at Local 27?

Did you report to your General Executive Board in your fiduciary role as an officer of 27 that we have an organized crime figure connected with us, or a report?

MR. IANNUZZI: Objection to the form.

Q. We have on the record the fact that whether, regardless of the truth or falsity of it, whether you asked or brought this to anybody's attention at 27, that's all I want to know from you?

A. I don't remember bringing it to anybody's attention.

[IO-3, pp. 71-72. (Emphasis supplied)]

In contrast to his 1990 testimony before the Investigations Officer, at the hearing before me Patrick stated that he did conduct an investigation upon hearing the allegations that his father and brother were LCN members. Patrick said, "I asked my father and my brother if they were connected to organized crime." T157-1 to 2. Patrick also stated that as part of his investigation he spoke with Respondent Lanza, Harvey Goldstein, Irving Stern and Mike Piccuero, two Local 27 accountants, and John Iannuzzi,⁶ the

⁶ See n. 5 at p. 10, for a discussion on Respondents' conversations with Harvey Goldstein. Patrick testified at the hearing that he spoke to Irving Stern (T157-9 to 13) and Mike Piccuero (T198-25 to T199-6). There is nothing in the record, however, to indicate that he spoke to either of them about the
(continued...)

attorney representing him on the instant charges. T157-9 to T167-8.

When deposed by the Investigations Officer prior to the filing of the charge, Patrick testified that he did not bring the allegations to anyone's attention, however, now having had a chance to review the charges, Patrick has fashioned a defense that has him discussing the allegations with no fewer than five persons. Thus, Patrick's testimony at the hearing before me is simply not credible, and is accorded no weight.

Nonetheless, even if I were to credit Patrick's statements regarding his purported investigation, for the reasons discussed in connection with Lanza, supra, pp. 7-11, I also find Patrick's purported investigative efforts lacking.

V. THE MERITS OF THE CHARGES

In these charges, the Investigations Officer alleges that Respondents failed to fulfill their fiduciary duties by not investigating and by not taking remedial action with respect to the allegations that Pasquale and Robert Crapanzano, while officers of Local 27, were members or "soldiers" in the Gambino Organized Crime Family of La Cosa Nostra. It is clear from the record that

⁶(...continued)
allegations of the Crapanzanos' LCN ties. Moreover, during a discussion with Respondents, Iannuzzi informed them that Robert Crapanzano had testified during his in-person sworn examination taken by the Investigations Officer that Robert had met John Gotti, Paul Castellano, Carlo Gambino, Aniello DellaCroce and Thomas Bilotti. T243-14 to T246-12. This could have only served to reinforce the point that there may have been merit to the allegations of Robert's and Pasquale's LCN ties.

Respondents were well aware of the allegations of their organized crime affiliations since at least 1983 or 1984.

I find that Respondents, as officers and members of Local 27's Executive Board, had an affirmative duty to investigate the allegations of Pasquale's and Robert's mob ties during their tenures on the Board. See, e.g., United States v. IBT, 754 F.Supp. 333, 349 (S.D.N.Y. 1990) (Local Union officer disregarded his fiduciary duty by failing to investigate circumstances surrounding a fellow Union officer's conviction and guilty plea to embezzlement.); United States v. IBT, 88 Civ. 4486 (DNE), slip op. (Nov. 8, 1991, S.D.N.Y.) at p. 9-10 (seven Local Union Executive Board members were found to have violated their Local Union by-laws by ignoring multiple allegations of LCN influence in their Local).⁷

Respondents contend that Section 501(a) of the Labor Management Reporting Disclosure Act of 1959, 29 USC 501(a), sets forth the fiduciary standards for Union officers, and is controlling in this instance. Respondents Post-Hearing Memorandum at pp.21-25. Specifically, Respondents argue that Section 501(a), and various cases interpreting that statute, impose a fiduciary duty "upon union officers only with regard to the use of union money or property." Id. at p. 24. (Emphasis in original). Respondents' reliance on Section 501(a) is misplaced.

⁷ Section 15 of Local 27's by-laws expressly provides that the Executive Board has a "duty to investigate any alleged breach of fiduciary duty when the circumstances so warrant." IO-6.

The issue of an IBT officer's duty to investigate corruption in the Union is now settled. United States District Court Judge David N. Edelstein has endorsed the general proposition that every IBT officer is "a fiduciary with respect to the Union members. They have a duty to disclose and remedy wrongdoing by the IBT." United States v. IBT, 708 F.Supp. 1388, 1401 (S.D.N.Y. 1989), citing, United States v. Local 560 of International Brotherhood of Teamsters, 780 F.2d 267, 284 (3d Cir. 1985). Judge Edelstein reached a similar result in upholding my decision to veto the appointment of Jack Yager to the positions of International Vice President and Central Conference Director, stating that the failure of an IBT officer to act in the face of corruption, when he has an affirmative duty to do so, constitutes aiding and abetting the extortion of the IBT members' rights. United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. April 18, 1991). See also, United States v. District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America, No. 90 Civ. 5722, slip op. at p. 21 (S.D.N.Y. November 20, 1991), (a failure of Union official to meet his fiduciary obligation to investigate union corruption created a sufficient basis for criminal aiding and abetting liability).

In a case similar to the instant one, I permanently debarred from the IBT seven officers of Local 295 in Jamaica, New York, for, inter alia, breaching their fiduciary duties by failing to investigate numerous allegations of LCN corruption in their Local. That Decision was affirmed in all respects by Judge Edelstein on

November 8, 1991. Investigations Officer v. Calagna, et al., Decision of the Independent Administrator (June 14, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. November 8, 1991).

The fundamental premise of the decisions cited here is that all IBT officers have a duty to investigate allegations of corruption in their midst. Respondents cannot sit idly by in light of numerous allegations that their Local Union is controlled or influenced by organized crime and not expect to face the consequences of their inaction. In this case, their inaction amounts to a violation of their Local's by-laws and a breach of their fiduciary duty to the Local's membership.

Respondents also contend that it is unfair to expect them to conduct an investigation into the allegations in this matter because the FBI, Congress, the Department of Labor, various United States Attorneys, and the Investigations Officer, never proved that Pasquale and Robert Crapanzano were members of organized crime. Respondents' Pre-hearing Memorandum at p. 28. Respondents also contend that they only possessed power similar to that possessed by all other members of Local 27, namely, that they could merely file charges, they could not remove Robert or Pasquale from office. Id. at pp. 28-29. Respondents' arguments once again are belied by Section 15(B) of their own by-laws. See n. 7, supra. Moreover, in their own papers, Respondents acknowledge that as members of the Local 27 Executive Board, they hold "the disciplinary authority over Union Officials." Respondents Pre-Hearing Memorandum at p. 26.

Not only do the Local 27 by-laws require its officers to investigate allegations of corruption; common sense, and any knowledge of the workings of a Local Union, demonstrate that a Local's members and its Executive Board are not on equal footing with respect to getting things accomplished. It is a given that Respondents are in a far better position to investigate and remedy problems within their Local than its members -- in fact, they are the only ones within the Local who can realistically do so.

I am aware that it may be awkward for a son to investigate his own father and brother, and in Lanza's case, for him to investigate allegations about his mentor and close friend. That notwithstanding, when Respondents assumed their positions of responsibility in Local 27, they became obligated to act in the interest of its membership.

Respondents argue that they lacked the experience and resources to conduct an investigation in this case. Respondents Post-Hearing Memorandum at pp. 29-30. Respondents could have hired a private detective agency;⁸ could have sought assistance from the authorities; could have obtained copies of the charges and proofs filed by the Investigations Officer against the Crapanzanos'; or could have arranged an in-depth interview of Pasquale and Robert by a trained professional. See, Investigations Officer v. Sansone, Decision of the Independent Administrator (March 30, 1992) at p. 14. The point of all of these suggestions is that not any one of

⁸ Section 15(A)(4) of Local 27 by-laws authorizes the Executive Board to secure "special or expert services as may be required for the organization."

them is an essential element of the proper discharge of Respondents' duty to investigate, but rather that reasonable means of investigation were available. There is simply no justification for inaction on the grounds that such an investigation was not feasible.

Not only did Respondents fail to investigate and act with respect to allegations centering on Pasquale's and Robert's LCN membership, they also rewarded Robert with two bonuses in 1991 totalling \$36,777. IO-20; T200-5 to 18 and T225-8 to 21. At the time the first bonus was given, on July 15, 1991, Robert had already been charged by the Investigations Officer with being a member of organized crime. See IO-9. At the time of the second bonus, given on December 4, 1991, Robert had already resigned by Agreement from the IBT rather than face the charges filed by the Investigations Officer alleging that he was an organized crime member. See IO-10.

Thus, I find that the Investigations Officer has met his burden of proving just cause that Respondents violated Local 27's by-laws and breached their fiduciary duties to the members by their failure to investigate and to act in connection with the allegations of Pasquale and Robert Crapanzanos' membership in organized crime.

VI. THE PENALTIES TO BE IMPOSED

That Patrick Crapanzano and Louis Lanza were aware of the allegations of Pasquale's and Robert's LCN ties is a given. They have both admitted it.

That leaves us with what Respondents did to investigate Pasquale's and Robert's LCN connections and remedy them. In reality, they did nothing. The investigative "techniques" described by Respondents are unacceptable. Not only that, but Respondents rewarded Robert Crapanzano with over \$36,000, despite being aware of the numerous allegations regarding his Gambino Family membership, and despite the fact that he resigned from the Union rather than face charges premised on those allegations. The Respondents efforts to remedy the situation were virtually non-existent.

Given that the primary goal of the Consent Order is to eradicate organized crime's intolerable presence from the IBT, I find that the only proper punishment for Respondents is permanent debarment from the IBT. See, e.g., Calagna, et al., supra, at pp. 45-48. Thus, Respondents are to remove themselves from all of their IBT-affiliated positions (including membership in the IBT) and draw no money or compensation therefrom, or from any other IBT-affiliated source.

VII. RESPONDENTS' BENEFITS

As has been my practice, I asked Respondents' counsel to submit to me at the hearing a schedule of any and all benefits to

which Respondents are entitled as well as a memorandum setting forth his position on my authority to impose sanctions impacting upon such benefits. In making this request, specific reference was made to my November 29, 1990, Supplemental Opinion in Investigations Officer v. Senese, et al., and Judge Edelstein's affirmance of that Opinion and United States v. IBT, 735 F. Supp. 1181 (S.D.N.Y. 1990). Courtesy copies of these decisions, which set forth my approach to imposing sanctions on benefits were forwarded to Respondents' counsel for reference. In the past, I have found it helpful to have information regarding benefits on file in the event an adverse decision is issued.

On December 18, 1991, Respondents' counsel requested that I postpone the January 15, 1992, hearing. I denied this request, but did notify Respondents' counsel that he could supply his submission on Respondents' benefits along with his Post-Hearing Memorandum rather than supply it to me at the hearing.

On March 6, 1992, I received Respondents' Post-Hearing Memorandum. Despite my granting the extension to submit materials on the employee benefits of Respondents, the Memorandum did not make any mention of such benefits. Nonetheless, my authority to impose sanctions on the employee benefits of a respondent is now well settled by virtue of the Senese Decision. Thus, to the extent Respondents' benefits exist, sanctions impacting upon such benefits are in order. Consistent with my ruling in Senese, I will not alienate any of Respondents' vested benefits. Thus, Respondents can retain any vested benefits they may have in their Local 27 or

other IBT Pension Plans. See also, Guidry v. Sheet Metal Workers National Pension Fund, 1210 S. Ct. 680 (1990).

The next category of benefits to address is those that are administered by both IBT-affiliated persons or entities, on the one hand, and non-IBT affiliated persons and entities, on the other. In the past, I have characterized such benefits as "Third-Party Plans." If Respondents are participants in any Third-Party Plan, I direct that the IBT, and any affiliate that may contemplate doing so, discontinue making payment of Union funds to such Third-Party Plans on Respondents' behalf. This ruling does not interfere with Respondents' right to receive any benefits that may already be vested in such plans.

In addition, to the extent the IBT or any IBT-affiliated entity contemplates making the payment of any benefits to Respondents which are under their control (such as bonuses and Local controlled severance plans), they are hereby directed not to make such payments.

I ask the Investigations Officer to send copies of this Decision to any IBT-affiliated entity that he suspects may seek to transfer benefits to Respondents.

Lastly, consistent with the well-recognized general prohibition on the payment of legal fees by a Union on behalf of Union officials charged with misconduct and found to have committed misconduct, neither the IBT nor any IBT-affiliated entity may pay Respondents' attorney fees. See, e.g., United States v. Local 1804-1, 732 F.Supp. 434, 437 (S.D.N.Y. 1990)

VIII. MY VOLUNTARY STAY

I will stay the imposition of the penalties pending Judge Edelstein's review of this Decision, which I will submit to him by way of Application.


Frederick B. Lacey
Independent Administrator

Dated: March 30, 1992