

To: Members of Local 510 Executive Board
From: Members of the Independent Review Board
Re: Proposed Charges Against Joseph T. Stauffer,
Former Secretary-Treasurer of Local 510
Date: March 19, 1997

I. RECOMMENDATION

The Independent Review Board ("IRB") refers the below report to the Executive Board of Local 510 for the purpose of initiating charges against Joseph T. Stauffer ("Stauffer"), former Secretary-Treasurer of Local 510, for bringing reproach upon the IBT, breaching his fiduciary duties and embezzling approximately \$8,146 from Local 510. This figure represents personal expenses, including golf-related expenditures and dues for membership in a country club, which Stauffer caused the Local to pay.

II. SUMMARY

Local 510, located in Orrville, Ohio, consists of approximately 515 members. Stauffer chartered Local 510 in August 1966, and served as Secretary-Treasurer from September 1966, until his retirement on December 31, 1996. Stauffer was the only full-time officer of Local 510 and, for the years 1990 through 1995, received an average annual salary of approximately \$60,000. Stauffer was the Secretary-Treasurer in November 1996, when the Chief Investigator examined the books and records of Local 510. Stauffer's term of office expired on December 31, 1996. He did not seek reelection and has since retired from the Local. Pursuant to

Article XIX, Section 1(g) of the IBT Constitution, charges may be preferred against a member who has been issued a withdrawal card.

It appears that between May 1990 and February 1995, Stauffer embezzled at least \$8,146 of Local 510 funds by causing the Local to pay for personal items unrelated to any union purpose. These items consist of payment of golf related expenditures and country club membership dues in an amount in excess of that approved by the Executive Board. After the IBT auditor brought the golf-related expenditures to his attention, Stauffer initially disputed the items in what he later described as an effort to forestall imposition of a trusteeship. Eventually, Stauffer reimbursed the Local for approximately \$8,146 for the golf-related expenditures paid by the Local on his behalf.

Based upon this conduct, it appears that Stauffer violated Article II, Section 2(a) and Article XIX, Sections 7(b)(1), (2) and (3) of the IBT Constitution by embezzling approximately \$8,146 in Local 510 funds.

III. INVESTIGATIVE FINDINGS

The investigation has disclosed that Stauffer consistently had Local 510 pay for his personal expenses. Between May 1990 and December 1995, Local 510 paid approximately \$8,146 in golf-related expenditures which were not necessary for conducting union business, and thus were personal in nature. (Ex. 1). In addition, during 1991, 1992 and 1993, the Local paid all of the annual membership fees for Stauffer's membership in the Juli Fe View Country Club, when the Executive Board had authorized payment

of only one-half of the membership fees. (Ex. 2). In 1994, the amount of golf-related expenses paid from Local 510 funds was approximately \$1,027 (Ex. 1), and the cash disbursements exceeded the cash receipts by approximately \$4,079. (Ex. 3).

A. Embezzlement - Golf-Related Expenditures

In 1995, IBT auditor Louis Baniecki conducted an audit of Local 510. (Exhibit 4). This audit covered the period from May 1, 1990 through February 28, 1995. The audit revealed payment by the Local of a significant number of golf-related expenses. These expenses covered more than sixty separate instances during the audit period in which Stauffer incurred expenses at the Country Club for items such as golf cart rentals by the Local's certified public accountant, individuals representing the Local's employers, Executive Board members, part-time employees of the Local and non-members of the Local; club membership dues; and alcohol consumed without meals at the Country Club. (Id.).

On March 15, 1995, Baniecki informed Stauffer that the schedule of golf-related expenses not necessary for conducting official union business totalled approximately \$9,097. (Id. at 6). Baniecki instructed Stauffer to reimburse the Local immediately. Stauffer refused. (Id. at 3).

Almost one month later, the Local's attorney sent a letter to the Secretary-Treasurer of the IBT, questioning the disallowance of these expenses and requesting published guidelines concerning these types of expenditures. (Ex. 5). On April 12, 1995, IBT General Secretary-Treasurer Tom Sever responded by letter

to Stauffer advising him that it had been the consistent policy of the International that golf-related activities are considered personal in nature and are not considered to be necessary for conducting official union business. (Ex. 6). In response, Stauffer claimed that certain of the expenditures were, in his opinion, for the benefit of union membership. As a result, Sever directed Auditor Baniecki to conduct an additional review of the matter. (Ex. 7).

On July 18, 1995, Baniecki completed his review and submitted a corrected list of golf-related expenditures which he considered unnecessary for conducting official union business. (Ex. 8). Upon review, the unauthorized expenses were reduced to approximately \$8,146. On or about July 18, 1995, Stauffer reimbursed Local 510 with a check drawn on his personal account in the corrected amount. (Exs. 8 and 9).

On January 6, 1997, Stauffer appeared and testified at a sworn examination. (Ex. 10). At this examination, Stauffer reviewed the invoices from the Juli Fe View Country Club for golf-related expenses for the period March 1992 through January 1995 and the cancelled checks reflecting payment of those invoices with Local 510 funds. (Exs. 10, 11). Stauffer acknowledged that he had incurred those expenses. (Ex. 10 at 27-28). Some of the invoices reflected his routine practice of playing a round of golf with the Local's auditor whenever he did his audit work, (Id. at 29, 31-32), and of playing a round of golf with representatives of an employer after a grievance meeting (Id. at 30, 33). Stauffer

testified that he had argued with the IBT General Secretary-Treasurer over the golf-related expenditures because he "couldn't let him put the Local into receivership over some incident like this." (Id. at 25). Stauffer described his initial letter of protest as "[j]ust a letter I wrote to him at the time stating that I was unaware of any rules, which still I didn't request the proof of it because at the time I didn't want the Local put into receivership." (Id. at 27). Stauffer's concern in 1995 about the imposition of a trusteeship was not unfounded; in 1994 the cash disbursements exceeded the cash receipts by approximately \$4,079 (Ex. 3), and the Local paid approximately \$1,027 of its funds for Stauffer's golf-related expenses. (Ex. 1). Moreover, in no year from 1992 through 1995 did cash receipts exceed cash disbursements by more than \$7,500. (Exs. 3, 12, 13 and 14).

B. Embezzlement - Overpayment of Stauffer's Country Club Membership

Stauffer was a member of the Juli Fe View Country Club. The minutes of the Executive Board reflect that on February 9, 1980, the Board approved the payment of one-half of the annual membership fee for Stauffer. The annual membership fee in 1980 was \$375.00 (Ex. 2). During the years 1991, 1992 and 1993, the Local paid the entire annual membership fee for Stauffer at the Juli Fe View Country Club. (Exs. 1, 11). Stauffer maintained that he paid for his wife's membership, but that the Executive Board had increased the amount that the Local would pay from 50% to 100%. However, Stauffer has been unable to produce a copy of the Executive Board minutes reflecting the increased amount that the

Local had agreed to pay, and has claimed that the Recording Secretary failed to include it in the minutes.

At his sworn examination, Walter Snyder, a former Trustee and the current Recording Secretary, testified that when it came to preparing the minutes, "Joe [Stauffer] and I would work together in putting the minutes together of any of our meetings...I'd say pretty much Joe always typed up the meetings [sic] after [we] would go over certain issues and put it together. (Ex. 15 at 13).

In Investigations Officer v. Frank Baccaro, IA Decision dated June 23, 1992 at 6, the Independent Administrator found that Baccaro's reimbursement to the Local, only after being informed of possible embezzlement charges, was "evidence of Baccaro's intent to deprive his Local of its funds." The Independent Administrator found that "[t]o find otherwise would be to invite an intolerable situation where those committing financial wrongdoing would simply wait and see if they are discovered before deciding whether to make restitution." Here the inference is even stronger because, after the International Auditor's raising questions in 1995, Stauffer questioned the policy behind the disallowance of these expenses because he did not want the Local put into a receivership. Only after a second review did Stauffer reimburse the Local for the golf-related expenses. (Exs. 1, 5, 6, 7, 8 and 9).

C. Standard for Embezzlement

In order for an embezzlement charge to be proven, it must be shown that the charged party had the fraudulent intent to embezzle. See, United States v. Walch, 728 F.2d 1113, 1118 (9th

Cir. 1989) ("under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds.")- Here, Stauffer's intent to embezzle was demonstrated by his pattern of causing the Local to pay for the personal, golf-related expenses. The Local paid for Stauffer's entertainment of the auditor who reviewed the Local's books on a monthly basis, members of the Executive Board, part-time employees of the Local, employers representatives with whom Stauffer had meetings on member grievances and non-Local members.

In addition, Stauffer's intent to embezzle was also demonstrated by his pattern of violating Section 4.1 of the IBT Secretary-Treasurer's Manual. Section 4.1 provides in pertinent part as follows:

Cash disbursements are made for salaries, operating expenses, purchase of fixed assets, investments, and other purposes as are necessary to operate the Local Union. Such disbursements must be made in accordance with Local Union Bylaws. **Under no circumstances should personal expenses be charged to and/or run through the Local Union books.**

(Ex. 16). (emphasis in original). Stauffer's blatant conduct in violating this provision is reflected in more than sixty transactions involving payment of his personal golf-related expenses from May 1990 through February 1995.

IV. PROPOSED CHARGES

Based upon the foregoing, it is recommended that Joseph T. Stauffer be charged as follows:

Between May 1990 and February 1995, while an officer of Local 510 you brought reproach upon the IBT, breached your

fiduciary duties and embezzled approximately \$8,146 in Local 510 funds in violation of Article II, Section 2(a) and Article XIX, Section 7(b)-(1), (2) and (3) of the IBT Constitution, to wit:

While an officer of Local 510, between May 1990 and February 1995, you embezzled Local 510 funds by engaging in a pattern of golf-related expenditures not related to union business, totalling approximately \$8,146 and causing the Local to pay for these items. These personal charges were of no benefit to the union and included expenses at the Country Club for items, such as golf cart rentals by the Local's certified public accountant, individuals representing the Local's employers, Executive Board members, part-time employees of the Local, and non-members of the Local; country club membership dues above the amount authorized by the Executive Board; and alcohol consumed without meals at the Country Club.

EXHIBITS TO REPORT CONCERNING JOSEPH T. STAUFFER

- Ex. 1 IBT Auditor Louis Baniecki's Corrected List of Golf-Related Expenditures dated July 18, 1995
- Ex. 2 Minutes of Executive Board Meeting, Teamsters Local Union No. 510, February 9, 1980
- Ex. 3 Form LM-3, Labor Organization Annual Report for 1994, Local Union No. 510
- Ex. 4 Local Union Audit Report dated March 15, 1995 for Local Union No. 510
- Ex. 5 Letter dated April 10, 1995 from William B. Gore to IBT General Secretary-Treasurer Tom Seger [sic]
- Ex. 6 Letter dated April 12, 1995 from Tom Sever to Joseph T. Stauffer
- Ex. 7 Letter dated July 12, 1995 from Tom Sever to Joseph T. Stauffer
- Ex. 8 Check number 281 dated July 18, 1995 drawn on the First National Bank of Ohio Account of Joseph T. or Nancy J. Stauffer and payable to Teamster Local 510 in the amount of \$8,146.66
- Ex. 9 Deposit Ticket dated July 18, 1995 for Local Union No. 510 account at the First National Bank of Ohio reflecting deposit of Stauffer check in the amount of \$8,146.66
- Ex. 10 Invoices from the Juli Fe View Country Club for the Joseph Stauffer account for the period of March 1992 through February 1995 and checks drawn on the first National Bank account of Local 510 reflecting payment of those invoices
- Ex. 11 Transcript of Sworn Examination of Joseph T. Stauffer dated January 6, 1997
- Ex. 12 Form LM-2, Labor Organization Annual Report for 1992, Local Union No. 510
- Ex. 13 Form LM-2, Labor Organization Annual Report for 1993, Local Union No. 510
- Ex. 14 Form LM-3, Labor Organization Annual Report for 1995, Local Union No. 510

Ex. 15 Transcript of sworn testimony of Walter Snyder dated
January 6, 1997

Ex. 16 IBT Secretary-Treasurer Manual Section 4 - Cash
Disbursements

INDEPENDENT REVIEW BOARD
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JD-457

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17 Battery Place, Suite 331
New York, NY 10004

Administrator:
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1825 Eye Street, NW, Suite 1100
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September 16, 1997

General President Ron Carey
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Re: Decision on Charges against Local 813
Member Henry Tamily

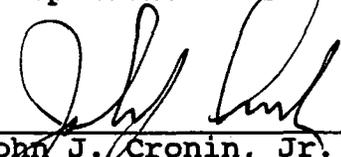
Dear Mr. Carey:

The Independent Review Board has reviewed your decision of August 12, 1997, in the above-captioned matter, and finds the decision to be not inadequate.

Very truly yours,

Members of the
Independent Review Board

By:



John J. Cronin, Jr.
Administrator

cc: Earl V. Brown, Jr., Esq.
David Neigus, Esq.
Eugene Maney, Trustee, Local 813

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO



OFFICE OF
RON CAREY
GENERAL PRESIDENT

August 12, 1997

Mr. Henry Tamily
215 Gardner Road
Ridgewood, NJ 07450

Re: Article XIX Charges Referred by the IRB to
Local 813 Trustee Eugene Maney Against
Henry Tamily

Dear Brother Tamily:

Enclosed is my decision on the charges against you referred by the Independent Review Board ("IRB") to Local 813 Trustee Eugene Maney. Also enclosed is a copy of the findings and recommendations of the hearing panel in this case.

Sincerely,

Ron Carey
General President

RC/lmb

Enclosure

cc: Chris McLoughlin, Panel Chair
Roy McClam, Panel Member
Donna Santoro, Panel Member
Eugene Maney, Trustee, Local 813
John J. Cronin, IRB Administrator
Charles Carberry, IRB Chief Investigator

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

In the Matter of:)
)
ARTICLE XIX CHARGES)
) DECISION
)
)
against)
)
LOCAL 813 MEMBER HENRY TAMILY)
)

Having reviewed and duly considered the hearing record and the recommendation of the hearing panel in the above-referenced case, I hereby issue the following decision on Article XIX charges filed by the Local 813 Trustee Eugene Maney against Local 813 member Henry Tamily.

I. The Charges

This case arises out of charges referred by the Independant Review Board to Local 813 Trustee Eugene Maney based on allegations referred by the Local 813 Investigations Officer who was appointed pursuant to the settlement of the Federal Civil RICO suit against Local 813. The charges allege that Henry Tamily brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2), and (11) of the IBT Constitution by committing acts including engaging in a criminal enterprise, attempting to restrain competition in the private carting industry against Section 460 of the New York Penal Law which forbids Enterprise Corruption (a class C felony), committing extortion, and falsifying records. The charges further allege that he had no legitimate basis for an IBT membership.

II. The Hearing

General President Ron Carey appointed a panel under Article XIX of the International Constitution and a duly noticed hearing

was held on May 21, 1997 before a panel comprised of Chris McLoughlin, Donna Santoro, and Roy McClam. Tamily did not appear for he hearing. Trustee Maney introduced evidence at the hearing that Henry Tamily was an active member of Local 813. At his sworn examination by the IRB on October 5, 1995, Tamily admitted that Local 813 documents which listed him as working at Avon Carting, one of his companies, were wrong. He admitted owning owned the company but testified that he did not work there. Since Tamily was neither an approved "owner-operator" nor "owner-driver" under both the IBT Constitution and under the local's bylaws, Tamily's union membership was unwarranted.

Tamily also testified that he was a co-owner of three paper carting companies. Two of these, Apex Waste Paper and Professional Recyclers, Inc., did not employ Teamsters. They instead had AFL-CIO Local 958 contracts. Tamily testified that all six of his companies were run by his and his partner's sons out of Lyndhurst, New Jersey.

On June 20, 1995, The People of New York v. Association of Trade Waste Removers of Greater New York, Inc. charged Tamily, his partners, and two of their paper carting companies with being members of a criminal enterprise for the purpose of restraining trade and competition in the private carting industry. Charges included extortion, coercion in the first degree, combination in restraint of trade and competition, and falsifying business records in the first degree. On February 13, 1997 Tamily pled guilty to attempted Enterprise Corruption and detailed his illegal activities. His sentencing date was April 17, 1997. Suggested penalties included imprisonment and fines.

III. The Panel's Recommendations

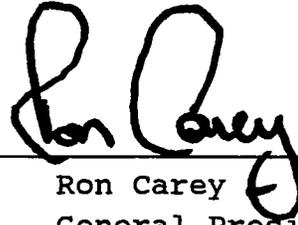
Having reviewed and considered the evidence of the hearing panel. I find proven the above charges against Henry Tamily. I also agree with the hearing panel's recommended penalty.

Mr. Tamily is hereby expelled from his membership in the union- permanently barring him from participating in the affairs of the union, permanently barring him from holding union office,

permanently barring him from contracting with, seeking or holding office or employment with Local 813, the IBT or any other IBT affiliate or IBT-sponsored employee benefit plan, and permanently barring him from seeking or accepting money or other compensation for any goods and services from Local 813, the IBT or any other IBT affiliate or IBT-sponsored employee benefit plan other than receipt of vested benefits to which he may otherwise lawfully be entitled by reason of prior participation in an IBT- sponsored employee benefit plan or plans.

August 12, 1997

Date



Ron Carey

Ron Carey
General President