INDEPENDENT REVIEW BOARD
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VIA UPS OVERNIGHT

August 26, 1993

Johnnie Brown
International Trustee
Joint Council 16
265 West 14th Street
Room 1201
New York, NY 10011

RE: International Trustee Decision regarding Local 813 Officers

Dear Trustee Brown:

We have reviewed your August 2, 1993 decision on the charges against Local 813 officers Martin Adelstein, Alan Adelstein, James Murray and Michael Giammona. By this decision Martin and Alan Adelstein were suspended from employment with all IBT entities for a period of five years. James Murray and Michael Giammona were suspended from employment with all IBT entities for a period of two years. The suspended officers were permitted to maintain their IBT membership during the suspension period.

While we do not agree with or endorse all the findings and statements in your decision, the Independent Review Board has no further questions regarding the actions taken by you in this matter. The sanctions imposed pursuant to your decision should be implemented immediately.

Very truly yours,

Members of the Independent Review Board

By: _____
John J. Cronin, Jr.
Administrator

cc: Charles M. Carberry, Esq.
Michael Shapiro, Esq.

Decision of the International Trustee of Joint Council 16 on the Referral from the Independent Review Board of Charges Against Local 813 Officers Martin Adelstein, Alan Adelstein, James Murry and Michael Giammona

PRELIMINARY STATEMENT

On April 12, 1993, I was appointed Trustee of Joint Council 16 pursuant to Article VI, Section 5 of the IBT Constitution. While my primary task during the trusteeship was to prepare for and conduct an election of officers in Joint Council 16, Article VII, Section 5(a) of the Constitution required me to take complete charge and control of the affairs of Joint Council 16. Accordingly, in addition to numerous other duties, I took charge of the referral from the Independent Review Board ("IRB") of the charges against Local 813 officers Martin Adelstein, Alan Adelstein, James Murry and Michael Giammona (the "Local 813 charges").

As Trustee, I take my duties and responsibilities quite seriously. I am bound to follow the IBT Constitution in light of the Consent Decree entered into in U.S. v. IBT, 88 Civ. 4486 (DNE) and the applicable decisions. First and foremost, I am committed to protecting and defending the interests of the Teamster members in Joint Council 16 and, in this case, in Local 813.

I have heard several days of testimony and have read thousands of pages of deposition transcripts, exhibits, affidavits, cases and briefs. Because I must follow applicable cases in deciding this matter, I may not, and do not, hand down my own, personal notion of what is just and fair.

I allowed the Joint Council 16 Executive Board to make the preliminary decision in this case, subject to my ultimate review.[1] Unfortunately, I am not able to accept the Executive Board's decision to dismiss the charges. This is primarily because I am unable to reconcile the Executive Board's decision with the many "failure to investigate" decisions. While there are indeed mitigating factors in this case not present in the other cases, and while there were arguments raised here that were not raised in other cases, the core conduct at issue -- the intentional failure to investigate credible allegations of serious corruption in a Teamster local -- is the same.[2] Accordingly, as discussed below, I find that the charges have been proven.

One other point merits brief mention. The Consent Decree and the IRB Rules provide for a system -- unlike that in place under the court-appointed officers -- where IBT subordinate bodies have the first opportunity to hear and determine charges, such as these, that are promulgated by the IRB. This is a process designed to lead to eventual IBT self-governance. I believe that, in order for this process to be a meaningful one, the IRB should give great deference to the findings and recommendations of an IBT subordinate body. My decision follows.

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[1]Under Article VI, Section 5 of the IBT Constitution, I was empowered either to remove the Joint Council officers or allow them to continue to serve under my direct supervision. I choose the latter course.

[2]By "credible," I mean statements that, under the circumstances, merit follow-up. By "serious" corruption, I mean conduct that is more than di minimis.

PROCEDURAL HISTORY

The procedural history of this case is set out in full in the July 26, 1993 decision of the Executive Board of Joint Council 16. Briefly, on April 22, 1993, the IRB referred the Local 813 charges to Joint Council 16. Among other things, the charges alleged that Martin Adelstein, Alan Adelstein, James Murry and Michael Giammona "wilfully disregarded [their] fiduciary duty to investigate and to act with respect to allegations and evidence that Bernard Adelstein... associated with members of LaCosa Nostra."

At an Executive Board meeting held May 4, 1993, the Joint Council 16 Executive Board and I reviewed the charges pursuant to Article XIX, Section 1(b) of the IBT Constitution. We then decided to schedule a hearing in this case.

I designated the Executive Board, with William Whelan as the Chair, to preside over the hearing of the charges. As Trustee, I retained the ultimate supervisory authority at the hearing. I retained Daniel E. Clifton of the firm of Lewis, Greenwald, Kennedy, Lewis, Clifton & Schwartz as "special counsel" to present the case in support of the charges.

Although attorneys are not normally permitted at hearings held by IBT subordinate bodies, the Joint Council, prior to the inception of the trusteeship, had adopted a policy permitting all parties to be represented by counsel at hearings on IRB charges. Martin Adelstein, Alan Adelstein and James Murry were represented by Barry Slotnick and Michael Shapiro of Slotnick & Baker. Michael

Giammona was not represented by counsel. Eugene Eisner of Eisner, Levy, Pollack & Ratner represented Local 813. Both the Joint Council 16 Executive Board and I were represented by counsel throughout the proceedings.

Hearings were held on May 28 and June 2, 1993. In addition to the charged parties, Richard Weinman, counsel for Local 813 from 1972 through 1987, testified at the hearing. All parties were vigorously cross-examined. Special counsel Clifton presented the IRB report and the hundreds of pages of supporting exhibits.[3] He also introduced several additional exhibits.[4]

After the hearings, all parties submitted briefs and reply briefs. Local 813 submitted an amicus brief in support of the charged parties.

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[3]At the hearing, Barry Slotnik made much of the fact that the bulk of these materials was inadmissible hearsay. The Second Circuit, rejecting similar arguments raised in Bernard Adelstein's case, recently articulated the standard to be applied in evaluating whether hearsay is sufficiently reliable to be admissible. United States v. IBT, No. 93-6030 (2nd Cir. July 13, 1993). I need not reach this question, however, because I have based my decision here solely on the deposition and hearing testimony of the charged parties.

[4]Special Counsel Exhibits 12 and 13 are, respectively, the decisions of the Independent Administrator in the Crapanzano and Sansone cases. Exhibit 14 is the AFL-CIO Code of Ethical Practices which, among other things, recommends an investigation into the fitness of a union officer who invokes the Fifth Amendment privilege against self-incrimination, as Bernard Adelstein did in 1988 in the RICO case filed against the IBT. Exhibits 15 and 16 are, respectively, a recent indictment and superseding indictment against individuals in the private sanitation industry. Special counsel did not rely on these last two exhibits.

On July 26, 1993, the Joint Council 16 Executive Board rendered its decision in this case. After a thorough and careful review of the evidence presented,[5] the Executive Board concluded that the charges should be dismissed. The crux of its decision was that the charged parties conducted an adequate investigation under the circumstances and, even if the investigation was inadequate, their failure to act was not "willful." As discussed below, I simply cannot accept this conclusion.

STATEMENT OF FACTS

The Parties

Martin Adelstein has been employed by Local 813 since 1962. He has held both elected and appointed positions, including business agent, Trustee, Recording Secretary and Secretary-Treasurer. He has worked in Local 1034[6] since 1959, as a business agent, Vice President, Secretary-Treasurer and President. He, his brother Alan and his father Bernard, all of whom had an extremely close working relationship, were the central figures who ran both locals. (Tr.259, 301, 355, 450)[7]

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[5]As discussed below, with the exception of one or two credibility determinations, I agree with most of the Executive Board's findings in this case. I cannot, however, accept its conclusion that the charged parties did not wilfully fail to investigate allegations of corruption in Local 813.

[6]I am troubled by the fact that the Adelsteins appear to hold full-time positions and draw full salaries and benefits from both Locals 813 and 1034.

[7]Citations to "Tr." followed by a page number refer to the transcript of the hearings held in this case. Citations to "Dep.Tr." refer to the transcripts of depositions taken by the Investigations Officer.

Alan Adelstein has worked for Local 813 since 1964, with a two-year break in service in the mid-1960's. After a brief stint as a business agent, he became a Trustee and then President of Local 813. He became a business agent of Local 1034 in 1969, and was then Recording-Secretary, Vice President and, ultimately, Secretary-Treasurer. As stated above, he was intimately involved in the affairs of both locals and, along with his brother and father, ran the operations of both locals.

James Murry worked as a rank-and-file member in the private sanitation industry for twenty-one years. In 1980, after serving as a shop steward in Local 813, he became a Trustee. More recently, he became Vice President of Local 813. Murry did not become a full-time employee of Local 813 until 1985. Murry spends approximately two half days per week in the union office for staff meetings. (Murry Dep.Tr. 10). He spends the majority of his time in the field, servicing and representing the members (Id.)

Michael Giammona was a Trustee of Local 813 from 1974 to 1986. During this time, he worked full-time in the craft and was paid by Local 813 for only the three hours per month he spent attending Executive Board Meetings (Tr. 298-301). In 1986, Giammona became a Local 813 business agent. In November 1992, after the removal of Bernard Adelstein, he became the Recording-Secretary.

In contrast to the Adelsteins, neither Murry nor Giammona had a major voice in running the day-to-day or long-term affairs of the Union (Tr. 301,303; Murry Dep. Tr. 10). Indeed, Mr. Weinman,

counsel for Locals 813 and 1034, testified that both Murry and Giammona were both normally "in the field," unlike the Adelsteins, who were usually "in the office." (Tr. 259-262).

The Allegations of Corruption in Local 813

The record is replete with allegations of organized crime control and domination of Bernard Adelstein and Local 813, dating as far back as the 1950's. References to control appear in the McClellan Committee Reports (1957), the Report of the President's Commission on Organized Crime (1986), the Rand Report (1987), the Report of the New York State Assembly Environmental Conservation Committee on "Organized Crime Involvement in the Waste Hauling Industry" (1986), Steven Brill's 1978 book, The Teamsters, and in numerous newspaper articles published over the last twenty years.

The Charged Parties Actions in Response to the Allegations of Corruption

The charged parties responses to the allegations of corruption are described in detail in Joint Council 16's decision. There is no dispute about what actions were taken, but rather only about whether these actions were sufficient to fulfill the duty to investigate. As did Joint Council 16, I am following the IRB's direction only to consider actions taken prior to January, 1992.[8] These actions can be summarized as follows:

1. The charged parties confronted Bernard Adelstein with the allegations of corruption and control.

[8]As discussed below, I view the post-January, 1992 actions as substantial mitigating factors to be considered in assessing the appropriate penalty.

2. The allegations were discussed at Executive Board, staff and membership meetings.

3. After several articles in New York Newsday stated that Local 813 was controlled[9] by organized crime, the Local 813 Executive Board, at some time in the 1980's, sent its attorney, Richard Weinman, to meet with Newsday reporters Robert Greene and Ken Crowe to see if they had factual information supporting the allegations (Tr. 208-212; 221; 241).

4. The charged parties explored the possibility of a libel suit against New York Newsday.

5. In early 1991, the Local 813 Executive Board retained an outside investigator to look into charges of misconduct by a Local 813 business agent on a picket line.

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[9]Slotnik argues that, because the articles concerned mob "control" of Bernard Adelstein and Local 813, whereas the charges involve the failure to investigate allegations that Adelstein "associated" with members of organized crime, the charges must be dismissed. I reject this argument. Allegations concerning "control" necessary imply that association has occurred. This is distinct from the issue that concerned Judge Newman, who dissented in the Second Circuit's recent decision affirming the sanctions imposed on Bernard Adelstein. Judge Newman found that the association charge had never been proven and that a domination charge had never been lodged. Here, the only issue is whether there was a failure to investigate allegations of association. I find that allegations of control, by their very nature, imply association.

DISCUSSION

In spite of the fact that there are thousands of pages of testimony and evidence in this case, the issue before me is simple: Did the charged parties wilfully and deliberately fail to investigate allegations that Local 813 and its principal officer, Bernard Adelstein, were controlled or dominated by organized crime? In answering this question, I must decide: (1) whether the charged parties knew of these allegations; (2) if so, whether they conducted an adequate investigation; and (3) if not, was their failure wilful?

As a preliminary matter, as did Joint Council 16, I reject the argument raised by Local 813 in its Amicus Brief that the charges must be proven "beyond a reasonable doubt." (Local 813 Brief, pp. 7-12). The Rules and Procedures for the operation of the IRB provide that "[u]pon referral, [an] IBT entity... shall... resolve the referred matter as provided by the IBT Constitution, applicable law[10] and these Rules." (Rule I(5)) (emphasis added). Article XIX, 1(e) of the IBT Constitution provides that "[i]n order to be sustained.... charges must be supported by a preponderance of reliable evidence...." Rule J(6) of the IRB Rules, upon which Local 813 relies, only governs hearings held by the IRB. As

[10]I agree that Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §411(a)(5), is fully applicable to these proceedings. Section 101(a)(5), which provides "[s]afeguards against improper disciplinary action" by labor organizations, prevents discipline of a union member unless the member has been: (1) served with written specific charges; (2) given a reasonable time to prepare his defense, and (3) afforded a full and fair hearing. All three elements have been satisfied here.

discussed below, I find that the charges have been proven by a preponderance of the reliable evidence.

The Duty to Investigate

The duty of officers of IBT-affiliated locals to investigate and act with respect to credible allegations of serious corruption within their locals is now well established, although still of recent vintage. This duty encompasses the investigation of officials that are reputed to have organized crime ties. See, e.g., United States v. IBT (Sansone), 981 F.2d 1362, 1368-70 (1992). The scope of the duty, as defined by the Second Circuit Court, "is measured by the magnitude of the evidence and the importance of the allegations of corruption." 981 F.2d at 1370.

The first hint of an IBT officer's duty to investigate appeared in Judge Edelstein's decision denying the IBT's motion to dismiss the Government's RICO action. In United States v. IBT, 708 F.Supp. 1388 (S.D.N.Y. 1989), Judge Edelstein found that, because every union officer "is a fiduciary with respect to the Union members," the officer has "a duty to disclose and remedy wrongdoing by the IBT." Id. at 1401.[11] Thus, for purposes of

[11]Other than this decision, United States v. Local 560, 780 F.2d 267, 284, (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986), is the only pre-1991 IBT case cited by special counsel for the proposition that union officers have a duty to investigate allegations of corruption. Local 560 does not, however, establish a clearly defined duty such as that at issue here. In that case, a RICO action brought by the Government against Local 560, the court held that certain members of the union's executive board aided and abetted acts of extortion, primarily by the affirmative acts of appointing known criminals to union office and expending union assets for the benefit of an

RICO liability, it was sufficient to allege that the individual defendants had aided and abetted the commission of acts of racketeering by failing to act when they had knowledge of, or consciously avoided knowledge of, wrongdoing. This decision, however, did not discuss a duty under the IBT Constitution to investigate rumors or allegations of wrongdoing.

Cases from the Independent Administrator squarely holding that IBT officers are subject to discipline for failing to investigate credible allegations of serious corruption by their fellow officers began to emerge in mid-1991.[12] See, e.g.,

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official who had repeatedly committed offenses while in office. Id. at 283. While the court stated that inaction can result in criminal liability, it clearly relied on the officers' affirmative actions in finding such liability. Id. at 284. There is no discussion in Local 560 of any failure to investigate allegations or rumors of criminal misconduct.

[12]In a 1990 decision, United States v. IBT (Salvatore), 754 F. Supp. 333 (S.D.N.Y. 1990), the charged officer's failure to investigate or question the propriety of payments to a convicted (by plea of guilty) union official was held to be sufficient circumstantial evidence to establish the officer's intentional complicity in a scheme to fraudulently deprive the union of its funds. Although this case has since been cited as involving a failure to investigate, as required by the IBT Constitution, it is not. First, the case involved a union officer's failure to act despite knowledge of improper payments; no investigation of mere allegations was at issue. Id. at 336. Second, unlike the situation with Local 813, the duty to investigate was expressly set forth in the local union's by-laws. Id. at 339; see also U.S. v. IBT (Calagna) (Local 295's by-laws imposed on Executive Board members affirmative duty "to investigate any alleged breach of fiduciary duty when the circumstance so warrant and to take appropriate action if the investigation so merits.")

The only other pre-1991 "failure to investigate" case, which did not involve discipline, was the Independent Administrator's November 28, 1990 veto of the appointment of Jack Yager to the positions of International Vice-President and Director of the Central Conference of Teamsters. Among other things, Yager had failed to investigate allegations that Roy

Investigations Officer v. Calagna, Decision of the Independent Administrator, June 14, 1991; Investigations Officer v. Crapanzano, Decision of the Independent Administrator, March 30, 1992, aff'd United States v. IBT, 803 F.Supp. 740 (S.D.N.Y. 1992); Investigations Officer v. Sansone, Decision of the Independent Administrator, March 30, 1992, aff'd. United States v. IBT, 792 F.Supp. 1346 (S.D.N.Y.), aff'd. 981 F.2d 1362 (2d Cir. 1992); Investigations Officer v. Coli, Decision of the Independent Administrator, May 15, 1992, aff'd. United States v. IBT, 803 F.Supp. 748 (S.D.N.Y. 1992); Investigations Officer v. Senese, Decision of the Independent Administrator, April 13, 1993.[13]

The principle that emerges from these cases, discussed at length in the Sansone decisions of the Independent Administrator, the district court and the Second Circuit, is that union officers who acquire knowledge of allegations of serious corruption in their midst have a duty to take appropriate steps to investigate the allegations. The duty derives from Article II, Section 2(a) of the IBT Constitution, which requires unions officers to conduct themselves "at all times in such a manner as not to bring reproach upon the Union." With respect to the scope of the investigation,

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Williams had close ties to organized crime.

[13]Since the Consent Decree, other courts have imposed on non-Teamster union officials a similar duty to investigate allegations of corruption. See, e.g. United States v. Local 1804-1, International Longshoremen's Assn., 812 F.Supp. 1303 (S.D.N.Y. 1993); United States v. Carpenters, 778 F.Supp. 749 (S.D.N.Y. 1991).

a union officer must employ "whatever means are necessary" to verify or refute the allegations.[14] Sansone, 792 F.Supp. at 1354. If the allegations are found to be true, the officer must "implement appropriate remedial measures" in order to purge the local of the influence of organized crime. Id.

The Local 813 Charges

In order to determine whether special counsel has proven the charges by a preponderance of the reliable evidence, I must decide whether the charged parties knew of the allegations of corruption in their local, whether they conducted an adequate investigation into these allegations, and if not, whether their failure to do so was wilful. Unless all three questions are answered in the affirmative, I must dismiss the charges. As stated earlier, I find that the charges have been proven.

1. The Charged Parties Knowledge of the Allegations

The evidence established beyond a doubt that, over at least the last 20 years, there have been repeated allegations of organized crime domination and control of Local 813 and Bernard Adelstein. A full description of these allegations is contained in the IRB's investigative report. Descriptions of the allegations are also contained in the Independent Administrator's decision on the charges against Bernard Adelstein, as well as in the decisions

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[14]The duty to investigate in this context arises within a trade union. In assessing the adequacy of the steps taken to fulfill the duty, it seems appropriate to consider the resources available to the union decisionmaker.

of the district court and Second Circuit upholding the disciplinary sanctions against Bernard Adelstein.

I need not -- and do not -- determine the truth or falsity of these allegations. Rather, my task is to decide whether the charged parties knew of the allegations. By their own admission, they did.

Martin Adelstein, at his September 23, 1992 deposition taken by the Investigations Officer, testified that, in 1987 or 1988, he may have heard about various reports alleging organized crime control of Bernard Adelstein and Local 813 (M. Adelstein Dep. Tr. 44-45). Specifically, he testified that he may have heard about the Jaguar tape (alluding to control of Local 813) and the Rand Report (containing similar references) in the late 1980's. (Id. at 52-53).[15]

While Martin Adelstein testified at the Joint Council hearing that he did not read the New York State Assembly Report, the Rand Report or the Report of the President's Commission on Organized Crime prior to 1992 (Tr. 506), he acknowledged that he had testified truthfully at his deposition (Tr. 505). In addition, he admitted having seen newspaper articles over the past 20 years that claimed that Bernard Adelstein was controlled by organized crime (Tr. 454, 497, 510, 511). Finally, Martin Adelstein testified to having read the references to organized crime control of Local 813 contained in Steven Brill's book, The Teamsters (Tr.

[15]Later, his deposition testimony is a bit confused on this point (M. Adelstein Dep. Tr. 67, 82).

507-09). Indeed, in light of Martin's admittedly "intimate" relationship with Bernard Adelstein, (Tr. 450), it is not surprising that he knew of the repeated allegations of organized crime control of Bernard Adelstein and Local 813.

Alan Adelstein was similarly apprised of the many newspaper articles, since the late 1970's, that alleged organized crime control of Local 813 and Bernard Adelstein (A. Adelstein Dep. Tr. 22-23; Tr. 358-60, 384, 388, 401, 402). Although he testified that he was not aware of the McClellen Committee Report, the Report of the President's Commission on Organized Crime or the New York State Assembly Report (Tr. 391, 397, 399), he admitted having read the references to Local 813 in Brill's book, The Teamsters (Tr. 392).

I need not make a credibility finding concerning whether Martin and Alan knew of all the allegations in the many governmental reports issued since the 1950's. Given their admittedly close and intimate relationship with their father, as well as their more than twenty years as key officers of Local 813, it is difficult to imagine that they were entirely in the dark concerning these reports. Nonetheless, because they testified to having read many newspaper articles over a twenty-year period concerning control of Bernard Adelstein and Local 813, I find that they, by their own admission, had knowledge of allegations of corruption in Local 813.

The same is true for James Murry and Michael Giammona. Giammona admitted having seen newspaper articles since the 1980's

linking Bernard Adelstein to organized crime (Tr. 281, 282). Murry, likewise, recalled seeing articles since at least 1989, particularly a Daily News article entitled "Tainted Teamsters." (Tr. 320, 323, 331, 334.) Neither Murry nor Giammona had knowledge of any governmental reports or of Steven Brill's book (Tr. 277, 339).

Because Murry and Giammona spend most of their time in the field, rather than in the office, because they do not have the primary responsibility for running the local, nor the same intimate relationship with Bernard Adelstein that his sons do, and because their educational background is more modest than that of the Adelstein sons, it is entirely possible that Murry and Giammona testified credibly concerning their lack of knowledge of governmental reports and investigations. Nonetheless, by their own testimony, they had knowledge, over many years, of allegations contained in newspaper articles that organized crime controlled and dominated Bernard Adelstein and Local 813.

2. The Adequacy of the Charged Parties Investigation

The charged parties, conceding that they have a legal duty to investigate allegations of corruption, argue that they fulfilled their duty here. I simply cannot agree.

With respect to the period prior to 1992 - - the relevant period here - - the charged parties: (1) asked Bernard Adelstein whether the allegations were true; (2) discussed the allegations at Executive Board staff and membership meetings; (3) sent their lawyer to interview two New York Newsday reporters; (4) explored

the possibility of filing a libel suit against New York Newsday; and (5) retained an outside investigator to investigate possible picket line misconduct by a Local 813 business agent.

Both the Independent Administrator and the district court have already held that simply asking an official who is the subject of allegations whether the allegations are true, and discussing the allegations at union meetings, are insufficient to fulfill the duty to investigate. See, e.g., Sansone, 981 F.2d at 1369-70 (discussions within Executive Board and confronting fellow officer with allegations "inadequate and insufficient to discharge duty").

While I commend the Executive Board for sending its attorney to interview the Newsday reporters, I find that this, too, was insufficient. Once the reporters refused to provide information, the Executive Board, as the court has suggested, had other options. It could have sought public information or governmental reports, hired a trained professional to conduct an interview of Bernard Adelstein, hired a private investigator, asked its attorney to conduct a further investigation to develop the facts, or sought assistance from the authorities.[16] Sansone, 792 F.Supp. at 1352. That they did none of these, but rather only explored the possibility of filing a libel suit, suggests an unwillingness to get to the bottom of what was alleged.

I am equally unpersuaded that the investigation of the business agent on the picket line constituted a sufficient response

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[16]The adequacy of the steps taken must be assessed on all the facts, including facts relating to what a labor organization can accomplish.

to the allegations of corruption in Local 813. If anything, this action shows a willingness to act aggressively when it came to allegations other than those involving Bernard Adelstein. Indeed, the charged parties relied on this investigation as evidence of their willingness to conduct investigations. Unfortunately, it also highlights an unwillingness to conduct an investigation of the principal officer of Local 813.

Finally, as a justification for not conducting a more thorough investigation of Bernard Adelstein, the charged parties rely on the fact that there were five or six governmental investigations during this time period, and that no charges ever resulted. Even were I tempted to accept this argument, both the Independent Administrator and the district court have made clear that a union officer's duty to investigate exists notwithstanding governmental investigations.[17] See, e.g., Crapanzano, Decision of Independent Administrator at 16-17, 803 F.Supp at 748 (failure of government to prosecute charges is "no excuse" for officer's failure to investigate).

In sum, I find that the actions taken by the charged parties were insufficient to satisfy the legal duty to investigate. While they do serve as mitigating factors, as I discuss below, they do not warrant a dismissal of the charges here.

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[17]In assessing what the officers knew and what investigative action they should have taken, I believe that governmental investigations may be considered. Under appropriate circumstances, officers may defer to an ongoing governmental investigations in particular if an investigation overlaps with their own. Such was not the case here, as the duty arose well after the governmental investigations were over.

3. Was There a "Wilful" Failure to Investigate?

As the Second Circuit Court of Appeals has noted, the term "wilful" normally depends on its context. United States v. Strand, 893 F.2d 504, 507 (2d Cir. 1990). The Supreme Court recently considered the definition of "willfulness" in Cheek v. United States, 498 U.S. ____, 112 L.3d. 617 (1991), a case involving a criminal violation of the tax code. There, Justice White emphasized that "the standard for the statutory willfulness requirement is the "voluntary, intentional violation of a known legal duty." 498 U.S. at 629, quoting, United States v. Bishop, 412 U.S. 346, _____ (1973).

The Seventh Circuit, in United States v. Papia, 910 F.2d 1357 (7th Cir. 1990) considered the definition of willfulness in a labor relations context. That case involved a violation of 29 U.S.C. §186(d), which bars an employer from "willfully" paying employees' union dues with the intent to benefit the employer. The Court held that "to act willfully under §186(b) means to act with 'an awareness of [the laws].'" Id. at 1361, quoting United States v. Kaye, 556 F.2d 855, 863 (7th Cir. 1977).

I find these definitions of "willfulness" appropriate here. Thus, in order for the charges to be sustained, I must find that the charged parties were aware that they had a duty to investigate and, nonetheless, decided not to do so.

In ascertaining whether the charged parties were aware of their duty, I must look at when the judicially-defined duty was created. Indeed, labor law generally provides that union officials

will not be held responsible for legal rules that were not clearly established at the time of their action or inaction. For example, a union breaches its duty of fair representation "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness.'" Air Pilots Ass'n v. O'Neill, 111 S. Ct. 1127, 1130 (1991). (emphasis added).

Similarly, union officers' corporate counterparts are not held accountable for errors in business judgment recognized only when viewed with the benefit of hindsight. Corporate directors are shielded from liability when their business decisions are made "upon the basis of the information then reasonably available to the directors...." Smith v. Van Gorkom, 488 A.2d 858, 874 (S. Ct. Del. 1985). See also Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). ("If the law at the time was not clearly established, a [governmental] official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to 'know' that the law forbade conduct not previously identified as unlawful."); see also Mitchell v. Forsyth, 472, U.S. 511, 530 (1985).

The underpinnings of these decisions is the courts' recognition of the unfairness of holding fiduciaries to unobtainable, ill-defined standards of decision-making. As a policy matter, a person would not accept a position if he would then be subject to liability for failing to perform in conformance with legal duties not in existence at the time of his actions.

This is particularly true with respect to labor unions, where officers, most of whom come from the rank-and-file, simply cannot be constrained in their actions by fear of liability created by after-the-fact doctrines.

The duty under the IBT Constitution of officers of subordinate bodies to investigate corruption was not clearly established until 1991, when the Yager and Calagna decisions were handed down by the Independent Administrator and published in the IBT magazine.[18] The duty was subsequently refined and clarified in the cases involving Patrick Crapanzano (March, 1992), Sansone (March, 1992), Coli (May, 1992) and Senese (April, 1993). Thus, even though the charged parties failed to investigate allegations of corruption for many years, they did not "willfully" breach their duty until 1991, when the duty was clearly defined and described to Teamster officers.[19]

This is consistent with the testimony of the charged parties. Alan Adelstein acknowledged that, in 1991, he began to read cases concerning the duty to investigate in the Teamster Magazine (Tr.373). Giammona, too, testified that he learned of the

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[18]As discussed earlier, the question decided by the Third Circuit in Local 560 was whether a failure to investigate, coupled with intentional wrongdoing, could constitute aiding and abetting under the Hobbs Act. Likewise, the Salvatore case involved intentional complicity in a fraudulent scheme. In neither case was the duty under the IBT Constitution to investigate allegations of corruption clearly defined.

[19]The question of when a "willful" failure to investigate occurs was never raised in Sansone, nor in the other failure to investigate cases decided by the Independent Administrator.

duty in 1991, which he recalled as being around the time of the Sansone decision (Tr.344).

It was not until 1992, after charges were filed by the Investigations Officer against Bernard Adelstein, that the charged parties decided to conduct an investigation into the allegations of organized crime control of Bernard Adelstein. Although their eventual decision to conduct an investigation is a substantial mitigating factor to be considered in assessing a penalty, it came almost a year after they had a duty to act. It also came after they had voted to conduct an investigation of a union business agent which, according to their own testimony, was done because they acknowledged their duty to investigate. Accordingly, at least during 1991, the charged parties failure to investigate Bernard Adelstein was intentional, in violation of a known legal duty and, as such, "willful."

The Penalty to be Assessed

The determination of the appropriate penalty to be assessed is perhaps the most difficult part of my decision. I recognize that, in virtually every decision handed down by the Independent Administrator, a lifetime ban on holding employment with all IBT entities has been imposed.[20] For the reasons discussed below, I find that this is too severe a penalty here.

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[20]The one exception was the penalty imposed on officers Raimondi and Bertino in the Senese case. Because both had run against the Senese ticket for union office and, in the course of the campaign, had denounced Senese and publicized his alleged associations with organized crime, they were subjected to only a two-year ban on holding office.

First and foremost, the charged parties have recognized and embraced their duty to investigate allegations of corruption in Local 813. Giammona acknowledged that he now knows that, regardless of his own, personal opinion of the truth or falsity of certain newspaper articles, he is obligated to conduct an independent investigation (Tr.344). James Murry likewise testified that he now knows that the Consent Decree requires an investigation into allegations of corruption (Tr. 326). The Adelsteins expressed even more forcefully their current recognition of their duty to investigate corruption. (A. Adelstein Dep. Tr. 70; Tr. 410, 443, 469).

In addition to their testimony, the actions of the charged parties demonstrates that they have accepted their duty to investigate. In January, 1992, at the First Executive Board meeting following the filing of charges against Bernard Adelstein, before the charges were filed here, the Executive Board voted to conduct an investigation into the allegations against Bernard Adelstein.[21] In addition, in September, 1992, they voted to do a background investigation on a potential new Executive Board member. More recently, in an attempt to determine, once and for all, whether there is any truth to the allegations of corruption in their local, they hired Kroll Associates, a highly respected

[21]Upon learning that Joint Council 16 had similarly decided to conduct an investigation of Bernard Adelstein, the Local 813 Executive Board voted to defer their own investigation to Joint Council 16's and be bound by the findings of Joint Council 16.

investigative agency, to conduct a thorough investigation of Local 813 and its officers.[22]

The attitude and actions of the charged parties stand in stark contrast to the behavior of the union officials involved in the other failure to investigate cases. In Sansone, for example, unlike here, the Independent Administrator found that "there was never any genuine acceptance of an affirmative duty to investigate." Decision at 16. In both Crapanzano and Senese, unlike here, the allegations were never discussed at Executive Board or membership meetings, and the principal officer who was the subject of the allegations was never confronted. In Calagna, not only did the charged parties fail to take even "one step" to cleanse the reputation of the local, but there was evidence that they attempted to hinder an outside investigation. Decision at 17, 26. These cases are quite different from the situation here.

In addition, the testimony established that the charged parties relied on the advice of their attorney that they did not have to conduct an investigation. Although this is not an absolute defense in this case, it is a mitigating factor to be considered in assessing a penalty. The attorney for Local 813 testified that, even though he was aware of the allegations of control, he did not advise the charged parties to conduct an investigation, because he "didn't see the need for it." (Tr. 223, 224, 226). All of the

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[22]Joint Council 16 has already received a request from Kroll to produce documents in its possession concerning Local 813.

charged parties testified that they relied on this advice when they opted not to act.

This is different from Sansone, where the advice given by counsel concerned only the possible liability for associating with an officer alleged to have ties to organized crime. 981 F.2d at 1370. It is also quite different from Coli, where the charged party himself was a lawyer, where the lawyer on whom he relied had an obvious conflict of interest and where the charged party did not disclose the nature of the allegations to the lawyer whom he consulted. Decision of Independent Administrative at 11-14. Here, the advice of counsel for Local 813 may have lulled the charged parties into inactivity. Again, while not a complete defense, it is a factor I must bear in mind.

There are other factors which counsel against a lifetime ban here. There are no allegations of corruption against any of the charged parties. The record shows that they are hardworking trade unionists. It also shows that they have negotiated good contracts, and have worked hard in servicing the members of Locals 813 and 1034. Finally, the record is replete with hundreds of letters attesting to the dedication and high moral character of the charged parties, particularly Martin and Alan Adelstein.[23]

In light of all of these factors, I am of the opinion that Martin and Alan Adelstein should be suspended from employment

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[23]While favorable character submissions have been made in other cases, see, e.g., Coli and Sansone, it is the particular constellation of mitigating factors here that merits less than a lifetime ban.

with any IBT entity for a period of five years. James Murry and Michael Giammona[24] should be barred from employment for a two-year period. Their lesser penalty is due, in large part, to their more peripheral role in Local 813 and the fact that, unlike the Adelsteins, they did not have the power to order an investigation on their own. (Tr. 261-62, 295, 303). During the period of suspension, all of the charged parties may retain their membership in order to work in the craft, if they so chose.

In addition, I am recommending to the General President that trusteeships be imposed on Locals 813 and 1034. I make this recommendation in order to ensure that the locals function smoothly and democratically during this transition period. The Trustee(s) should oversee the investigation being conducted by Kroll Associates, and evaluate objectively the actions to be taken if any criminal conduct of current or former officers is uncovered.

Again, I am mindful that the penalties imposed here are significantly lighter than those imposed in the past by the Independent Administrator. Those penalties, which have been described by the Second Circuit as "drastic" and "severe," Sansone, 981 F.2d at 1372, are simply inappropriate here. I am convinced that, if faced with the same situation again, the charged parties would conduct an appropriate investigation. Accordingly, and in

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[24]I am troubled by the fact that Michael Giammona who was a Trustee during the relevant time period here, was the only Local 813 Trustee to be charged. This appears to be because, at the time the charges were filed, he was the Recording-Secretary of the Local. I have decided his case with reservation about the IRB having singled him out from the other Trustees and charging him alone, without explanation.

light of the mitigating circumstances described above, they should have the right to seek local office in the future.

Dated: New York, New York
August 2, 1993