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Frederick B. Lacey
Independent Administrator

January 7, 1991

VIA HAND DELIVERY

Honorable David N. Edelstein
United States District Court
United States Courthouse, Room 2104
New York, NY 10007

Re: APPLICATION XVII BY THE INDEPENDENT ADMINISTRATOR UNDER
THE CONSENT ORDER DATED MARCH 14, 1989 - SUPPLEMENTAL
OPINION OF INDEPENDENT ADMINISTRATOR IN THE MATTER OF THE
HEARINGS OF CIRINO "CHARLES" SALERNO AND WILLIAM CUTOLO
ON CHARGES FILED BY THE INVESTIGATIONS OFFICER

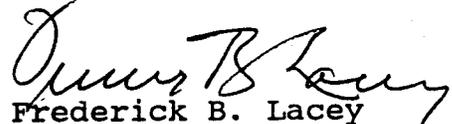
Dear Judge Edelstein:

I transmit herewith two originals and one copy of my
Application XVII for an Order by Your Honor directing compliance
with my January 7, 1991, Supplemental Opinion regarding Cirino
"Charles" Salerno and William Cutolo.

In addition to the Application, please find enclosed the
original and two copies of my January 7, 1991, Supplemental
Opinion, as well as an original and one copy of an Affidavit of
Service.

If you find it appropriate, I respectfully request that a
member of Your Honor's staff file the original of the "backed"
Application, Supplemental Opinion and Affidavit of Service with the
Clerk's office.

Respectfully submitted,


Frederick B. Lacey
Independent Administrator

FBL:dsg

Enclosures

cc: James T. Grady, Esq. (via UPS NEXT DAY AIR & Hand Delivery)
Edward T. Ferguson, III, AUSA (via Hand Delivery)
Charles M. Carberry, Esq. (via UPS NEXT DAY AIR)
Michael H. Holland, Esq. (via UPS NEXT DAY AIR)
Ronald Russo, Esq. (via UPS NEXT DAY AIR)
Ronald Straci, Esq. (via UPS NEXT DAY AIR)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	88 CIV. 4486 (DNE)
	:	
Plaintiff,	:	APPLICATION XVII BY THE
	:	INDEPENDENT ADMINISTRATOR
v.	:	UNDER THE CONSENT ORDER
	:	DATED MARCH 14, 1989 -
INTERNATIONAL BROTHERHOOD OF	:	SUPPLEMENTAL OPINION OF
TEAMSTERS, CHAUFFEURS, WARE-	:	INDEPENDENT ADMINISTRATOR
HOUSEMEN AND HELPERS OF	:	IN THE MATTER OF THE HEARING
AMERICA, AFL-CIO, et al.	:	OF CIRINO "CHARLES" SALERNO,
	:	AND WILLIAM CUTOLO.
Defendants.	:	

Application is made by the undersigned as Independent Administrator for ruling by the Honorable David N. Edelstein, United States District Judge for the Southern District of New York, on the issue of the propriety of termination of Cirino "Charles" Salerno's ("Salerno") and William Cutolo's ("Cutolo") health and welfare benefits, as determined by me as Independent Administrator in my Supplemental Opinion of December 27, 1990, submitted with this Application. This question concerning Respondents' health and welfare benefits was remanded to me for a decision by Your Honor in your Opinion and Order of September 18, 1990, ruling on my Application XII.

By letter dated October 1, 1990, I directed Salerno and Cutolo to submit to me copies of any benefit plans or payment arrangements that may be at issue. I also directed the Salerno, Cutolo, the International Brotherhood of Teamsters ("IBT"), the

Investigations Officer and the Office of the United States Attorney for the Southern District of New York ("Government") to brief the issues.

I note that Cutolo's counsel, Ronald Russo, advised me by letter dated October 9, 1990, that Cutolo was no longer associated with the IBT and is not now a recipient of any health or welfare benefits from the IBT. I interpret this to mean that such coverage will not be sought or undertaken.

I have reviewed the briefs, memoranda, letters and exhibits concerning this issue, which were submitted by the Investigations Officer, the Respondents, the Government and the IBT. Included in my review was IBT Local Union 272 ("Local 272") Blue Cross/Blue Shield plan as supplemented by medicare submitted by Mr. Salerno.

Salerno's claim to his continuing health coverage is based on his purported retirement from the IBT. I permanently barred Salerno from the IBT on August 20, 1990. I subsequently stayed the imposition of that penalty pending Your Honor's review of my decision. Following my decision, but pending Your Honor's decision, Salerno "resigned." Under those circumstances, it cannot be said that Salerno "retired" from the IBT. Salerno, in obvious anticipation that Your Honor would uphold the penalty imposed, sought to thwart my decision. In Your Honor's September 18, 1990, Decision in this matter you rejected Salerno's ploy as

"meritless". United States v. IBT (Application XIII), slip op. (S.D.N.Y. September 18, 1990) at p.6.

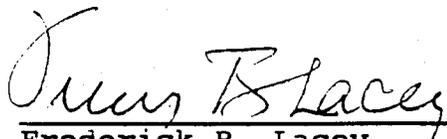
Simply put, Salerno did not "retire," but rather was expelled permanently from the IBT, and is not entitled to retirement benefits provided by Local 272. Certainly, Salerno, whose departure from the IBT was occasioned by his bringing reproach upon the Union by his association with members of La Cosa Nostra and his conviction of certain crimes, is no more entitled to "retirement" benefits than other officers who have left Local 272 prior to retirement for other reasons. Further, as set forth in my Supplemental Opinion of November 29, 1990, expenditure of union assets on Salerno's behalf, under these circumstances, would constitute a violation of the Consent Order. See Investigations Officer v. Senese, Supplemental Opinion of November 29, 1990 at pp. 12-15, aff'd, United States v. IBT (Application XVI), slip op. (S.D.N.Y. December 28, 1990).

Accordingly, I directed Local 272, and any other IBT-affiliated entity that may have contemplated doing so, to cease providing Salerno health benefits under the Blue Cross/Blue Shield plan at issue, and not to make any future payments of union funds or disbursements of union assets to any other health, welfare or employee benefit plan on Salerno's behalf.

Finally, I directed Local 861 and any other IBT-affiliated entity that may have contemplated doing so, not to make any future payments of union funds or disbursements of union assets

to any health, welfare, or employee benefit plan on behalf of Cutolo, if such exist.

It is respectfully requested that an Order be entered directing compliance with my decision if Your Honor finds it appropriate.



Frederick B. Lacey
Independent Administrator

Date: January 7, 1991.

INVESTIGATIONS OFFICER,

Claimant,

v.

CIRINO "CHARLES" SALERNO, and
WILLIAM CUTOLO,

Respondents.

SUPPLEMENTAL OPINION
OF THE INDEPENDENT
ADMINISTRATOR

I. BACKGROUND

In my Opinion of August 20, 1990, I determined that Cirino "Charles" Salerno ("Salerno") and William Cutolo ("Cutolo") were to permanently remove themselves from all of their IBT-affiliated union positions and draw no money or compensation therefrom, or from any other IBT-affiliated source. See Investigations Officer v. Salerno, et al, Opinion of the Independent Administrator (August 20, 1990). In imposing this sanction, I found that the Investigations Officer had proven the charges that Salerno brought reproach upon the IBT by associating with members of organized crime and by being convicted in New York State Supreme Court for violating New York Labor Law § 725 by accepting two \$500 payments from an employer of members of Local 272. Additionally, I found that the Investigations Officer proved the charges that Cutolo was a member of La Cosa Nostra and knowingly associated with members of La Cosa Nostra. My August 20, 1990, Opinion was submitted to United States District Court Judge David N. Edelstein, for review and approval by way of Application XIII. Following my decision, but pending Judge Edelstein's decision, Salerno notified Judge

Edelstein that he had resigned from the IBT effective September 14, 1990. Judge Edelstein was also informed that Cutolo had resigned from his IBT position effective February 1, 1990.

In his opinion and order dated September 18, 1990, Judge Edelstein affirmed my ruling and remanded to me for decision the issue of my power to terminate the health and welfare benefits¹ of Salerno and Cutolo as part of any penalty I impose. See United States v. IBT, et al (Application XIII), slip. op., (S.D.N.Y., September 18, 1990), at p. 8.

By letter dated October 1, 1990, I directed Salerno and Cutolo to submit to me copies of any benefit plans or payment arrangements that may be at issue. I also directed the parties to brief the issues involved. See my letter of October 1, 1990, to the Investigations Officer, the Government, Salerno's attorney and Cutolo's attorney. The IBT was sent a copy of that letter and invited to submit its position.

Cutolo's counsel, Ronald Russo, advised me by letter dated October 9, 1990, that Cutolo was no longer associated with the IBT and is not now a recipient of any health or welfare benefits from the IBT. See Mr. Russo's letter of October 9, 1990, to me. I interpret this to mean that such coverage will not be sought or undertaken.

¹ In my August 20, 1990, Opinion, I concluded that the Supreme Court's ruling in Guidry v. Sheet Metal Workers National Pension Fund, 110 S.Ct. 680 (1990), precluded me from ordering the cessation of pension benefits.

By letter dated October 3, 1990, Ronald Straci, Salerno's counsel, submitted a single page document apparently generated by Empire Blue Cross/Blue Shield which was described as a copy of the Blue/Cross Blue Shield Program covering Salerno. See Mr. Straci's letter of October 3, 1990, to me. Mr. Straci informed me that since Salerno is no longer employed, and is over 75 years of age, his coverage will differ slightly. He further informed me that he would forward a copy of Salerno's present coverage. Id. By letter to me dated October 18, 1990, Mr. Straci sent a one page document, again apparently generated by Empire Blue Cross Blue Shield, that he described as a copy of Salerno's present Blue-Cross Blue Shield program. See Mr. Straci's letter of October 18, 1990, to me. This document apparently lists Salerno's basic hospital and comprehensive major medical benefits, but provides no further information concerning who is covered under the plan, and who is responsible to make payments under the plan.

An additional document was also submitted on Salerno's behalf -- a one-page handwritten document described as a copy of the minutes of the March 1989 meeting of the Executive Board of Local 272 authorizing the payment of health care benefits to Local officials after retirement and until death. See Memorandum of Charles Salerno ("Salerno's Memorandum") at p. 4 and attachment. As stated in Salerno's Memorandum, at p.2:

Mr. Salerno was requested to provide a list of benefits provided to him as a result of his retirement. The only benefit provided by Local 272 is Blue Cross Coverage supplementing Medicare for him and for his wife.

. . . The cost of the present coverage supplementing Medicare is \$100.50 per month each for Mr. Salerno and his wife

Local 272 provides, as a retirement benefit only, minimal health coverage to retiring officers and their families.

It is further specifically noted at p.3:

Mr. Salerno's medical coverage for himself and his wife is provided only because of his retirement and is not unique to him. It has been provided to all other retirees and conversely not granted to those who have left the employ of Local 272 prior to retirement. [Emphasis supplied.]

II. DISCUSSION

In my November 29, 1990, Supplemental Opinion in the matter of Investigations Officer v. Senese, et al., aff'd, United States v. IBT (Application XVI), slip op. (S.D.N.Y. December 28, 1990), I concluded that while the Consent Order does not preclude the termination of health and welfare benefits, I did not have jurisdiction over benefit plans that were not exclusively controlled by the IBT or an IBT-affiliated entity. Given that such plans involve non-IBT trustees and participants, I found that I did not have jurisdiction over such plans and simply could not require them to discontinue payment of such benefits to Senese. The Supreme Court's prohibition on the cessation of pension benefits was also acknowledged.

However, in order to protect the assets of Senese's Local and prevent that Local's association with a member of organized crime (Senese), I directed the Local to discontinue making payment of

union funds to any health, welfare or employee benefit plan on Senese's behalf.²

Against this background, I review the status of Local 272's Blue Cross coverage as supplemented by medicare for Salerno and his wife. Salerno argued that:

The benefit provided to Mr. Salerno was due and vested to him upon his retirement. It is a benefit provided by Local 272 an affiliate of I.B.T. and clearly within the exclusionary provisions of the Consent Order. [Salerno's Memorandum at pp.4-5.]

The IBT noted:

The IBT takes no position on any benefit conferred upon Salerno or Cutolo by their respective local unions. [November 5, 1990, letter of the IBT, to me, at p. 1, n.1.]

The Investigations Officer argued:

Salerno has submitted only a one-page certificate for hospitalization and major medical insurance coverage. It appears from this certificate that the coverage costs \$313.80 per month. . . . To the extent this insurance benefit was provided to Salerno by his local (Local 272) or any IBT affiliate, it is within the Administrator's disciplinary powers under the Consent Order to order its termination.

The Government simply incorporated by reference its arguments previously made in the Senese matter.

Salerno's claim to his continuing health coverage is based on his purported retirement from the IBT. I permanently barred Salerno from the IBT on August 20, 1990. I subsequently stayed

² I further concluded that "it would be impractical, and perhaps unworkable, to prohibit Senese from drawing any payments from those plans, as those plans would doubtlessly continue to make payments nonetheless."

the imposition of that penalty pending Judge Edelstein's review of my decision. Following my decision, but pending Judge Edelstein's decision, Salerno "resigned." Under these circumstances, it cannot be said that Salerno "retired" from the IBT. Salerno, in obvious anticipation that Judge Edelstein would uphold the penalty imposed, sought to thwart my decision. Judge Edelstein rejected Salerno's ploy noting:

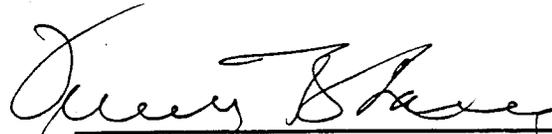
Salerno's resignation from the IBT in no way renders the decision of the Independent Administrator moot. The Independent Administrator permanently barred Salerno from the IBT. But his voluntary resignation would not prevent Salerno from returning to the IBT at any point in the future. Such a possibility is clearly at odds with the penalty imposed by the Independent Administrator, which would preclude Salerno's return to the IBT. Salerno's mootness argument is simply meritless.
[United States v. IBT, (Application XIII), slip. op. (S.D.N.Y. September 18, 1990) at pp.5-6]

Simply put, Salerno did not "retire," but rather was expelled permanently from the IBT, and is not entitled to retirement benefits provided by Local 272. Salerno, himself, concedes that health benefits are "not granted to those who have left the employ of Local 272 prior to retirement." Salerno's Memorandum at p.3. Certainly, Salerno, whose departure from the IBT was occasioned by his bringing reproach upon the Union by his association with members of La Cosa Nostra and his conviction of certain crimes, is no more entitled to "retirement" benefits than other officers who have left Local 272 prior to retirement for other reasons. Further, as set forth in my Supplemental Opinion of November 29, 1990, expenditure of union assets on Salerno's behalf, under these

circumstances, would constitute a violation of the Consent Order. See Investigations Officer v. Senese, Supplemental Opinion of November 29, 1990 at pp. 12-15.

Accordingly, I direct Local 272, and any other IBT-affiliated entity that may contemplate doing so, to cease providing Salerno health benefits under the Blue Cross Blue Shield plan at issue, and not to make any future payments of union funds or disbursements of union assets to any other health, welfare or employee benefit plan on Salerno's behalf.

Finally, I direct Local 861 and any other IBT-affiliated entity that may contemplate doing so, not to make any future payments of union funds or disbursements of union assets to any health, welfare, or employee benefit plan on behalf of Cutolo, if such exist.



Frederick B. Lacey
Independent Administrator

Dated: January 7, 1991.