

counsel at the hearing.² Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has sustained his just cause burden of proving the charges against all Respondents. United States v. IBT, 754 F. Supp. 333, 337-338 (S.D.N.Y. 1990) ("[T]he Investigations Officer must establish just cause at disciplinary hearings by a fair preponderance of the evidence.").

I. THE CHARGES

The Investigations Officer charged Respondent Friedman as follows:

CHARGE

While a suspended member of IBT Local 507, [Friedman] brought reproach upon the IBT, interfered with and induced others to interfere with the performance of the Union's legal obligations and violated [his] membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (5) of the IBT Constitution, to wit:

On March 13, 1990, United States District Judge Edelstein affirmed the Independent Administrator's decision suspending [Friedman] from all IBT-affiliated positions for one year and ordered that [he] not participate in any IBT related activity from March 13, 1990 to March 13, 1991. Beginning in January 1991 and continuing to the present, [Friedman's] convictions for embezzling Union funds and conspiring to and conducting the affairs of an enterprise through a pattern of racketeering in violation of 18 U.S.C. §§1962(c) and (d), prohibited [him] pursuant to 29 U.S.C. §504 from, among other things, advising any labor organization and from acting as a consultant or advisor to any labor organization.

² Friedman had his own counsel, and the remaining Respondents were jointly represented by one attorney.

[Friedman] interjected [himself] in the affairs of IBT Local 507 despite these prohibitions against [his] Union activity. For example, on October 27, 1990, [Friedman] attended the Local 507 Riser Foods contract ratification meeting and spoke to the members on the issue of ratification of the contract. At other times, [Friedman] advised and instructed on and discussed Union matters with Local 507 business agents and Executive Board members at the Union hall and other locations. In many ways, [Friedman] broadcasted the appearance that [he] continued to maintain influence and control over Local 507 affairs.

The Investigations Officer charged the remaining Respondents as follows:

CHARGE

While [officers and agents] of IBT Local 507, [Respondents] brought reproach upon the IBT, interfered with and allowed others to interfere with the performance of the Union's legal obligations and violated [their] oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (5) of the IBT Constitution, to wit:

On March 13, 1990, United States District Court Judge Edelstein affirmed the Independent Administrator's decision suspending Harold Friedman ("Friedman") from all IBT-affiliated positions for one year and ordered that Friedman not participate in any IBT related activity from March 13, 1990 to March 13, 1991. Beginning in January 1991 and continuing to the present, Friedman's convictions for embezzling Union funds and conspiring to and conducting the affairs of an enterprise through a pattern of racketeering in violation of 18 U.S.C. §§1962 (c) and (d), prohibited him, pursuant to 29 U.S.C. §504, from advising any labor organization. Paragraph E(10) of the Consent Order permanently enjoined [Respondent officers and agents] and all other IBT members from knowingly associating with a person enjoined from participating in Union affairs.

Despite these prohibitions against Friedman's Union activity and the injunction prohibiting [Respondent Officers and Agents] from knowingly associating with him, from March 1990 to the present, [Respondent Officers and Agents] permitted Friedman to interject himself in the affairs of IBT Local 507. For example, on October 27, 1990, Friedman attended the Local 507 Riser Foods

contract ratification meeting and spoke to the members on the issue of ratification of the contract. At other times, Friedman advised and instructed on and discussed Union matters with Local 507 business agents and Executive Board members at the Union hall and at other locations.

In many ways, [Respondent Officers and Agents] encouraged and broadcasted the appearance that Friedman continued to maintain influence and control over Local 507 affairs.

II. THE IBT CONSTITUTIONAL PROVISIONS

The charges against Respondents implicate two provisions of the IBT Constitution. The first is Article XIX, Section 7(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 Bylaws 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.

* * *

(5) Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any Union's legal or contractual obligations. Causing or participating in an unauthorized strike or work stoppage.

Article II, Section 2(a), is also implicated. This section, which contains the oath of office mentioned in Article XIX, Section 7(b) (2), mandates that all members shall conduct themselves "at all times in such a manner as not to bring reproach upon the Union"

III. BACKGROUND

A. Friedman's 1990 One-Year Suspension

On January 11, 1990, I issued a Decision in the matter of Investigations Officer v. Friedman and Hughes. See IO-2.³ In Friedman and Hughes, the Investigations Officer had charged Friedman with bringing reproach upon the IBT by virtue of his having: (1) embezzled funds from Bakery, Confectionery and Tobacco Workers International Union, Local 19 ("Bakers Local 19"), in 1981 while he was the President of that Local; (2) conspired to and engaged in racketeering activity in connection with Bakers Local 19; and (3) filed a false form LM-2 with the Department of Labor on behalf of Bakers Local 19.

In my 1990 Decision in Friedman and Hughes, I found that the Investigations Officer had proved the charges against Friedman. As a penalty, I ordered Friedman "to remove [himself] from all of [his] IBT affiliated Union positions and draw no money or compensation therefrom, or from any other IBT affiliated source," for a period of one-year. IO-2 at 48. I voluntarily stayed my Decision and the penalty imposed pending review by the Honorable David N. Edelstein, United States District Judge for the Southern District of New York. On March 13, 1990, Judge Edelstein affirmed my ruling, at which time the one-year suspension commenced. See United States v. IBT, 735 F.Supp. 506 (S.D.N.Y. 1990) (entered in this matter as IO-3). Judge Edelstein's Decision was subsequently

³ The Investigations Officer's exhibits are referred to as "IO," followed by the exhibit number and page reference, if appropriate.

affirmed by the United States Court of Appeals for the Second Circuit. United States v. IBT, 905 F.2d 610 (2d Cir. 1990) (entered in this matter as IO-4). At the time his one-year suspension commenced, Friedman was serving both as President of IBT Local 507 and as President of Bakers Local 19. T770-2 to T770-11.⁴ The one-year suspension (by its terms and as limited by my jurisdiction), affected only Friedman's relationship with IBT-affiliated entities.

B. Friedman's Three-Year Disability

The conduct that Friedman had been engaged in with Bakers Local 19 which resulted in my having suspended him for one-year from his IBT positions in 1990, also formed the basis of Friedman's criminal conviction in 1989 in the United States District Court for the Northern District of Ohio in the matter of United States v. Friedman, et al., 86 Cr. 114.

As a result of Friedman's 1989 criminal conviction, beginning on January 3, 1991, and continuing to January 3, 1994, Friedman is prohibited from (among other labor-related activities) acting as a consultant or advisor to any labor organization, pursuant to 29 U.S.C. §504. See, Justice Department's January 19, 1991, Debarment Letter, attached as "Exhibit B" to Friedman's Motion to Dismiss Disciplinary Charge of Investigations Officer, dated September 25,

⁴ All transcript references are to the hearing held before me. The citation refers to the transcript page number followed by the line number. In this instance, "T770-2 to T770-11" refers to transcript page 770, lines 2 through 11.

1992; Friedman's post-hearing brief at 13. This bar affects Friedman's relationship with both IBT Local 507 and Bakers Local 19.

C. The Relationship Between IBT Local 507 and Bakers Local 19

At this point, some background on the relationship between IBT Local 507 and Bakers Local 19 is helpful. The two Unions, although separate entities, are run almost as one. They share the same office space and personnel. See, e.g., IO-36 at 23-26; IO-35 at 21-22; IO-33 at 43-44; T131-9 to T132-17. See also Respondent Officers' and Agents' post-hearing brief at 5. They run many joint events. See, e.g., IO-8; IO-9; IO-52; IO-53; IO-55; T778-2 to T786-8. See also Respondent Officers' and Agents' post-hearing brief at 46, 49. Most significantly, they share the same Executive Board, Business Agents, and President. See, e.g., IO-8; IO-9; IO-52. See also Friedman's post-hearing brief at 17-26. Thus, the officers and agents charged in this matter were officers and agents of both IBT Local 507 and Bakers Local 19 at all times relevant to this case. Id.

IV. MERITS OF THE CHARGES

For the reasons set forth herein, I find that Friedman, with the knowledge, acquiescence, and/or assistance of Respondent Officers and Agents, played a significant role in the running of IBT Local 507 during his one-year suspension. Further, I find that Friedman, with the knowledge, acquiescence, and/or assistance of

Respondent Officers and Agents, held himself out as a figure of continuing authority in IBT Local 507 during his suspension. Finally, I find that Friedman, with the knowledge, acquiescence, and/or assistance of Respondent Officers and Agents, continued to advise IBT Local 507 and Bakers Local 19 after the date that he was barred from serving "as a consultant or advisor to any labor organization" by virtue of 29 U.S.C. §504.

A. Respondent Friedman

1. Scope of Friedman's IBT Suspension

My one-year suspension of Friedman did not include suspension of Friedman's IBT membership. In suspending Friedman I ordered that, for one-year, he was "to remove [himself] from all of [his] IBT-affiliated Union positions and draw no money or compensation therefrom, or from any other IBT-affiliated source." IO-2 at 48. I did not state that Friedman was "to remove himself from all of his IBT-affiliated Union positions (including membership in the IBT)." Cf. Investigations Officer v. Salerno, Decision of the Independent Administrator at 16 (September 30, 1992); Investigations Officer v. Adelstein, Decision of the Independent Administrator at 24 (September 14, 1992); Investigations Officer v. Chiavola, Decision of the Independent Administrator at 14 (March 25, 1992); Investigations Officer v. Wilson, Dickens, and Weber, Decision of the Independent Administrator at 26 (December 23, 1991); Investigations Officer v. Trivigno, Decision of the Independent Administrator at 27 (March 12, 1991); Investigations

Officer v. Vitale, Decision of the Independent Administrator at 39 (December 18, 1990). Thus, in suspending Friedman from all of his "IBT-affiliated Union positions," I intended only that Friedman was to remove himself from those positions he held with the IBT. I did not intend to suspend his IBT membership as well.

In affirming my decision, Judge Edelstein stated that "this Court will lift the voluntary stay on the penalty imposed by the Independent Administrator so that the suspension becomes effective immediately." IO-3 at 29-30. In so doing, it is clear that Judge Edelstein did not intend to modify my suspension order. Therefore, as of March 13, 1990, Friedman was suspended, for a period of one-year, from all of his IBT-affiliated Union positions, but he was not suspended from membership in the IBT.

a. Friedman's Violation of his IBT Suspension

With the parameters of Friedman's suspension thus defined, I now examine whether or not he violated the terms of his suspension.

One who has been suspended from "all IBT-affiliated positions" must relinquish all such offices. This Friedman did. Friedman's post-hearing brief at 15; Respondent Officers' and Agents' post-hearing brief at 34-35. However, simply removing oneself from office is not enough to comply with a suspension order.

In order for a suspension from the IBT to have any effect whatsoever, it must be implemented in both substance and form. In other words, Union power must be relinquished through all channels -- de jure and de facto; legitimate and illegitimate; denotative

and connotative. To comply with a suspension order, it is not nearly enough for a Union leader to simply stop using his title. Rather, he must not seek to exert any measure of authority over the Union. He must not put any pressure, no matter how subtle, upon those who have learned to follow his lead. He must not seek to give direction of any type to any IBT body, no matter what the means. In short, he must not in any way attempt to give the impression, either to the Union leadership or membership, that he still retains any power of any sort.

Given the foregoing, I am satisfied that Friedman violated the terms of his IBT suspension. Although as an IBT member, and as President of Bakers Local 19 (until January 3, 1991), Friedman may still have had a need to meet with and talk to the Respondent Officers and Agents charged in this matter, he was permitted to do so only within the strict confines of his suspension.⁵ Friedman's

⁵ Contrary to the assertions of Respondents (see, e.g., Respondent Officers' and Agents' post-hearing brief at 41-42, 59-60), there is nothing that prevents the Independent Administrator from imposing a suspension that allows an individual to retain his IBT membership, yet places certain limitations upon his activities as an IBT member. First, the Independent Administrator, in acting within his disciplinary authority to impose sanctions for violations of the IBT Constitution, is not a "state actor" whose actions are limited by the First Amendment. United States v. IBT (Senese), 941 F.2d 1292, 1295-96 (2d Cir. 1991), cert. denied, 112 S.Ct. 1161 (1992). Thus, any First Amendment challenge to the suspension based upon limitations which the suspension placed upon Friedman's rights of free speech, assembly, or association, is unavailing. Id. Likewise, 29 U.S.C. § 411(a)(2), which statutorily affords to Union members the rights of free speech and free assembly, specifically provides that the Section must not "be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining (continued...)"

conduct in giving direction to IBT Local 507, and in conveying the impression that he was still in charge of IBT Local 507, constituted a violation of his suspension.

One prime example of Friedman's violation of the suspension is his attendance at an IBT Local 507 contract ratification meeting. It is undisputed that Friedman attended, and spoke at, an October 27, 1990, meeting of IBT Local 507. T773-1 to T777-12. The sole purpose of this meeting was to discuss, and vote upon the ratification of, an IBT Local 507 contract with Riser Foods (an IBT Local 507 employer). See generally IO-7.

Friedman argues that his comments concerning the ratification of the Riser Foods contract had no effect upon the contract's ultimate acceptance by the membership. Friedman's post-hearing brief at 41-42. Friedman further argues that he had a legitimate reason to be at the meeting in his capacity as President of Bakers Local 19, inasmuch as a strike by members of IBT Local 507 would

⁵(...continued)
from conduct that would interfere with its performance of its legal or contractual obligations." 29 U.S.C. § 411(a)(2). Thus, the Independent Administrator, in acting with the disciplinary authority afforded him pursuant to Paragraph 12(A) of the Consent Decree, may issue punishments designed to enforce the "reasonable rules" of the IBT Constitution without thereby violating § 411(a)(2). Furthermore, a punishment that allows an IBT officer to retain his membership, but suspends him from office and curtails his permissible activities as a Union member, not only comports with the requirements of § 411(a)(2), but it also makes practical sense. If it were otherwise, the Independent Administrator would be left with little choice but to strip an officer of Union membership whenever such an officer is being barred or suspended from working for any IBT-affiliated entity.

adversely effect the workers of Bakers Local 19. Id. at 41. Friedman's position misses the point.

Regardless of whether Friedman's comments affected the outcome of the vote for the Riser Foods contract, the fact remains that Friedman attempted to influence that vote. Friedman wanted the Riser Foods contract to be adopted by the IBT Local 507 membership. This is made clear by Friedman's own assertion that he spoke at the meeting because IBT Local 507's failure to adopt the contract would adversely affect Bakers Local 19. Id. This attempt to influence the membership of IBT Local 507 in connection with a contract vote constituted a violation of his IBT suspension.

Further, Friedman's endorsement of the Riser Foods contract is a clear example of his holding himself out as someone who was still a figure of authority within the IBT. What other impression could the membership possibly be left with? As Friedman himself describes it, he entered the hall to applause, addressed the IBT Local 507 membership concerning their contract with Riser Foods, and left. T774-1 to T777-12. Clearly, the message to the IBT Local 507 membership was that Friedman was still a person from whom they should take direction. Holding himself out as leader to the IBT Local 507 membership was also prohibited by his suspension.

Finally, I note that Friedman states that he prefaced his remarks at the Riser Foods ratification meeting by saying, "I am here as the President of the Bakers Union. I know you all know it because it's been in the newspapers enough times, it's been on TV enough times, so there's no question that you all know that I have

nothing to say about 507, and I'm not here to say it." T776-8 to T776-14. Such words, even if they were spoken,⁶ were not, however, a talisman that magically transformed Friedman's comments into those that were non-violative of his suspension. To say that they were would allow a person suspended from the IBT to speak to the membership with a wink and a nod as an interested outsider, while still retaining influence over the Union. This is not permitted.

In addition to his attendance at the Riser Foods contract meeting, Friedman also attended an IBT Local 507 general membership meeting⁷ on April 14, 1990 -- just one-month after his suspension became effective. IO-6 at 2; T771-13 to T772-1. The meeting was

⁶ Unfortunately, the record is not clear as to what Friedman actually said at the Riser Foods meeting. This is due to the fact that either Friedman or Respondent Nativio directed the court reporter transcribing the meeting, George Tackla ("Tackla"), not to record Friedman's comments. T448-11 to T449-18. These were the only unrecorded comments made at this meeting. T450-8 to T450-11. This suggests that, at the very least, Friedman and/or Nativio knew that Friedman's comments might violate his suspension order and, thus, was an attempt to conceal the extent of his activity.

⁷ Respondents' argument that Friedman appeared at this meeting because it was a joint IBT Local 507-Bakers Local 19 meeting is not credible. Nativio, who chaired the meeting, admitted that most, if not all, of the people in attendance at the meeting were IBT Local 507 members. T484-7 to T484-12. Nativio called the meeting to order "in the name of Teamsters Local No. 507." IO-6 at 3. In addition, Letner stated that, although Local 507 had "an open-door policy," Bakers Local 19 and IBT Local 507 did not hold joint meetings. IO-13 at 10. This attempt by Respondents to justify Friedman's attendance at this IBT Local 507 meeting is illustrative of Respondents' continued pattern of using Bakers Local 19 as a cover for Friedman's involvement in IBT Local 507. See infra, at pp. 14-15. It also is evidence that the officers and agents were aware of, and assisted in covering-up, Friedman's involvement in IBT Local 507 after his suspension.

chaired by Respondent Nativio (Business Agent), who called the meeting to order "in the name of Teamsters Local No. 507." IO-6 at 3. Nativio urged IBT Local 507 members to "come down on a Saturday with all your Business Agents, Harold [Friedman] and [his wife, Respondent] Barbara [Walden] and everybody together, and make sure that your company knows that you are sticking together. That is good." IO-6 at 16. Friedman's attendance at this meeting, and Nativio's invitation to get the membership together with Friedman and his wife (Respondent Walden), was designed to convey the message that Friedman was still involved in IBT Local 507 affairs. Such conduct was in violation of Friedman's suspension.

Friedman and Respondent Officers and Agents also used Bakers Local 19 to enable Friedman to continue his involvement in IBT Local 507 affairs.⁸ For example, on or about May 1, 1990, the IBT Local 507 Health and Welfare Fund was merged into the Bakers Local

⁸ At the hearing, counsel for Respondents objected to the introduction of evidence designed to show that actions taken by Respondents as Baker's Local 19 officers and agents were improper or done solely for the purpose of assisting Friedman in remaining active with IBT Local 507. T641-13 to T641-25; T649-5 to T651-18. These objections were premised upon a lack of jurisdiction and a lack of relevance. Id. The evidence, however, is admissible for two purposes. First, to the extent that the evidence shows that Respondents sought to continue Friedman's involvement in IBT Local 507 through the use of their positions at Baker's Local 19, it is directly relevant to Respondents' violation of the suspension order. Second, to the extent that the evidence shows that improper actions were taken by respondents in their capacities as officers and agents of Baker's Local 19, such conduct, even though not taken in their capacity as members of the IBT, can properly be considered as bringing reproach upon the IBT. See United States v. IBT, 905 F.2d 610, 623 (2d Cir. 1990) (Independent Administrator could reasonably conclude that "non-IBT wrongdoing" brought reproach upon the IBT).

19 Health and Welfare Fund, of which Friedman was a trustee. IO-51; T742-12 to T742-25. Friedman also served as Chairman of the merged funds. T641-2 to T641-10. Thereafter, on or about October 3, 1990, the IBT Local 507 Pension Fund was merged into the Bakers Local 19 Pension Fund. IO-51; T638-23 to T639-1. Through these mergers, using his position with Bakers Local 19, Friedman was able to retain a certain measure of authority over a significant amount of funds earmarked for IBT Local 507 members' health, welfare, and pension benefits.

In addition, after his suspension and consequent loss of his \$175,000 salary as President of IBT Local 507, Friedman's salary as President of Bakers Local 19 was raised from approximately \$271,000 to \$504,000. T648-22 to T649-19, T651-24 to T654-1; IO-57. The reasonable inference that I draw from this near doubling of Friedman's Bakers Local 19 salary is that it was given to him to replace his loss of compensation as IBT Local 507 President.

The replacement of Friedman's IBT Local 507 salary with Bakers Local 19 funds, and the merger of the IBT Local 507 and Bakers Local 19 Health and Welfare and Pension Funds, are both instances in which Friedman's position with Bakers Local 19 was used by Respondents as a cover for his illegitimate participation in IBT Local 507 affairs.

Friedman also regularly met over dinner with the Respondent Officers and Agents, during the period of his suspension. IO-19 at 5, 5-17; IO-20 at 10, 20-21; Friedman's post-hearing brief at 67-68; Respondent Officers' and Agents' post-hearing brief at 48-49.

I am not persuaded that these dinners were, as Respondents contend, purely social occasions at which no business was discussed. The evidence of Friedman's attendance at the Riser Foods meeting, the evidence of his attendance at an IBT Local 507 general membership meeting, the use of Bakers Local 19 as a conduit and cover for Friedman's continued involvement in IBT Local 507 affairs, and the evidence that Friedman gave advice to IBT Local 507 and Bakers Local 19 leaders when he was statutorily prohibited from doing so (discussed infra at pp. 18-21), all belie the assertion that these dinners were social occasions where no IBT Local 507 business (and, after January 3, 1991, no Bakers Local 19 business) was touched upon. Indeed, such occasions were a perfect opportunity for Friedman to discuss Union business with small groups of officers and agents, without the worry of having a record being made of the conversations.⁹

It was admitted that, while Friedman was still permitted to discuss union business, these dinners were "an extension of the day." T647-21 to T648-7. I do not believe that the same dinners continued after Friedman was suspended and debarred, but that their character changed to become completely social in nature. To the extent Respondents' testimony suggested otherwise, I do not find that testimony credible. Given all of the above, I find that the

⁹ In the one instance where Friedman did talk to union leaders and members when his remarks were subject to being transcribed, at the Riser Foods contract ratification meeting, either Friedman or Nativio ordered that the comments be taken off the record. T448-11 to T449-18. See also, supra at note 6.

dinners with Friedman were contacts that included discussions of IBT Local 507 business and, as such, constituted a violation of his suspension.

Finally, during the period of his suspension, Friedman admittedly attended and spoke at several joint IBT Local 507 and Bakers Local 19 Christmas parties and blood bank drives. IO-8; IO-9; IO-52; T172-7 to T175-2; Friedman's post-hearing brief at 60-67. Respondent Yontek, in fliers distributed to members of Locals 507 and 19, intentionally displayed pictures of Friedman in attendance at these functions as Yontek's "personal little tribute to him." T622-1 to T622-16. Friedman correctly notes that his attendance at these functions in 1990 was not prohibited, as he was still President of Bakers Local 19. Friedman's post-hearing brief at 60. However, the fact that Friedman was such a prominent figure at these functions again highlights the lack of concern for the impression given to IBT Local 507 membership that Friedman was "still in charge" at their Union.¹⁰ Thus, if taken in isolation,

¹⁰ The flier depicting the 1990 Pensioner's Christmas Party is a particularly salient example. In addition to the numerous pictures prominently displaying Friedman at the party, the flier also contains copies of letters of appreciation sent to the Locals from Union members. Of the approximately 29 letters which are reproduced in the flier, 25 of them are addressed specifically to Friedman. IO-8. One of these letters, reprinted on page 1 of the flier, is addressed to "Mr. Friedman & Staff" and states, "There isn't another union as good as Baker's Local #19 and Teamstes [sic] Union #507." Id. (emphasis added). Another reprinted letter, addressed to "Mr. Friedman," states: "Let me tell you Harold, I don't care what I hear about you in the newspaper, or on television, or the books, or even what I hear from people that do not, I said do not understand where your [sic] coming from." Id. The choice to reprint these and the other letters addressed to
(continued...)

Friedman's attendance at these functions may not have been a violation of his suspension, but his place of prominence at them, coupled with the other incidents described above, contributed to the overall impression given to the membership that Friedman's suspension was not implemented on a practical level, and that he retained significant influence over IBT Local 507.¹¹

2. Scope of Bar Imposed by 29 U.S.C. §504

Beginning on January 3, 1991, and continuing to the present, Friedman was, and is, subject to the prohibitions of 29 U.S.C. § 504 by virtue of his convictions for embezzling Union funds and conspiring to and conducting the affairs of an enterprise through a pattern of racketeering, in violation of 18 U.S.C. §§1962(c) and (d). See Justice Department Debarment Letter, supra, p. 6. This bar applies to his relationship with both IBT Local 507 and Bakers Local 19.

Respondents contend that this prohibition against Friedman's acting as a consultant or advisor to any labor organization only

¹⁰(...continued)

Friedman is indicative of the willingness of Respondents to project the image to the Union membership that Friedman was still in charge of IBT Local 507 even after his suspension. Indeed, conspicuously absent from this or any other flier is any indication that Friedman was no longer running IBT Local 507. Rather, the appearance was given that Friedman was very much the lone figure of authority at both IBT Local 507 and Bakers Local 19.

¹¹ As the District Court has recently noted: "[T]he Independent Administrator has the authority to find that a pattern of conduct constitutes a violation of the IBT Constitution, even if no single element of the pattern itself is a violation." United States v. IBT, No. 88 Civ. 4486 (DNE), slip op. at 35-36 (S.D.N.Y. Feb. 9, 1993).

prohibits him from serving in such capacity if he is compensated for his efforts. Respondent Officers' and Agents' post-hearing brief at 52-53. I reject this argument.

In making their argument, Respondents rely upon a tortured interpretation of 29 U.S.C. § 504. Once subject to 29 U.S.C. § 504, Friedman was prohibited, among other things, from serving as: (1) "a consultant or advisor to any labor organization" (§ 504 (a)(1)); and (2) "a labor relations consultant or adviser to a person engaged in an industry affecting commerce" (§504 (a)(3)). The term "labor relations consultant," which is found in subsection (a)(3), is defined as "any person who, for compensation, advises or represents an employer, employer organization, or labor organization" 29 U.S.C. § 402 (m) (emphasis supplied). No such limitation, however, is placed upon the terms "consultant or advisor" found in subsection (a)(1). Thus, Respondents' suggestion that the more restrictive definition of "labor relations consultant" somehow limits the application of Friedman's debarment to situations in which he is a paid consultant to a labor organization, is unsupported by the plain language and intent of the statute. To so limit the statute's application would lead to the absurd result of allowing debarred union officers, like Friedman, to volunteer to run a union organization, without violating the statute.

a. Friedman's Violation of the Bar Imposed by 29 U.S.C. §504

Friedman consulted with and advised officers and agents of IBT Local 507 and Bakers Local 19 after he was prohibited from doing so by virtue of 29 U.S.C. §504.

It is undisputed that Friedman gave IBT Local 507 officers and agents "pep talks" concerning Union activities after his statutory bar was in place. Friedman's post-hearing brief at 56. One of these "pep talks" was given by Friedman during a "staff meeting" of the Business Agents of IBT Local 507 and Local 19.¹² IO-17 at 16-18. The admitted purpose of Friedman's talk at this meeting was to "address confusion" that existed in the Locals after his departure.¹³ IO-17 at 17. A meeting was also specifically organized some time in 1992 to permit Friedman to speak to the Business Agents of IBT Local 507 and Bakers Local 19, at which time he urged that they "stick together."¹⁴ IO-13 at 8-9. See also T161-19 to T163-16. On another occasion after his statutory debarment, Friedman directly discouraged anyone from IBT Local 507

¹² Although the precise date of this "pep talk" is not clear from the record, it occurred during the time when Friedman was "no longer running either local." IO-17 at 18. Thus, it must have taken place after January 3, 1993, which is the date that Friedman was first barred from consulting with or advising both locals.

¹³ Exactly why Friedman's statutory bar suddenly created "confusion" at the Locals, when he had supposedly not been involved with the running of IBT Local 507 for nearly one year in compliance with his suspension, is unexplained.

¹⁴ Although it is not clear whether this meeting and the meeting at which Friedman "addressed confusion" at the locals were one in the same, what is clear is that the meeting(s) did take place.

from attempting to run for a position with the International Union.¹⁵

Friedman attempts to justify these actions by characterizing his statements to the Union leadership as "a 'pep talk' given by a retired Union officer to take care of the members and serve the needs of the locals." Friedman's post-hearing brief at 56. Whatever the spin Friedman tries to put upon them, however, these "pep talks" constituted "advice" to a labor organization and, as such, were prohibited under the terms of his statutory debarment.¹⁶

Furthermore, Friedman's dinners with IBT Local 507 and Bakers Local 19 officials also continued after his statutory debarment under §504. As stated earlier, I find that these dinners included discussion of Union business. See supra at pp. 15-17. These contacts, too, violated the prohibition under §504 against Friedman acting as a consultant or advisor to any labor organization.

¹⁵ Yontek testified that Friedman, during a meeting that took place in late 1991 or early 1992, told a group of officers and agents:

[I]f anybody is interested with going along with anybody that was running in the local and through this, some way you may get a position with the international, you're more than welcome to take it. However, you wouldn't be in this local.

T610-4 to T610-9. See also, IO-20 at 9; IO-13 at 9-10; T158-2 to T158-11.

¹⁶ To the extent that any such "pep talks" took place during the period of Friedman's IBT suspension, they were violative of that suspension.

3. Friedman's Violation of the IBT Constitution

Friedman's violation of the one-year suspension imposed upon him in Investigations Officer v. Friedman and Hughes, Decision of the Independent Administrator (January 11, 1990), as well as his violation of the debarment imposed by 29 U.S.C. §504, brought reproach upon the Union under Article II, Section 2(a) of the IBT Constitution. In addition, Friedman's conduct was clearly disruptive of (and, as seen infra at pp. 22-25, induced others to disrupt) the performance of the Union's legal obligations -- namely, that suspensions imposed pursuant to the Consent Decree be carried out completely, properly, and fully, and that all statutory debarments be entirely implemented. As such, Friedman violated Article XIX, Section 7(b)(5) of the IBT Constitution.

B. Respondent Officers and Agents

1. Scope of the Officers' and Agents' Duties

In order for a suspension imposed under the Consent Order, or a statutory debarment, to be effective, it is necessary that all those within the IBT who are in a position to enforce the disability scrupulously do so.

As stated earlier, once an individual is suspended from all IBT-affiliated Union positions, he must not seek to exert any measure of authority over the Union. He must not put any pressure, no matter how subtle, upon those who have learned to follow his lead. He must not seek to give direction of any type to any IBT body, no matter what the means. In short, he must not in any way

attempt to give the impression, either to the Union leadership or membership, that he still retains any power of any sort.

It is the duty of all IBT officials to take every reasonable step to prevent a suspended or barred individual from violating this standard. This duty is an affirmative one; acquiescence in the face of a violation of a suspension order or a statutory debarment is a violation of that duty. In sum, all IBT officials in a position to do so must take positive steps toward ensuring that a suspension order or statutory debarment is effectively implemented. The Respondent Officers and Agents in this case violated that duty.¹⁷ See, e.g., United States v. IBT (Sansone), 981 F.2d 1362, 1368 (2d Cir. 1992) (IBT officers have a duty to investigate and act upon allegations of corruption in their midst).

¹⁷ Paragraph E(10) of the Consent Decree states that "officers, representatives, members and employees of the IBT are hereby permanently enjoined . . . from knowingly associating with . . . any person otherwise enjoined from participating in union affairs . . ." IO-1 at p. 6 (emphasis added). The Investigations Officer contends that the officers and agents were enjoined from knowingly associating with Friedman by virtue of this injunction. Investigations Officer's post-hearing brief at pp. 26-28. My determination that the Respondent Officers and Agents violated their duty to ensure Friedman's compliance with his suspension makes it unnecessary for me to determine in this case whether Friedman was a "person otherwise enjoined from participating in union affairs" within the meaning of the Consent Decree. Likewise, therefore, I need not reach Respondents' arguments that they relied upon the advice of counsel in: (1) concluding that Friedman was not suspended from membership in the IBT by virtue of my suspension order or the statutory bar (I agree that he was not); and (2) concluding that they were not enjoined from knowingly associating with Friedman pursuant to paragraph E(10) of the Consent Decree.

2. The Officers' and Agents' Violation of Their Duty

Some of the Respondent Officers and Agents took affirmative steps in assisting Friedman's continued involvement in IBT Local 507 after his suspension.¹⁸ Regardless, however, of the relative egregiousness of the conduct that the Investigations Officer was able to show in the case of each of the individual Respondent Officers and Agents, the fact remains clear that not one of them took a single affirmative step to prevent Friedman's violation of his suspension.

While it is true that some of the Respondents, such as those who were on IBT Local 507's Executive Board, were in a better position to respond to Friedman's improper activities, all of the Respondents could have taken some steps to remedy the situation, but failed to do so. They could have reported the violation to the Independent Administrator or to the Investigations Officer. They could have protested Friedman's continued infiltration into IBT Local 507 affairs. They could have simply refused to meet or speak with Friedman as Friedman continued to inject himself into IBT Local 507 matters. What is more, by continuing to meet and consult

¹⁸ For example, Yontek admitted to voting in favor of doubling Friedman's salary from Baker's Local 19, which I found was designed to compensate Friedman for his loss of pay from IBT Local 507 after his suspension. T653-20 to T654-1. See also supra at p. 15. Nativio chaired the IBT Local 507 general membership meeting that Friedman attended, and made specific comments at that meeting designed to give the membership the impression that Friedman was still involved in the affairs of IBT Local 507. See supra at pp. 13-14. Nativio also chaired the Riser Foods contract ratification meeting, at which Friedman was permitted to endorse the acceptance of an employer contract by the IBT Local 507 membership. See supra at pp. 11-13. See also IO-7.

with Friedman under the guise of "social contacts," and by sitting idly by as Friedman attended Local 507 functions, the Respondent Officer and Agents indicated their willingness to allow Friedman to retain control, both in fact and in appearance, of IBT Local 507.

As for the Respondent Officers' and Agents' acquiescence in the face of Friedman's violation of his statutory bar, I find that this, too, was a violation of their duty as officers and agents of the IBT.

In sum, Respondent Officers and Agents violated their duty to ensure that Friedman's suspension from IBT Local 507, and statutory bar from acting as a consultant or advisor to any labor organization, was implemented on a full, complete, and practical level.

3. The Officers' and Agents' Violation of the IBT Constitution

In failing to act upon Friedman's violation of the one-year suspension imposed upon him in Investigations Officer v. Friedman and Hughes, Decision of the Independent Administrator (January 11, 1990), and in failing to act upon Friedman's violation of his statutory bar under § 504, Respondent Officers and Agents brought reproach upon the Union under Article II, Section 2(a) of the IBT Constitution. In addition, their actions and inactions were disruptive of the performance of the Union's legal obligations -- namely, that suspensions imposed pursuant to the Consent Decree be carried out completely, properly, and fully, and that the organization not retain or place any person to serve in violation

of 29 U.S.C. § 504. See 29 U.S.C. § 504(a). As such, Respondent Officers and Agents violated Article XIX, section 7(b)(5) of the IBT Constitution.

V. PENALTY TO BE IMPOSED

A. Respondent Friedman

This is the second time that I have found Friedman to have brought reproach upon the IBT. The first time, as discussed in some detail earlier, I imposed upon him a one-year suspension from all IBT-affiliated bodies. Investigations Officer v. Friedman and Hughes, Decision of the Independent Administrator (January 11, 1990). In that case I considered, in mitigation of Friedman's penalty, the representations of his counsel that Friedman "had served [his] Union's members well, [was a] community asset[], and [was] otherwise, in all respects, [a] good citizen[]." Id. at 47. As such, I gave Friedman the one-year suspension -- a relatively lenient penalty in light of the infractions that I found him to have committed in that case. This time, however, Friedman is not entitled to any such consideration.

Violations of a suspension order and a statutory debarment are particularly serious offenses. Not only do such violations evidence the violator's belief that he is above the law, but they signal to the Union leadership and membership that the rules do not apply to those who are powerful. Such a message both condones lawlessness and deflates the morale of those who attempt to live within the law and work within the rules.

Further, on a practical level, suspension orders must be vigorously enforced, lest the penalties imposed become meaningless exercises in futility; and once the penalties are rendered meaningless so, too, will a violation of the rules become meaningless. As such, it is necessary that an individual's violation of his suspension be met with substantial penalties.

Therefore, for the violations herein, I order that Friedman is hereby permanently barred from membership in the IBT. By virtue of this decision, Friedman is to remove himself from all of his IBT-affiliated Union positions (including membership in the IBT), and is to draw no money or compensation therefrom, or from any other IBT-affiliated source.

B. Respondent Officers and Agents

For the reasons discussed above, it is crucial that all those in a position to do so scrupulously see to it that all suspensions and statutory bars are vigorously enforced. As a practical matter, this is of greater importance than the suspended individual himself obeying his suspension or debarment, because such an individual cannot violate his suspension if he does not have the assistance, or at least the acquiescence, of officers and agents inside the Union. Therefore, Respondent Officers' and Agents' violations of the IBT constitution merit punishment.

I note, however, that the Officers of IBT Local 507 were, as members of the Executive Board, better suited to stop Friedman from violating his suspension than were the IBT Local 507 Business

Agents. They had the ability to call meetings, to pass board resolutions, and to otherwise clearly direct that Friedman immediately cease attempting to direct IBT Local 507 affairs. Thus, while the Business Agents had a duty coextensive with the IBT Local 507 Officers to take positive steps toward ensuring that the suspension order was not violated, the scope of the reasonable steps that the Business Agents could have taken in fulfilling their duty was more limited than those that the Officers could have taken. As such, I find it appropriate to deal with the Officers and Agents separately with regard to the penalties to be imposed upon them.

**1. Executive Board Members and Officers:
Yontek, Walden, Jurevicius, LaBuda**

As Executive Board members during all times relevant to this case, Yontek, Walden, Jurevicius, and LaBuda had available an array of steps they could have taken to enforce Friedman's suspension. They chose not to do so; rather, these Respondents chose to permit Friedman's continued influence in IBT Local 507. They also chose to give the impression to IBT Local 507's membership that Friedman was still de facto in charge at the Union.

Further, none of the Executive Board members acted in the face of Friedman's violation of his statutory bar under § 504. Not only was this failure to act a violation of their duty as Officers of IBT Local 507, but it was also disruptive of the performance of the Union's legal obligations, inasmuch as it permitted IBT Local 507

to retain or place Friedman to serve the Local in violation of 29 U.S.C. § 504. See 29 U.S.C. § 504(a).

Accordingly, for a period of eighteen months, Yontek, Walden, Jurevicius, and LaBuda are barred from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship position. They may, however, retain their IBT membership. During the eighteen month period in which these Respondents are barred from holding any officer or trusteeship position, they shall also be barred from working, in any capacity, with IBT-affiliated entities. Stated another way, during this eighteen month period, these four Respondents may only obtain employment with non-IBT-affiliated entities.¹⁹

2. Business Agents: Kolar, Schuetz, Kapelka, Lukic

Respondents Kolar, Schuetz, Kapelka, and Lukic were Business Agents of IBT Local 507 at all times relevant to this case. As I have pointed out, although not in the same position of authority as IBT Local 507's Executive Board members, these Business Agents had a duty to do all that they reasonably could to enforce Friedman's suspension. Instead, however, they chose to do nothing. Through their inaction, they permitted Friedman to influence IBT Local 507 during the time when he was barred from doing so, and allowed the

¹⁹ During this eighteen month period, these Respondents shall also be prevented from holding any positions such as job steward, shop steward, or the like.

impression to be given to IBT Local 507's membership that Friedman was still in charge at the Union.

Further, none of the Business Agents acted in the face of Friedman's violation of his statutory bar under § 504. Not only was this failure to act a violation of their duty as Business Agents of IBT Local 507, but it was also disruptive of the performance of the Union's legal obligations, inasmuch as it permitted IBT Local 507 to retain or place Friedman to serve the Local in violation of 29 U.S.C. § 504. See 29 U.S.C. § 504(a).

Accordingly, for a period of six months, Kolar, Schuetz, Kapelka, and Lukic are barred from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship position. They may, however, retain their IBT membership. During the six month period in which these Respondents are barred from holding any officer or trusteeship position, they shall also be barred from working, in any capacity, with IBT-affiliated entities. Stated another way, during this six month period, these four Respondents may only obtain employment with non-IBT-affiliated entities.²⁰

3. Business Agents: Thomas and Letner

Respondents Thomas and Letner are currently Officers of IBT Local 507. However, the representations of counsel indicate that they did not become officers until January of 1991. Respondent

²⁰ During this six month period, these Respondents shall also be prevented from holding any positions such as job steward, shop steward, or the like.

Officers' and Agents' post-hearing brief at 67-68. Prior to that date, Thomas and Letner served as Business Agents. These representations have not been refuted; thus I will accept them. Friedman's suspension was still in effect during January of 1991, and his statutory debarment did not begin until that month. Thus, while Thomas and Letner did not have the same opportunity to stop Friedman's pre-January 1991 activities as did those who were members of the Executive Board during all times relevant to this case, these two Respondents did have at their disposal the variety of steps available to Executive Board members to stop Friedman's post-January 1991 activities. In light of all of the above, I have decided to consider Respondents Thomas and Letner separately from the other Respondents.

Accordingly, for a period of nine months, Thomas and Letner are barred from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship position. They may, however, retain their IBT membership. During the nine month period in which Thomas and Letner are barred from holding any officer or trusteeship position, they shall also be barred from working, in any capacity, with IBT-affiliated entities. Stated another way, during this nine month period, Thomas and Letner may only obtain employment with non-IBT-affiliated entities.²¹

²¹ During this nine month period, Thomas and Letner shall also be prevented from holding any positions such as job steward, shop steward, or the like.

4. Business Agent: Nativio

Respondent Nativio was a Business Agent at all times relevant to this case. As noted, like his fellow Business Agents, Nativio had a duty to do all that he reasonably could to enforce Friedman's suspension and statutory bar. Also like his fellow Business Agents, Nativio failed to fulfill this duty.

However, Nativio deserves specific mention because he had a more proactive role in assisting Friedman's violation of his suspension than did the other Business Agents. For example, Nativio chaired the IBT Local 507 general membership meeting that Friedman attended, and made specific comments at that meeting designed to give the membership the impression that Friedman was still involved in the affairs of IBT Local 507. See supra at pp. 13-14. Nativio also chaired the Riser Foods contract ratification meeting, at which Friedman was permitted to endorse the acceptance of an employer contract by the IBT Local 507 membership. See supra at pp. 11-13. See also IO-7.

In determining the appropriate penalty for a violation of the IBT Constitution, it is appropriate to consider the relative degree of culpability between individuals charged in the same matter. United States v. IBT, No. 88 CIV 4486 (DNE). slip op. at 9-10 (S.D.N.Y. March 5, 1993). In the instant case, the evidence shows that Nativio had a greater degree of culpability than the four Respondents (Kolar, Schuetz, Kapelka, Lukic) who were also solely Business Agents during the entire time period relevant to this case. Therefore, I find that, in the case of Nativio, a harsher

penalty is appropriate than the six month suspension that has been imposed upon the four similarly situated Respondents.

Accordingly, for a period of nine months, Nativio is barred from holding, or drawing any compensation from, any IBT-affiliated officer or trusteeship position. He may, however, retain his IBT membership. During the nine month period in which Nativio is barred from holding any officer or trusteeship position, he shall also be barred from working, in any capacity, with IBT-affiliated entities. Stated another way, during this nine month period, Nativio may only obtain employment with non-IBT-affiliated entities.²²

5. Employee Benefits

My authority to impose sanctions on Respondents' employee benefits is now well settled. See Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd United States v. IBT, 941 F.2d 1292 (2d Cir. 1991).

The first category of benefits to address are those that are administered by both IBT-affiliated persons and 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."

²² During this nine month period, Nativio shall also be prevented from holding any position such as job steward, shop steward, or the like.

If Friedman is a participant in any Third-Party Plan, I direct that the IBT and any affiliate that makes, or may contemplate making payments, not make, or discontinue making, payment of Union funds to such Third-Party Plans on Friedman's behalf. This ruling does not interfere with Friedman's right to receive any benefits that may have already vested in such plans. See, e.g., Guidry v. Sheet Metal Workers National Pension Fund, 1210 S.Ct. 680 (1990).²³

As for Yontek, Walden, Jurevicius, LaBuda, Kolar, Schuetz, Kapelka, Lukic, Nativio, Thomas and Letner, any contributions made by any IBT-affiliated entity to sustain benefits on their behalf in such Third-Party Plans as a result of their serving, or having served as officers, trustees, or employees of IBT-affiliated entities must cease during their respective disability periods. Again, vested benefits in such plans are not disturbed by virtue of this Decision.²⁴

²³ Based on the schedule of benefits provided on behalf of Friedman it appears that the Teamsters' Affiliates Pension Fund and the Central States Pension Fund, both of which Friedman participates in, are Third-Party Plans.

²⁴ Based on the schedule of benefits provided by Respondent Officers and Agents it appears that the Bakers Local 19 Pension Fund and the Bakers Local 19 Health and Welfare Fund, both of which all the Respondent Officers and Agents participate in, are Third-Party Plans. In addition, Kapelka, Kolar, Lukic and Nativio also participate in the Teamsters' Affiliate Pension Plan and the Joint Council 41 Severance Plan, both of which appear to be Third-Party Plans as well.

The second category of benefits to address are those that are under the exclusive control of the IBT or IBT-affiliated entities (such as bonuses and Local-controlled severance plans).

As for Friedman, to the extent the IBT or any IBT-affiliated entity contemplates making a payment of any such benefits to him, they are hereby directed not to do so.²⁵

As for Yontek, Walden, Jurevicius, LaBuda, Kolar, Schuetz, Kapelka, Lukic, Nativio, Thomas and Letner, any contributions made by any IBT-affiliated entity to sustain any such benefits on their behalf as a result of their having served as officers, trustees, or employees of IBT-affiliated entities must cease during their respective disability periods.

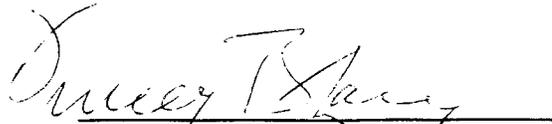
Any of the Respondents are free to use their personal funds to continue any particular benefit.

Finally, given that all Respondents were found culpable, they are not entitled to have any of their legal expenses paid by any IBT-affiliated entity. See, e.g., United States v. Local 1804-1, 732 F.Supp. 434, 437 (S.D.N.Y. 1990).

²⁵ Friedman, in his schedule of benefits, has represented that he does not receive any health and welfare benefits from the IBT.

VI. MY VOLUNTARY STAY

I will stay this decision and the penalties imposed pending Judge Edelstein's review of my decision, which will be submitted to him for consideration by way of Application.



Frederick B. Lacey
Independent Administrator

Dated: June 21, 1993