

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF  
AMERICA, AFL-CIO, et al.

Defendants.

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: 88 Civ. 4486 (DNE)  
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: APPLICATION CIV BY THE  
: INDEPENDENT ADMINISTRATOR UNDER  
: THE CONSENT ORDER DATED MARCH  
: 14, 1989 -- DECISION OF THE  
: INDEPENDENT ADMINISTRATOR IN  
: THE MATTER OF THE HEARING OF  
: EUGENE BENNETT AND VICTOR  
: ALFIERI  
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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 issues raised by the Investigations Officer during a hearing before me on the charges filed against Eugene Bennett ("Bennett") and Victor Alfieri ("Alfieri"). I have decided these issues in a Decision dated October 27, 1992, a copy of which is enclosed herewith.

Bennett was charged with failing to investigate allegations that his fellow Union officers, from both Local 272 and Joint Council 16, were associated with organized crime (Charges One and Two), and with "knowingly associating" with members of La Cosa Nostra (Charge Three). Alfieri was charged with willfully

disregarding his fiduciary duty to investigate and act with respect to allegations that his fellow Union officers were associated with La Cosa Nostra (Charge One), and with "knowingly associating" with members of La Cosa Nostra (Charge Two).

Having reviewed the evidence and the Post-Hearing submissions, I found that the Investigations Officer had satisfied his just cause burden of proving the charges against Respondents by a preponderance of the evidence. As a penalty, I permanently barred Bennett and Alfieri from the IBT. Both Bennett and Alfieri are to immediately remove themselves from all of their IBT-affiliated Union positions (including membership in the IBT) and draw no money or compensation therefrom or from any other IBT-affiliated source.

In addition, I directed that, consistent with my opinion in Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT (Application XVI), 753 F.Supp. 1181 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d. Cir. 1991), that sanctions be imposed upon Respondents' employee benefits. I also prohibited Bennett and Alfieri from having any portion of their legal fees and costs paid by the IBT or any IBT-affiliated entity.

I did not voluntarily stay my Decision or the penalties imposed pending review by Your Honor as I found it in the best interest of the IBT that Respondents immediately be purged from the Union. Nonetheless, it is respectfully requested that an order be

entered affirming my October 27, 1992, Decision, if Your Honor finds it appropriate.

  
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Frederick B. Lacey  
Independent Administrator

Dated: 11/6/92

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INVESTIGATIONS OFFICER,

Claimant,

v.

VICTOR ALFIERI and EUGENE BENNETT,

Respondents.

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DECISION OF  
THE INDEPENDENT  
ADMINISTRATOR

This matter concerns charges filed by the Investigations Officer, Charles M. Carberry, against Victor Alfieri ("Alfieri"), Vice President of Local 272, and Eugene Bennett ("Bennett"), former Secretary/Treasurer and Business Manager of Local 272 and former Recording Secretary of Joint Council 16 (sometimes referred to as "Respondents"). A hearing was held before me on these charges and post-hearing submissions were received.<sup>1</sup> Bennett was represented by counsel at the hearing. Alfieri appeared pro se. Having reviewed the evidence and the post-hearing submissions, I find that

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<sup>1</sup> Bennett wrote to me requesting an adjournment of the disciplinary hearing until criminal charges against him concluded. Citing Article XIX, Section 7(a) of the IBT Constitution, he argued that I was prohibited from conducting a hearing on the disciplinary charges filed by the Investigations Officer, because they involve the same set of facts as are relevant to his pending criminal prosecution. I denied his request, citing paragraph D.6 of the Consent Order, which amended the IBT Constitution to permit the suspension of "a member or officer facing criminal or civil trial while the charges are pending." See Investigations Officer v. Friedman and Hughes, Decision of the Independent Administrator (September 29, 1989) at 5-7, aff'd, United States v. IBT, 725 F. Supp. 162, 165-66 (S.D.N.Y. 1989), aff'd, 905 F.2d 610, 620 (2d Cir. 1990). Subsequently, Bennett explained in writing that in light of the pending criminal charge, he would not submit a post-hearing memorandum.

the Investigations Officer has satisfied his just cause burden of proving the charges against Respondents by a preponderance of the evidence. See United States v. IBT, 754 F. Supp. 333, 337-38 (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 AGAINST VICTOR ALFIERI**

The Investigations Officer charged Alfieri as follows:

CHARGE ONE

While an officer of IBT Local 272, [Alfieri] brought reproach upon the IBT, violated [his] fiduciary duties to the members and violated [his] oath, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While an officer of Local 272, [he] willfully disregarded [his] fiduciary duty to investigate and act with respect to the allegations that [his] fellow officers including, but not limited to, Cirino "Charles" Salerno were associated with La Cosa Nostra ("LCN").

CHARGE TWO

While an officer of IBT Local 272, [he] brought reproach upon the IBT and violated [his] membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

From in or about 1975 to the present, while an officer of IBT Local 272, [he] knowingly associated with members of La Cosa Nostra ("LCN"), including, but not limited to,

Philip Tortorici and LCN associates including, but not limited to, Cirino "Charlie" Salerno.

## II. THE CHARGES AGAINST EUGENE BENNETT

The Investigations Officer charged Bennett as follows:

### CHARGE ONE

While an officer of IBT Joint Council 16, [Bennett] brought reproach upon the IBT, violated [his] fiduciary duties to the members and violated [his] oath, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While an officer of IBT Joint Council 16, [he] willfully disregarded [his] fiduciary duty to investigate and act with respect to the allegations that [his] fellow members of Joint Council 16, including, but not limited to, Pasquale "Patsy" Crapanzano, Bernard Adelstein and Anthony Distinti, were associated with La Cosa Nostra ("LCN").

### CHARGE TWO

While an officer of IBT Local 272, [he] brought reproach upon the IBT, violated [his] fiduciary duties to the members and violated [his] oath, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

While an officer of IBT Local 272, [he] willfully disregarded [his] fiduciary duty to investigate and act with respect to the allegations that [his] fellow officers of Local 272 including, but not limited to, Cirino "Charles" Salerno were associated with La Cosa Nostra ("LCN").

### CHARGE THREE

While an officer of IBT Local 272 and Joint Council 16, [he] brought reproach upon the IBT and violated [his] membership oath in

violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

From in or about 1970 to the present, while an officer of IBT Local 272 and Joint Council 16, [he] knowingly associated with members of La Cosa Nostra ("LCN"), including, but not limited to, Philip Tortorici and LCN associates including, but not limited to, Cirino "Charlie" Salerno.

### III. 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 the International Union.

\* \* \*

In 1991, this section of the Constitution was significantly amended to include additional grounds for such charges. Consequently, Section 7(b)(9) is now implicated. This section specifies that "[k]nowingly associating . . . with any member or associate of any organized crime family or any other criminal group" shall be a basis for discipline.

Second, Article II, Section 2(a) is 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 time in such a manner as not to bring reproach upon the Union . . . ."

#### IV. BACKGROUND

Alfieri has been a Teamster with Local 272 for thirty-three years and has served as an officer of that Local since 1976. IO-4 at 4-12 to 15 and at 5-6 to 9.<sup>2</sup> He served as a Trustee and Business Agent from 1976 until 1990, when he became Vice President of Local 272. Id. at 5-6 to 13. On March 3, 1992, Bennett, who was then Secretary/Treasurer and Business Manager of Local 272, suspended Alfieri because of an internal union charge involving the Local's membership. Id. at 6-17 to 8-25.

At the time of his retirement in July of 1992, Bennett, a member of Local 272 for approximately forty-seven years, was the senior member of its Executive Board. IO-1 at 4-4 to 11 and at 4-25 to 5-3. Bennett served as a Trustee and Business Representative from 1961 until 1974, when he became President of the Local. Id. at 4-2 to 8. In 1979, he became Secretary/Treasurer and Business Manager of Local 272. Id. at 3-15 to 19. Bennett was also a Trustee of Local 272's pension and welfare fund. Id. at 4-22 to 24.

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<sup>2</sup> Citations to the Investigations Officer's exhibits are referred to as "IO" followed by the number identifying the exhibit and then the page number of the exhibit, if appropriate. For those exhibits that are transcripts, the page number will be followed by the line number. For example, IO-4 at 5-6 to 9 refers to the transcript on page 5, lines 6 to 9.

In 1990, Local 272's Executive Board consisted of Bennett, Alfieri, Cirino "Charles" Salerno ("Salerno") and Floyd Valrie ("Valrie"). Id. at 5-4 to 7.

Bennett additionally served as Recording Secretary of Joint Council 16 and Trustee for the Joint Council's pension fund. Id. at 4-20 to 24 and at 22 - 12 to 16. Prior to serving as Recording Secretary, he was a member of the Advisory Board and later, a Trustee for Joint Council 16. IO-2 at 22 - 17 to 23. While an officer of Joint Council 16, Bennett served on its Executive Board, with, among others, Bernard "Bernie" Adelstein ("Adelstein"), Pasquale "Patsy" Crapanzano ("Crapanzano") and Anthony "Smiley" Distinti ("Distinti"). IO-1 at 5-6 to 12. On July 16, 1992, Bennett retired as Secretary Treasurer and Business Manager of Local 272 and as Recording Secretary of Joint Council 16. IO-7.

#### V. THE INVESTIGATIONS OFFICER'S CASE

In proving the charges against Respondents, the Investigations Officer relied primarily on the sworn Declaration of Federal Bureau of Investigation ("FBI") Special Agent Brian F. Taylor ("Agent Taylor"), who verified his Declaration at the hearing before me. IO-19. Agent Taylor has worked as a Special Agent with the FBI for over fifteen years. Id. at ¶ 1. Agent Taylor's career has primarily consisted of conducting investigations on organized crime activities or supervising other

Special Agents conducting such investigations. Id. He is currently the Coordinating Supervisory Special Agent of all organized crime investigations in the FBI's New York Field Office. Id. at ¶ 2. Agent Taylor served as Supervisory Special Agent in charge of an organized crime squad in the New York Office, from 1984 until July 1991. Id. at ¶ 3. Prior to this position, he investigated La Cosa Nostra (sometimes referred to as "LCN") organized crime activities in New York City and Buffalo, New York. Id. at ¶¶ 4-5.

From his experience as a Special Agent and Supervisory Special Agent, Agent Taylor is familiar with FBI criminal investigations of LCN members and associates, as well as with the intelligence information gathered by the FBI on LCN activity. Id. at ¶ 6. Agent Taylor is fully familiar with the various investigative techniques used by the FBI in organized crime investigations. Id. As such, Agent Taylor has instructed newly hired and experienced Special Agents of the FBI, as well as members of other law enforcement agencies, on organized crime and investigative methods. Id. at ¶ 8. Agent Taylor has also observed, met, interviewed and arrested numerous members and associates of LCN. Id. at ¶ 6. Moreover, on numerous occasions, Agent Taylor has testified in criminal trials and other legal proceedings concerning LCN activities. Id. at ¶ 7.

Recognizing Agent Taylor's extensive background and experience, I accept him as an expert in organized crime

investigative procedures and in the structure of organized crime in the New York City area. This is consistent with my prior acceptance of Agent Taylor as an expert in Investigations Officer v. Buckley, et al., Decision of the Independent Administrator (November 18, 1991) at 6, aff'd, United States v. IBT, 782 F. Supp. 238 (S.D.N.Y. 1992), Investigations Officer v. Adelstein, et al., Decision of the Independent Administrator (September 14, 1992) at 6, and Investigations Officer v. Frank Salerno, Decision of the Independent Administrator (September 30, 1992) at 6.

#### **VI. FAILURE TO INVESTIGATE ALLEGATIONS AGAINST FELLOW OFFICERS**

The Investigations Officer charges Respondents with violation of their fiduciary duties as IBT Officers. Specifically, the Investigations Officer charges that as IBT Officers, Respondents had an affirmative duty to investigate the reports that fellow officers were associated with members of organized crime and to act on the findings of their investigation.

A Union officer's fiduciary duty to investigate and remedy corruption within the Union is well established. See United States v. IBT, 708 F. Supp. 1388, 1401 (S.D.N.Y. 1989) (IBT officers have a duty to "disclose and remedy wrongdoing by the IBT") (citing United States v. Local 560 of IBT, 780 F.2d 267, 284 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (1986)); Investigations Officer v. Calagna, Decision of the Independent Administrator (June 14, 1991) at 23 (IBT Officers have a "duty to investigate allegations

of corruption in their midst"), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. at 2 (S.D.N.Y. November 8, 1991) ("IBT Officers are fiduciaries with respect to Union members and have a duty to investigate and remedy corruption in the Union."). In addition, as members of Local 272's Executive Board, Respondents had a duty, under the Local's bylaws, to investigate allegations concerning a breach of a fellow officer's fiduciary duty. IO-8 at 18, Section 16-C. The bylaws state that the Executive Board "shall have the duty to investigate any alleged breach of fiduciary duty when circumstances so warrant and to take appropriate action if the investigation so merits." Id. Moreover, the bylaws required Bennett, as Secretary-Treasurer, to supervise all officers and employees of Local 272. Id. at 8, Section 10-B.

Respondents, therefore, had a duty to pursue a reasonable means of investigation. For example, Respondents could have: "sought assistance from the authorities; . . . arranged a polygraph test or an in depth interview of [those fellow officers in question] by a trained professional; [or] could have hired a private investigator . . . ." Investigations Officer v. Sansone, Decision of the Independent Administrator (March 30, 1992) at 14, aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. May 15, 1992). These alternatives are listed to emphasize that reasonable means of investigation were available. Id.

To prove that Respondents failed to investigate and remedy wrongdoing, the Investigations Officer must establish by a

preponderance of the evidence, that: 1) Respondents had knowledge of the allegations against their fellow officers; and 2) Respondents failed to adequately investigate the truthfulness of such allegations.

**A. Alfieri's Failure to Investigate Salerno**

**1. Knowledge of the Allegations**

Salerno, former President of Local 272, served as a member of its Executive Board for approximately twenty years. IO-1 at 6-25 to 7-3. In August 1990, Salerno was removed from his office and from membership in the IBT for having knowingly associated with members of organized crime and for having received kickbacks from an employer of Local 272 members. Investigations Officer v. Salerno, et al., Decision of the Independent Administrator (August 20, 1990) at 36, aff'd, United States v. IBT, 745 F. Supp. 189 (S.D.N.Y. 1990).

I find that Alfieri had knowledge of the allegations that Salerno was associated with La Cosa Nostra. Vincent "Fish" Cafaro ("Cafaro"), a former "Genovese soldier," provided FBI agents with information detailing the LCN's involvement in Local 272. Ex. M.<sup>3</sup> In January 1987, Cafaro informed the FBI of Salerno's relationship to the Genovese family. Id. at p. 1-5. Specifically, Cafaro provided the FBI with details of, among other illegal activity,

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<sup>3</sup> Agent Taylor's exhibits are referred to as "Ex." followed by a letter identifying the exhibit and then the page number of the exhibit, if appropriate.

Salerno's skimming money from Local 272 and of his making payments to the Mafia out of Local 272 funds. Id. Cafaro told the FBI that Salerno would pay either Cafaro or Salerno's brother, Anthony "Fat Tony" Salerno ("Anthony Salerno"), a former boss of the Genovese family, a portion of the money he skimmed from Local 272 employers. Id. Based on Cafaro's statements, the FBI initiated a criminal investigation into Local 272 and in 1988, seized the Local's books and records. IO-9 at 1. At the time of the FBI's investigation, Alfieri was a Trustee of Local 272, with responsibility over Local 272's books and records. IO-3 at 4 to 5. Alfieri therefore knew or should have known of the FBI's investigation.

Since 1988, Salerno has frequently been named in the media as having ties to LCN and as having received kickbacks from employers of Local 272 members. Alfieri admitted that he read an October 24, 1989, article in the New York based weekly newspaper, the Village Voice, which discussed LCN's control over Local 272. IO-3 at 10-13 to 22. The article described Salerno's alleged ties to the Genovese family, citing to Cafaro's signed statement to the FBI. IO-9. The paper reported that Salerno allegedly delivered money to the Genovese family, which he skimmed from Local 272. Id. The article then detailed Salerno's receipt of kickbacks from employers of Local 272 members and from the sale of the union headquarters. Id.

Other publications also reported Salerno's ties with LCN. On June 4, 1989, Newsday, a New York based newspaper, reported that

the Investigations Officer would likely begin his attack on corruption in the IBT by targeting fourteen New York Teamster leaders. IO-20. The fourteen Teamsters named were those officers who avoided answering the Justice Department's investigation in United States v. IBT, 88 Civ. 4486 (DNE), by asserting their Fifth Amendment privilege against self-incrimination. Id. Salerno was among the fourteen listed. Id.

On April 2, 1990, the Daily News, another New York newspaper, mentioned Salerno in its report on organized crime's attempt to circumvent the law. IO-18 at 1. Based on a conversation taped by the FBI, the article addressed the LCN's use of "Salerno's union as a Trojan horse for getting around" the law. IO-18.

Moreover, in the April 1990 issue of The International Teamster magazine, the IBT's monthly publication which is distributed to every IBT member, I identified Salerno as one of twelve individuals charged with knowingly associating with organized crime. IO-11 at 1. In the October 1990 issue of The International Teamster, I reported that those charges had been proven and that Salerno had been permanently barred from the IBT. IO-13.

Alfieri testified, during his in-person examination before the Investigations Officer, that in 1988, after he read about Salerno in the newspapers, he suggested to Salerno that he leave the union. IO-4 at 35-23 to 36-5. Acknowledging that

Salerno was a liability to Local 272, Alfieri testified that he asked Salerno: "Charlie, why don't you leave? There is a lot of allegations, a lot of things in the papers, why don't you leave?" Id. at 36 - 3 to 5.

Alfieri also testified that in September 1988 he attended a meeting in which Salerno was present. Id. at 36-21 to 37-21. Alfieri admitted that at the meeting, Bennett gestured to him that Salerno as well as the others at the table were "wise guys." Id. at 38-6 to 11.

## **2. Failure to Investigate Allegations**

Despite his knowledge of the allegations against Salerno, Alfieri made no effort to investigate those allegations. Instead, Alfieri testified that he merely confronted Salerno, who not surprisingly denied their validity, and Bennett, who also dismissed the allegations. IO-3 at 11 - 2 to 9. Alfieri testified that he never raised the allegations at an Executive Board meeting. Id. at 11 - 10 to 12. Alfieri's failure to actively confront the allegations of Salerno's LCN ties is a gross breach of his fiduciary duty to investigate and remedy corruption within the IBT, and more particularly, within his Local.

**B. Bennett's Failure to Investigate Salerno, Adelstein, Crapanzano and Distinti**

**1. Knowledge of the Allegations**

**a. Salerno**

I find that Bennett also had knowledge of the allegations against Salerno. Bennett and Salerno were fellow members of Local 272's Executive Board for over twenty years. IO-1 at 5 - 4 to 12 and at 6 - 25 to 7 - 3. Bennett testified that he was aware of allegations in the media accusing Salerno of receiving kickbacks from the sale of a union building, and from those employers who employed Local 272 members. Id. at 39-21 to 40-18. Bennett also conceded that the allegations against Salerno involving his receipt of kickbacks from employers were discussed at an industry luncheon. Id. at 41 - 4 to 11.

Additionally, Bennett, as the senior member of the Local 272 Executive Board, knew or should have known of the FBI's 1988 investigation into Salerno. The FBI's investigation, coupled with the vast local media coverage naming Salerno as a likely target for an investigation (see text under VI. A. 1.), provided Bennett with notice of the allegations regarding Salerno's LCN ties. Bennett's knowledge of the allegations against Salerno becomes even more apparent upon considering the fact that Bennett admitted that since the entry of the Consent Decree, he has made a practice of reading The International Teamster magazine, including those sections which list the individuals charged by the Investigations Officer. IO-2 at 24-22 to 25-5.

**b. Adelstein**

Adelstein recently served as the Secretary - Treasurer of the Executive Board of Joint Council 16, on which Bennett formerly served as Recording Secretary. IO-19 at ¶ 74. In April 1992, the Investigations Officer charged Adelstein with knowingly associating with members and associates of LCN. In a September 14, 1992, decision, I found that the Investigations Officer had met his burden of proving that charge and thus permanently removed Adelstein from all ties to the union. Investigations Officer v. Adelstein, Decision of the Independent Administrator (September 14, 1992) at 23.

I find that Bennett had knowledge of the allegations against Adelstein. Adelstein's connection to New York organized crime has been well publicized in the media. As early as 1957, the Select Committee on Improper Activities in the Labor or Management Field of the United States Senate ("Select Committee") questioned Adelstein about his connections to the Mafia. IO-19 at ¶ 77. The Select Committee published an Interim Report, in which it described Adelstein's relationship to organized crime and his role in helping the Mafia control the New York City private garbage carting business, through Local 27 and Local 813. Id. In October 1987, Rand Corporation published "Racketeering in Legitimate Industry," by Peter Reuter. Id. The publication noted Adelstein's association with organized crime. Id.

Moreover, in December 1988, Adelstein signed a Stipulation and Order in United States v. IBT, 88 Civ. 4486 (DNE)(S.D.N.Y.). Id. at ¶ 78, Ex. BD. The Stipulation and Order stated that if Adelstein was called to testify in regard to that case, he would invoke his Fifth Amendment privilege against self-incrimination. Ex. BD. On June 4, 1989, Newsday named Adelstein as a likely target of the Investigations Officer, in part because of his decision to exercise his Fifth Amendment rights. IO-20 at 1. The paper also identified Adelstein as one of five New York Teamsters named as LCN by the Labor Department in the 1970s. Id. The Labor Department alleged that Adelstein was an associate of the Genovese family. Id.

On July 1, 1990, the Daily News also reported on Adelstein's connection to the Mafia. Id. The newspaper named Adelstein as Secretary Treasurer of Joint Council 16 and head of a private sanitation workers local. Id. The paper noted that a Luchese family member referred to Adelstein's local, in a secretly recorded conversation, as "'our f\_\_\_\_\_g union.'" Id.

In addition, as Secretary-Treasurer and Business Agent of Local 813, Adelstein is named as a defendant in United States v. Private Sanitation Industry, 89 Civ. 1848 (E.D.N.Y.), a suit against Local 813. IO-19 at ¶ 82. The case involves allegations that organized crime controls the garbage carting industry on Long Island, New York. Id. Filed June 6, 1989, the case is still pending. Id.

Nevertheless, on April 20, 1992, Bennett testified that prior to April 1992, he had neither heard nor read that Adelstein was associated with members of organized crime. IO-2 at 27-15 to 19 and 28-9 to 19. Bennett also testified that he had no prior knowledge that in December 1988 Adelstein asserted his Fifth Amendment privilege against self-incrimination in United States v. IBT, 88 Civ. 4486 (DNE)(S.D.N.Y.). Id. at 31 - 20 to 32 - 8. Bennett denied that Adelstein's refusal to testify was ever discussed in a Joint Council Board meeting. Id. at 36-9 to 19. Additionally, Bennett testified that prior to April 1992, he had no knowledge that Adelstein was named as a defendant in the Government's suit against Local 813. Id. at 37 - 14 to 24 and at 38 - 23 to 25.

I do not find Bennett credible when he testifies that he lacked knowledge of the allegations against Adelstein. See United States v. IBT, 764 F. Supp. 797, 801-02 (S.D.N.Y. 1991) ("trier of fact must infer knowledge and intent by considering the facts and circumstances . . . and then draw rational inferences"), aff'd, 956 F.2d 1161 (2d Cir. 1992). It is impossible, as a fellow officer of Joint Council 16 and a fellow IBT member, for Bennett to have remained ignorant of these allegations. Moreover, as someone who tries to read at least one newspaper a day, IO-2 at 31 - 8 to 19, it is unrealistic that Bennett could be unaware of the publicized allegations regarding Adelstein's connection to La Cosa Nostra.

**c. Crapanzano**

Crapanzano was the Vice President and a Trustee of the Pension Fund for Joint Council 16. IO-19 at ¶ 64. I find that Bennett had knowledge of the LCN allegations that had been widely publicized against Crapanzano. In 1988, Crapanzano was publicly identified as a member of organized crime by the United States Senate Permanent Subcommittee on Investigations. Ex. F. Moreover, Crapanzano was previously convicted for his wrongdoing as a Union Officer. IO-19 at ¶ 67. In 1966, he was found guilty on charges that he accepted kickbacks from employers of Local 27 members. Id. (citing United States v. Patsy Crapanzano, 64 Cr. 639 (S.D.N.Y.).

On January 4, 1989, Crapanzano signed a Stipulation and Order in United States v. IBT, 88 Civ. 4486 (DNE) (S.D.N.Y.), stating that if he was called to testify in that matter, he would assert his Fifth Amendment privilege against self-incrimination. IO-19 at ¶ 66, Ex. AP. Consequently, on June 4, 1989, Newsday listed Crapanzano as a likely target for the Investigations Officer. IO-20. The paper also named him as one of the five New York Teamsters who were recognized as having LCN connections in a 1970s internal Labor Department memorandum. Id. He was identified in the memorandum as a Genovese family soldier. Id.

On June 28, 1990, the Investigations Officer charged Crapanzano with bringing reproach upon the IBT by being a member of LCN and by committing those acts for which he was convicted in 1966. Ex. AN. These charges were published in The International

Teamster in October 1990. IO-13. Crapanzano permanently withdrew from the IBT, on October 7, 1990, in settlement of the charges. Ex. AO. I reported Crapanzano's settlement in the March 1991 issue of The International Teamster.

Despite the extensive publication of Crapanzano's wrongdoing, Bennett testified, on April 20, 1992, that he had no knowledge of the allegations until Crapanzano resigned. IO-2 at 23-7 to 26-25. Specifically, Bennett testified that he had no previous knowledge that Crapanzano was a member of LCN, that he had any prior convictions, that Crapanzano entered a stipulation invoking the Fifth Amendment or of his being charged by the Investigations Officer for being a member of the LCN. Id. at 23-7 to 26-18.

Just as Bennett's self-serving denials in regard to Adelstein were incredible, I also find Bennett's testimony regarding Crapanzano to be unbelievable. It is incomprehensible that Bennett, as a high ranking officer of Joint Council 16, could remain ignorant of the allegations swarming around Crapanzano. As noted, Bennett himself testified that since the entry of the Consent Decree, he has habitually read The International Teamster, including those sections in the magazine which list the individuals charged by the Investigations Officer. Id. at 24-22 to 25-5.

#### d. Distinti

In addition to serving as the President of Local 707 in Woodside, New York, Distinti served as the Recording Secretary of Joint Council 16. IO-20. I find that Bennett also had knowledge of the allegations regarding Distinti's ties to the LCN.

Distinti's advancements within Local 707 were outwardly suspicious. Distinti was appointed to the Executive Board of Local 707 while Nicholas Grancio, a Colombo family member, served as Vice President. IO-19 at ¶ 70. In 1984, Distinti was appointed President of Local 707, in replace of Louis Alimena, who was also identified as having LCN ties. Id. at ¶ 71. Distinti was appointed to this office despite lacking tenure in Local 707 and despite continuing to be a paid officer of Local 277. Id. As an officer of Joint Council 16, which has jurisdiction over Local 707, Bennett should have been alerted by Distinti's rise within the Local.

Moreover, the media exposed the corruption within Local 707. In 1986, the media publicized the Colombo crime family's control over Local 707 in the process of investigating Bruno Bauer's death. The media identified Bauer as a dissident IBT member who lost his life as a result of his attempt to inform the National Labor Relations Board of corruption within Local 707. Ex. AZ.

Additionally, on December 30, 1988, Distinti signed a Stipulation and Order pursuant to United States v. IBT, 88 Civ.

4486 (DNE)(S.D.N.Y). IO-19 at ¶ 69, Ex. AU. Distinti stated in the Stipulation and Order that if called to testify in that case, he would assert his Fifth Amendment privilege. Ex. AU. Consequently, on June 4, 1989, Newsday, assuming that he had something to hide, named Distinti as a likely target for the Investigations Officer. IO-20.

In light of the media's coverage of Distinti, I find it impossible that Bennett could remain ignorant of the allegations against him. Moreover, the circumstances surrounding Distinti's appointments within Local 707 should have alerted Bennett that improprieties were taking place.

## **2. Failure to Investigate Allegations**

Bennett failed to adequately investigate the validity of the allegations against Salerno. Bennett testified that he never brought the allegations against Salerno to the Local 272's Executive Board's attention. IO-1 at 41-12 to 17. Instead, Bennett merely discussed the allegations with Salerno, who not surprisingly denied their validity. Id. at 41-18 to 23. Even more disturbing is Bennett's creation of a pension plan that benefited Salerno, despite the Investigations Officer's pending charges against him. IO-6 at Ex. 6-A. Bennett told the Local's Executive Board about the pension plan's benefit to Salerno on June 28, 1990, two months after Salerno was charged. Id. at Ex. 6A.

Bennett also failed to investigate the validity of the allegations against Adelstein. Bennett testified that as a Trustee of Joint Council 16, he never initiated, participated or requested an investigation into Adelstein's relationship to organized crime. IO-2 at 32-14 to 18. Moreover, Bennett never asked Adelstein for information related to the lawsuit in which Adelstein was a named defendant. Id. at 38-18 to 22.

Bennett also failed to investigate the validity of the allegations against Crapanzano and Distinti. On April 20, 1992, Bennett testified that he never inquired into any of Crapanzano's alleged wrongdoing. Id. at 26 - 19 to 25. Moreover, even after Crapanzano resigned, Bennett made no inquiry as to the reason for his resignation. Id. at 24-13 to 21.

Bennett's failure to take affirmative action in regard to the allegations against his fellow Officers is a gross breach of his fiduciary duty to investigate and remedy corruption within the IBT.

#### **VII. RESPONDENTS' KNOWING ASSOCIATION WITH MEMBERS OF LA COSA NOSTRA**

The Investigations Officer also charged Respondents with knowingly associating with Philip Tortorici ("Tortorici"), a member of LCN and Salerno, an LCN associate. In Investigations Officer v. Senese, et al., Decision of the Independent Administrator (July 12, 1990) at 35, aff'd, United States v. IBT, 745 F. Supp. 908 (S.D.N.Y. 1990), I established that a prohibited association

requires purposeful contact with a LCN member, as opposed to that which is "incidental or fleeting." It is also well-settled that knowledge of an associate's LCN ties may be inferred from the "duration and quality" of the association. Unites States v. IBT, 745 F. Supp. 908, 918 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, Senese v. United States, 112 S. Ct. 1161 (1992). Accordingly, to satisfy these charges, the Investigations Officer must prove that: 1) Tortorici was a member of LCN and that Salerno was an LCN associate; 2) Respondents purposefully associated with these two men; and 3) Respondents associated with them knowing of their ties to LCN.

**A. Philip Tortorici**

In approximately 1979, Tortorici became a member of Local 531. IO-19 at ¶ 31. During his first few years of membership, he served as an Assistant to Local 531 Health and Welfare Fund. Id. In 1984, Tortorici became Administrator or Trustee of the Health and Welfare Fund. Id. As such, he was not on the Local 531 Executive Board. Id.

**1. Member of La Cosa Nostra**

I have previously found Tortorici to be member of LCN in Investigations Officer v. Frank Salerno, Decision of the Independent Administrator (September 30, 1992) at 8. In regard to the hearing at hand, Agent Taylor provided sufficient evidence to

corroborate Tortorici's membership in LCN. IO-19. In signed statements dated October 2, 1986 and March 9, 1987, Cafaro, a self-admitted member of the LCN, named Tortorici as a member of his "regime" within the Genovese family. Ex. B at p. 3. Tortorici's testimony before the Investigations Officer, on February 12, 1991, supports this evidence. IO-5. Tortorici acknowledged that he knew such LCN associates as Cafaro, Anthony Salerno, Sammy Santora and Salerno. IO-5 at 12 to 15. Tortorici also testified that he spent his free time at the Palma Boy Social Club, which was identified as a Mafia meeting place. IO-5 at 15 - 22 to 16-14. The Palma Boy Social Club was one of two clubs in which Anthony Salerno, while Boss of the Genovese family, conducted his business. IO-19 at ¶ 22. Moreover, in 1991, Tortorici resigned from his office in settlement of charges brought by the Investigations Officer alleging that Tortorici was a member of the LCN and that he knowingly associated with members of the LCN. Id. at ¶ 31. I therefore find the evidence offered by Agent Taylor to be consistent with my earlier finding regarding Tortorici's membership in LCN.

**2. Respondents' Purposeful Association with Tortorici**

Respondents acknowledged meeting with Tortorici, who had no connection to Local 272, in September 1988. IO-2 at 4 -5 to 14; IO-4 at 36-21 to 37-21. Alfieri testified that he attended a September 1988 meeting with Bennett, Tortorici, Salerno and Frank

Salerno at a restaurant in New York City on 79th Street and First Avenue. IO-4 at 36-21 to 37-21. Alfieri testified that at the meeting, Bennett was instructed by an "older fella" to add Frank Salerno to Local 272's payroll. Id. at 37-9 to 13. Alfieri testified that Bennett was also told that no one was to "ever go near Charlie Salerno . . . ." Id.

Bennett's testimony on April 20, 1992, corroborates Alfieri's testimony. IO-2. Bennett not only confirmed the time and location of the meeting, but he also confirmed the identity of those who attended. Id. at 4-5 to 14 and at 8-2 to 5. Moreover, Bennett acknowledged that at the meeting, Tortorici requested that Frank Salerno be placed on Local 272's payroll. Id. at 5 to 7.<sup>3</sup> Bennett also mentioned that Tortorici spoke to Alfieri and Salerno regarding Alfieri and Salerno's friendship. Id. at 6-19 to 21. Alfieri's testimony is further supported by the fact that Bennett subsequently hired Frank Salerno as a Business Agent. IO-1 at 9-7 to 17.

Moreover, testimony from Daniel Sullivan, Secretary Treasurer of Local 272, also corroborates that Tortorici pressured Bennett to hire Frank Salerno. IO-6 at 58-19 to 59-15. Sullivan testified that Bennett suggested to him that had Bennett not hired

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<sup>3</sup> Bennett, however, testified that before the September 1988 meeting, Joe Hartnett, who was then Vice President, brought Frank Salerno to his attention as a candidate for a Business Agent position. IO-2 at 5-13 to 20.

Frank Salerno, Bennett's physical safety would have been at risk. Id. at 59-2 to 6.

Frank Salerno's June 9, 1992, deposition also suggests that wrongdoing took place at the September 1988 meeting. IO-17. Frank Salerno asserted his Fifth Amendment privilege against self-incrimination in response to questions regarding his attendance at the September 1988 meeting. Id. at 3-20 to 4-20.

Accordingly, I find that Respondents met with Tortorici in September 1988. I also find that the discussion at the meeting clearly evidences a purposeful association with Tortorici by Respondents.

**3. Respondents' Knowing Association with Tortorici**

I find that Respondents associated with Tortorici despite knowing that he was associated with LCN. Tortorici's connection to LCN was apparent from the circumstances of the meeting alone. Tortorici's request that Local 272 hire Frank Salerno and allow Salerno to keep his position reflected control over Local 272 by an outside force.

**B. Charles Salerno**

**1. Member of La Cosa Nostra**

In 1990, the Investigations Officer brought charges against Salerno, who was then President of Local 272, for knowingly associating with members of organized crime and for receiving

kickbacks from union employers. IO-12 at 2. In an August 20, 1990 decision, I found that Salerno knowingly associated with members of the La Cosa Nostra. Investigations Officer v. Salerno, et al., Decision of the Independent Administrator (August 20, 1990) at 29, aff'd, United States v. IBT, 745 F. Supp. 189 (S.D.N.Y. 1990). Consequently, I permanently barred Salerno from the Union. IO-13.<sup>4</sup>

In connection with the instant hearing, Agent Taylor provided extensive evidence to corroborate Salerno's LCN ties. IO-19. Cafaro, a self-admitted member of the LCN, is the primary source of Agent Taylor's information. Ex. C, M. Cafaro provided an affidavit to the Permanent Subcommittee on Investigations of the United States Senate, as well as testimony and signed statements to the FBI, detailing his experience and knowledge of the LCN. See Ex. B, C, D, L, M, O, Q, R, AD, AG, AQ.

In a statement dated January 21, 1987, Cafaro discussed Salerno and Local 272's relationship with LCN. Ex. M. Referring to the Mafia's control over Local 272, Cafaro described the Local as " . . . ours; it belongs to our brugad." Id. at p. 1. Cafaro detailed how Salerno skimmed money from Local 272 and delivered it to LCN hands. Id. Cafaro explained that, in part through "sweetheart contracts" with garage owners, Salerno provided the LCN

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<sup>4</sup> This finding was based upon the Affidavit of another FBI Special Agent. That Affidavit was supported, in part, by Government surveillance tapes capturing Salerno discussing union business with members of organized crime. This evidence was not submitted here.

with \$2,000 to \$5,000 in cash, per garage. Id. Salerno initially delivered this money to his brother, Anthony Salerno, or to Cafaro. Id. At the time, Anthony Salerno was the Boss of the Genovese family. IO-19 at ¶ 26.<sup>5</sup>

Salerno subsequently made payments to Sammy Santora, who Cafaro identified as an "underboss." Ex. M at p. 2. Cafaro also mentioned that Salerno sometimes visited "the kid Barney, the caporegime," Liborio "Barney" Bellomo ("Bellomo"). Id. In April 1988, Bellomo was identified as a member of the Genovese crime family in an exhibit before the Permanent Subcommittee on Investigations of the United States Senate. Ex. F at p. 788.

Accordingly, I find the evidence offered by Agent Taylor to be consistent with my earlier finding regarding Salerno's LCN ties.

## **2. Respondents' Purposeful Association with Salerno**

Respondents served with Salerno on Local 272's Executive Board. IO-1 at 4-25 to 5-7. In this capacity, Bennett and Salerno had a working relationship for over twenty years and Alfieri and Salerno worked together for approximately fourteen years. Id. at 4-25 to 5-3 and at 6-25 to 7-7; IO-4 at 5-6 to 9 and at 6-25 to 7-

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<sup>5</sup> Agent Taylor identified Anthony Salerno as the former "Boss" of the Genovese family, and this identification was well corroborated in the record. IO-19 at ¶ 26. I therefore accept this identification. Furthermore, I found Anthony Salerno to be an LCN member in Investigations Officer v. Salerno, et al., Decision of the Independent Administrator (August 20, 1990) at 23, aff'd, United States v. IBT, 745 F. Supp. 189 (S.D.N.Y. 1990).

7. Upon reading allegations against Salerno in the newspapers, Alfieri testified that before September 1988, he approached Salerno and suggested that he leave the union. IO-4 at 36 - 3 to 5.

Bennett testified that in September 1988, Salerno asked him to attend a meeting at a restaurant on 79th Street and First Avenue. IO-2 at 8-2 to 5. At the meeting, Bennett met with Salerno, Alfieri, Tortorici and Frank Salerno. Id. at 4-9 to 14. Alfieri corroborated that both he and Bennett attended the September 1988 meeting. Alfieri testified that at the meeting an "older fella" warned Bennett that no one was to "ever go near Charlie Salerno." IO-4 at 37-9 to 13. (See discussion above at VII. A. 2.).

I therefore find that Respondents met with Salerno in September 1988. I also find that the discussion at the meeting clearly evidences a purposeful association by Respondents with Salerno, in his role as an LCN associate.

Nevertheless, Bennett also acknowledged that on another occasion Salerno requested that Bennett meet him at a "fruit and vegetable stand on 115th Street and First Avenue." IO-1 at 65 - 4 to 9. Upon meeting, Salerno took Bennett and Joe Hartnett, who was then the Vice President, out for a drink. Id. at 65 - 10 to 15.

In addition, Bennett arranged a pension plan for Local 272, in which he admittedly benefitted Salerno. IO-6 at Ex. 6-A.<sup>6</sup>

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<sup>6</sup> On August 14, 1992, Daniel Sullivan testified that upon taking over as Secretary Treasurer of Local 272, he discovered the pension plan in a locked safe. IO-6 at 49-6 to 12.

In a June 28, 1990 Special Executive Board meeting, Bennett acknowledged his creation of the pension plan and asked the Board to vote on it. Id. Bennett explained that in preparing the plan, he "did something in there for [himself], Charles Salerno and Joe Hartnett." Id. This meeting was held two months after I reported in The International Teamster that the Investigations Officer had charged Salerno with associating with members of LCN. IO-11.

Accordingly, against this background, it is clear that Respondents' association with Salerno was purposeful.

### **3. Respondents' Knowing Association with Salerno**

I also find that Respondents associated with Salerno knowing that he was linked to the LCN. (See discussion above at Section VII. B. 2.).<sup>7</sup>

## **VIII. THE PENALTIES TO BE IMPOSED**

Respondents chose not to investigate allegations that fellow Union officials were tied to LCN. Moreover, Respondents have knowingly associated with a member and an associate of LCN. In so doing, Respondents have not only assisted, but encouraged the LCN to infiltrate and control the IBT.

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<sup>7</sup> Alfieri, Bennett and Salerno were recently indicted, in the Southern District of New York, on charges of racketeering while Officers of Local 272. Ex. BM. The trial is scheduled for November 16, 1992.

At the hearing before me and again in his post-hearing submission,<sup>8</sup> Alfieri, in his own defense, alleged that Charles Salerno was in the Union before Alfieri was hired. T-31-24 to 32-12.<sup>9</sup> Moreover, Alfieri implied that his life would have been endangered had he attempted to remove Salerno. T-32-5 to 9. At the hearing, Alfieri explained: "I can't say nothing to them. When I got the job, he was there, I can't throw the boss out. I wouldn't be hear [sic] talking to anybody." T-32-6 to 9. Although I recognize the potential difficulty arising from acting on such allegations, the obstacles do not justify Alfieri's inaction. Moreover, at the hearing, Alfieri acknowledged that he did take action to expose alleged wrongdoing by Daniel Sullivan, the current Secretary Treasurer of Local 272, and Bennett. T-36-7 to 37-5.<sup>10</sup> I therefore find Alfieri's argument to be without merit.

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<sup>8</sup> In his post-hearing submission, Alfieri attempted to exculpate himself from any wrongdoing. I will not address the other arguments he asserted in an attempt to justify his inaction, because based on the Investigations Officer's evidence, I find that they have no merit.

<sup>9</sup> All transcript references are to the September 11, 1992 hearing before me. The citation refers to the transcript page number, followed by the line number.

<sup>10</sup> Specifically, Alfieri acknowledged a letter that he wrote to Bennett, on March 10, 1992, alleging that Sullivan had ties to LCN. T-36-25 to 37-5. Alfieri also alleged at the hearing that he motivated Valrie, Vice President of Local 272, to make a written complaint against Bennett. T-36-7 to 19. In a letter dated April 23, 1992, which was addressed to Thomas Sever, General Secretary Treasurer of IBT, Valrie alleged that Bennett had engaged in improprieties as Secretary Treasurer of Local 272.

Alfieri accepted the fiduciary duties involved in his position when he accepted his office. Only by removing those officers who knowingly sit back and allow the LCN to become involved in the Union, can I ensure that the IBT will become clean of such corruption. As I have previously acknowledged,

If [an officer's] failure to investigate and act under the circumstances is accepted as the norm, nothing short of repeated intervention . . . would suffice to rid the IBT of any organized crime influences. I find that it is necessary to insist on strict compliance with the affirmative obligations placed on union officials to investigate and act when faced with [such wrongdoing].

Investigations Officer v. Kosey, Decision of the Independent Administrator (April 22, 1992) at 15, aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. May 15, 1992).

Accordingly, I find that Respondents have "brought reproach upon the IBT" and violated their oath and fiduciary duty, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution. The purpose of the Consent Order is to eliminate organized crime's presence within the IBT. With that goal in mind, I find that Respondents must be permanently removed from the IBT.

As previously noted, Bennett retired from his offices within Local 272 and Joint Council 16, on July 16, 1992. IO-7. Alfieri, on the other hand, has been suspended since March 3, 1992. IO-4 at 6 - 17 to 24. Because Respondents could otherwise return to the IBT in the future, their current separation from the union

does not prevent disciplinary action against them. See United States v. IBT, 745 F. Supp. 189, 192 (S.D.N.Y. 1990) (an officer's retirement from the Union does not preclude the imposition of permanent debarment from union membership).

Accordingly, by virtue of this decision, Respondents are permanently barred from the IBT. Respondents must permanently remove themselves from all of their IBT - affiliated Union positions, including membership in the IBT. Moreover, Respondents shall draw no money or compensation therefrom or from any other IBT-affiliated source.

As is my practice, I invited Respondents to submit schedules of their benefits. Respondents, however, made no such submission. Despite this failure to provide me with a schedule of their benefits, sanctions impacting upon such benefits, to the extent they exist, are in order.

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

Bennett made a specific request that Local 272 continue health insurance coverage for him and his wife, in light of their ongoing illnesses. Bennett explained that he would then reimburse Local 272 for the expenses associated with the continued coverage. I will permit Local 272 to continue the Bennetts' health insurance coverage, as long as Bennett reimburses the Local for this coverage with his personal funds.

Bennett's counsel, Brian D. Linder, in a letter dated September 29, 1992, has offered to act as an intermediary between Bennett and Local 272, for the reimbursement of costs for the continued health insurance coverage. Accordingly, I direct that Mr. Linder act as the intermediary. As such, Mr. Linder shall submit annual accountings of Bennett's reimbursement for the continued health insurance coverage, on behalf of him and his wife, to the Independent Review Board. The Independent Review Board, on which I serve as a member, was established on October 13, 1992, pursuant to the Consent Order.

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

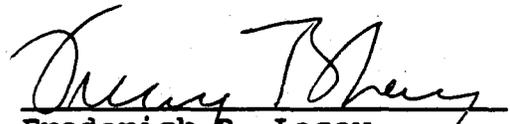
Lastly, it is well-settled that the Union will not pay the legal fees of those union officials who are charged by the Investigations Officer and found guilty. See, e.g., United States

v. Local 1804, et al., 732 F. Supp. 434, 437 (S.D.N.Y. 1990).  
Therefore, no IBT - affiliated entity may make any contributions to Bennett's attorneys fees in connection with these charges.

**IX. APPLICATION TO JUDGE EDELSTEIN**

It is the best interest of the IBT that Respondents immediately be purged from the Union, and, accordingly, I will not stay this decision. The penalties imposed herein shall take effect immediately.

Notwithstanding the fact that I have not stayed this decision or the penalties imposed, I will submit this Decision to Judge Edelstein for his review and approval by way of Application, in accordance with the procedure set forth in the Consent Order.

  
Frederick B. Lacey  
Independent Administrator

Dated: October 27, 1992