

INVESTIGATIONS OFFICER,

Claimant,

v.

DUANE WILSON, MICHAEL H.
DICKENS, and JACK WEBER,

Respondents,

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter concerns three charges filed by the Investigations Officer against: (1) Duane Wilson ("Wilson"), a Business Agent with IBT Local Union 100 in Evendale, Ohio; (2) Michael H. Dickens ("Dickens"), the President of Local 100; and (3) Jack Weber ("Weber"), the Secretary-Treasurer of Local 100. A hearing was held before me and post-hearing briefs were submitted. Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has met his burden in proving the charges.

I. THE CHARGE AGAINST WILSON

The Investigations Officer charged Wilson with:

Violating Article II, Section 2(a) and Article XIX, Section 6(b)(2), of the International Brotherhood of Teamsters Constitution (IBT), by conducting [himself] in a manner to bring reproach upon the IBT; and

Violating Article XIX, Section 6(b)(6) of the IBT Constitution; to WIT:

On March 20, 1991, on the premises of Local 100 [Wilson] assaulted an Officer of the Local.

This charge implicates two provisions of the IBT Constitution.

First, Article XIX, Section 6(b) is implicated. This provision 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.
- (6) Disruption of Union meetings, or assaulting or provoking assault on fellow members or officers, or failure to follow the rules of order or rulings of the presiding officer at meetings of the Local Union, or any similar conduct in, or about union premises or places used to conduct union business.

Second, Article II, Section 2(a) is also implicated. This section, which contains the oath of office mentioned in Article XIX, Section 6(b)(2), mandates that all members shall conduct themselves "at all times in such a manner as not to bring reproach upon the Union . . . [and] to never knowingly harm a fellow member"

Given the record developed during the hearing before me, and the additional arguments submitted by both parties in their post-hearing memoranda, I conclude that the Investigations Officer has met his just cause burden by proving by a preponderance of the evidence that Wilson assaulted Hooks as charged on the evening of March 20, 1991.¹

¹ My use of the preponderance of evidence standard in evaluating the findings of the Investigations Officer is now a settled issue. See United States v. IBT 745 F. Supp. 333, 338 (S.D.N.Y. 1990) (continued...)

A. Merits Of The Charge Against Wilson

Wilson serves as a Business Agent for Local 100. The charge against him alleges that he assaulted his fellow Union officer, Anthony Hooks ("Hooks"), the Local's Vice-President who also functions as a Business Agent. There is no dispute that a physical confrontation occurred between the two men on the evening of March 20, 1991, at the Local 100 Union Hall in Evendale, Ohio. However, the two men offer conflicting accounts of the event in question.

Wilson states that Hooks started the matter by giving him a "push" and that their subsequent struggle amounted to no more than a "wrestling match". T53-20 to 24.² Hooks states that Wilson began by punching him in the side of the face while he was looking elsewhere and then continued to punch and kick him as he attempted to flee from the Union Hall, offering no resistance. IO Ex. C pp.18-21.³ Accordingly, this decision involves a resolution of the two contradictory versions of the confrontation.

¹(...continued)

("Thus I am surprised to find the standard of proof issue raised since this Court and the Court of Appeals have never expressed any doubt as to the standard applied by the Independent Administrator to determine whether just cause has been proved.") For this reason, Wilson's argument that a higher proof standard should be applied here is meritless.

² All transcript references are to the July 18, 1991, hearing. The citation refers to the transcript page number followed by the line number. In this case, "T53-20 to 24" refers to transcript page 53, lines 20 through 24.

³ Investigations Officer's exhibits are referred to as "IO Ex." followed by the alpha character identifying the exhibit and the page number of the exhibit.

By all accounts, Hooks was at the Union Hall that evening to participate in an audit of the Local's books. Wilson was downstairs in the meeting room with Weber, Local 100's Secretary-Treasurer, eating pizza and drinking beer. It is also not disputed that "the Executive Board of Local 100 was split as to the proper and appropriate methods under which it should be operated." Investigation Officer's Post-Hearing Reply Memorandum at 1. See also IO Ex. N pp. 9-35; IO Ex. H pp. 5-6. Hooks, along with James Beck ("Beck"), the Recording Secretary, and Thomas Koop ("Koop") and Thomas Breeden ("Breeden"), the Local's Trustees, had objected to financial decisions made by the Local's President and principal officer, Dickens. Weber supported Dickens' moves. See discussion infra at p. 18. At one point, the Trustees had refused to sign the Local's financial "books." Dickens, in turn had reduced the frequency of the Trustees' audits from once a week to once a month. IO Ex. H pp. 5-6.

Thus, the audit meeting at which this incident occurred was attended by the tensions of a power struggle over who controlled the Local's purse strings. These tensions were aggravated by an inquiry into Local 100's finances by the staff of the Investigations Officer in September 1990. Dickens and Weber had reacted with resentment to that inquiry.⁴ IO Ex. F pp. 34-35; IO

⁴ The Investigations Officer ultimately charged Dickens and Weber with bringing reproach upon the Union by embezzling and making unauthorized expenditures of Local 100's funds. These charges are discussed below. See infra, pp. 14-26.

Ex. G pp 64-68. Weber and Dickens believed that Hooks was using the Investigations Officer's investigation to enhance his political position by suggesting that they had engaged in financial improprieties.

In addition, at the time, Wilson opposed Hooks, and the slate of candidates with whom he was running, in the election for delegates to the 1991 IBT Convention. T64-17 to T65-11; IO Ex. D p. 18.

Shortly after 8:00 p.m. on March 20, 1991, Hooks, who had been upstairs at the Local 100 Union Hall where the Trustees were auditing the books, went down to get sodas for the others from the barroom. To get to the bar area, a "very small room," he passed by Wilson and Weber in the main hall. T53-6 to T54-5. Wilson got up and followed him into the barroom to confront him about an alleged visit by Hooks to the Cincinnati Association For The Blind whose employees are in a bargaining unit assigned to Wilson in his capacity as a Business Agent. T53-6 to 11. Wilson believed that Hooks had said something that had "upset" the people at the Association for the Blind. T53-12 to 18; IO Ex. D p. 19.

Weber followed Wilson into the small bar area about five seconds later. T115-14 to T116-2. According to Wilson and Weber, Wilson called Hooks a liar and Hooks thereupon gave Wilson a "push." T53-17 to 24. This, in the version of events asserted by Wilson and Weber, precipitated a wrestling match between Wilson and Hooks during which the two struggling men exited the barroom,

turned left and proceeded down a short hallway (about fifteen feet), through the rear door of the building onto a loading dock and then into the parking lot where Weber finally separated them.⁵ T53-20 to T54-14.

However, in Hooks' account of the confrontation, a "very, very drunk" Wilson approached him in the barroom and said, "I want to know what the F you said to -- at the Cincinnati Association of [the] Blind to my people, lying over there, when you were campaigning last week." IO Ex. C pp. 18-19. According to Hooks, Wilson then punched him in the side of his face as he turned to fill a soda cup. IO Ex. C p. 19. Hooks testified that Wilson pursued him punching and kicking him and knocking him down three times as Hooks fled down the hallway and through the door onto the loading dock. IO Ex. C. pp. 19-20. Outside on the loading dock, Hooks states that Wilson knocked him down again and kicked him off the dock onto the parking lot and then pursued him and knocked him down on the grass. IO Ex. C pp. 20-21.

According to Hooks, at the point where he felt he could escape, Weber told Wilson "that's enough" and Wilson broke off the attack. IO Ex. C p. 21. Hooks asserts that he did not retaliate or resist -- except to flee. Although the incident occurred shortly after 8:00 p.m. -- after daylight hours -- the area around

⁵ Hooks alleges that Weber tried to block his path of escape and, at one point, held and choked him. IO Ex. C. pp. 19 - 20. The Investigations Officer did not charge Weber and, therefore, the issue of Weber's participation in the assault is not before me.

the parking lot where Hooks and Wilson ended up is artificially lighted and is capable of being viewed from the second floor of the Union Hall. IO Ex. F pp. 40-41. The IBT members auditing the books heard bangs and screams but did not view the incident. IO Ex. F p. 40. However they came down to assist Hooks after he got their attention by throwing quarters against the window of the room where they were working. IO Ex. C pp. 21-23.

By all accounts, the police were called in the immediate aftermath of the confrontation. Wilson and Weber, who were still present at the meeting hall, were arrested on assault charges. Hooks was treated that same evening at the emergency room of Bethesda Hospital in Cincinnati. Although Hooks felt at one point that the attack would not stop and that his life was in danger (IO Ex. C p. 20), his injuries were such that he did not require overnight hospitalization. According to the medical records and treating physician, Hooks had multiple areas of tenderness along the right side of his face, neck, arm and shoulder, contusions to the arm and chest wall, and abrasions on his left knee where he had fallen. IO Ex. K pp. 66-67; IO Group Ex. B (medical records of Hooks' treatment at Bethesda hospital).

The other IBT members who were upstairs auditing the books observed Hooks after the confrontation. Trustee Koop reported:

Mr. Hooks was standing there half bent over and gasping for breath. We both asked what happened and Tony [Hooks] said that both Jack Weber and Duane Wilson had beat him and kicked [him] when he went down to get the soft drinks. He said they were trying to kill him but

he got away. He was still quivering and trembling and I asked if I should go call the police.

[IO Group Ex. B (March 20, 1991, witness statement by Koop)]

Recording Secretary Beck stated: "Hooks was holding his face, his head, his chest, and I thought he was going to have a heart attack." IO Ex. F p. 41. In addition, the arresting officer also noted "red marks" on Hooks' face where he "appeared to have been struck." IO Group Ex. B (Police report of March 20, 1991).

While Hooks described Wilson as "very, very drunk" (IO Ex. C p. 18), Wilson stated that he had consumed two glasses of beer. T70-18 to 20. The police officer who arrested Weber and Wilson observed that: "They were not staggering drunk. However, they were under the influence of alcohol." IO Ex. K p. 59. The Evendale Chief of Police described Wilson as "very belligerent." IO Ex. K p. 97. The Police Chief also reported that "his eyes were glassy. He was very deliberate with his movements. Was somewhat uncoordinated. Speech was slightly slurred. Very aggressive." IO Ex. K p. 97. Describing Wilson, the Police Chief stated: "It was my opinion that he was intoxicated" IO Ex. K p. 97.

Hooks filed criminal charges against Weber and Wilson.⁶ A trial was held before a Magistrate, in Hamilton County, Ohio Municipal Court on July 1, 1991, at which the charges against Weber were dropped and Wilson was found not guilty. At the end of the

⁶ Wilson also subsequently filed a criminal assault charge against Hooks. The basis of that charge was that Hooks pushed him. T76-25 to T77-11. That charge was dismissed. Letter of July 24, 1991, from John M. Isidor, Esq., counsel to Hooks.

trial, after acquitting Wilson, the Magistrate concluded: "Teamsters should handle their own matters and disagreements of the Union. This case is dismissed." IO Ex. K p. 104. Given this statement, I cannot give any weight to the Magistrate's finding of "not guilty" to the extent it touches upon the issue of the credibility of the IBT members involved in this conflict. It is clear from the Magistrate's statements that he believed the proper forum to resolve this matter was the Union's disciplinary process.

In deciding whose version of events to accept, I have credited the statements of non-IBT members -- the arresting officer, the Police Chief and the Emergency Room Physician -- who are neutral parties and who have no intra-Union political stake in the outcome of this disciplinary proceeding. All of this evidence corroborates Hooks' version of events. The medical evidence of Hooks' injuries is inconsistent with Wilson's and Weber's account of the incident. The police statements contradict Wilson's representations concerning his alcohol consumption on the night in question.

Moreover, at the hearing, Wilson was unable to state what it was about Hooks' alleged visit to the Association for the Blind that had offended him and impelled him to instigate the confrontation. T84-17 to T86-21. As Wilson testified: "There was no specific thing he said or did." T84-22 to 23. When pressed further on this point, Wilson stated: "Well he shouldn't have been nosing into what I considered my business as far as our contract." T86-8 to 10. However, given the then pending IBT Convention

delegate race, Hooks would have had every right to campaign among those employees, assuming he was there as Wilson believes.⁷ Thus, it is clear that Wilson had no valid reason to get up from his meal and follow Hooks into the bar area, corner him, and then to initiate what even Wilson admits was a hostile confrontation. These actions, coupled with Wilson's inadequate explanation, compel the conclusion that Wilson was spoiling for a fight and seeking a pretext to attack Hooks.

This assault, without more, violates Article XIX, Section 6(b)(6) of the IBT Constitution (assaulting fellow members or officers in, or about, Union premises), and Article II, Section 2 (a) (knowingly harming fellow members).

In addition, the assault clearly violates the oath of office contained in Article II, Section 2 (a) and brings reproach upon the Union in violation of Article XIX Section 6 (b)(2). The use of such a strong arm tactic in connection with an election of International delegates and Local Union officers, as well as in the context of an intra-Union struggle over use of the dues payers' money, can only serve to stifle the legitimate political activity that is needed to insure that IBT Local Unions are operated with the best interest of the membership in mind. To tolerate such behavior here would be to invite more of this intolerable conduct.

⁷ Wilson also indicated that he took offense when a Shop Steward at the Association for the Blind phoned him to request a copy of the Local's by-laws. Wilson demanded to know who told the steward to request the by-laws and was apparently given to understand that Hooks had. T85-2 to 25.

For the foregoing reasons, I find that the Investigations Officer has established just cause to find that the charge against Wilson was proved.

B. The Penalty To Be Imposed

As was observed in Investigations Officer v. Cherilla, Decision of the Independent Administrator (November 12, 1991) at pp. 11-12:

[A] violent attack on a fellow Union officer cannot be condoned and [such] actions are deserving of punishment. An appropriate penalty is required to demonstrate that violent, strong-arm tactics will no longer be tolerated and have no place in this Union, especially in the context of a political race. IBT members must be free to engage in Local, as well as International Union, politics without fear of violence and intimidation. On a more basic level, IBT members who blatantly ignore their IBT Constitutional obligation not to "assault" or "harm" their fellow members must be sanctioned.

Therefore, I impose upon Wilson a suspension of five years from the IBT.

Wilson is to remove himself from the IBT and all of his IBT-affiliated Union positions (including membership in the IBT and his position with Local 100) and draw no money or compensation therefrom or from any other IBT-affiliated source for the period of his suspension.

With an eye toward preventing potential problems between Wilson and Hooks, or any person involved on behalf of Hooks, as a witness or otherwise in this matter, I direct that Wilson shall not in any way, directly or indirectly, harass, interfere with,

assault, threaten or take any other action in any way detrimental to the rights, employment, IBT membership, benefits or other interest of Hooks or any other person involved on behalf of Hooks in this matter. Moreover, I direct Wilson to immediately instruct all officers, business agents and members of Local 100, by written notice in the form attached hereto, to refrain from taking any retaliatory action against Hooks or any other persons involved, on behalf of Hooks, in this matter. A copy of the signed notice, and an affidavit that it has been properly distributed, shall be supplied to the Investigations Officer by Wilson within ten days from the date of this decision.⁸ In addition, Wilson shall not participate in any way, in any grievance, disciplinary matter, arbitration or any other Union matter or employment matter pertaining to Hooks, or any other person involved on behalf of Hooks, in this matter at any time in the future. The prohibitions set forth in this paragraph are effective immediately and are not subject to my voluntary stay discussed below.

C. Wilson's Benefits

At my request, Wilson's attorney wrote to me on indicating that Wilson is a participant in the following plans, funds and benefit programs:

⁸ The requirement of distributing the notice to the members may be satisfied by posting the notice at all work sites for a period of 45 days. The notice should be mailed, however, to all officers and business agents.

1. The Central States Health and Welfare Fund.
2. The Central States Pension Fund.
3. The Teamster Affiliates Pension Plan.
4. An automobile allowance of \$650.00 per month.
5. Severance Benefit.

My authority to impose sanctions on a respondent's 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, 753 F. Supp. 1181 (S.D.N.Y. 1990).

Consistent with my ruling in Senese, I will not alienate any of Wilson's vested benefits. See also, Guidry v. Sheet Metal Workers National Pension Fund, 1210 S. Ct. 680 (1990). However, I direct that Local 100 and any other IBT-affiliated entity that may contemplate doing so, not contribute to any of the above listed plans, funds or benefit programs during Wilson's period of suspension. Wilson is also not entitled to any automobile allowance during his period of suspension. Wilson may, if he wishes, use his personal funds to pay the premiums for his Health and Welfare Fund, or to make contributions to his Pension plans during his suspension.⁹

⁹ Of course, Wilson's legal fees must be paid from his personal funds. This is consistent with the well-settled principal that Union officials charged with misconduct and found to have committed misconduct may not have their legal fees paid by their Union. See, e.g., United States v. Local 1804, 732 F. Supp. 434, 437 (S.D.N.Y. 1990).

D. My Voluntary Stay

With the exception of the requirement of the posting of the notice and of my prohibitions on future retaliatory actions against Hooks and any other person involved in this matter on behalf of Hooks (see supra pp. 12-13), I will stay this decision pending Judge Edelstein's review. To that end, I will submit this decision to Judge Edelstein by way of Application.

II. THE CHARGES AGAINST DICKENS AND WEBER

The Investigations Officer charges that Dickens (the Local's President) and Weber (the Local's Secretary-Treasurer) (hereinafter sometimes the "Respondents") acted in a manner to bring reproach upon the IBT by breaching their fiduciary duties to the members of Local 100, violating the Local Union's by-laws, and embezzling approximately \$5625.00 from Local 100. The Investigations Officer specifically charges Respondents with violating Article XIX, Sections 6(b)(1) and (2), and Article II, Section 2(a)¹⁰ of the IBT Constitution by "fraudulently appropriating and converting to the use of [themselves] and others, at least \$5,625.00 of Local 100's money."

The Investigations Officer's charge also specifically implicates Section 16(A) of Local 100's by-laws which requires

¹⁰ See supra, pp. 1-2, for a discussion of these provisions.

Local Union Executive Board authorization for expenditures and contributions of Local Union funds.¹¹

The Investigations Officer alleges that the Respondents caused the Local to contribute approximately \$5,000.00 in fees and expenses for a golf outing held in Florida from about October 10 to October 14, 1990, without Executive Board approval. Respondents are also charged with causing Local 100 to contribute \$625.00 for a testimonial dinner for Jack Yager in December 1990, despite the Executive Board's previous refusal to approve this expenditure.

A. Merits Of The Charge

At the heart of this charge is an allegation of embezzlement. Respondents do not dispute the fact that they made the expenditures or contributions in question. Instead, they argue that the expenditures were properly authorized for business and charitable purposes and did not violate the Local's by-laws or the IBT Constitution. However, after reviewing the record and considering the post-hearing arguments, I conclude that the Investigations Officer has met his just cause burden of proving that Respondents

¹¹ Section 16 (A) of the Local 100 By-Laws provides:

Except as may be otherwise provided in these By-Laws, the Local Union Executive Board is authorized and empowered to conduct and manage the affairs of this organization, and to manage, invest, expend, contribute, use, borrow, lend and acquire Local Union funds and property in the pursuit of accomplishment of the objectives set forth in the Constitution of the International Union and these By-Laws and resolutions adopted in the furtherance thereof. [emphasis supplied]

fraudulently converted Union funds to their own use or the use of others and caused the Local to make contributions in violation of the by-laws.

It is now well settled that for the Investigations Officer to prove a charge of embezzlement, he must establish that the charged party acted with "fraudulent intent to deprive the Union of its funds." See, e.g., Investigations Officer V. Salvatore, Opinion of the Independent Administrator (October 21, 1990) at p. 21, aff'd, United States v. IBT (Application XIV), 754 F.Supp 333, 338-339 (S.D.N.Y. 1990); Investigations Officer v. Vitale, Decision of the Independent Administrator, (December 18, 1990) at p. 11, aff'd., United States v. IBT (Application XXI), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. June 6, 1991); Investigations Officer v. O'Brien, Decision of the Independent Administrator (May 15, 1991) at pp. 26-27, aff'd, United States v. IBT (Application XXXI), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. September 11, 1991); Investigations Officer v. Morris et al., Decision of the Independent Administrator (May 22, 1991) at p. 13, aff'd, United States v. IBT (Application XXXVII), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. October 9, 1991); Investigations Officer v. Calagna et al., Decision of the Independent Administrator, (June 14, 1991) at p. 30, aff'd, United States v. IBT (Application XXX), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. August 14, 1991). See, also, 29 U.S.C. §501(c) (Embezzlement of Union assets); United States v. Welch, 728 F.2d 1113 (8th Cir. 1989) ("Nevertheless, under any test, union

officials violate §501(c) only when they possess fraudulent intent to deprive the Union of its funds.").

Respondents state that they believed they acted properly and made no effort to misrepresent these expenditures in the Local's financial records and that, therefore, they have not embezzled or otherwise acted with the intent to defraud the Union of its funds. However, the facts surrounding Respondents' conflict with other members of the Local's Executive Board and Respondents' failures to follow Section 16(A) of the by-laws compel a contrary finding. As stated in United States v. IBT Local 560, 780 F.2d 267, 284 (3rd Cir. 1985): "[I]t has long been settled that it is permissible to infer from circumstantial evidence the existence of intent." (Citing, United States v. Burrell, 496 F.2d 609, 610 (3rd Cir. 1974)). Respondents had an affirmative duty to obey their oath of office and follow Section 16(A) of the by-laws. Thus, any violation of the oath and Section 16(A) gives rise to an inference of fraudulent intent. As stated in Local 560, 780 F.2d at 284:

[I]f an individual fails to act when he has an affirmative duty to do so, negative inferences concerning his intent can be drawn from this inaction.

As established in the discussion of the charge involving the assault on Hooks by Wilson, the Local 100 Executive Board is split over the issue of how to manage its affairs. Dickens and Weber are opposed by Vice President Hooks, Recording Secretary Beck and Trustees Koop and Breeden. See, e.g., IO Ex. K p. 25; IO Ex. L p.

9; IO Ex. M pp. 13-14; IO Ex. N p. 22.¹² Koop and Breeden at one point refused to sign the books and Dickens in response reduced the frequency of the audits from once a week to once a month. IO Ex. M pp. 5-6. The by-laws require monthly audits, IO Ex. A (Local 100 by-laws, Section 12), but Local 100's practice had been to conduct weekly audits. IO Ex. M p. 5.

All current members of the Local 100 Executive Board were elected in 1989 on the same "reform ticket" that ousted the incumbents. T127-5 to T129-10. They took office in January 1990 and immediately thereafter began to disagree regarding the procedures by which the Local's affairs should be managed. IO Ex. N p. 9.

The Local's by-laws specify how the Local's money is to be spent. Under Section 8(C), the President, in conjunction with the Secretary-Treasurer, has the authority to pay the Local's bills and current operating expenses. Under Section 16(A) the Executive Board is empowered to "manage, invest, expend, contribute, use, borrow, lend, and acquire Local Union funds," except as otherwise provided (e.g. as in Section 8 (C)).

Thus, it is clear in the by-laws that Dickens' authority to unilaterally spend money as President is limited not only by the requirement that he act in conjunction with Secretary-Treasurer

¹² The Investigations Officer exhibits for the charges against Dickens and Weber are separate from the exhibits supporting the charges against Wilson. Thus, the Alpha references here refer to the set of Exhibits relating to the Dickens and Weber charges.

Weber, but also by the larger requirement that his and the Secretary-Treasurer's unilateral authority to spend funds is limited to current bills and operating expenses. Other uses of the dues-payers' money require authorization by the Executive Board.

Dickens states that he discussed the Local's contribution to the Yager dinner with Executive Board members prior to one of their meetings in "October or November" of 1990 (T144-10 to 20), and secured their approval for the Local to pay for one-half of a table if Joint Council 26 would pay the other half.¹³ T145-7 to 25. The meeting in question occurred on November 28, 1990. IO Ex. K p. 21. Respondents claim that the discussion does not appear in the minutes because it took place prior to the actual meeting. T14-24 to T15-6. Similarly, Respondents suggest that the statement in the minutes "all other requests for donations were tabled" does not include the proposed \$625.00 contribution to the Yager affair because that affair was discussed "off the record" prior to the actual meeting. See IO Ex. C (Minutes of Local 100 Executive Board meeting, November 28, 1990.); Respondents' Post-Hearing Brief at pp. 6-8.

This argument is rejected. The suggestion that a matter subject to Executive Board approval would be handled "off the record" or prior to the Executive Board's actual meeting or otherwise apart from their usual considerations of such matters is

¹³ Weber signed the check for the Yager dinner. T218-13 to 20. Weber also attended the Yager dinner. T149-22 to T150-11.

implausible on its face. Moreover, the other members of the Executive Board flatly assert that they never approved this contribution either on or off the record. To the contrary, they specifically opposed the contribution during the actual meeting and formally moved to table it. IO Ex. K pp. 21-22 (Beck); IO Ex. L p. 9 (Hooks); IO Ex. M p. 7 (Koop); IO Ex. N pp. 19-20 (Breedon). The statements of the persons who had the authority to approve or disapprove the contribution are dispositive on the issue of whether or not the required approval was ever given. The other Board members' version is also consistent with the entry in the minutes that "[a]ll other requests for donations were tabled."¹⁴

Thus, it is evident that Executive Board approval was not obtained and Dickens and Weber violated Section 16(A) of the Local's by-laws by contributing \$625.00 of the Local's money to the affair in question.¹⁵

Respondents do not even try to suggest that they sought or obtained Executive Board approval for the "roughly \$5,000.00" (IO Ex. K p. 24), spent in connection with the Little Cities Golf

¹⁴ Other donations were discussed and considered at the November 28th meeting. For instance, a motion to donate \$1,000 to a Christmas food drive was approved. IO Ex. C. (Minutes of Executive Board meeting of November 28, 1990)

¹⁵ Respondents represent that this contribution was retroactively approved at a general membership meeting after the hearing. However, even if this post-hoc ratification did not flout the rules for amending the by-laws, it could not legitimize behavior that was wrong when committed. See, e.g., Morrissy v. Curran, 423 F.2d 393, 399 (2d Cir. 1970) (amendment retroactively legitimizing previous derelictions of duty held to be void).

tournament, a charity fund raising event held during the week of October 10-14, 1990, in West Palm Beach, Florida. See also IO Exs. D and E (Local 100 financial records). Instead, Dickens asserts that he viewed the matter as a Union business meeting the costs of which did not require Executive Board approval. T152-16 to T153-11. Dickens offered testimony indicating that he, along with Pat Eick ("Eick"), a Local 100 Business Agent who joined Dickens at the tournament, did in fact transact Union business in Florida during the month of October.¹⁶ T152-16 to T161-6. Thus, Dickens suggested, he "quite possibly" would have been in Florida even absent the benefit golf tournament. T160-10 to 15.

However, despite the representation that he viewed the event as a business matter, Dickens admits that the Local carried the Little Cities expenditure on its books as a charitable contribution. T196-10 to 25. Moreover, both Dickens and Eick took their wives with them to West Palm Beach for the week of the golf outing. T194-3 to 9; T233-21 to 24. In the light of these facts, Respondents' argument that they did not recognize the Little Cities' expenditure as a contribution requiring Executive Board approval loses credibility as does their argument that they viewed the affair as a business matter. Notwithstanding the collateral business aspects of the trip, it is clear that Respondents were

¹⁶ Weber did not attend the golf outing, however, he "signed the check." T212-21 to 213-4. See also T218-17 to 20.

aware of the charitable nature of the event as well as its entertainment value for themselves and their families.

Respondents also argue that the contribution to the Little Cities affair without Executive Board approval conforms to the usual practice of Local 100. Respondents furnished records of Local 100's participation in the Little Cities event for the years 1984 through 1988 and demonstrated that contributions to the golf outing had not previously been subject to Executive Board approval. T168-8 to T169-10. Respondents' evidence showed that Local 100 Officers had attended the event in 1984, 1987, and 1988 and that the only mention of the event in the minutes of the Executive Board meetings was a 1988 reference approving the purchase of advertising in the tournament brochure. Ibid. Respondents concede that no officers from Local 100 attended the event in 1989 and attribute this to the press of campaigning for the Local Union elections that took place in December 1989. T197-1 to 16.

The questionable practices of the prior Union officers -- who were ousted in the December 1989 elections by the Respondents running on a "reform" ticket -- cannot legitimize what is otherwise a clear violation of the by-laws. Moreover, the Local's present by-laws were amended in the latter part of 1988 to conform to the International's model by-laws. T191-12 to T192-11. Thus, there is no "past practice" that justifies the failure to secure Executive Board approval of this contribution to the Little Cities golf tournament and fund-raiser.

In addition, I cannot credit Respondents' argument that, as truck drivers with little experience in running a Union, they were unaware that Executive Board approval was required for the contributions that form the basis for these charges. The Executive Board consistently opposed Dickens' and Weber's efforts to spend the Local's money without its approval and specifically objected to the Yager contribution before it was made. The golf outing expenditures remained unknown to the members of the Executive Board until they saw the canceled checks at an audit meeting. However, when the Executive Board members subsequently questioned this expense, Dickens refused to recognize that they had any authority over the matter. IO Ex. K pp. 23-25.

It is evident that Respondents have been obdurate and defiant, rather than naive, in failing to abide by the relevant spending provisions of the Local by-laws. When first questioned about his spending powers, Dickens informed the Investigations Officer that he did not accept these limitations on his power. IO Ex. H pp. 53-54. As stated by Dickens:

I'm the principal executive officer of this local union. That's my thoughts. The first sentence of my bylaws say I'm in control of all affairs in this local union, and as long as I'm being unbiased and responsible to this local union, no, I don't think I need to -- that I need their permission to spend monies for things are dictated in my bylaws it should be spent for.

This is consistent with Hooks' testimony that Dickens "said as principal officer he would spend what he wanted to and okay what he wanted to." IO Ex. L p. 12.

Moreover, Respondents attempted to intimidate another member of the Executive Board into relinquishing his authority under the bylaws. As reported by Beck:

Dickens started saying to me, look, if you guys don't quit hammering on us, meaning going against them, bucking them, he says I'm going to ruin you. He says I got the office to do it and I will do it. I told them -- Weber got real close like he was going to punch me or something. I started getting pretty nervous and the only ones here was two of the BA's aligned with Dickens and Weber. I stood my ground but I thought for sure I was going to get a beating with the two of them there.
[IO Ex. K p. 36]

The pattern that emerges here is not one of unknowledgeable but well-meaning Union officers who are conducting Union business and making charitable contributions as well as they can, but rather two officers who seek to wield power without accountability in defiance of the by-laws and of the views of the other Executive Board members. What has occurred here is an unprincipled arrogation of power in which Respondents have sought total control over Local 100's finances. Even without the embezzlement charge, Respondents' pursuit of this impermissible goal, violates Section 16(A) of the Local 100 by-laws as well as their oath of Union office and brings reproach upon the IBT.

It is evident that Respondents were well aware of the by-law's requirement that they obtain Executive Board approval for the contributions in question. Moreover, the contributions made were not straightforward donations to charity. In this case, part of the contributions covered the Respondents' expenses for dinner and a golf tournament with only the net profits presumably going to the

charity. As the November 28, 1990, minutes show, straightforward charitable contributions were submitted to the Executive Board for approval whereas the contributions involving junkets were not.

Thus, it is clear that Respondents sought to bypass the Executive Board in matters where it was obvious that their own personal entertainment was mixed with ostensible business or charitable activities. From this I conclude that Respondents acted with fraudulent intent in circumventing the Executive Board to secure the funds necessary to attend a golf outing and a testimonial dinner.

Given the above considerations, I find that the Investigations Officer has established just cause to find that the charges against Dickens and Weber were proved.

B. The Penalty To Be Imposed

Respondents converted Union funds to their own use in treating themselves to a golf outing and a testimonial dinner. They also made contributions from the Local 100 treasury in violation of the Local's by-laws thereby bringing reproach upon the Union. In making these ambiguous and improper expenditures, they sought to disguise the fact that, in part, the Local's funds were used for their personal benefit.

Accordingly, Respondents' suspension from the IBT is in order. As a penalty, Respondents shall be suspended for a period of five years. As noted in a prior decision:

Officers of IBT Locals must understand that their Local Union coffers are not their personal piggy banks that can be cracked open whenever it serves their personal benefit. The Local's assets belong to the Local's members. The Local's officers are mere trustees of those assets.

[Investigations Officer v. Morris et al., Decision of the Independent Administrator (May 22, 1991), at p. 26, aff'd, United States v. IBT, 88 Civ. 4486(DNE), slip op. (S.D.N.Y. October 9, 1991)]

Thus, Respondents are to 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 during their period of suspension.

C. Respondents' Benefits

At my request, Respondents' attorney wrote to me indicating that Respondents participate in the following plans, funds and benefit programs:

1. The Central States Health and Welfare Fund.
2. The Central States Pension Fund.
3. The Teamster Affiliates Pension Plan.
4. An automobile allowance of \$650.00 per month.
5. Severance Benefit.

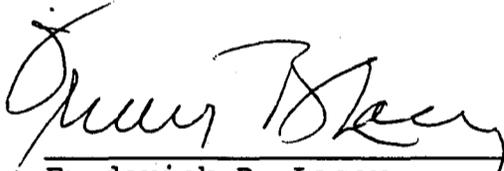
As stated in connection with the charge against Wilson, my authority to impose sanctions on a respondent's employee benefits is now well settled.

Consistent with my ruling in Senese, see supra pp. 13-14, I will not alienate any of Respondents' vested benefits. However, I direct that Local 100 and any other IBT-affiliated entity that may

contemplate doing so, not contribute to any of the above listed plans, funds or benefit programs during Respondents' period of suspension. Respondents are also not entitled to any automobile allowance during their respective suspensions. Respondents may, if they wish, use their personal funds to pay the premiums for their Health and Welfare Funds, or to make contributions to their Pension plans during their suspension.¹⁷

D. My Voluntary Stay

I will stay my decision involving Dickens and Weber pending Judge Edelstein's review. To that end, I will submit this decision to Judge Edelstein by way of Application.



Frederick B. Lacey
Independent Administrator

Dated: December 23, 1991

¹⁷ The prohibition on the Union's payment of Respondents' legal fees is also fully applicable. see supra p. 14, n. 9.

NOTICE

On December 23, 1991, the Independent Administrator issued a Decision suspending me, Duane Wilson, IBT Local Union 100 Business Agent, for a period of five years from Local 100 and the IBT for physically assaulting fellow Local 100 officer, Anthony "Tony" Hooks, on Local 100 premises on March 20, 1991. The Independent Administrator voluntarily "stayed" my suspension pending review of his Decision by the United States District Court for the Southern District of New York. To inform all Local 100 members of the Independent Administrator's Decision, and to prevent any retaliatory action against Tony Hooks, I was ordered to distribute this Notice to you.

BY ORDER OF THE INDEPENDENT ADMINISTRATOR:

I hereby instruct all officers, business agents, and members of Local 100 that they shall not in any way, directly or indirectly, harass, interfere with, threaten or take any other action in any way detrimental to the rights, employment, IBT membership, benefits or other interest of Tony Hooks or any other person involved on behalf of Mr. Hooks in the matter involving the charge filed against me by the Investigations Officer and the hearing conducted on that charge by the Independent Administrator.

Duane Wilson
Business Agent
IBT Local Union 100

Date

**THIS NOTICE SHALL REMAIN POSTED
FOR A PERIOD OF FORTY-FIVE DAYS**