

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	88 Civ. 4486 (DNE)
	:	
Plaintiff,	:	APPLICATION LX OF THE
v.	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION OF THE
INTERNATIONAL BROTHERHOOD	:	INDEPENDENT REVIEW BOARD
OF TEAMSTERS, et al.,	:	IN THE MATTER OF
	:	BRUCE W. PRESLEY
Defendant.	:	
	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IBT Rules"), Application is made by the IRB for ruling by the Honorable David N. Edelstein, United States District Judge for the Southern District of New York, on the issues and the charges filed against Bruce W. Presley ("Presley").

On May 16, 1997, IBT Joint Council 41 Hearing Panel (the "Panel") conducted a hearing to consider the April 15, 1997, IRB Investigative Report concerning charges against Presley. The Panel thereafter rendered its decision on June 22, 1997, and found the evidence insufficient to sustain the charges against Presley and dismissed the charges. In an August 6, 1997, letter to Joint Council 41, the IRB advised that the Panel Decision was inadequate by not following the applicable law or the IBT Constitution. Thereafter, on September 23, 1997, a supplemental Panel hearing was held. In its October 15, 1997, Supplemental Report and Decision, the Panel affirmed its earlier decision to dismiss the charges filed against Presley.

Once again, by letter dated December 17, 1997, the IRB advised Joint Council 41 that its response was inadequate because it continued to fail to apply applicable legal standards and that, as a result, the IRB would hear the matter de novo as provided in the March 14, 1989, Consent Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.).

Presley was charged with bringing reproach upon the IBT while being an officer of Local 497 by breaching his fiduciary duties to members by directly and indirectly making loans to the Local's officers, and by embezzling and unlawfully converting to his own use the funds of Local 497.

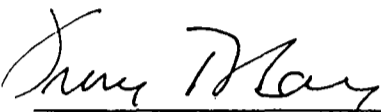
Having reviewed the prior record and supplemental written submissions, the IRB found that the charges against Presley have been proved. As a penalty, Presley is suspended from IBT membership for a six-month period. In addition, Presley was fined \$5,000 which must be paid to the IBT before he can resume his membership or any position in any IBT-affiliated entity.

Enclosed with the July 8, 1998, Opinion are the following exhibits:

- A) the April 15, 1997, IRB Investigative Report with exhibits 1-48 (two volumes);
- B) the February 10, 1998, IRB Hearing Transcript with IRB exhibits 1-13, and Presley exhibits A-H;
- C) the May 16, 1997, Joint Council 41 Hearing Panel Transcript with Presley exhibits 1-36; and,
- D) the September 23, 1997, Joint Council 41 Supplemental Hearing Panel Transcript with exhibits 1-6 and Presley exhibits A-F.

It is respectfully requested that an Order be entered affirming the IRB's July 8, 1998, Opinion, if Your Honor finds it appropriate.

Dated: July 13, 1998

By:   
Frederick B. Lacey  
Member of the  
Independent Review Board



Title 29, United States Code, Section 503(a).  
By taking these salary advances in excess of  
\$2,000 on thirty-seven occasions, Presley  
accepted unlawful loans from Local 497.

and

- (2) During the period June 1996 through September 1996, Presley, by preparing, signing and accepting the proceeds of Local 497 checks payable to himself which reflected a salary increase not approved by the Local 497 Executive Board, embezzled and unlawfully converted to his own benefit the funds of Local 497 in violation of Article XIX, Section 7(b)(3) of the IBT Constitution.

On May 16, 1997, a Joint Council Hearing Panel (the "Panel") conducted a hearing on these charges. By decision dated June 22, 1997 (the "Decision"), the Panel found the evidence insufficient to sustain the charges against Presley and dismissed the charges. (IRB-5). By letter dated August 6, 1997 (the "IRB Letter"), the IRB advised the Joint Council that the IRB found the Decision inadequate. (IRB-6). By letter dated August 20, 1997, Joint Council 41 stated that the Panel had directed the parties to respond to the IRB's findings within ten days and that the Panel would reconvene and reconsider whether to vacate, modify or affirm the Decision. (IRB-7). By letter dated September 4, 1997, the Joint Council advised that, upon Presley's request, it would hold a supplemental hearing. On September 23, 1997, this supplemental hearing was held.

In its Supplemental Report and Decision (the "Supplemental Decision") dated October 15, 1997, the Panel affirmed its earlier decision to dismiss the charges filed against Local 497 Secretary

Treasurer and Joint Council Board Member Presley. (IRB-10). By letter dated December 17, 1997, the IRB notified the Joint Council that its response was inadequate because it continued to fail to apply applicable legal standards. (IRB-11). The IRB then determined it would conduct a hearing de novo on these charges as provided in the March 14, 1989 Consent Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.). (IRB-11).

On February 10, 1998, the IRB held a hearing on the charges against Presley in Cleveland, Ohio.

## **II. Discussion**

Local 497, located in Akron, Ohio, has approximately seven hundred members. It represents truckers, nursing home, dairy service and office workers throughout Ohio. (Ex. 1). Presley is a member of Local 497. In 1979, Presley became a Local business agent and has been the Local's Secretary Treasurer since 1981. (Ex. 3 at 4-5). Presley received an annual gross salary of approximately \$111,488 from 1992 through 1996. (Exs. 4 through 8 inclusive).

### **A. Illegal Loans Through Advance Salary Payments**

The first charge against Presley was that from January 9, 1992 through December 31, 1996, Presley had directed the Local to make interest free loans in excess of \$2,000 to himself on thirty-seven occasions, with a total illegal loan amount of \$127,904.77. (IRB -1; Exs. 4 -8). The chart below sets forth the date of each check and its corresponding pay period on the payroll voucher for that check

number:

	Check No.	Date Issued	Payroll Period	Advance Amount
1.	7349	1/09/92	1/10-1/24	3710.17
2.	7370	1/16/92	1/24-2/07	3710.17
3.	7382	2/03/92	2/07-2/21	3710.17
4.	7399	2/12/92	2/21-3/06	3710.17
5.	7423	3/02/92	3/06-3/20	3710.17
6.	7444	3/10/92	3/20-4/03	3710.17
7.	7472	4/01/92	4/03-4/17	3710.17
8.	7490	4/13/92	4/17-5/01	3710.17
9.	7541	5/13/92	5/15-5/29	3710.17
10.	7561	6/01/92	5/29-6/12	3710.17
11.	7581	6/11/92	6/12-6/26	3710.17
12.	7604	7/03/92	7/03-7/17	3710.17
13.	7628	7/13/92	7/17-7/31	3710/17
14.	7671	8/03/92	7/31-8/14	2473.40
15.	7684	8/13/92	8/14-8/28	3710.17
16.	7701	9/01/92	8/28-9/11	2473.40
17.	7718	9/11/92	9/11-9/25	3710.17
18.	7740	10/02/92	10/09-10/23	3710.17
19.	7758	10/10/92	10/23-11/06	3710.17
20.	7784	11/10/92	11/13-11/27	3710.17
21.	8055	5/20/93	5/16-5/30	2840.30
22.	8097	6/21/93	6/16-6/30	2556.27
23.	9312	10/06/95	10/01-10/15	2556.27
24.	9353	11/02/95	11/01-11/15	3692.39
25.	9361	11/06/95	11/16-11/30	2840.30
26.	9541	3/22/96	3/15-3/30	2545.92
27.	0215	6/17/96	6/16-6/30	4137.12
28.	0235	7/95/96	7/10-7/15	3182.40
29.	0246	7/12/96	7/16-7/30	4773.54
30.	0281	8/05/96	8/01-8/15	3182.40
31.	0303	8/14/96	8/16-8/30	3500.64
32.	0323	9/04/96	9/01-9/15	3182.40
33.	0356	9/19/96	9/16-9/30	3500.64
34.	0370	10/07/96	10/01-10/15	2545.92
35.	0397	10/18/96	10/16-10/30	3818.88
36.	0418	10/04/96	11/01-11/15	3500.64
37.	0435	11/18/96	11/16-11/30	<u>3818.88</u>

Total Illegal Loan Amount 127,904.77

Thus thirty-seven Local 497 payroll checks payable to Presley were issued before the end of the payroll period each covered. The record before us included the Local payroll records

accompanying each of these checks that reflected the pay period each check covered. For each employee, the Local kept an employee wage and expense record ("employee wage record"); a copy of a payroll voucher; and the cancelled payroll check. The employee wage record contained the itemized deductions withheld from each paycheck during the calendar year. The payroll voucher specified the payroll period the cancelled payroll check covered. (Ex. 3 at 7-8, 11-12, 15-20).

Presley was responsible for preparing and issuing the payroll checks, and keeping the payroll records, which were in his handwriting. (Ex. 3 at 7-8, 11-12, 15-20).

We also had before us forty-five checks to another officer of Local 497, also issued by Presley prior to the end of the pay period which they covered (Exs. 11 and 14-18); copies of Local 497 Form LM-2s for 1992 through 1996, which failed to report any of the advance salary payments to Presley as loans (Exs. 1 and 28-31); and copies of the Local's Trustees' Reports for 1992 through 1996 that Presley prepared which failed to report any advance salary payments as loans. (Exs. 31-35).

With regard to each check issued by Presley to himself and which formed the basis of the charge, the employee wage records, payroll checks and the payroll vouchers established that the checks were all issued for pay periods not yet ended, and that these Presley payroll checks were not for a prior pay period. (Exs. 4-8 and 10). For example, Local 497 general fund account check number

7349 dated January 9, 1991<sup>2</sup> payable to Presley for \$2,358.92 was for the pay period January 10 through January 24, 1992. The payroll voucher for this check contained an entry called "check description." The check description for this check stated: "payroll 1/10-1/24/92; Gross 3710.17; Net 2358.42." (Tr. 33-36; Ex. 4).

Presley conceded these payroll checks were issued in advance. (Tr. 51). Presley acknowledged that as a routine practice, salary payments were made before the end of the pay periods. (Tr. 51; Ex. 3 at 10). However, ignoring the entries on the check payroll voucher to the contrary, Presley claimed that his pay check in fact was consistently one pay period behind because his pay had been held back for two weeks at the start of his employment with the Local. (Tr. 70). In support of this claim, Presley presented a statement in the Executive Board Meeting minutes of its April 16, 1982 meeting by Fred Evans that when Presley and Evans were hired, they both had their first two weeks' pay held back. (Tr. 67-68; Presley Ex. A).

Presley has offered different claims regarding the actual amount of the alleged holdback. At the first hearing before Joint Council 41, Presley offered an exhibit in which he claimed that the alleged holdback amount was \$880.76. (JCH, Presley Ex.9). Presley created the cover sheet to this exhibit after the filing of the

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<sup>2</sup> At the IRB Hearing, it was agreed that the check contained a handwritten error and that the date of the check should have read January 9, 1992. (Tr. 36).

IRB-recommended charges. This cover sheet described the amount of the hold back as follows: "Due 2 weeks pay hold back, January 1979 = 880.76." (Id.)

Subsequently, in August 1997, the Joint Council sent Presley a copy of the IRB Letter of August 6, 1997, containing the IRB's finding that the Joint Council's Decision was inadequate. The IRB Letter stated that even if the alleged holdback amount of \$880.76 were deducted from each of the 37 advance payment checks, 24 advance payments greater than \$2,000 would remain. (IRB - 6). After receiving this information, Presley advanced a new argument regarding the holdback amount at both the Joint Council's supplemental hearing and the February 10, 1998, IRB Hearing. Presley now maintained that the amount of the alleged holdback was not frozen at the 1979 level reflected by his exhibit at the initial Joint Council hearing, but had increased as his salary increased. (Tr. 69; Presley Ex. A; JCSH Tr. at 139-140). Additionally, at the IRB Hearing, Presley introduced another one-page exhibit which he had created after the initial Joint Council hearing. This exhibit listed how the alleged holdback amount had varied over the years. (Tr. 73-74; Presley Ex. A at p.2). However, Presley introduced no Local payroll records which identified either the holdback of two weeks' salary or the holdback amount. Nonetheless, at the IRB Hearing, as indicated, Presley testified that the amount of the holdback increased as his salary increased. (Tr. 69). Presley testified that when his salary increased, the increase in the holdback would be reflected in the

first pay check issued after the increase, and not the check for the pay period after the date the increase was effective. We reject this contention.

The Local's payroll records do not support Presley's statement. The employee wage records do not contain any information concerning the existence of a holdback or the holdback amount. (Tr. 83-87; Exs. 4-8). Indeed, at the IRB Hearing, Presley acknowledged that while the employee wage record contains the amount of vacation carried over from one year to another, it contains no mention of the alleged holdback. (Tr. 84-87). Moreover, the records established that the practice (according to Presley) of holding money back immediately upon issuance of a raise was not followed. The employee wage records, kept by Presley, do not reflect that any additional "increased holdback amount" was held back by the Local. For example, these records reflect that Presley received two salary increases in 1996. On September 28, 1995, the Executive Board voted Presley a 5% wage increase effective January 1, 1996. This raise was reflected in check number 9444 dated January 11, 1996 for the pay period January 1-15, 1996. (Ex. 8). Neither the employee wage record nor the check payroll voucher reflected any additional holdback amount was deducted from Presley's increased gross salary. (Id.)

In June 1996, Presley gave himself a pay raise without Executive Board approval, conduct which forms the basis for the second charge. In September 1996, the Executive Board voted to retroactively approve this pay increase, effective with pay check

number 211, which had been issued on or about June 10, 1996. Neither the Presley employee wage record nor the accompanying payroll check vouchers from June through December 1996 reflected the withholding of any additional amount which could be claimed to constitute an increased holdback amount. (Ex. 8).

We must thus conclude that the belated holdback claim must be rejected. When first asked at his sworn examination by the Chief Investigator to explain why one check payable to him was issued prior to the end of the pay period it covered, Presley made no mention of any holdback:

Q. Can you explain why that check was written out to you in advance of the pay period?

A. I don't know why not, why you couldn't. I mean, it's convenience probably. I don't recall back then. We were busy. I'm out of the office a lot, but there has never been any direction that you cannot do it that way.

(Ex. 3 at 10). Later during the same examination, Presley again failed to mention any salary holdback when he was questioned concerning another payroll check issued before the end of the pay period it covered:

Q. I would direct your attention to check Number 9312 dated October 6, 1995

A. Yes.

Q. Does this check appear to be dated 10/6/95?

A. Yes, it does.

Q. And looking on the back of the exhibit, does it appear to have been negotiated on or about 10/06/95?

A. Yes, it does.

Q. The description portion of the backup document for the check states "Payroll 10/1 through 10/15/95"?

A. Correct.

Q. It doesn't contain an explanation as to why it was issued prior to 10/15/95?

A. Again, it was common practice. As far as I knew, that was acceptable practice. It's the way it's always done. IBT audited or okayed it.

(Id. at 17-18) Presley attempted to excuse this action because it was a common practice and he did not know it was wrong.

At the IRB Hearing, Presley was unable to offer any reason why he could not have drawn the check when it was due rather than in advance:

JUDGE LACEY: Is there any reason why today you couldn't pay when it was due rather than in advance?

MR. PRESLEY: Since this problem occurred, we have changed our procedures, and I meet with Mr. Daniels once a week, and present him the checks to sign, and we pay the checks on the dog gone day that they're supposed to be, because it's the first time that I knew that that's the way that it had to be done.

(Tr. 126).

It is also noted that, as to more than one-half of the 37 advance payments, the paycheck was issued days before the start of the two-week pay period they covered. This further indicates that there was no relation between the alleged holdback and the actual practice.

Presley also issued forty-five (45) advance checks to Local 497 Recording Secretary Sharon Chalfant (Ex. 11) and there is no claim that she had been subject to any holdback. We can only conclude that Presley's advance payments were, like hers, made

without any linkage to an alleged holdback.

Presley also argued that he was owed back pay for three months in 1982 when he was not paid by the Local for unused and unpaid vacation days. In all, Presley claimed that the Local Union owed him \$35,615.43 as the result of three months pay in 1982 when he worked without receiving a salary, the two weeks back pay previously discussed and unused and unpaid vacation salary checks he received were actually repayments of prior outstanding obligations owed to him by the Local. It appears that Presley did not reduce any of these claimed obligations by the amount of the salary advances which he received, thereby indicating that the salary advances were loans, unrelated to the reduction of the alleged Local indebtedness to him.

With regard to the claim that he received no salary for three months in 1982, Presley offered the testimony of Curtis Daniels, then a Trustee of Local 497 and currently its President (Tr. 133-34); a notarized statement dated May 8, 1997, of John Dodds, a former member and Trustee of Local 497 (Presley Ex. F); the minutes of the Executive Board Meeting of Local 497 for April 1982 (Presley Exhibit A); and the minutes of the Executive Board Meeting of Local 497 for September 30, 1982. (Presley Ex. F).

A review of the evidence establishes that this alleged obligation to Presley of \$35,615.43 was never reported as a Local obligation on any of the Local's Forms LM-2's, Trustee Reports or CPA's year-end financial reports. At his sworn examination, Presley never identified the advance salary payments in any other

way but as salary advances. Presley signed the LM-2's.

Presley's claim that his unused vacation amounted to an obligation of the Local in past due amounts which offset the advances is also wrong. Presley received the salary advance on a continuing basis. No Local records reflect any reduction in any obligation other than salary the Local owed Presley. There is no record indicating a reduction in accrued vacation when Presley received an advance. Presley recognized the nature of the obligation of vacation expense was different from the nature of the salary advance. When he prepared the checks for vacation, Presley identified the checks on the employee wage record and the payroll check vouchers as payments for vacation, and not salary. (Exs. 4-8). For each advance salary check which he prepared and signed, Presley identified the specific payroll period covered by the check on the accompanying check voucher. (Id.)

The Local's LM-2's from 1979 to the present do not reflect any obligation to Presley for the allegedly held back salary. The LM-2's were also prepared and signed by Presley. (Exs. 1, 28-31).

**B. Embezzlement of Funds -- Pay Increase with Retroactive Approval**

The hearing evidence established that from June 10, 1996, to September 21, 1996, Presley issued seven payroll checks to himself which contained a salary increase. The total amount advanced by this salary increase was \$2,100. Reviews of the payroll records of Local 497 and the Executive Board Meeting minutes for the meeting of September 20-21, 1996, establish that Presley gave himself a pay

raise without Executive Board approval as required by the Local's Bylaws. (Exs. 8, 38 and 46). This constituted an embezzlement in violation of Article XIX, Section 7(b)(3) of the IBT Constitution.

For any of these payments to Presley to constitute an embezzlement, it must be established that Presley acted with fraudulent intent to deprive an IBT entity of its funds. See United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1989) ("under any test, union officials violate Section 501(c) only when they possess fraudulent intent to deprive the Union of its funds"); Investigations Officer v. Caldwell, Decision of the Independent Administrator at 7 (February 9, 1993), (authorizing improper payment of officers' legal fees constituted embezzlement) (Ex. 40), aff'd, United States v. IBT, 88 Civ. 4486 (S.D.N.Y. September 2, 1993); Investigations Officer v. Ligurotis, supra, (Ex. 27), at 14 (embezzlement by means of a fraudulent pay raise); Investigations Officer v. Burke, supra, (Ex. 24) at 23, aff'd, United States v. IBT, 817 F.Supp. 337 (S.D.N.Y. 1993); Investigations Officer v. Vitale, Decision of the Independent Administrator at 9-10 (December 18, 1990) (Ex. 431), aff'd, United States v. IBT, 775 F. Supp. 90 (S.D.N.Y.), aff'd in relevant part, 948 F.2d 1278 (2d Cir. 1991).

In addressing the issue of fraudulent intent, "all of the evidence [must be] considered together . . . in light of all the surrounding circumstances." United States v. Welch, supra, 728 F.2d at 1119, quoting Morrisette v. United States, 342 U.S. 246, 275-76 (1951). Further, it is "permissible to infer from circumstantial evidence the existence of intent." United States v. Local 560, 780

F.2d 267, 284 (3d Cir. 1985), citing United States v. Berrell, 496 F.2d 609, 610 (3d Cir. 1974); see also Investigations Officer v. Caldwell, supra, (Ex. 40), at 7. The Second Circuit has stated that the key factor in determining the issue of fraudulent intent is whether there was authorization from the union and a benefit to the union for the payments under scrutiny. In United States v. Butler, the Court stated that:

Authorization from and benefit to the union are the controlling lodestars to determine whether a defendant acted with the fraudulent intent to deprive the union of its money.

We find such fraudulent intent here. The pay raise which Presley gave himself lacked the authorization of the union. Section 14(A)(2) of the Local's Bylaws vests the Executive Board with the sole authority to establish salaries and grant pay increases to officers and employees of Local 497. It requires that a change in salary must be specifically set forth in the minutes of the Executive Board meeting at which it is approved. Section 14(A)(2) provides in pertinent part:

The Local Union Executive Board, in addition to such other general powers conferred by these Bylaws, is hereby empowered to:

. . . .

2. Establish the salaries for the officers and Business Agents and establish the allowances, direct and indirect disbursements, expense and reimbursement of expenses for officers and Business Agents. Changes in the salaries, allowances or expenses of the officer and Business Agents shall be specifically set forth in the minutes of the Executive Board meeting at which such changes are approved. . . .

(Ex. 46 at p. 9). Here the Executive Board did not approve the

Presley pay raise until three months after Presley gave it to himself. By awarding himself Local money in the absence of Executive Board or membership approval, Presley spent Local money for his personal benefit.

Moreover, Presley's violation of his fiduciary duties is additional evidence of his fraudulent intent to embezzle. See Investigations Officer v. Morris, Decision of the Independent Administrator at 23 (May 22, 1991) (Ex. 42), aff'd, United States v. IBT, 777 F. Supp. 1123 (S.D.N.Y. 1991), aff'd, Docket Nos. 92-6056, 92-6058, 92-6088 (2d Cir. September 15, 1992). As a fiduciary, Presley had a duty to hold the Local's money and property solely for the benefit of the organization. See 29 U.S.C. Section 501(a). By awarding himself the Local's money in the absence of Executive Board or membership approval, Presley breached his fiduciary duties to the Local's members. See United States v. Local 560, supra, 780 F.2d 267, 284 (union officers are fiduciaries).

Presley's explanation of his claimed lack of fraudulent intent, in that he was unaware of the actual salary increase, is undercut by the evidence. Presley testified that he alone prepared the employee wage records. (Ex. 3 at 7). The employee wage records contained the listing of itemized payroll deductions for each paycheck. (Exs. 4 through 8). The employee wage record for Presley for 1996 showed that the increase in his net salary in June 1996 did not reflect a difference in the amount of his paycheck solely because of an adjustment based upon reduced FICA

contributions (Ex. 8), as Presley claimed. (Tr. 109). The employee wage record for Presley for 1996 reflected an increase in gross earnings in February 1996 (Ex. 8)<sup>3</sup> and an increase in net earnings in June 1996. (Id.)

Presley received an increase of \$300 in gross salary for ten weeks with a resulting net pay increase of more than \$500 in net pay for each of the five biweekly paychecks he received before he presented "the problem" to the Executive Board of Local 497 in September 1997. (Ex. 8). However, the minutes of the Executive Board meeting at which the pay raise Presley gave himself was retroactively approved do not reflect the prompt and full disclosure Presley claims. First, the disclosure was not promptly made. Presley gave himself the pay raise with the payroll check number 211, which he issued on June 10, 1996. (Ex. 37). Presley waited until the third time that the Executive Board met after June 10, 1996, to seek the Executive Board's retroactive approval of his pay increase.

Second, the Executive Board minutes do not reflect that Presley advised it either that he was already receiving the pay increase the Board was about to approve, or that the pay raise was needed to correct an "unintentional bookkeeping error." The minutes stated: "Motion made by Brother Bob Warner to approve an

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<sup>3</sup> Presley was not charged with receiving a pay increase until his receipt of his June 10, 1996, paycheck. However, the allegedly mistaken entries on the 1996 Presley Employee Wage Record from February 15 to May 30, 1996, showed a number which, if in error as claimed by Presley, would have been caught by the quarterly reconciliations in March and June 1996.

increase in gross payroll of 6.7% effective with check number 211 for Bruce Presley." (Ex. 38 at 7). When the Executive Board had previously granted a pay increase on a retroactive basis, the minutes specifically noted the retroactive nature of the raise. (Presley Ex. F).

It is well settled that the Executive Board cannot cure an officer's embezzlement through retroactive approval. See Investigations Officer v. Ligurotis, Decision of the Independent Administrator at 19-20 (October 27, 1992), aff'd, United States v. IBT, 814 F. Supp. 1165 (S.D.N.Y. 1993); United States v. Silverman, 430 F.2d 106 (2d Cir. 1970), modified on other grounds, 439 F.2d 1198 (2d Cir.), cert. denied, 402 U.S. 953, 91 S.Ct. 1619, 29 L.Ed.2d 123 (1971); United States v. Boyle, 482 F.2d 755 (D.C. Cir.), cert. denied, 414 U.S. 1076 (1973).

As part of the evidence of intent to defraud, the report charged that three hundred twenty-one out of three hundred twenty-two payroll checks examined by the Chief Investigator were not signed in compliance with the requirements of Local 497's Bylaws. (Exs. 4-8). Among the checks included in this category were the payroll checks containing Presley's salary advances and Presley's unauthorized pay increases. (Id.) These checks were issued without the valid necessary second signature required by the Local's Bylaws.

The Local's Bylaws required the Principal Officer (Presley) and the President (Curtis Daniels) to sign all checks on all bank accounts. However, of three hundred twenty-two payroll checks,

only one check was signed by these two officers. There was also evidence from Recording Secretary Chalfant that Presley told her she was authorized to sign the checks (Ex. 13 at 24); and from Mr. Daniels at his sworn examination that he did not sign the Local's checks at any time until the end of 1996 because he lived and worked far from the Local's offices (Ex. 43 at 8-9).

Presley testified that prior to 1988, the President and Secretary Treasurer signed the checks, but that practice changed when the President became disabled. Presley introduced minutes of a September 1988 Executive Board meeting at which it was noted that the authorized signatories on the bank accounts were the Secretary Treasurer and the Trustee, and that the Board approved a motion to allow any Executive Board member to sign checks. (Tr. 95-96; Presley Ex. C). Presley introduced testimony of President Daniels that he now signed the checks, as the Bylaws require. (Tr. 131, 140). Presley claimed that Article XXIII, Section 3 of the IBT Constitution, referred to in the Local's Bylaws, authorized the prior check signing procedures (Tr. 96).

A reading of the Constitutional provision and the Local 497 Bylaws establishes that Presley's position is wrong. Article XXIII, Section 3 of the IBT Constitution provides:

When the Local Union Secretary-Treasurers pay bills by check, such checks must bear the signature of any two (2) of the following: the Local Union President, the Local Union Secretary-Treasurer, or one (1) other officer or elected Business Agent.

The Bylaws explicitly provide:

The principal officer, subject to the provisions

of Article XXIII, Section 3 of the International Constitution, together with the President shall sign . . . all checks on all bank accounts. . . .

(Ex. 46 at Section 8B).

The Bylaws required the checks to be signed by the Secretary Treasurer (Presley) and the President (Daniels), and limited the check signing authority that the Local could authorize under the IBT Constitution.<sup>4</sup> It is undisputed that Daniels signed only one of the 322 payroll checks examined. This check signing procedure was in violation of the Local's Bylaws, and was not an oversight.

This failure to comply with the Bylaws cannot be ratified by subsequent actions of the Executive Board. Nor can reliance on an invalid resolution of the Executive Board justify a violation of a Bylaws provision. Investigations Officer v. Vitale, Decision of the Independent Administrator at 20-22 (December 18, 1990), aff'd, 948 F.2d 1278 (2d Cir. 1991).

### III. Conclusion

Based on the foregoing, the hearing evidence established that Bruce W. Presley brought reproach upon the IBT and violated the IBT Constitution and the Local Bylaws by making interest free loans in excess of \$2,000 to himself through advance payments of salary and in embezzling Local 497 funds by means of a pay increase without

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<sup>4</sup> In July 1995, an IBT auditor had instructed the Local to obtain Executive Board approval for Trustee Mascio and Recording Secretary Chalfant to be alternate signatories on the bank account. (Tr. 126-127; Ex. 44). This instruction was ignored for almost eighteen months, until after the Chief Investigator's review of the books and records of Local 497. (Exs. 43 at 9; 44 and 45).

Executive Board approval. The charges against Presley should be sustained.

#### **IV. Sanctions**

Presley received an economic benefit from the pay he took early even though the salary payments were earned within a relatively short period of time. By our rough estimate, the value of the Local's money lost, the interest which accrued at 10% between the time the salary payments were taken and earned, is approximately \$400. The \$2,100 in unapproved raises is also a benefit to which Presley was not, and cannot become, entitled. In mitigation of the penalty to be imposed we take into account that it appears that Presley served in the Secretary-Treasurer position without pay for three months in 1982.

Both violations, however, are substantial breaches of the IBT Constitution and Local Bylaws. They will not be tolerated and require that funds lost by the Local be restored. A fine and suspension from positions of trust are also required. Accordingly, the following sanctions are imposed:<sup>5</sup>

- (1) Presley is suspended from his office, and may not hold any other office or positions of any sort in any IBT-affiliated entity, for a period of six months;
- (2) During this suspension Presley shall draw no salary or compensation from any IBT-affiliated source;
- (3) Presley is directed to repay Local 497 \$2,500, representing the \$400 lost interest value of its money and \$2,100 for the unauthorized raises he paid himself;

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<sup>5</sup> IRB Member William H. Webster did not participate in this hearing.

- (4) In light of his financial misconduct in violation of the Constitution, in addition to the above repayments, a fine of \$2,500 is imposed;
- (5) The foregoing repayment of \$2,500 and fine of \$2,500 are to be paid to Local 497;
- (6) The repayments and penalties cannot be waived; nor can they be set off against any past, present or future claims Presley may have against the local;
- (7) Before resuming any office or position with any IBT-affiliated entity, Presley must show proof that the payments totaling \$5,000 have been made to Local 497 and that such payments were in fact made from his own funds.

Members of the Independent  
Review Board

  
Grant Crandall

  
Frederick B. Lacey

Dated: July 8, 1998

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :  
 :  
 Plaintiffs, :  
 :  
 -v- :  
 INTERNATIONAL BROTHERHOOD OF :  
 TEAMSTERS, et al., :  
 :  
 Defendants. :  
-----X

MEMORANDUM & ORDER  
88 Civ. 4486 (DNE)

EDELSTEIN, District Judge:

WHEREAS on April 15, 1997, the Independent Review Board ("IRB") forwarded to the International Brotherhood of Teamsters ("IBT") Joint Council 41 a report recommending that two charges be filed against Local 497 Secretary Treasurer Bruce W. Presley ("Presley") for making loans in excess of \$2,000 to himself through advance payments of salary and for embezzling Local 497 funds, See Opinion and Decision of the Independent Review Board, In Re: Bruce W. Presley, dated July 8, 1998 ("IRB Decision"), at 1; and

WHEREAS on April 22, 1997, the Joint Council filed the recommended charges against Presley, id.; and

WHEREAS the charges provided as follows:

- (1) During the period January 1992 to December 31, 1996, Presley, by preparing

and signing Local 497 checks, caused the Local to extend illegal loans in the form of advance salary payments to himself. In each of thirty-seven instances, the checks Presley prepared and signed constituted illegal loans in excess of \$2,000 in violation of federal criminal statute, Title 29, United States Code, Section 503(a). By taking these salary advances in excess of \$2,000 on thirty-seven occasions, Presley accepted unlawful loans from Local 497.

and

2) During the period June 1996 through September 1996, Presley, by preparing, signing and accepting the proceeds of Local 497 checks payable to himself which reflected a salary increase not approved by the Local 497 Executive Board, embezzled and unlawfully converted to his own benefit the funds of Local 497 in violation of Article XIX, Section 7(b)(3) of the IBT Constitution.

id. at 1-2; and

WHEREAS on May 16, 1997 a Joint Council Hearing Panel (the "Panel") conducted a hearing on these charges, id. at 2; and

WHEREAS by decision dated June 22, 1997 (the "Decision"), the Panel found the evidence insufficient to sustain the charges against Presley and dismissed the charges, id.; and

WHEREAS by letter dated August 6, 1997 (the "IRB Letter"), the IRB advised the Joint Council that the IRB found the Decision inadequate, id.; and

WHEREAS by letter dated August 20, 1997, Joint Council 41 stated that the Panel had directed the parties to respond to the IRB's findings within ten days and that the Panel would reconvene and reconsider whether to vacate, modify or affirm the Decision, id.; and

WHEREAS by letter dated September 4, 1997, the Joint Council advised that, upon Presley's request, it would hold a supplemental hearing, id.; and

WHEREAS on September 23, 1997, that supplemental hearing was held, id.; and

WHEREAS in its Supplemental Report and Decision (the "Supplemental Decision") dated October 15, 1997, the Panel affirmed its earlier decision to dismiss the charges filed against Presley, id. at 2-3; and

WHEREAS by letter dated December 17, 1997, the IRB notified the Joint Council that its Supplemental Decision was inadequate because it "continued to fail to apply applicable legal standards," id. at 3; and

WHEREAS the IRB determined that it would conduct a hearing de novo on these charges as provided in the March 14, 1989 Consent Order in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.), id.; and

WHEREAS on February 10, 1998, the IRB held a hearing on the charges against Presley in Cleveland, Ohio, id.; and

WHEREAS Presley was charged with bring reproach upon the IBT while being an officer of Local 497 by breaching his fiduciary duties to members by directly and indirectly making loans to the Local's officers, and by embezzling and unlawfully converting to his own use the funds of Local 497, id. at 19; and

WHEREAS after reviewing the prior record and supplemental written submissions, the IRB found that the charges against Presley have been proved, id. at 19-20; and

WHEREAS as a penalty, the IRB suspended Presley from IBT membership for a six-month period, id. at 20; and

WHEREAS in addition, the IRB fined Presley \$5,000 to be paid to the IBT before he can resume his membership or any position in any IBT-affiliated entity, id.; and

WHEREAS on July 14, 1998, this Court received Application LX of the IRB ("Application LX") requesting that this Court enter an Order affirming the IRB Decision; and

WHEREAS having reviewed the IRB Decision and all accompanying exhibits, this Court finds that the IRB Decision is neither arbitrary nor capricious; and

WHEREAS accordingly, this Court finds that Application LX of

the IRB should be granted;

IT IS HEREBY ORDERED THAT Application LX of the Independent Review Board regarding the charges and sanctions imposed against Bruce W. Presley is GRANTED.

IT IS HEREBY FURTHER ORDERED THAT the IRB submit its findings regarding Bruce W. Presley to the appropriate law enforcement authorities for their consideration.

SO ORDERED.

DATED: New York, New York  
July 21, 1998.

  
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U.S.D.J.