
INVESTIGATIONS OFFICER,

Claimant,

v.

ANTHONY CALAGNA, SR.,

Respondent.

IN RE: CALAGNA'S BENEFITS

DECISION OF THE
INDEPENDENT ADMINISTRATOR

In a decision dated April 9, 1991, I found that Anthony Calagna Sr., had embezzled \$50,000 in Local 295 funds, by virtue of Local 295's payment of that sum to Calagna's attorney for Calagna's defense of federal criminal racketeering charges. As a penalty, I ordered Calagna to return to Local 295 the \$50,000. I also ruled that:

If Calagna is owed any outstanding monies or benefits by Local 295, the Local should set off such amounts against Calagna's \$50,000 debt.

In a decision dated May 7, 1991, I found that Calagna had brought reproach upon the IBT by being a member of La Cosa Nostra ("LCN") while at the same time being a paid Business Agent and President of Local 295. I also found Calagna had brought reproach upon the IBT by virtue of his failure to testify before the Investigations Officer when required to do so.

As a penalty for Calagna's membership in LCN, I permanently barred him from the IBT. Accordingly, I ordered Calagna to remove

himself from all of his IBT-affiliated positions (including, of course, membership in the IBT), and draw no money or compensation therefrom, or from any other IBT-affiliated source. As a penalty for Calagna's failure to testify, I directed Calagna to personally reimburse the Investigations Officer for the reasonable costs and fees incurred in the taking of Calagna's deposition.

Both my April 9 and May __ decisions, and the penalties imposed, were voluntarily stayed pending review by United States District Judge David N. Edelstein.

In the past, I have imposed sanctions impacting upon a respondent's employee benefits, including pension, health and welfare benefits. See Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT (Application XVI), slip op., (S.D.N.Y. December 28, 1990). To that end, I invited Calagna to submit a schedule listing the benefits to which he is entitled, and a memorandum as to whether I should impose sanctions impacting upon those benefits.

By letter dated April 15, 1991, Calagna's attorney wrote to me indicating that:

[I]t is my understanding that Anthony Calagna is presently not in receipt of any benefits from Local 295 IBT or the Local 295/851 Joint Pension plan. It is further my understanding that Mr. Calagna may retain his future benefits under E.R.I.S.A. Pursuant to the C.O.B.R.A. law, Mr. Calagna may continue medical coverage by making his own contribution.

Calagna's attorney also informed me that Calagna is entitled to two weeks severance pay under the Local 295 severance plan. Lastly, I was told that Calagna's attorney has not received, nor does he intend to receive, "any funds from Local 295 in consideration of [his] fee in representing Mr. Calagna in the above-captioned proceeding."

PENSION BENEFITS

Addressing first the issue of pension benefits; although Calagna states that he is not receiving any benefits from Local 295's or Local 295/851's pension plan, it is not clear whether contributions have been, or are being, made on Calagna's behalf to any IBT-affiliated pension plan, such as a plan sponsored by Joint Council 16 or by Calagna's other local -- Local 806. Consistent with my decision in Senese, and my subsequent decisions issued thereunder, I direct that if such contributions are being made on Calagna's behalf to any such pension plan by any IBT-affiliated entity, they are to stop. Calagna may, however, continue to receive any pre-paid vested benefits.

OTHER EMPLOYEE BENEFITS

It is also unclear from Calagna's submission whether he receives any other benefits from IBT-affiliated entities. For example, while Calagna does not identify any health and welfare plan, he notes that under "the C.O.B.R.A. law," he may continue his

medical coverage. To the extent Calagna is a participant in any IBT-affiliated health and welfare plans, I direct that no IBT-affiliated entity may make payment of Union funds to such plans on Calagna's behalf. To the extent Calagna has benefits already vested in such plans, he is entitled to them. In addition, Calagna may continue such coverage by paying the premiums from his own personal funds.

SEVERANCE PAY

As noted, Calagna acknowledges that he is entitled to two weeks' severance pay under the Local 295 severance plan. Charges against the Local 295 Executive Board regarding the creation of this severance plan are pending before me. Mr. Calagna represents that "[n]o request for payment of those severance benefits will be made until [I] rule on the validity of the severance plan."

In the event I find such plan to be proper, any payments to Calagna pursuant to that plan should be withheld and used as an offset against the \$50,000 Local 295 has already paid to Calagna's attorney to represent Calagna in the criminal racketeering case. The same holds true for any other benefits the Local contemplates paying to Calagna, such as, but not limited to, accrued vacation pay.

LEGAL FEES

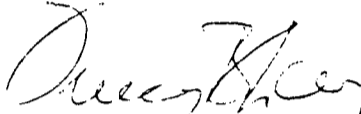
Notwithstanding Calagna's attorney's representation that he has not, and does not, intend to receive any funds from Local 295 in consideration of his fee in representing Calagna in these proceedings, I hereby direct that no IBT-affiliated entity may make any contributions to Calagna's legal expenses in connection with this matter. Such an order is consistent with the well-recognized general prohibition on the payment of legal fees by a Union on behalf of Union officials charged with misconduct and found to have committed misconduct. See, e.g., United States v. Local 1804-1, 732 F.Supp. 434, 437 (S.D.N.Y. 1990). To the extent any of Calagna's legal expenses have been paid by any IBT-affiliated entity, I order the responsible officials of such entity to take all necessary step to seek the return of such fees. Calagna shall notify any such entity that has contributed to his defense, of this decision. Calagna shall notify such entity in writing, with a copy of the notification to be sent to the Investigations Officer.

Lastly, it appears that at least \$10,000 has been paid to Calagna's attorney by the "Anthony Calagna Defense Fund Committee," headed by Local 295's current Vice President Anthony Cuzzo. I direct the Investigations Officer to take the sworn in-person examination of Mr. Cuzzo to determine if any of the Calagna Defense Fund monies were derived from any IBT-affiliated entity. If the answer to that inquiry is in the affirmative, the officials

of such entity should be notified of this decision by the Investigations Officer.

THE VOLUNTARY STAY

I will stay this decision pending Judge Edelstein's review. To that end, I will file this decision with Judge Edelstein by way of Application.



Frederick B. Lacey
Independent Administrator

Dated: May 9, 1991