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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., Defendant.	88 Civ. 4486 (DNE) APPLICATION LXV OF THE INDEPENDENT REVIEW BOARD --OPINION OF THE INDEPENDENT REVIEW BOARD IN THE MATTER OF THE HEARING OF JAMES SANTANGELO AND RICHARD MIDDLETON

Pursuant to Paragraph O. of the Rules of Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB 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 heard by the IRB during a hearing on November 10, 1998, and thereafter determined, on the charge filed against Local Union 848 Secretary-Treasurer James Santangelo ("Santangelo") and President Richard Middleton ("Middleton").

Santangelo and Middleton were charged with bringing reproach upon the IBT and breaching their fiduciary duties to members by making interest-free loans to themselves and other Local 848 officers and employees through advance payments of severance plan benefits. Having considered the evidence, the IRB found that the charges have been proved.

As a penalty, Respondents and their counsel will immediately implement the corrective action that they proposed to take in their counsel's letter of March 19, 1999, as set forth in

IN RE:	JAMES SANTANGELO SECRETARY TREASURER RICHARD MIDDLETON PRESIDENT IBT Local 848	OPINION AND DECISION OF THE INDEPENDENT REVIEW BOARD

I. INTRODUCTION

On August 4, 1997, the Independent Review Board recommended to Joint Council 42 that charges be filed against Local 848 Secretary Treasurer James Santangelo ("Santangelo") and President Richard Middleton ("Middleton") based upon their creating a Severance Pay Plan ("Plan") and making payments within a year to themselves and others under the Severance Pay Plan in violation of the Local's Bylaws. The recommended charges alleged that Santangelo and Middleton had caused the Local to extend illegal interest free loans in the form of advanced severance payments to themselves and Local 848 Recording Secretary Arlene Praw in violation of 29 U.S.C. Sec. 503(a).[1]

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[1] The original IRB-recommended charge against Santangelo provided:

> While an officer of Local 848 you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, and breached your fiduciary duties to

At the time the Plan was created, the then Local 848 Bylaws provided for severance payments only when employment terminated. Since Santangelo, Middleton and Praw were employed at the time they received the payments, valid amendments to the Local's Bylaws were required to make these payments legitimate. However, while the amendments had been enacted by the Local, because they had not yet

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> members by directly and indirectly making loans to the Local's officers, including yourself, to wit:
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> During the period January, 1991 through the present, by creating a Severance Pay Plan designed to accelerate severance payments and eliminate the need for termination from employment and by distributing payments to yourself and others in contravention of the Local Union's bylaws, you have caused the Local Union to extend illegal interest free loans in the form of advanced severance payments to yourself and others. The three checks which you prepared and signed constituted illegal loans in excess of $2,000 in violation of the federal criminal statute, Title 29, United States Code, Section 503(a). Those loans remain outstanding.

The IRB-recommended charge against Middleton provided:

> While an officer of Local 848 you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, and breached your fiduciary duties to members by directly and indirectly making loans to the Local's officers, including yourself, to wit:
>
> During the period January, 1991 through the present, by creating a Severance Pay Plan designed to accelerate severance payments and eliminate the need for termination from employment and by distributing payments to yourself and others in contravention of the Local Union's bylaws, you have caused the Local Union to extend illegal interest free loans in the form of advanced severance payments to yourself and others. The two checks which you signed constituted illegal loans in excess of $2,000 in violation of the federal criminal statute, Title 29, United States Code, Section 503(a). These loans remain outstanding.

been approved by the General President, they were not in effect when Santangelo, Middleton and Praw took their severance payments in July and August 1992. (Ex. 30, Hearing Tr. at 71)[2] Putting Praw aside, the gross amount of the severance payments which Santangelo and Middleton took were, respectively, $27,945.00 and $13,352.00. (Ex. 4 at 2, Ex. 11 at 2).

On August 11, 1997, after receipt of the IRB-recommended charges, and based upon those charges, Joint Council 42 President Michael Riley ("Riley") filed charges of misconduct against Santangelo and Middleton; and on September 22 and 23, 1997, a Joint Council Panel conducted a hearing. In its Decision (the "Decision") dated October 21, 1997, the Joint Council Hearing Panel (the "Panel") agreed that the payments of the severance pay benefits were made before the IBT General President had approved the proposed Bylaw amendments which would have authorized making of the payments. (Decision at 12). Nonetheless, the Panel found that there was no merit to the charges and dismissed the charges. Id. at 13. Further, with regard to Santangelo, the Panel found that the charges were barred by the statute of limitations. Id. at

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[2] "IRB-__" refers to the exhibits of the IRB introduced at the IRB Hearing on October 13, 1998 and November 10, 1998 (the "IRB Hearing"); "Tr." refers to the transcript of the IRB Hearings; "Ex.__ " refers to the exhibits introduced by the Chief Investigator at the IRB Hearings; "Resp. Ex.___" refers to the exhibits introduced by Santangelo and Middleton at the IRB Hearing; "JC Tr. " refers to the transcript of the Joint Council Hearings on September 22 and 23, 1997 and June 9, 1998.

12-13.

Advised of the Panel Decision, by letter of February 24, 1998 (the "IRB Letter") the IRB advised the Joint Council that the IRB found the Decision inadequate. (IRB-5).

On June 9, 1998, the Joint Council held another hearing. In its Supplemental Report and Decision (the "Supplemental Decision") dated June 29, 1998, the Panel affirmed its earlier decision and again dismissed the charges. (IRB-10).

By letter dated August 13, 1998, the IRB notified the Joint Council that the Panel's Supplemental Decision was inadequate. (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); and on September 10, 1998, the IRB sent to Santangelo and Middleton its Notice of Hearing fixing a hearing date of October 13, 1998 in Washington, D.C. (IRB-13).

On October 13, 1998, the IRB hearing commenced in Washington, D.C. Conference of counsel before the IRB led to redaction of language from the original charges concerning the creation of the severance plan. (Tr. at 33-34,49-52, 88-90).

The original charge against Santangelo was amended to read as follows:

> While an officer of Local 848 you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, and breached your fiduciary duties to members by directly and indirectly making loans to the Local's officers, including yourself, to wit:

> During the period January, 1991 through the present, by distributing payments to yourself and others in contravention of the Local Union's bylaws, you have caused the Local Union to extend illegal interest free loans in the form of advanced severance payments to yourself and others. The three checks which you prepared and signed constituted illegal loans in excess of $2,000 in violation of the federal criminal statute, Title 29, United States Code, Section 503(a). Those loans remain outstanding.

The original charge against Middleton was amended to read as follows:

> While an officer of Local 848 you brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, and breached your fiduciary duties to members by directly and indirectly making loans to the Local's officers, including yourself, to wit:
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> During the period January, 1991 through the present, by distributing payments to yourself and others in contravention of the Local Union's bylaws, you have caused the Local Union to extend illegal interest free loans in the form of advanced severance payments to yourself and others. The two checks which you signed constituted illegal loans in excess of $2,000 in violation of the federal criminal statute, Title 29, United States Code, Section 503(a). These loans remain outstanding.

(Id. at 33-34 and 49-52).

Tied to the revision of the original charges is a Stipulation by the parties that at the October 13, 1998 hearing the original charges were amended as follows:

> All allegations that the Severance Pay Plan was created and designed in order to accelerate severance payments and eliminate the need for termination of employment were deleted. It was not contested that the Plan was created to establish a segregated benefit fund at the direction of the International auditor and that there was nothing "nefarious" or "improper" about the creation of the Plan. Allegations concerning the failure to fully inform the membership concerning this Plan were withdrawn.

Stipulation, p. 2 (See Appendix A)

The parties have further stipulated:

a. All allegations that the Severance Pay Plan was created and designed in order to accelerate severance payments and eliminate the need for termination of employment were deleted. It was not contested that the Plan was created to establish a segregated benefit fund at the direction of the International Auditor and that there was nothing "nefarious" or "improper" about the creation of the Plan.

b. Allegations concerning the failure to fully inform the membership concerning this Plan were withdrawn.

4. The IRB hearing [of October 13, 1998] resumed on November 10 before Board Member Frederick B. Lacey in Los Angeles, California. All references to the failure to comply with the provisions of the Severance Pay Plan and to an improper intent connected with the termination of the Plan were also deleted from the charges at this hearing.

5. The Local maintained a severance pay practice for full-time employees dating back to the 1950's. That pay practice was incorporated into the bylaws in 1988 at the insistence of Santangelo. During the course of an audit in early 1991, the International Auditor directed the Local Union to fund the severance liabilities in an ERISA trust. Outside counsel was retained to prepare the trust documents, which did not enhance the benefit formula, although it had been suggested by counsel. A bylaw amendment was drafted by the Local's attorney to substitute the Severance Pay Plan for the severance pay practice. This as well as other amendments were presented to the membership at the January, February and March, 1992 meetings and were approved by a secret ballot vote of the membership at the March meeting. A letter requesting approval of these bylaw amendments was forwarded to General President Carey on April 24, 1992. Most of these amendments, including the Severance Pay Plan amendment, were approved by letter dated November 10, 1992.

7. Sometime after the membership vote on the amendments, but before approval by IBT General President Carey or the General Executive Board, Mr. Santangelo expressed concern over the ability of the Local Union to sustain this fringe benefit in the context of the Local's decline in membership and financial condition. After consulting counsel and the other trustee of the Plan, [Santangelo] terminated the plan on July 16, 1992, and proceeded to make the distribution of accrued severance benefits to all Plan participants, including Santangelo and Middleton. The payments were made in violation of the then existing Bylaws.

8. The original IRB Report did not allege or charge embezzlement in this case. It is not disputed that the charged parties had earned the severance benefits through their prior years of service as employees of the Local Union. After the Severance Pay Plan was terminated, the Local Union did not subsequently reinstate a severance pay program or provide a substitute benefit for Santangelo or Middleton.

9. While Middleton was not a trustee of the Severance Plan, had no role in the administration of the Plan and was not involved in the decision to terminate the Plan, he did sign three (3) checks, including one to himself, paying the accrued severance benefits.

10. Article VI, Section 4(a) of the International Constitution provides that "Bylaws of Local Unions and other subordinate bodies, and amendments thereto, shall be effective upon approval by the General President." While the charged parties raised a number of issues concerning the interpretation and application of that constitutional provision, the bylaw amendment creating the Severance Pay Plan, which included a termination provision, was implemented at least four (4) months prior to receiving the approval of the General President.

11. The fully developed record created during the five (5) days of hearings established a different perspective from the original IRB Report. The minutes of the Local's membership meetings did not fully reflect the reporting by the officers to the membership concerning these matters. The hearing record clearly established that there was no failure to fully report and seek membership approval for these matters. However, the fact remains that they did not await the approval of the bylaw amendments by the General President before making the severance payments to themselves and others. Consequently, the charged parties were not in compliance with the requirements of Article VI, Section 4(a) of the International Constitution.
Stipulation, pp. 2 - 5.

The IRB granted Santangelo's and Middleton's application to transfer the hearing to Los Angeles, California, where on November 10, 1998, the continued hearing was held before IRB Member Lacey. See IRB Rule D.2. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of

Teamsters.[3]

II STATEMENT OF FACTS

A. The IRB Report and the Chief Investigator's Evidence

1. James Santangelo

Santangelo joined Local 560 of the IBT in 1959 and has been a member of Local 848 since approximately 1962. (Ex. 2 at 7-8). He was appointed a Business Agent of Local 848 in 1972. Santangelo became the Recording Secretary of Local 848 in 1976, was elected Secretary Treasurer in 1978 and has remained in that position to the present. (Id. at 8-9).

When Santangelo became an employee of the Local in April 1972, Local 848 had a severance policy under which a full time employee would receive one week's pay for each year worked upon termination from employment. (Id. at 8, 20). Thus, to collect under the severance policy an employee had to end Local employment. In 1991, Santangelo, Middleton and the other Executive Board members created a new Severance Pay Plan (the "Plan"). (Ex. 21). In April 1991, an IBT auditor instructed the Local that it needed to fund the existing severance obligation then provided under the Local's Bylaws. (Ex. 20 at 15, 18, 20). In April 1991, Santangelo called

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[3] Rule D.2 provides in pertinent part: ". . . One IRB member, with the consent of the other two, may be authorized to conduct a hearing pursuant to Paragraph `J. Hearings,' and issue a written recommended decision on any matter." Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters.

a staff meeting at which other representatives of the Local estimated that the then current severance obligation totaled $94,074. (Ex. 2 at 28-29). Santangelo also attended the meetings in November and December 1991 at the offices of the attorney who prepared the Plan for the Local. At these meetings, the terms of the Plan were discussed and draft documents relating to the Plan were reviewed. (JC Tr. at 45-46, 51-52, 221, 231, 266, 270 and 292). Santangelo attended the Executive Board meetings in September 1991 when the Board unanimously approved the acceptance of the Plan, and the January 1992 meeting when the Summary Plan Description was reviewed and approved. (Exs. 21, 30).

Santangelo knew that under the Plan, he would now for the first time be able to receive severance payments without terminating his employment with the Local if the Plan were discontinued. (Ex. 2 at 75-76). Under the terms of the Plan documents, Santangelo was one of the two trustees of the severance plan. (Ex. 18 at 11).

On July 16, 1992, Santangelo and Fernando Muniz[4], a former President of Local 848, voted to terminate the Plan. (Ex. 25; JC Tr. at 93, 280-81). This triggered the lump sum severance payments totaling $56,240 to Santangelo, Middleton and two other employees. (Exs. 31, 32, 34 and 36). On the day that he voted to terminate

[4] The Chief Investigator quite properly observes that Muniz was not eligible to be a Plan Trustee at that time because the plan documents specified the current President should be one of the Trustees. Thus, the decision to terminate in violation of the Bylaws was made by a Trustee who was not holding office under the Plan and by Santangelo, the person who benefitted most from the early termination.

the Plan, Santangelo signed a check drawn on the general fund account of Local 848 payable to himself in the amount of $15,574.72, which represented the net proceeds of the severance benefits that he advanced himself. (Exs. 25, 31).[5]

Almost a month later, on August 14, 1992, Santangelo signed three additional checks on the general fund account of Local 848 which represented the net proceeds of severance plan payments to three other Local 848 employees as follows:

Payee	Gross Amount	Net Amount
Middleton	$13,352.00	$10,530.57
Arlene Praw	$13,047.00	$ 5,997.31
Gloria Barrall	$ 1,896.00	$ 1,474.26

(Exs. 11, 32 through 36).

As has been noted, the then Local Bylaws provided for severance payments only upon the end of employment; and amendments to the Local's Bylaws were necessary to make these payments. On April 24, 1992, Santangelo submitted the proposed Bylaw amendments to the IBT General President for approval as required under the IBT Constitution. (Ex. 45). The IBT General President had not yet approved the submitted amendments when Santangelo and Middleton made the payments in July and August 1992. (Exs. 30, 45, 46; Resp. Ex. 15). Thus, in July 1992 Santangelo was not entitled to receive any severance benefit payment while his employment continued; and he did not have the authority to issue any severance benefit payments to any Local 848 employee who had not terminated his

[5] The gross amount of the severance funds which Santangelo received was $27,945.00. (Ex. 4 at 2).

employment with Local 848.

2. Richard Middleton

Richard Middleton joined the IBT in 1968 and has been a member of Local 848 since approximately 1970. He became the Recording Secretary of Local 848 in 1989 and served as the Recording Secretary until July, 1992 when he was appointed President of Local 848. In 1994, Middleton was elected President of Local 848. (Ex. 9 at 6-8).

Middleton has been a full time employee of Local 848 since July 1980. (Id. at 9). He attended the staff meeting in April 1991 after receipt of the IBT auditor's instruction that the Local needed to fund the severance obligation provided under the Local's Bylaws. (Ex. 19 at 15, 17; JC Tr. at 38, 221, 266 and 292). In April 1991, Middleton attended the Local 848 meeting at which the Local's representatives estimated that this severance obligation then totaled $94, 074. (Ex. 9 at 19, 28). Middleton also attended the meetings in November and December 1991 at the offices of the attorney who prepared the Plan for the Local, and participated in these meetings in the discussion and review of the terms of the Plan and the draft documents relating to the Plan. (JC Tr. at 45-46, 51-52, 221, 231, 266, 270 and 292). Middleton attended the Executive Board meeting in September 1991 when the Board unanimously approved the creation of the Severance Pay Plan, and

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[6] At the IRB Hearing, both Santangelo and Middleton testified that they did not personally need the severance monies when they made the severance payments in July and August 1992. (Tr. at 242 and 269).

the January 1992 meeting when the Summary Plan Description was reviewed and approved. (Exs. 21, 30). Middleton knew that under the Plan, he could receive severance payments without terminating his employment with the Local if the plan were discontinued. (Ex. 9 at 14-15).

In June 1992, upon the retirement of Fernando Muniz, Middleton was appointed President of Local 848. (Id. at 16). He did not replace Muniz as a Trustee of the Plan, as provided in the Plan documents, because the two Trustees, Santangelo and Muniz voted at a special meeting of the Plan Trustees on July 16, 1992 to terminate the Plan. (Ibid.; Ex. 17 at 4, Section 7.1; and Ex. 25). On August 14, 1992, Middleton signed three checks on the general fund account of Local 848 which represented the net proceeds of severance plan payments to himself and two other employees as follows:

Payee	Net Amount
Middleton	$10,530.57
Arlene Praw	$ 5,997.31
Gloria Barrall	$ 1,474.26

(Exs. 32, 34 and 36). As is the case with respect to Santangelo, because the IBT's General President had not yet approved the necessary Bylaw amendments, Middleton was not entitled to receive any severance payments or pay any to still employed employees.

B. The Respondents' Case

The Respondents produced five witnesses at the IRB Hearing: Robert Vogel, the Local's attorney; Richard Wilson, the Local's accountant; Arlene Praw, a Local employee and current Recording

Secretary; Santangelo; and Middleton.

1. Robert Vogel

Robert Vogel was the lead attorney for Local 848 from 1985 through 1994. (Tr. at 109). In April 1991, Vogel attended a meeting with Local officers and IBT auditor Bruce Mohn. Vogel testified the meeting was called to address Mohn's concerns that the severance benefit that was then contained in Local 848 Bylaws had not been reflected on the monthly trustee reports, had not been reflected on the annual LM-2 Reports as a contingent liability and that the funding of that contingent liability had not been segregated or earmarked from the Local's general treasury. (Id. at 111). At the meeting, at the suggestion of the Local's accountant, the Local Executive Board agreed to develop an ERISA plan.

Vogel participated in the drafting of the Bylaw amendment regarding the Local's severance pay plan. (Id. at 120). At the time he drafted the Bylaw amendment, Vogel was aware that there would be a termination provision in the new plan. (Id. at 126). Vogel testified that in the early summer of 1992, Fernando Muniz and William Radtke, two officers and long term employees of the Local, decided to retire. This decision resulted in a strain on the Local's treasury. (Id. at 128).

Vogel acknowledged that the IBT auditor's calculation of the amount of the severance benefit was not disclosed on the Local's trustee reports. Vogel also acknowledged that the auditor had told him that the funding for the severance obligation had not been segregated from the general account. Vogel did not remember

whether the severance plan documents provided for the segregation of the severance obligations fund from the general account, but testified he believed that the severance obligation was never fully segregated from the general fund. (Id. at 132-33).

Vogel did not believe that he had any conversations with anyone at the Local concerning the approval of the Bylaw amendments before those severance payments were made. (Id. at 137). Specifically, Vogel testified that he had no discussions with Santangelo in July 1992 concerning whether the Bylaw amendment which would authorize payments under the new severance plan had been approved. (Id. at 135). While Vogel had spoken with Recording Secretary Praw in September 1992 concerning the status of the Bylaw changes generally, the specific Bylaw proposal dealing with the severance plan was not discussed. Following this conversation, Vogel telephoned an attorney for the International, whose name he did not recall, concerning the status of the Local 848 proposed Bylaw changes. Vogel had no recollection of having made this request in writing. (Id. at 137).

2. Richard Wilson

Richard Wilson was the accountant for Local 848. Wilson testified that the Local created the severance plan to comply with the IBT auditor's directive to disclose the severance obligation on the Local's financial records. (Tr. at 152). Wilson acknowledged that the financial obligation called for by the Local's severance policy then in effect had not been disclosed on any of the Local's records in 1988, 1989, 1990 or 1991. (Id. at 177). Wilson stated

the documents for the plan were not finalized until February or March 1992. Wilson learned in June or July 1992, when Muniz and Radtke retired, that the checking account for the severance fund had not been opened. Wilson directed Praw to make those payments from the general fund. (Id. at 164-65). At that time, Santangelo told Wilson that the plan was too expensive and that he wanted to terminate it. (Id. at 166).

3. Arlene Praw

Arlene Praw was the Recording Secretary of Local 848 from June 1992 to the present. (Tr. at 188). Praw believed that the paperwork for the Plan was not completed until March 1992. Praw made the Local's first effort to fund the plan more then two months later, on June 1, 1992. (Id. at 194). Although the full obligation was approximately $94,000, Praw stated she sent two checks to the Guardian Bank, one for $25,000 to open the severance trust account and another for $500 to open the severance checking account. (Id. ;Exs. 22, 23). Praw conceded that the Local had never fully funded the severance plan, and that the $25,000 check was the only deposit made into that account. (Tr. at 197).

Praw stated that in early July 1992 Santangelo called her into his office and told her he wanted an accounting of the amount of money needed to satisfy the severance obligation. (Id. at 199). Praw testified that as of July 1992 the Local had lost approximately five hundred members from the closing or merger of businesses. (Id. at 200). When the plan was terminated, the payment to Santangelo, Middleton, herself and another Local

employee were made from the general fund checking account. (Id. at 204-205).

Praw testified that she spoke with an attorney for the International named Carolyn Kaminski in the latter part of August 1992, after the severance payments had been made under the new plan, concerning the approval of the 1992 Bylaws. Praw testified that Kaminski told her the International simply had a backlog of approvals, and had not reached Local 848's application. After receipt of the November 10, 1992, letter approving the amendments (Ex. 46; Resp. Ex. 15), Praw also spoke with Kaminski. (Tr. at 211-212). Praw testified that she sent the Local 848 Bylaw amendments to the IBT General President on April 10, 1992. Prior to the payment to Santangelo in July 1992, Praw had not spoken with anyone at the International to determine whether the proposed Bylaw changes had been approved. (Id. at 219). After the payment of severance benefits to Santangelo in July and the payments to Middleton and herself in August 1992, Praw did not have any conversations with anyone at the International regarding approval of the Bylaw changes. (Id. at 220).

4. James Santangelo

Santangelo testified that in 1992 the Local had lost approximately 785 members, and with the payment of severance and other benefits to two other long term officers and employees, was experiencing financial difficulties. (Tr. at 234-235). Santangelo consulted the Local's accountant and attorney and he and Muniz then voted to terminate the Plan. (Id. at 237-240). Although

Santangelo stated he did not need his severance benefits in July 1992 when he received them (Id. at 242), he also testified that he did not consider leaving the money in the general fund until he terminated his employment (Id. at 263). Santangelo testified that at the time he made the decision to terminate the Plan he did not consider whether the IBT General President had approved the Local's proposed Bylaw amendments. (Id. at 243). Santangelo believed that he had asked the Local's attorneys to check on the status of the approval of the Bylaw amendments only after he had made the severance payments. (Id. at 249).

Santangelo acknowledged that he had signed the checks representing the severance payments. (Id. at 251, 252). Santangelo further acknowledged that as a trustee of the severance plan, he had not created any individual account as called for by the plan. (Id. at 252). Santangelo testified that he had never spoken with the Local's attorney about obtaining the approval of the General President for the proposed Bylaw changes regarding payment of severance plan benefits. (Id. at 258). Santangelo stated that he had not considered the IBT Constitution provision which provides that Bylaw amendments are not effective until approved by the General President. (Id. at 260).

5. Richard Middleton

Richard Middleton had been the Recording Secretary of Local 848 for five years when in July 1992, he became President. (Tr. at 265-66). Middleton testified that he did not have any conversations with Santangelo or Muniz concerning the termination

of the severance plan. (Id. at 267). Middleton acknowledged that he had signed the checks reflecting the severance benefits to himself, Praw and another Local employee upon termination of the plan. (Id.). The checks were drawn on the general fund account. (Id. at 268). Middleton described the Local's financial condition at the time the severance plan was terminated in July 1992 as "weak." (Id.). Middleton was aware that under the previous severance policy and the Local's Bylaws prior to 1992, the payment of severance benefits was conditioned upon an individual's termination of employment. (Id. at 270). He also knew that in April 1992 the Local submitted an amendment to its Bylaws concerning the severance pay plan. Middleton testified that "he didn't even think about" whether the General President had approved the Bylaws amendment before he signed the checks constituting severance payments under the new severance plan. (Id.). Middleton testified he did not recall whether he had any conversation with anyone concerning the authorization of the severance benefit checks he signed. (Id. at 273).

III. DISCUSSION

THE EVIDENCE ESTABLISHED JUST CAUSE TO FIND SANTANGELO AND MIDDLETON BROUGHT REPROACH UPON THE IBT AND VIOLATED THE IBT CONSTITUTION AND THE LOCAL BYLAWS

The IRB-recommended charges against Santangelo and Middleton, as revised, alleged that in July and August 1992 they had caused the Local to extend illegal interest free loans in the form of advanced severance payments to themselves and current Local 848 Recording Secretary Arlene Praw in violation of the Local Union

Bylaws.

A. The Severance Payments Were Made In Violation of the Local 848 Bylaws.

In 1991 the Local's Bylaws specifically stated that severance benefits were available to a full-time employee only upon termination from employment. Section 16 provided in pertinent part:

> Severance
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> Full time employees of the Local Union shall be entitled to one (1) week severance for each year service upon termination.

(Ex. 29). An amendment to the Local's Bylaws was necessary to make payments under the new severance plan. In January 1992, the Executive Board proposed a Bylaws amendment which would authorize the payment of severance benefits under the new severance plan as follows:

> (C) Severance
>
> Full time employees of the Local Union shall be entitled to severance pay upon termination of employment with the Local Union consistent with the Local Union's Severance Benefit Plan.

(Ex. 30).

Article VI, Section 4(a) of the IBT Constitution governed the amendment of Bylaw provisions and provided that the proposed amendments were not effective until approved by the General President. Section 4(a) provided:

> Bylaws of Local Unions and other subordinate bodies, and amendments thereto, shall be effective upon approval by the General President.

(Ex. 47). The evidence at the IRB hearing established that

Santangelo and Middleton made or took the severance payments in July and August 1992 in violation of the Local's Bylaws.

On April 24, 1992, Santangelo, aware of the approval requirement, submitted the proposed Bylaw amendments to the IBT General President for approval as required under the IBT Constitution. (Ex. 45). (Id.).

On July 16, 1992, the day that he voted to terminate the Plan, Santangelo signed a check drawn on the general fund account of Local 848 payable to himself in the amount of $15,574.72, which represented the net proceeds of his severance benefits that he advanced himself. (Exs. 25, 31). On August 14, 1992, Santangelo and Middleton signed three additional checks drawn on the general fund account of Local 848 which represented the net proceeds of severance plan benefit payments to Middleton, Praw and a third Local employee, each of whom had not terminated employment with the Local. (Exs. 11, 32 through 36).

The International had not yet approved the Bylaw amendments which were necessary to authorize these payments and therefore the amendment was not in effect when Santangelo and Middleton made the payments in July and August 1992. (Exs. 30, 46). The International did not approve the proposed Local 848 Bylaw changes until November 10, 1992.(Ex. 46, Resp. Ex. 15). Absent this approval, in July 1992 Santangelo was not entitled to receive any severance benefit payment while his employment continued; nor did he have the authority to issue any severance benefit payments to any Local 848 employee who had not terminated his or her employment

with Local 848. Respondents do not contend that they needed the money immediately. Both Santangelo and Middleton testified that they did not personally need the severance monies when they made the severance payments in July and August 1992. As a result, in the absence of Bylaw approval, Santangelo, Middleton and two other Local employees who had not severed their employment improperly received and retained severance payments.

At the IRB Los Angeles Hearing, Santangelo and Middleton presented the testimony of Messrs. Vogel and Wilson to show that the Plan was drawn up by an accountant and attorney who suggested the new termination provisions.

However, we find that the testimony did not establish that the accountants who recommended the severance plan and the attorneys who drafted the plan documents advised the Local's officers to make the severance payments in violation of the Local's Bylaws.

The early severance payments in July and August 1992 cannot be regarded as an advance owed but not yet payable under the Local's Bylaws. The Bylaws provided:

> The Local Union Executive Board or the principal executive officer is authorized to make to any Local Union officer or employee advances on his salary and/or vacation pay, within the restrictions of applicable law.

Since one of the restrictions of applicable law is that the payment in question may not be in excess of $2,000, the payments to Santangelo and Middleton cannot be justified as an advance. Moreover, it is also uncontested that these payments were not for

salary or vacation pay.

As to Santangelo's and Middleton's claims that they did not even think about whether the General President had approved the Bylaw changes, Santangelo and Middleton, as Local principals, were present at the Executive Board meeting when the Plan was approved. Santangelo as Plan trustee voted to terminate the Plan's Trust Agreement less than one year later and thereby triggered the lump sum distributions provided upon termination of the Plan. Santangelo prepared and signed all the severance payment checks. Middleton was the second signatory on his own severance payment check and on the payments to employees Praw and Barrall. Under these circumstances, Santangelo's and Middleton's claims that they did not think about whether the Bylaw changes had been approved are unacceptable.

Respondents complain about the 7-month delay in getting IBT approval of the amendment. This is irrelevant. Moreover, Article VI, Section 4(a) of the IBT Constitution provided an alternative resort to the IBT General Executive Board should the General President fail to approve the proposed amendments:

> If the General President fails to approve the Bylaws or amendments thereto, the matter may be referred by the subordinate body to the General Executive Board for its determination.

(Ex. 47). The 1992 Local 848 proposed Bylaw changes had been on file with the International for more than two months when, in July 1992, Santangelo made the payment of severance benefits to himself. Neither Santangelo, Middleton nor any representative of Local 848

took any steps under Article VI, Section 4(a) of the IBT Constitution to refer the question of Bylaw amendment approval to the General Executive Board in the face of the General President's failure to approve the Bylaw changes concerning the authorization of severance payments. (Ex. 49).

B. The Payments Constituted Illegal Loans.

Section 503 of the Labor-Management Reporting and Disclosure Act of 1959 provides:

> No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

Title 29, United States Code, Section 503 (a).

The money for these severance benefits did not belong to Santangelo or Middleton; the money came from the general fund and belonged to the Local Union. The funds of the Local Union could be disbursed only in accordance with the Local Union Bylaws and the law. In taking the money before they had a right to it, Santangelo and Middleton caused the Local to loan them these monies.

Santangelo and Middleton were on ample notice that the practice of advancing money in amounts greater than $2,000 was illegal. The law is well established and the restriction is consistent with basic fiduciary obligations. Both under the Independent Administrator and the IRB, the Teamster Magazine has

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[7] Section 503(a) provides, upon conviction, for imposition of a sentence of imprisonment of up to one year and a fine of not more than $5,000.

reported actions emphasizing that loans to officers over $2,000 were prohibited. (Exs. 42 and 43). Indeed, that salary advances in excess of $2,000 constitute loans in violation of the Title 29, United States Code, Section 503(a) was explicitly addressed by the Independent Administrator. Investigations Officer v. Burke, Decision of the Independent Administrator at 21 (October 1, 1992) (Ex. 41), aff'd, United States v. IBT, 817 F. Supp. 337 (S.D.N.Y. 1993); see Investigations Officer v. Ligurotis, Decision of the Independent Administrator at 11 (October 27, 1992) (Ex. 44), aff'd, United States v. IBT, 814 F. Supp. 1165 (S.D.N.Y. 1993).

Moreover, Santangelo's and Middleton's violation of their fiduciary duties is additional evidence of their intent. See Investigations Officer v. Morris, Decision of the Independent Administrator at 23 (May 22, 1991), 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 fiduciaries, Santangelo and Middleton 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 themselves and other Local employees the Local's money in the absence of Local Bylaw authorization, Santangelo and Middleton breached this fiduciary duty to the Local's members by receiving and spending Local money for personal benefit. See United States v. Local 560, supra, 780 F.2d 267, 284 (union officers are fiduciaries); Morrisey v. Curran, 650 F.2d 1267, 1274 (2d Cir. 1981) (union official breaches fiduciary duty when funds are spent for his benefit and such expenditures are

manifestly unreasonable as a Local officer); Farrington v. Benjamin, 468 F. Supp. 343, 350-51 (E.D.Mich. 1979).

Nor do Santangelo's and Middleton's alleged consultations with counsel negate the element of wilfulness for a violation of Title 29, United States Code, Section 503. (Respondents' Supplemental Brief to Joint Council at 16-18).

The wilfulness of Santangelo's and Middleton's conduct is clear; we find that each wilfully engaged in the charged misconduct. (Investigations Officer v. Burke, supra, Ex. 41 at 21). Santangelo and Middleton were aware that in July and August 1992, the Local Bylaws did not authorize the severance payments and that advances of moneys in amounts greater than $2,000 was illegal. Making the severance payments was a "substantial breach of the IBT Constitution and the Local's Bylaws." See Matter of Bruce W. Presley, Opinion and Decision of the Independent Review Board (July 8, 1998).

C. The Charge Against Santangelo Is Within the Statute of Limitations

Santangelo had previously argued that the charge against him relating to his preparation and signature of a check reflecting payments of severance benefits to himself was barred by the statute of limitations. This claim is without merit.

Article XIX, Section 7(a) of the IBT Constitution provided in pertinent part that "[a]ny charge based upon alleged misconduct which occurred more than five (5) years before the discovery of the conduct giving rise to the charge shall be rejected by the Secretary-Treasurer, except for charges based upon the non-payment

of dues, assessments, and other financial obligations." (Ex. 48). Under this constitutional provision, the charge is within the statute of limitations because it relates to the "non-payment" of a "financial obligation," to wit, the money loaned to Santangelo. Santangelo's failure to repay to the Local the advanced severance benefits to which he was not then entitled was explicitly excluded from the five-year limit because it created a financial obligation.

In addition, as stated in the IRB recommended charges, the advance to Santangelo, while made over five years before the filing of the charges, remains outstanding. Thus, the continuing illegal debt owed to the Local brings this matter within the five-year period as to Santangelo. The advances to Middleton and Praw, which Santangelo caused, were made on or about August 14, 1992, and as such are within the five-year statute of limitations period. The Joint Council was wrong to dismiss any of these charges on statute of limitations grounds.

The Respondents also contend that the IBT retroactively approved Bylaw amendments involving dues and initiation fee increases. Baptiste and Wilder letter of March 19, 1999, p. 2.

Respondents add to this contention that they want the IRB to direct that the IBT produce any information relating to such retroactive approvals. We decline to do so. There have been submitted to the IRB documents relating to eight instances which indicate that the IBT appears to have approved proposed Bylaw amendments on a retroactive basis. See Exs. 50-62. In each case, unlike here, the Local specifically requested retroactive approval

and the proposed amendments in virtually every case involve increases in receipts to the Local through dues or initiation fees. It does not appear that retroactive approval was given to an amendment which would have validated a previously improper disbursement of Local funds.

The Respondents' argument is further flawed in its inconsistency with their position that they did not think about the necessity for IBT approval at the time they received or took the payment.

The Respondents also contend that the IBT was guilty of outrageous "unreasonable delay" in its approval of the proposed amendments. The answer to this is that Santangelo took his payment the very day the Plan was terminated and only three months after IBT approval had been sought. As we have already noted, Respondents had available alternative relief from the General Executive Board; and no reason has been given why Respondents could not have waited until IBT approval was forthcoming, or, alternatively, why they did not write to the General President to ask for expedited treatment of the Local's application.

The Respondents argue that, even if there was a violation, Santangelo and Middleton had earned the severance benefits at the time of the Plan's termination. This does not constitute a defense to the charge.

We have considered the balance of the Respondents' contentions and find them irrelevant on the issue of whether there was here a violation as charged. We will, however, consider those contentions

on the issue of the sanctions to be imposed.

Turning to the letter of March 19, 1999, from Baptiste and Wilder, Respondents' counsel, we are advised that (pp. 2-3):

> Furthermore, as Mr. Santangelo an Mr. Middleton had earned the severance benefits at the time of the Plan's termination, the absence of a continuing pattern of failing to comply with the bylaws and the absence of any intent to circumvent financial controls, we respectfully submit that the appropriate penalty should be a reprimand. In addition, the following undertakings will be instituted: (1) The minutes of Executive Board and membership meetings shall set forth in more detail the descriptions of the reports of officers and the issues discussed. (2) Although all officers are ultimately responsible, the Local Union Executive Board shall designate one officer to review, prior to implementation, every action of the Executive Board and membership to assure compliance with the Bylaws and the International Constitution. (3) The Local Union shall promptly schedule a seminar for all Local 848 stewards to educate them and heighten their sensitivity to fiduciary responsibility and other compliance issues. (4) A seminar shall be held for all Joint Council 42 delegates, representing nineteen (19) Locals, at the April meeting to educate them and heighten their awareness of fiduciary responsibility issues, including compliance with their bylaws and the International Constitution, as well as the consequences that flow from failing to fully comply.
>
> In reviewing this matter, we respectfully request that you take into consideration the fact that Mr. Santangelo, as a candidate in the recent International officer election, was subjected to frequent questioning by members during the election campaign concerning these charges. Since reports on the case appeared five (5) times in the International magazine, both Mr. Santangelo and Mr. Middleton have suffered the embarrassment of being accused in the Teamster magazine of failing to fully disclose to their membership and of making illegal loans to themselves as part of an alleged scheme, even though the case ultimately involved the premature implementation of the Bylaw amendment. If the decision of the IRB reflects the withdrawal of these allegations, we would appreciate having that so noted in the summary published in the Teamster magazine.
>
> The proposed remedies were fashioned with a view toward a more direct presentation of the issues in this type of case, not only to the stewards of Local 848 but to all of the Executive Board members of the nineteen (19) Local Unions in Joint Council 42. While the IRB cases are summarized in the Teamster magazine, the non-lawyer readers may not grasp their factual context or the possible application to the conduct of business in their Local. These seminars will more fully explore these issues, generate discussion

of practical applications and hopefully impress upon them the necessity for fully complying with the Local's bylaws and the International Constitution and the consequences that flow from failing to do so in a comprehensive manner.

We respectfully request that the Board Members consider this proposal as a means of resolving this protracted case, which has obviously been for Mr. Santangelo and Mr. Middleton personally very costly to their reputations and their pocket books. The legal expenses in this case have exceeded many times over the net severance payment to Mr. Santangelo of $15,574.72 for twenty (20) years of service and to Mr. Middleton of $10,530.57 for his twelve (12) years of service.

While there can be no excuse for the Respondents' breach of their fiduciary duty to their Local and the membership, they had in fact earned the money which they received in July and August 1992.

IV. CONCLUSION

Based upon the foregoing, the evidence established that Santangelo and Middleton 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 themselves and other Local 848 officers and employees through advance payments of severance plan benefits. The charges against Santangelo and Middleton have been proved. Accordingly, we imposed the following sanctions:

A) Respondents and their counsel, if they have not already done so, will immediately implement the corrective action that they proposed to take in their counsel's letter of March 19, 1999, as set forth in this opinion at p. 28; and their counsel will provide the Independent Review Board with documentary evidence that the corrective action has been undertaken. Compliance with this directive is to occur by July 1, 1999.

B) Respondents are to pay to Local 848 by July 1, 1999, the following sums as a penalty for the violations that were the subject of this Opinion and Decision:

Santangelo	$2,000
Middleton	$1,000

Members of the
Independent Review Board

Grant Crandall

Frederick B. Lacey

William H. Webster

Dated: May 24, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiffs, -v- INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., Defendants.	OPINION & ORDER 88 Civ. 4486 (DNE)

EDELSTEIN, District Judge:

BACKGROUND

This opinion emanates from the voluntary settlement of an action commenced by the United States of America against, inter alia, the International Brotherhood of Teamsters ("IBT" or "the union") and the IBT's General Executive Board ("GEB"). The settlement is embodied in the voluntary consent order entered March 14, 1989 ("Consent Decree"). The goals of the Consent Decree are to rid the IBT of the hideous influence of organized crime and establish a culture of democracy within the union. The long history of this case has been set forth in this Court's numerous prior opinions. Accordingly, only those facts necessary for resolving the instant matter shall be set forth.

Currently before this Court is Application LXV of the

Independent Review Board ("IRB") ("Application LXV"), dated May 25, 1999. In Application LXV, the IRB requests that this Court affirm the IRB's May 24, 1999 decision.

FACTS

On August 4, 1997, the Independent Review Board ("IRB") recommended to International Brotherhood of Teamsters Joint Council 42 ("Joint Council") that it file charges against Local 848 Secretary-Treasurer James Santangelo ("Santangelo") and Local 848 President Richard Middleton ("Middleton") based upon their creation of a Severance Payment Plan (the "Plan") and the payment of money to themselves and others under the Plan in violation of Local 848's Bylaws. See Proposed Charges against Local 848 Officers James Santangelo and Richard Middleton (August 4, 1997) at 1. The IRB alleged that Santangelo and Middleton had brought reproach upon the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (3) of the IBT Constitution, and had breached their fiduciary duties to Local 848 members by directly and indirectly making illegal interest free loans in the form of advanced severance payments to themselves and Local 848 Recording Secretary Arlene Praw, in violation of 29 U.S.C. Sec. 503(a). See id.

At the time Santangelo and Middleton created the Plan, Local 848's Bylaws provided for severance payments only when a member's employment had terminated. Thus, because Local 848 still employed Santangelo, Middleton and Praw at the time they received the payments, amendments to Local 848's Bylaws would have been required in order to make such payments legal. Although the amendments making such payments legal had been enacted by Local 848, the General President of the IBT had not yet approved them, and thus, they were not in effect when Santangelo, Middleton and Praw took their severance payments in July and August 1992.

By letter dated August 11, 1997, Joint Council President Michael Riley ("Riley") informed the IRB that the Joint Council filed the recommended charges against Santangelo and Middleton. See Letter from Michael Riley to IRB (August 11, 1997) at 1. On September 22 and 23, 1997, a Joint Council Panel (the "Panel") conducted a hearing on the charges. By decision dated October 21, 1997, the Panel determined that while the payments of the severance pay benefits were made before the IBT General President had approved the proposed Local 848 Bylaw amendments authorizing such payments, there was no merit to the charges, and therefore, dismissed the charges. See Decision of the Hearing Panel on Charges Against James Santangelo and Richard Middleton

Recommended by the IRB ("Panel Decision") at 12-13. Furthermore, with regard to Santangelo, the Panel held that the statute of limitations barred the charges. See id.

On February 24, 1998, the IRB advised the Joint Council that the IRB found the Panel Decision to be inadequate. See Letter from John J. Cronin, Jr., Administrator of the IRB, to Robert Lennox, Secretary-Treasurer of Joint Council 42, (February 24, 1998) at 1. Accordingly, on June 9, 1998, the Joint Council held another hearing and by decision dated June 29, 1998, the Panel affirmed its earlier decision and again dismissed the charges. See Supplemental Decision of the Hearing Panel on Charges Against James Santangelo and Richard Middleton Recommended by the IRB ("Supplemental Panel Decision") at 13.

On August 13, 1998, the IRB notified the Joint Council that the IRB found the Supplemental Panel Decision to be inadequate. See Letter from John J. Cronin, Jr., Administrator of the IRB to Robert Lennox, Secretary-Treasurer of Joint Council 42, (August 13, 1998) at 1. The IRB determined that it would conduct a hearing de novo on the charges against Santangelo and Middleton as provided in the March 14, 1989 Consent Order in United States v. International Bhd. of Teamsters, 88 Civ. 4486 (S.D.N.Y.). See Letter from John J. Cronin, Jr., Administrator of the IRB to

James Santangelo and Richard Middleton (September 10, 1998) at 1. Additionally, on March 19, 1999 the IRB received a letter from counsel for Santangelo and Middleton listing certain undertakings that Local 848 would institute in order to prevent a similar failure to abide by the Local's Bylaws and uphold fiduciary duties in the future. Letter from Baptiste and Wilder to IRB March 19, 1999) ("Baptiste & Wilder Letter") at 2-3. Those undertaking are as follows:

> (1) The minutes of Executive Board and membership meetings shall set forth in more detail the descriptions of the reports of officers and the issues discussed. (2) Although all officers are ultimately responsible, the Local Union Executive Board shall designate one officer to review, prior to implementation, every action of the Executive Board and membership to assure compliance with the Bylaws and the [IBT] Constitution. (3) The Local Union shall promptly schedule a seminar for all Local 848 stewards to educate them and heighten their sensitivity to fiduciary responsibility and other compliance issues. (4) A seminar shall be held for all Joint Council 42 delegates, representing [nineteen] Locals, at the April [1999] meeting to educate them and heighten their awareness of fiduciary responsibility issues, including compliance with their bylaws and the [IBT] Constitution, as well as the consequences that flow from failing to fully comply.

11.

On October 13, 1998, and on November 10, 1998, the IRB

hearing was held before IRB member Honorable Frederick B. Lacey. The IRB issued its decision on May 24, 1999, finding that the statute of limitations had not run as to Santangelo; and that the charges against Santangelo and Middleton were proved. See Opinion and Decision of the IRB, In re: James Santangelo, Secretary-Treasurer and Richard Middleton, President of Local 848 ("IRB Decision") (May 24, 1999) at 26, 29. As a penalty, the IRB imposed the following sanctions on Santangelo and Middleton:

> A) Respondents and their counsel, if they have not already done so, will immediately implement the corrective action that they proposed to take in their counsel's letter of March 19, 1999, as set forth in this opinion at p. 28; and their counsel will provide the [IRB] with documentary evidence that the corrective action has been undertaken. Compliance with this directive is to occur by July 1, 1999.
>
> B) Respondents are to pay to Local 848 by July 1, 1999, the following sums as a penalty for the violations that were the subject of this Opinion and Decision:
>
> Santangelo $2,000
> Middleton $1,000

Id. at 28-29.

Pursuant to Paragraph O. of the Rules of Procedures for

Operation of the IRB, the IRB submitted Application LXV on May 25, 1999 for a ruling by this Court on the IRB Decision.

Discussion

It is well established that the findings of the IRB, as the successor to the Independent Administrator, are entitled to "great deference." See United States v. IBT ("Friedman & Hughes"), 905 F.2d 610, 616 (2d Cir. 1990). In reviewing IRB disciplinary actions, this Court has held that the "arbitrary and capricious" standard of review is applicable. United States v. IBT ("Portal"), 908 F. Supp. 139, 143 (S.D.N.Y. 1995). Paragraph O. of the IRB Rules provides that "[i]n reviewing actions of the IRB, this Court shall apply the same standard of review applicable to review of final agency action under the Administrative Procedure Act." See Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters, ¶ O. Furthermore, the Second Circuit has held that "the [Administrative Procedure Act] generally allows the reviewing court to set aside action only when it is arbitrary and capricious, an abuse of discretion or not in accordance with law." United States v. IBT ("Wilson"), 978 F.2d 68, 72 (2d Cir. 1992).

Santangelo and Middleton have not submitted any papers in opposition to the IRB Decision. This Court, having reviewed the IRB's May 24, 1999 Opinion and Decision and all accompanying exhibits, finds that the charges against Santangelo and Middleton have been proved by a preponderance of the evidence. There is nothing in the IRB Decision that could be construed as arbitrary and capricious, an abuse of discretion, or unwarranted in law. Furthermore, having reviewed the sanctions the IRB imposed, this Court finds that the sanctions are proportionate to the severity of the misconduct of which Santangelo and Middleton are guilty.

Conclusion

Based upon the foregoing, Application LXV of the IRB is Granted and the IRB Decision is Affirmed in all respects.

SO ORDERED

DATED: New York, New York
July 12, 1999

U.S.D.J.