

INDEPENDENT REVIEW BOARD
444 North Capitol St., NW, Suite 528
Washington, DC 20001
(202) 434-8080
Facsimile (202) 434-8084
Corruption Hotline (800) CALL IRB

FD-296
FD-53
FD-297

Chief Investigator:

Charles M. Carberry, Esq.
17 Battery Place, Suite 331
New York, NY 10004

Administrator:

John J. Cronin, Jr.

VIA EXPRESS MAIL

July 21, 1993

Robert DeRusha
Secretary Treasurer
Joint Council 10
650 Beacon Street
Room 501
Boston, MA 02215

Board Members:

Grant Crandall, Esq.
Crandall, Pyles & Haviland
1021 Quarrier Street
Charleston, WV 25301

Frederick B. Lacey, Esq.
LeBoeuf, Lamb, Leiby & MacRae
One Gateway Center, Suite 603
Newark, NJ 07102-5311

William H. Webster, Esq.
Milbank, Tweed, Hadley & McCloy
1825 Eye Street, NW, Suite 1100
Washington, DC 20006

RE: Joint Council 10 Decision regarding Local 841 Officers

Dear Mr. DeRusha:

We have received your June 4, 1993 letter enclosing the "Supplemental Decision of the Executive Board of Joint Council 10 in the Matter of Daniel Zenga, Andy Bellemare and William Schomburg" ("supplemental decision"). By this supplemental decision, the Joint Council 10 Executive Board removed Daniel Zenga ("Zenga") and Andy Bellemare ("Bellemare") from their positions with Local 841 and indefinitely suspended their IBT membership. Zenga and Bellemare were both permanently barred from being employed by Local 841 or other IBT Entity. By this supplemental decision, Local 841, Zenga and Bellemare were directed not to cause contributions to be made on Zenga's or Bellemare's behalf to the Local's Health and Welfare and Pension Funds.

Furthermore, within ninety days of receipt of the decision, the Joint Council 10 Executive Board directed Zenga and Bellemare to cause properly supervised representation elections to be held between non-IBT Local 402 and IBT local 633 at the Seabrook and Rockingham Racetracks. The supplemental decision also provided that after Zenga and Bellemare disaffiliated themselves from non-IBT Local 402, they may reapply to Joint Council 10 of reinstatement of their IBT membership. However, as a condition of reinstatement of their IBT membership, both Zenga and Bellemare must agree never to seek union office or to serve as an employee or consultant to Local 841 or any other IBT Entity.

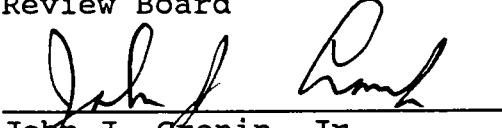
Robert DeRusha
Joint Council 10
July 13, 1993
Page 2.

By the supplemental decision, William Schomburg was suspended from his position as Trustee of Local 841 for a period of six months after which he may apply to Joint Council 10 for reinstatement to the position of Trustee.

In light of the supplemental decision, the Independent Review Board has no further questions regarding the actions taken in this matter.

Very truly yours,

Members of the Independent
Review Board


By: John J. Cronin, Jr.
Administrator

cc: Charles M. Carberry, Esq.

SUPPLEMENTAL DECISION OF THE EXECUTIVE BOARD OF JOINT COUNCIL 10
IN THE MATTER OF DANIEL ZENGA, ANDY BELLEMARE AND WILLIAM SCHOMBURG

On April 5, 1993, the Executive Board of Teamsters Joint Council 10, acting through a three-member panel issued its decision in the instant matter. That decision included certain penalties as against Daniel Zenga, Andy Bellemare and William Schomburg. This decision was submitted to the Independent Review Board for its consideration. By letter dated May 27, 1993, the Independent Review Board notified the Executive Board of Joint Council 10 that the panel's decision was "inadequate" because the Joint Council's sanctions were, in the judgment of the Independent Review Board, not "sufficiently specific" in certain respects. The Independent Review Board directed the Executive Board to take "additional actions" to correct the "deficiencies" noted by the Independent Review Board.

In accordance with the instructions of the Independent Review Board, the Executive Board of Joint Council 10, acting by and through the undersigned panel members, hereby imposes the following penalties as a substitute for the penalties imposed in its April 5, 1993 decision.

PENALTY OF THE MAJORITY OF THE PANEL MEMBERS

Daniel Zenga: Based on the findings set out in the April 5, 1993 decision, the panel removes Zenga from his position as Secretary/Treasurer of Local 841 and suspends indefinitely his membership in the IBT. The panel further orders that Zenga, within 90 days of his receipt of this decision, begin the process for conducting representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks. After Local 402 has

participated in properly supervised representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks and after Zenga has disaffiliated himself from Local 402, Zenga may apply to the Joint Council for the reinstatement of his IBT membership.

The panel further orders that Zenga may not hereafter be employed as an employee of IBT Local 841 or any other IBT Entity and that neither Local 841 nor Zenga shall cause to have contributions made to the Local's Health and Welfare and Pension Funds on behalf of Zenga.

The panel finally orders that Zenga, as a further condition to seeking reinstatement of his IBT membership, must agree never to seek union office or to serve as an employee or consultant to IBT Local 841 or any other IBT Entity.

Andrew Bellemare: Based on the findings set out in the April 5, 1993 decision, the panel removes Bellemare from his position as President of Local 841 and suspends indefinitely his membership in the IBT. The panel further orders that Bellemare, within 90 days of his receipt of this decision, begin the process for conducting representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks. After Local 402 has participated in properly supervised representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks and after Bellemare has disaffiliated himself from Local 402, Bellemare may apply to the Joint Council for the reinstatement of his IBT membership.

The panel further orders that Bellemare may not hereafter be employed as an employee of IBT Local 841 or any other IBT Entity and that neither Local 841 nor Bellemare shall cause to have contributions made to the Local's Health and Welfare and Pension Funds on behalf of Bellemare.

The panel finally orders that Bellemare, as a further condition to seeking reinstatement of his IBT membership, must agree never to seek union office or to serve as an employee or consultant to IBT Local 841 or any other IBT Entity.

William Schomburg: Based on the findings set out in the April 5, 1993 decision, the panel suspends Schomburg from his position as Trustee of Local 841 for a period of six months. At the conclusion of six months, Schomburg may apply to the Joint Council for reinstatement to the position of Trustee. Schomburg's reinstatement will be conditioned upon a showing by Schomburg that he is fully aware of the responsibilities of a Local Union Trustee.

	
<u>Robert L. Piccone</u> Vice President	<u>Robert G. DeRusha</u> Secretary/Treasurer

Date: June 4, 1993

Teamsters Joint Council No. 10

of

MASSACHUSETTS, MAINE, NEW HAMPSHIRE, RHODE ISLAND AND VERMONT

affiliated with

INTERNATIONAL BROTHERHOOD OF TEAMSTERS



David W. Laughton
President

Robert L. Piccone
Vice President

John F. Murphy
Recording Secretary

Robert G. DeRusha
Secretary-Treasurer
Principal Officer

Paul V. Walsh
Trustee

Ernest R. Tusino
Trustee

John J. Perry
Trustee

April 5, 1993

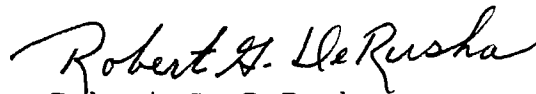
Independent Review Board
444 No. Capitol Street, N.W.
Washington, D.C. 20001

Re: Independent Review Board
Report of Officers of Local 841

Gentlemen:

Enclosed please find the "Decision of the Executive Board of Joint Council 10 in the Matter of Daniel Zenga, Andy Bellemare and William Schomburg".

Very truly yours,


Robert G. DeRusha
Secretary/Treasurer

Enclosure

cc Ron Carey, General President
Charles M. Carberry, Investigations Officer
Daniel Zenga
Andy Bellemare
William Schomburg
Michael Feinberg, Esq.
Gary Witlen, Esq.



DECISION OF THE EXECUTIVE BOARD OF JOINT COUNCIL 10 IN THE
MATTER OF DANIEL ZENGA, ANDY BELLEMARE AND WILLIAM SCHOMBURG

In a document dated January 12, 1993, the members of the Independent Review Board ("IRB") forwarded to the Executive Board of Joint Council 10 a report that contained certain "findings" and "charges" as against Daniel Zenga ("Zenga"), the Secretary/Treasurer and principal officer of Local 841; Andy Bellemare ("Bellemare"), the President of Local 841; and William Schomburg ("Schomburg"), a Trustee of Local 841 and the former Recording Secretary of that Local. The IRB's referral was made under Section G(e) of the Consent Order in United States of America v. International Brotherhood of Teamsters et al, 88 CIV 4486 (DNE), which provides as follows:

"Any findings, charges, or recommendations of the Independent Review Board regarding discipline or trusteeship matters shall be submitted in writing to an appropriate IBT entity (including designating a matter as an original jurisdiction case for General Executive Board review), with a copy sent to the General President and General Executive Board. The IBT entity to which a matter is referred shall thereupon promptly take whatever action is appropriate under the circumstances, as provided by the IBT Constitution and applicable law. Within 90 days of the referral, that IBT entity must make written findings setting forth the specific action taken and the reasons for that action."

As set forth in the IRB's referral document, the specific charges to be considered by the Executive Board were as follows:

(1) "By acting as IBT officers while simultaneously serving as officers of non-IBT Local 402 and directly competing with at least one IBT Local for members, Zenga and Bellemare brought reproach upon the IBT, engaged in dual-unionism and violated their allegiance to the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2) of the IBT Constitution."

(2) "By failing to adopt Bylaws which comply with the IBT Constitution and refusing to submit Bylaws to the IBT General President for approval, Zenga and Bellemare violated Article XXII, Section 1 and Article XIX, Section 7(b)(1) of the IBT Constitution."

(3) "By failing to keep a bookkeeping system as required by the IBT Secretary Treasurers Manual, Zenga violated Article XIX, Section 7(b)(1) and Article XXIII, Section 4 of the IBT Constitution."

(4) "By causing Local 841 to pay for expenses unrelated to IBT business during his trips to Florida, expenses related to his boat and by taking an unauthorized salary increase, Zenga breached his fiduciary duties and embezzled approximately \$21,774.00 of Local 841 funds in violation of Article XIX, Section 7(b)(1), (2), and (3) of the IBT Constitution."

(5) "By failing to keep minutes of Local 841 Executive Board meetings, Schomburg, the Local's Recording Secretary, failed to perform his duties and violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT constitution. By allowing Schomburg to fail to perform his duties, Zenga, the Local 841 principal officer, violated Article XXII, Section 1, Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT Constitution."

In response to the IRB's referral, the Executive Board of Joint Council 10 first put in place an Overseer of Local 841, effective February 1, 1993. The Overseer selected by the Executive Board is John Perry, who is the principal officer of Local 82 and a Trustee of Joint Council 10. Among his responsibilities, the Overseer is responsible for approving all expenditures of funds by Local 841 while the Executive Board considers the IRB's charges.

The Executive Board of the Joint Council next selected a panel of three of its members - Robert L. Piccone, Vice President; Robert G. DeRusha, Secretary/Treasurer; and John F. Murphy, Recording Secretary - to conduct a hearing and issue a decision on the IRB's charges. That hearing was conducted on February 10, 1993. The hearing was stenographically recorded and, subsequently, transcribed. The transcription accurately reports the individuals

present during the hearing as well as accurately describes the exhibits introduced into evidence. [Since this is the first referral made by the IRB under the Consent Order, the Executive Board had no guide regarding the procedural format to be used in acting on the IRB's referral.]

FINDINGS

(1) "By acting as IBT officers while simultaneously serving as officers of non-IBT Local 402 and directly competing with at least one IBT Local for members, Zenga and Bellemare brought reproach upon the IBT, engaged in dual-unionism and violated their allegiance to the IBT in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2) of the IBT Constitution."

This charge relates to the role of Zenga and Bellemare as president and secretary/treasurer, respectively, of Local 402, Toys, Dolls, Sporting Goods and Novelty Workers Union, AFL-CIO ("Local 402"). According to his testimony, Zenga obtained a charter for Local 402 in approximately 1973. Also according to his own testimony, Zenga obtained the Local 402 charter to compete with and invade the jurisdiction of IBT Local 633, which has jurisdiction in New Hampshire:

MR. MURPHY: Why did you obtain a charter for Local 402 of the Novelty Workers Union?

THE WITNESS: I answered that question earlier. It was a vehicle to organize the Seabrook Race Track.

MR. MURPHY: Because you couldn't organize them as Teamsters?

THE WITNESS: That's correct.

MR. MURPHY: Why couldn't you organize them as Teamsters?

THE WITNESS: Two reasons. Number one, we don't have

jurisdiction up there; and number two, the dues structure in the Teamsters is way too high for that kind of a worker. They would not join the Teamsters.

MR. MURPHY: Do you recall what the dues structure was back in the '70s?

THE WITNESS: Four dollars, it was very low. But, no, I mean you're asking me to go back over 20 years. So the simple answer is, no, I cannot.

MR. MURPHY: Did you ever give any consideration at all back when you obtained your charter from the Novelty Workers Union of turning that organizing lead over to the Teamsters?

THE WITNESS: No, never. (Transcript at pp. 163-165)

The panel finds that by seeking a charter from the Novelty Workers to avoid the jurisdictional restrictions of the IBT, Zenga failed to bear true and faithful allegiance to the IBT. In obtaining the Local 402 charter and, thereafter, organizing the employees at the Seabrook Race Track, Zenga competed with IBT Local 633 for employees of a type historically represented by Local 633. In this regard, the statement by Zenga that he also obtained the Local 402 charter because the dues structure of the Teamsters was, at that time, too high for track workers is contradicted by the fact that IBT Local 633 represented various classifications of employees at the Rockingham race track in Salem, New Hampshire from 1967 until the track burned down in the latter part of the 1970's. Accordingly, the panel finds that, in fact, the dues structure within the Teamsters was not an impediment to the organizing of the Seabrook employees by IBT Local 633 and that Zenga sought the Local 402 charter solely to avoid the IBT's jurisdictional restrictions.

The next incident where Zenga, now in conjunction with Bellemare, competed directly with IBT Local 633 for members occurred at Rockingham Racetrack in 1984. In 1984, Local 633 attempted to organize various classifications of employees at Rockingham Racetrack. Local 633 obtained signed authorization cards from over 120 employees out of a unit described by Local 633 as containing 180 employees. The record contains copies of those signed authorization cards. Local 633's efforts to organize were challenged by Local 402 and the track based on claims that the New Hampshire Department of Labor had no jurisdiction to conduct an election and that Local 402 and Rockingham Racetrack had a collective bargaining agreement covering the employees Local 633 was seeking to represent.

At no time has Zenga or Bellemare presented any documentary evidence, other than a printed collective bargaining agreement, to support their testimony that Local 402 during 1984 was authorized to represent the employees sought by Local 633. In fact, the record contains persuasive documentary evidence to the contrary. In this regard, the record contains a sworn statement from the owner of Rockingham that, in November 1984, the track had refunded dues to approximately 200 employees that had been improperly deducted and given to Local 402. The record also contains copies of Local 402's membership cards which clearly authorize the deduction of dues. These two documents are not consistent with the testimony of Zenga and Bellemare that they represented a majority of the employees at Rockingham when they entered into a collective bargaining agreement

with the track.

In any case, the fact remains that, regardless of whether Local 402 had the necessary authorization cards at the time it entered into the collective bargaining agreement with Rockingham, the Rockingham situation represented an infringement of IBT Local 633's jurisdiction by Zenga and Bellemare through the vehicle of Local 402.

Zenga and Bellemare raise three "defenses" to this charge. First, they argue that the charge is barred by the Article XIX, Section 7(a) which provides: "Any 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 charges based on the non-payment of dues, assessments and other financial obligations." Zenga and Bellemare argue that since the formal conflict with Local 633 occurred in 1984, the charge of dual unionism is time barred. The panel disagrees. Local 402 continues to represent employees in New Hampshire under a charter that Zenga admits was obtained by him to avoid the jurisdictional requirements of the IBT. While the formal conflict before the New Hampshire Department of Labor occurred in 1984, the infringement on the jurisdiction of Local 633 by Zenga and Bellemare remains just as real and offensive today as it was in 1984. Had Zenga and Bellemare relinquished their claim to employees in New Hampshire under the auspices of Local 402 more than five years ago, their statute of limitations claim would be persuasive. However, since Zenga and Bellemare continue to represent employees in

New Hampshire today, they continue to compete with Local 633.

The second argument of Zenga and Bellemare is that a telegram in October 1984 from then-IBT General President Presser to the principal officer of Local 633 disclaimed interest in the Rockingham unit of employees, which means, according to Zenga and Bellemare, that they cannot be found to have improperly competed with Local 633. The panel rejects this argument for two reasons. First, there is no evidence that General President Presser was aware, when he sent the telegram, that the officers of Local 402 were also officers of IBT Local 841. Second, Zenga and Bellemare mischaracterize the telegram as a disclaimer of interest. In this regard, the telegram states:

"For your information, the following message has been received in this office from Julius Isaacson, President, International Union of Allied Novelty And Production Workers: Quote -- Please be informed that one of your Locals, Local 633, 265 Maple Street Manchester New Hampshire is actively raiding one of the International Union of Allied, Novelty and Production Workers, AFL-CIO unions, Local 402 at Rockingham Race Track, Salem New Hampshire.

As you are aware the International Brotherhood of Teamsters, Chauffeurs, Warehousemans and Helpers of America have a no raid mutual assistance pact with the International Union of Allied Novelty and Production Workers, AFL-CIO. Will you please inform your Local Number 633 to honor our agreement -- Unquote

If the above facts are correct and as we have a no-raid agreement with the NPW, you are instructed to cease and desist your organizing activities and to withdraw your interest in the employees of Rockingham Race Track. Please Advise me by Titan that you have complied with these instructions" (emphasis supplied).

Local 633 responded to General President Presser's telegram by indicating that Local 633 and not Local 402 had had collective

bargaining agreements with Rockingham prior to the fire which closed the track for several years. General President Presser took no further action to restrict Local 633's efforts to organize at Rockingham. Accordingly, the panel finds that neither the language of the telegram itself nor the subsequent actions of General President Presser can be characterized as evidence that the IBT disclaimed interest in the employees at Rockingham.

The third argument of Zenga and Bellemare is that their involvement with Local 402 was "common knowledge" and, therefore, the panel should infer from that fact that they did not violate the IBT Constitution, since no one ever challenged them within the IBT organization. However, the panel now has before it a charge of dual-unionism, and while the lack of prior charges has been noted by the panel, the members of the panel do not place great weight on the absence of prior action but have recognized the absence of prior action as a mitigating circumstance and have framed the penalty accordingly.

The panel is responsible for considering the charges now before the Joint Council. Based on the evidence and considering the arguments of Zenga and Bellemare, the panel finds that both Zenga and Bellemare have violated and continue to violate Article II, Section 2(a) and Article XIX, Section 7(b)(2) of the IBT Constitution.

(2) "By failing to adopt Bylaws which comply with the IBT Constitution and refusing to submit Bylaws to the IBT General President for approval, Zenga and Bellemare violated Article XXII, Section 1 and Article XIX, Section 7(b)(1) of the IBT Constitution."

There is no dispute on the record that Local 841 has not had Bylaws that complied with the IBT Constitution for at least 10 years. There also is no dispute that Local 841 has failed to submit its Bylaws to the General President for approval for at least the same 10 year period. The record contains a declaration of IBT auditor Paul V. Murphy and related exhibits. The declaration and exhibits reveal that Auditor Murphy audited Local 841 in 1982, 1986 and 1990; that during the 1982 and 1986 audits Murphy advised Zenga that the Local 841 Bylaws had to be properly adopted and approved by the General President; and that in 1990 Murphy advised the Local's office personnel that bylaws had to be adopted and approved.

During the hearing, Zenga did not challenge Auditor Murphy's evidence:

"MR. ZENGA: I would have to say this. I've known Paul Murphy a long time. Paul Murphy is probably one of the finest gentleman I've ever met. And I am not going to sit here, and I don't want to be in a position to be bumping heads with Paul Murphy. I mean I've got nothing bad to say about him. I'll tell you this, if he wrote that it's because that's what he believes happened. I can tell you that I never recall having a conversation with him about bylaws, that I just don't recall." Transcript at p. 265.

Accordingly, the panel finds that Zenga and Bellemare violated Article XXII, Section 1 and Article XIX, Section 7(b)(1) of the IBT Constitution by failing to adopt Bylaws which comply with the IBT Constitution and refusing to submit Bylaws to the IBT General President for his approval.

(3) "By failing to keep a bookkeeping system as required by the IBT Secretary Treasurers Manual, Zenga violated Article XIX, Section 7(b)(1) and Article XXIII, Section 4 of the IBT Constitution."

During the hearing, Zenga stipulated that the bookkeeping method employed by Local 841 under his supervision did not comply with the IBT Secretary Treasurers Manual in that the method employed by Zenga did not require "that all [expense] vouchers [were] fully supported in detail before approval" (Transcript at pp. 97-98). Therefore, the panel finds that Zenga violated Article XIX, Section 7(b)(1) and Article XXIII, Section 4 of the IBT Constitution by failing to keep a bookkeeping system as required by the IBT.

(4) "By causing Local 841 to pay for expenses unrelated to IBT business during his trips to Florida, expenses related to his boat and by taking an unauthorized salary increase, Zenga breached his fiduciary duties and embezzled approximately \$21,774.00 of Local 841 funds in violation of Article XIX, Section 7(b)(1), (2), and (3) of the IBT Constitution."

The panel has carefully reviewed this charge as drafted by the IRB. While the body of the IRB's report contains references to improper expenses billed by Zenga to Local 402, the actual charges do not refer to this issue. In addition, the charge characterizes the expenditures in Florida and for the boat as "unrelated to IBT business" (as opposed to "unauthorized"), while characterizing the salary increase as "unauthorized." The panel assumes and believes that the IRB intentionally framed this charge in the manner indicated above and will not substitute its judgment for that of the IRB in framing the issue.

The evidence is undisputed that Local 841 paid for certain charges incurred by Zenga on his Local 841 credit card in Florida, in a location near his Florida residence. There is no apparent dispute that these charges, which totaled \$136.15, could not be shown by Zenga to have been related to any business on behalf of Local 841. There also appears to be no dispute that a reimbursement for an \$18 cash expense, that also was incurred by Zenga in Florida, could not be shown by Zenga to have been incurred in relation to his duties as Secretary/Treasurer of Local 841. The IRB has also challenged a reimbursement for a \$73.25 meal expense that, according to Zenga, was improperly described as an "out of town" expenses when, in fact, the \$73.25 was a properly reimbursable expense incurred by Zenga in the greater Boston area. Zenga has reimbursed Local 841 for the \$136.15, \$18 and \$73.25, while not conceding that the expenses were not reimbursable.

The panel finds that the Florida expenses were not properly paid by Local 841. The panel, however, does not find that Zenga "embezzled" those funds as the panel understands the meaning of that term, in that the panel finds that the billing to Local 841 (or, alternatively, the failure to immediately reimburse the Local) was inadvertent. In making this finding, the panel notes that it is undisputed that Zenga regularly was in Florida; yet, the evidence presented showed no pattern of improper Florida charges to Local 841. The panel finds that, as regards these charges, the breach of fiduciary duty lies with the failure of Zenga to impose the requisite

bookkeeping system that would have required detailed vouchers and that would have most likely avoided the failure on the part of Zenga to promptly reimburse Local 841.

As regards the \$73.25 expense for which Zenga was reimbursed, the panel does not find that Zenga embezzled those funds. However, here again the absence of the proper bookkeeping system results in a lack of verification of the actual purpose of the expenditure. The panel finds that Zenga had a fiduciary obligation to the members of Local 841 to render a specific accounting as to this expense and that had Zenga not already reimbursed Local 841 for this expense, the panel would have ordered him to do so as part of its remedy.

The second class of expenditures referred to in this charge is the expenses associated with the use by Zenga of his private boat to entertain participants at the Eastern Conference Car Haulers Meeting held in Falmouth, Massachusetts. These expenditures, which totalled \$907, included fuel, dockage fees and food and liquor for consumption on the boat. The panel is troubled by the "authorization" evidence offered by Zenga and Bellemare, given that the only instance in which the alleged actions of the Executive Board of Local 841 are documented in writing during the period January 1987 to September 1992 is the signed confirmation of the alleged telephone poll results. However, as regards the boat, Zenga is not charged with incurring an unauthorized expense but, rather, is charged with causing Local 841 to pay for expenses unrelated to the business of

Local 841. In addition, Article VI, Section 6 of Local 841's Bylaws granted the Secretary/Treasurer the authority to "[i]ncur expenses that he deems necessary for the good and welfare of the local union." Accordingly, the panel finds that the question of whether Zenga received Executive Board approval is not relevant to this charge.

In regards to the issue of whether the boat expense related to the business of Local 841, there is no evidence that the boat was not used to entertain the members in attendance at the meeting. As a representative from the host State, the panel finds that Zenga could incur reasonable expenses entertaining the members and that the use of his boat as the method for entertaining those members (as opposed to, for example, hosting a reception or a dinner) was not unrelated to the business of Local 841.

The final element of this charge is the alleged unauthorized salary increase. The panel finds that this portion of the charge relates directly to the charge that the various officers failed to keep adequate minutes of Executive Board meetings. Given the total absence of Executive Board minutes, the panel must weigh the credibility of all the witnesses who testified regarding this issue. In this regard, each of the Executive Board members who testified during the hearing stated that the matter of the salary increase was raised, briefly discussed and ultimately approved by the Executive Board at the Board's December 1988 meeting. The panel finds that insufficient evidence exists to conclude that Zenga's salary increase was not authorized.

(5) "By failing to keep minutes of Local 841 Executive Board meetings, Schomburg, the Local's Recording Secretary, failed to perform his duties and violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT Constitution. By allowing Schomburg to fail to perform his duties, Zenga, the Local 841 principal officer, violated Article XXII, Section 1, Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT Constitution."

There is no dispute that the Recording Secretary of Local 841, Schomburg, failed to keep minutes of the Executive Board meetings from at least January 1987 through September 1992. Zenga, as principal officer of Local 841, was responsible for insuring that those minutes were kept. Therefore, the panel finds that Schomburg violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT Constitution and that Zenga violated Article XXII, Section 1, Article II, Section 2(a) and Article XIX, Section 7(b)(1) of the IBT Constitution.

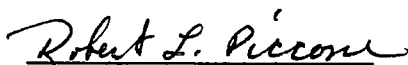
PENALTY OF THE MAJORITY OF THE PANEL MEMBERS

Daniel Zenga: Based on the findings set out above, the panel removes Zenga from his position as Secretary/Treasurer of Local 841 and suspends indefinitely his membership in the IBT. The panel further orders that Zenga, within 90 days of his receipt of this decision, begin the process for conducting representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks. After Local 402 has participated in properly supervised representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks and after Zenga has disaffiliated himself from Local 402, Zenga may apply to the Joint Council for the reinstatement of his IBT membership.

Andrew Bellemare: Based on the findings set out above, the panel removes Bellemare from his position as President of Local 841 and suspends indefinitely his membership in the IBT. The panel further orders that Bellemare, within 90 days of his receipt of this decision, begin the process for conducting representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks. After Local 402 has participated in properly supervised representation elections between Local 402 and IBT Local 633 at Seabrook and Rockingham Racetracks and after Bellemare has disaffiliated himself from Local 402, Bellemare may apply to the Joint Council for the reinstatement of his IBT membership.

William Schomburg: Based on the findings set out above, the panel suspends Schomburg from his position as Trustee of Local 841 for a period of six months. At the conclusion of six months, Schomburg may apply to the Joint Council for reinstatement to the position of Trustee. Schomburg's reinstatement will be conditioned upon a showing by Schomburg that he is fully aware of the responsibilities of a Local Union Trustee.

The panel recommends that the Overseer, who is familiar with the operation of Local 841 and who is the principal officer of IBT Local 82, serve as the Trustee of Local 841 until the final disposition of this case.


Robert L. Piccone
Vice President


Robert G. DeRusha
Secretary/Treasurer

Date: April 5, 1993

I concur with the findings of my fellow panel members that Daniel Zenga and Andrew Bellemare are guilty of Dual Unionism.

Dual Unionism is one of the most serious infractions that a trade unionist can commit; indeed, it is tantamount to treason. The fact that Zenga and Bellemare have engaged in Dual Unionism without prior challenge does not in any way detract from the damage their misconduct caused this Union.

A labor organization has the right to expect that elected officers or agents do not sabotage or subvert its policies in the name of a supposed loyalty to union members nor engage in activities diametrically opposed to the very existence of the union. Meader v. IUMSWA, 786 F. Supp.95 (D. ME., 1992).

The importance of these principals has been recognized by both Congress and the National Labor Relations Board. Section 101(a)(2), 29 U.S.C. Section 411(a)(2) of the LMRDA permits the expulsion of any member who attempts to threaten the union as an institution. Congress included the following restriction on the freedom otherwise guaranteed to a union member.

Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and this refraining from conduct that would interfere with its performance of its legal or contractual obligations. LMRDA section 101(a)(2), 29 U.S.C. Section 411(a)(2).

In addition, the National Labor Relations Board has held that expulsions are permissible where the actions of a union member interfere with the union's institutional integrity. Section 8(b)(1)(A) National Labor Relations Act, 29 U.S.C. section 158(b)(1)(A).

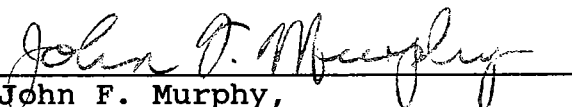
The IBT has a right and duty to demand loyalty from its international and local officers. Dual Unionism strikes at the union as an institution and the only appropriate penalty is expulsion.

Therefore I recommend the following:

Daniel Zenga shall be removed from his office of Secretary-Treasurer of Local 841 and expelled from membership in the IBT immediately.

Andrew Bellemare shall be removed from his office of President of Local 841 and expelled from membership in the IBT immediately.

The penalty imposed on William Schomburg is appropriate.



John F. Murphy,
Recording Secretary