
INVESTIGATIONS OFFICER,

Claimant,

-against-

ANTHONY CALAGNA, SR., MICHAEL
URSO-PERNICE, ROBERT W. REINHARDT,
ANTHONY CALAGNA, JR., SALVATORE
E. CATALDO, RALPH DELSARDO, AND
JOHN MORAN, JR.,

Respondents.

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter concerns charges filed by the Investigations Officer against the following officers of IBT Local Union 295 located in Jamaica, New York: (1) Anthony Calagna, Sr. ("Calagna"), President of Local 295;¹ (2) Michael Urso-Pernice ("Urso-Pernice"), Secretary-Treasurer; (3) Robert W. Reinhardt ("Reinhardt"), Vice President; (4) Anthony Calagna, Jr. ("Calagna, Jr."), Recording Secretary; (5) Salvatore E. Cataldo ("Cataldo")²,

¹ The Investigations Officer has filed three other separate charges against Anthony Calagna, Sr., as well. These charges were heard independently of the charges herein and have been decided in two separate opinions. See Investigations Officer v. Anthony Calagna, Sr. (In Re: Charges One and Two), Decision of the Independent Administrator (May 7, 1991), and Investigations Officer v. Anthony Calagna, Sr. (In Re: Charge Three), Decision of the Independent Administrator (May 9, 1991).

² By letter dated April 18, 1991, I was informed by counsel that following the conclusion of these hearings, Respondent Cataldo resigned from his position as Trustee of Local 295. Cataldo's resignation does not render the Investigations Officer's charges against him moot.

Trustee; (6) Ralph Delsardo ("Delsardo"), Trustee; and (7) John Moran, Jr. ("Moran"), Trustee (collectively "Respondents"). Hearings on these charges were held before me and pre- and post-hearing briefs were submitted. Robert W. Gaffey, Esq. represented the Investigations Officer. Counsel for Respondents were Michael Pollack, Esq., for Anthony Calagna; and Ira Drogin, Esq., for the remaining officers. Having reviewed the evidence and the pre-and post-hearing submissions, I find that the Investigations Officer has met his burden in proving each of the charges against Respondents.

I. THE CHARGES

There are five charges at issue here. The charges against each of the Respondents are essentially identical. As the charges are rather lengthy, they are annexed hereto, in full, as Exhibit A. The charges may be summarized as follows:

A. Charge One

In Charge One, the Investigations Officer alleges that Respondents, as members of the Executive Board of Local 295, brought reproach upon the IBT by violating their fiduciary duties when they repeatedly failed "to investigate breaches of fiduciary duties by Local 295 officers and other corruption in the affairs of

Local 295, in violation of Article II, Section 2(a)³ and Article XIX, Section 6(b) (1), (2) and (3)⁴ of the IBT Constitution." More specifically, the Investigations Officer charges that Respondents disregarded their fiduciary duties to investigate "(1) multiple allegations of involvement by La Cosa Nostra in the affairs of Local 295, (2) allegations of criminal acts by officers,

³ Article II, Section 2(a) provides:

Any person shall be eligible to membership in this organization upon compliance with the requirements of this Constitution and the rulings of the General Executive Board. Each person, upon becoming a member, thereby pledges his honor: to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Bylaws and laws of his Local Union; to comply with all rules and regulations for the government of the International Union and his Local Union; to faithfully perform all the duties assigned to him to the best of his ability and skill; to conduct himself or herself at all times in such a manner as not to bring reproach upon the Union [Emphasis supplied].

⁴ Article XIX, Section 6(b) provides:

The basis for charges against members, officers, elected Business Agents, Local Unions, Joint Councils or other subordinate bodies for which he or it shall stand trial shall consist of, but not be limited to, the following:

- (1) Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.
- (2) Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.
- (3) Embezzlement or conversion of union's funds or property

and (3) multiple convictions of persons involved in the affairs of Local 295, including its present and former officers."

The Investigations Officer points out that Section 13.2 of Local 295's by-laws provides that the Executive Board has an affirmative duty "to investigate any alleged breach of fiduciary duty when the circumstances so warrant and to take appropriate action if the investigation so merits." Reference is thereafter made to numerous criminal proceedings concerning the affairs of Local 295, and to extensive newspaper and other media coverage alleging the presence of widespread corruption, including associations with members of organized crime, among the officers of Local 295.

The Investigations Officer then charges that, in the face of these numerous allegations of corruption in Local 295, Respondents took "affirmative steps to thwart any remedy or investigation of these matters in direct antagonism to the interests of the members." The Investigations Officer claims that Respondents should have conducted investigations into the foregoing matters and allegations instead of completely disregarding their duty to the members to investigate and take action to remedy corruption in the affairs of Local 295.

B. Charge Two

In Charge Two, the Investigations Officer charges that Respondents embezzled money from Local 295 by (i) authorizing

payment by the Local Union of \$150,000, plus additional unspecified costs and expenses, in legal fees to Calagna's attorney for the defense of Calagna's indictment for alleged extortion of money from an employer of Local 295 members of which \$50,000 has already been paid; and (ii) agreeing to give Calagna, post-indictment, a salary increase of \$31,200, annually, and unjustifiably making the raise retroactive a full year.⁵

C. Charge Three

In Charge Three, the Investigations Officer charges that Respondents embezzled Local 295 money by creating a Local Union "severance" plan that served no legitimate interest of the membership, but was instead solely for Calagna's personal benefit and the benefit of the other members of the Executive Board. The Investigations Officer alleges that at the time the plan was created, Respondents and the other members of the Executive Board were aware that Local 295 and its officers were under investigation by federal authorities. Thus, the "severance" plan was created simply "to feather the nests of officers who might be convicted or

⁵ In a decision dated April 11, 1991, upon the same facts, I found that Calagna had embezzled \$50,000 in Local 295 funds by virtue of Local 295's payment of that sum to Calagna's attorney for his defense of federal criminal racketeering charges against him. See Investigations Officer v. Anthony Calagna, Sr. (In Re: Charge Three), Decision of the Independent Administrator (May 9, 1991). Therefore, the Investigations Officer's second charge implicates Calagna in the embezzlement as a result of his complicity in securing his post-indictment raise.

otherwise forced to leave office as a result of the then-continuing grand jury investigation."

D. Charge Four

In Charge Four, the Investigations Officer charges that Respondents embezzled Local 295 money to purchase a new car costing \$28,866 for then Secretary-Treasurer, Michael Hunt, upon his retirement. The Investigations Officer further alleges that the purchase of the car violated Section 15.3 of Local 295's by-laws, which requires that title to automobiles purchased by the Local Union shall remain with the Local, and Section 13.1.9 of the by-laws which provides that any transfer of union assets must be approved by the membership.

E. Charge Five

In Charge Five, the Investigations Officer charges that Respondents brought reproach upon the IBT by embezzling Local 295 monies in the form of monthly payments from the Local to Harry Davidoff, a former Local 295 officer, in the amount of approximately \$1,800. The Investigations Officer alleges that these payments have been made to Davidoff since 1972 and continue to date despite his conviction in 1986 for extortion and conspiracy to commit extortion of employers of Local 295 members.

II. CHARGE ONE -- FAILURE TO INVESTIGATE

A. Findings of Fact

At the hearing, the following was established:

1. Section 13.2 of Local 295's by-laws specifically provides:

The Local Union Executive Board shall have the duty to investigate any alleged breach of fiduciary duty when circumstances so warrant and to take appropriate action if the investigation so merits.

[Investigations Officer's Ex. 6 at p.8]

2. Although the tenure of the individual respondents on the Executive Board varies greatly, each respondent has been a member of the board since at least 1989 and a member of Local 295 for at least 10 years. Specifically, Urso-Pernice has been an officer of Local 295 since 1984 and a member for 17 years. T815-5 to 817-12.⁶ Reinhardt has been an officer of Local 295 since 1975 and a member for 29 years. T466-17 to 22. Calagna, Jr., has been an officer since February of 1989 and a member for 10 years. T789-12 to 22. Cataldo has been an officer since January of 1989 and a member for 27 years. T742-22 to 743-17. Delsardo has been an officer since 1983 and a member for 25 years. T686-18 to 689-8. Moran has been an officer since 1976 and a member for 25 years. T605-9 to 17.

3. At the hearing, the Investigation Officer presented evidence, primarily through the Declaration of Federal Bureau of Investigation Special Agent, James J. Malley (the "Malley Declaration"), with attached exhibits, of a history of corruption in the affairs of Local 295. Investigations Officer's Ex. 1 with attached exhibits A through BM.

4. For example, the last two presidents of Local 295 (respondent Calagna and former president Frank Calise) have been convicted of crimes directly related to the misuse of their position in the Local Union. In

⁶ All transcript references are to the transcript of the hearing before me. The cite refers to the transcript page number followed by the line number. In this case, "T815-5 to 817-12" refers to transcript page 815, line 5 through transcript page 817, line 12.

1985, Frank Calise was indicted, along with former Local 295 Officer, Harry Davidoff, in United States v. Salvatore Santoro, et al., 85 Cr. 100 (E.D.N.Y.), a major federal racketeering case which charged that members and associates of the Luchese Family of La Cosa Nostra used Local 295 and its sister Local 851 to conduct a racketeering enterprise. Both Calise and Davidoff were named in the indictment as associates of the Luchese Family. Salvatore Santoro, Paul Vario and Frank Manzo, each of whom has been publicly identified as a member of La Cosa Nostra, were also indicted in the case. Malley Declaration at ¶ 22 and 24-25 (including exhibits cited therein).

The indictment contained numerous charges of La Cosa Nostra involvement in the affairs of Local 295 including charges of extortion of employers through the threat of wrongful labor activities by Local 295. Investigations Officer's Ex. 1(L). On November 7, 1986, Calise pled guilty to the charges of racketeering and was sentenced to nine years. Investigations Officer's Ex. 1(AR). Davidoff was convicted of racketeering and extortion in this and a related indictment, see United States v. Harry Davidoff, 85 Cr. 100 (E.D.N.Y.) (Investigations Officer's Ex. 1(AG)), and was sentenced to ten years. Investigations Officer's Ex. 1(AP) and (AQ).

5. Similarly, on May 3, 1989, Respondent Calagna was indicted in United States v. Frank Calise, Anthony Calagna and Richard Schroeder, 89 Cr. 308 (E.D.N.Y.), along with Local 295's former President Frank Calise, for extortion and conspiracy to commit extortion from P.C. Delivery, an air freight company at Kennedy Airport which employs Local 295 members. Investigations Officer's Ex. 1(BF). In June of 1990, Calise pled guilty to the charge of a conspiracy to commit extortion. Investigations Officer's Ex. 1(BG). On January 3, 1991, Calagna was convicted, after a jury trial, of extortion and a conspiracy to commit extortion. Investigations Officer's Ex. 44. As a condition of bail, the court required Calagna to resign as an officer of Local 295. Id.

6. In addition to the two former presidents of Local 295, a Local 295 shop steward, Carmelo Amato, is currently under indictment for extortion of employers of Local 295 members. In 1989, Amato, along with former President Frank Calise, was indicted for conspiracy to commit extortion for conspiring to threaten work stoppages and other interferences by Local 295 to extort money from air freight companies at Kennedy Airport. The

defendants were also charged with obstruction of justice for interfering with an investigation of racketeering, extortion and other crimes committed by organized crime members and officials of Local 295 and Local 851. Investigations Officer's Ex. 1(AO). In June of 1990, Calise entered a guilty plea in this case to conspiracy to commit extortion. Investigations Officer's Ex. 1(BK).

7. Local 295 has also been featured prominently in many other federal indictments and convictions. In United States v. Soldano, et al, 71 Cr. 558 (S.D.N.Y.), the defendants therein were charged and eventually convicted for, among other things, fraudulent manipulation of Local 295's severance scheme. Investigations Officer's Ex. 1(W through AE).

8. In United States v. Parker, 88 Cr. 026 (E.D.N.Y.), George Parker, a Local 295 employer, was charged with, among other things, extorting and conspiring with others to extort money from air freight companies at Kennedy Airport by threatening to cause the organization of non-union employees by Local 295 and Local 851. Investigations Officer's Ex. 1(AF). On December 19, 1988, Parker entered a guilty plea to one count of extortion and was sentenced to five years, suspended sentence, and fined \$100,000. Investigations Officer's Ex. 1(BM).

9. In United States v. Vincent Santa and Thomas Orlando, 86 Cr. 303 (E.D.N.Y.), the defendants were charged with extortion and conspiracy to commit extortion by threatening work stoppages and other labor difficulties involving Local 295 and Local 851. Investigation Officer's Ex. 1(AH). On March 20, 1987, Santa was convicted of extortion and sentenced to ten years in prison. Investigations Officer's Ex. 1(AI). On January 21, 1987, Orlando was also convicted and sentenced to two years, suspended sentence. Investigations Officer's Ex. 1(AW and BE).

10. In United States v. Salvatore Reale and George Parker, 86 Cr. 302 (E.D.N.Y.), the defendants therein were charged with extortion and conspiracy to commit extortion by threatening air freight companies at Kennedy Airport with interference from Local 295, including the threat to organize non-union employees by Local 295. Investigations Officer's Ex. 1(AJ). On February 4, 1988, Reale pled guilty to charges of extortion and was sentenced to 15 years, suspended sentence, and placed on

probation for five years. Investigations Officer's Ex. 1(AK).

11. In United States v. Mark Tangas, (E.D.N.Y.), Tangas, a Local 295 employer, was indicted in 1988 for perjury and obstruction of justice for falsely testifying before a grand jury which was "seeking to determine whether Anthony Calagna, the [then] president of Teamsters Local 295, was arranging for and receiving illegal labor peace payoffs from air freight and shipping companies on behalf of himself and the Luchese Family." Investigations Officer's Ex. 1(AU).

12. In United States v. Frank Cammarano, 89 Cr. 654 (E.D.N.Y.), the defendant therein was indicted for extortion and conspiracy to commit extortion by threatening various air freight companies with labor disputes or organization of non-union employees by Locals 295 and 851. Investigations Officer's Ex. 1(AV). On March 30, 1989, Cammarano was convicted and sentenced to eight years, suspended sentence. Investigations Officer's Ex. 1(BL).

13. In addition to the numerous criminal proceedings involving the affairs of Local 295 which occurred during the tenure of the Respondents, Local 295 and its officers were themselves the subject of various criminal investigations. In April of 1987, the FBI searched Local 295's offices, pursuant to a search warrant, and discovered several handguns and two coded diaries hidden in the ceiling tiles above the offices. See Investigations Officer's Ex. 8. Subsequently, Calagna, Urso-Pernice and then President Michael Hunt were subpoenaed by a grand jury to provide fingerprints, photos and handwriting exemplars to assist the grand jury in its investigation. Id.

14. In addition, in or around 1988, the FBI interviewed respondents Urso-Pernice, Moran and Delsardo in person. T619-19 to 625-17; T691-3 to 696-4 and T831-24 to 840-24. Moran and Delsardo were interviewed in Moran's home and were asked to identify various photographs. Moran was able to identify Frank Calise, Harry Davidoff and Michael Urso-Pernice among the photographs he was shown. T622-18 to 23. At the hearing, Moran testified that the officers simply told him that "they were only investigating these people, and that is it." T623-19 to 23. Delsardo, when asked if the officers told him what they were investigating, testified that they "asked me--asked us in general, what do you men

think of all of this talk about the airport; in other words, the illegal activities, you know the stealing at the airlines, this and that." T694-6 to 10. Delsardo testified that he told the officers: "It is bullshit, as far as I'm concerned, I don't know nothing about it." T694-13 to 15.

15. In March of 1990, Local Union 295, the Executive Board of Local 295, respondents Calagna, Urso-Pernice and Reinhardt were named as defendants in United States v. Local 295, et al., 90 Civ. 970 (E.D.N.Y.), a civil RICO action filed by the United States in the Eastern District of New York. Investigations Officer's Ex. 20(A). The complaint alleges, among other things, that Anthony Calagna is a member of the Luchese Family of La Cosa Nostra and that Harry Davidoff, Mark Davidoff, Frank Calise and Carmelo Amato are associates of La Cosa Nostra. Id. The civil RICO complaint charges that the defendants have engaged in a pattern of extortion from employers and members of Local 295 through an "Airport Union Enterprise" and a "Luchese Family Enterprise" Id.

16. The numerous criminal and civil proceedings concerning alleged, and often proven, corruption in the affairs of Local 295 and the various investigations and allegations of corruption and organized crime involvement in Local 295 and the air freight industry at Kennedy Airport have also been the subject of a multitude of newspaper and magazine articles and other media coverage. See Investigations Officer's Ex. 1(F), (H) and (R). For example, a February 22, 1985 article in the New York Daily News states that "eleven men--including two ranking members of the Luchese organized crime family and two Teamsters officials--were indicted yesterday on charges of using 'captive' labor unions to try to extort \$900,000 from Kennedy Airport cargo firms." Investigations Officer's Ex. 1(F). Moreover, the Airport Press, a publication distributed at Kennedy Airport with which Respondents are familiar (see T543-14 to 544-15) has extensively covered the federal investigations into racketeering activity at Kennedy Airport including Local 295's role. Investigations Officer's Ex. 1(R).

17. On May 8, 1990, the Investigations Officer attempted to conduct a sworn in-person examination of Calagna. As a result, in a separate decision concerning an independent charge, I found that Calagna brought reproach upon the IBT by invoking the Fifth Amendment and refusing to testify in response to questions by the

Investigations Officer concerning La Cosa Nostra and other corruption in Local 295. I also found that the Investigations Officer met his burden of establishing just cause for finding that Calagna was and is a member of La Cosa Nostra. See Investigations Officer v. Anthony Calagna, Sr. (In Re: Charges One and Two), Decision of the Independent Administrator (May 7, 1991).

Given this extensive background, I find that the evidence presented to me demonstrates that from at least 1975, until the present, Local 295, its officers, former officers, employers of its members, and others associated with the Local Union, have been the subject of repeated and ongoing allegations and findings of corruption, including La Cosa Nostra infiltration into the Local. Respondents were well aware of these allegations and findings. For example, respondent Reinhardt stated that he knew of the various criminal investigations and other allegations of corruption and La Cosa Nostra involvement in Local 295. Reinhardt testified that he had read about such allegations in the newspaper, including the Airport Press. T543-7 to 552-25. Furthermore, Respondents were surely aware of the various investigations into the affairs of Local 295 after the FBI searched the Local's offices in 1987 and found several guns and two coded books concealed above the office's ceiling tiles, and after the FBI interviewed Moran, Delsardo and Urso-Pernice and subsequently several of the officers were subpoenaed by the grand jury to provide fingerprints, photos and writing exemplars. See, supra at p. 10.

Despite having knowledge of various allegations and findings of criminal activity involving Local 295, knowledge which would

have been difficult to avoid, Respondents did nothing to investigate or remedy these alleged problems. The following discourse at the hearing between the Investigations Officer and Reinhardt typifies the Respondents' unwillingness to investigate or take any remedial action:

Q Have you ever heard, sir, that Carmelo Amato [a Local 295 shop steward] was indicted?

A Yes.

Q When did you hear that?

A I believe I read it in the newspaper approximately May of -- it could have been May of '89. I think it was around the same time that Anthony [Calagna] was charged in a different type of case.

Q What steps, sir, if any, did you take to look into the matter of Carmello Amato's indictment to determine whether there was any truth to the allegations against him?

A I took no steps.

* * *

Q Now, you read in the newspaper about Paul Vario?

A Yes, at that time, back then, yes.

Q Did you read, sir, that Paul Vario was alleged to be a member of the Luchese family?

A Yes.

Q Do you understand what the Luchese family is?

A I believe it is a part of the LCN whatever you want to call it.

Q You read, sir, did you not, that Paul Vario was alleged to have some involvement in the affairs of your local, is that right?

A I believe at that time, they did say that he was involved, but how he was involved, I don't know, but it said something in the paper about that, yes.

Q What steps, if any, did you take to investigate whether Paul Vario did have any involvement in your local?

A No steps whatsoever.

Q Now, sir, when you read in the papers about Vario, you also read allegations that Frank Calise, the president of Local 295, was involved in La Cosa Nostra, did you not?

A I don't remember if they said he was associated or knew him, I really don't know. I believe there was something -- what the terminology was, I really -- I don't remember.

Q The terminology aside, you did read, sir, did you not --

A Yes.

Q What steps, if any, did you undertake to investigate those allegations?

A None

Q Sir, does Frank Manzo or did Frank Manzo have any involvement in the affairs of Local 295?

A Not to my knowledge.

Q At any time?

A Not to my knowledge, no.

Q Did you ever read allegations that as a member of La Cosa Nostra, Manzo was exerting influence in some way over the affairs of Local 295?

A I remember reading in the papers that he was somehow involved with 295, but whether it was putting influence over them or not, I really don't know. I don't know what the words were.

Q What steps, if any, did you take to investigate that?

A None

Q What steps, if any, did the executive board members, other than yourself, take to investigate?

A None that I know of.

* * *

Q Did there come a time, sir, when you learned that Davidoff had been indicted?

A Yes.

Q That was approximately when?

A That was in 1985, I believe.

Q Sir, when he was indicted, did you learn what Harry Davidoff was alleged to have done?

A I don't know if it was--I believe it was extortion or conspiracy to extort. I don't know the exact charge.

Q Do you know if any of the charges of extortion or conspiracy to commit extortion involved Local 295's affairs?

A I believe so. I believe it was.

Q In your time on the board, sir, have you ever attempted to determine the truth or falsity of those allegations?

A Of the charges?

Q Yes, sir.

A No.

Q Do you know if anyone of the executive board has?

A No.

* * *

Q In Paragraph 15 [of the civil RICO complaint against Local 295], there is an allegation that Anthony Calagna was and is a made member of the

Luchese organized crime family. Did you see that when you read the complaint?

A Yes, I did.

Q You read the complaint in and around March 1990?

A When I received it, yes.

Q Was that about the time that you received it?

A It was sometime in March of 1990, yes.

Q Since that time, sir, what steps, if any, have you taken to investigate any of these matters?

A Of all these matters that you just --

Q Of the paragraphs we just reviewed.

A Okay. I did not take no steps. The only one I really talked to about it was Anthony [Calagna]. The day I got this, he was served with one, and we were sitting down in the same room reading it. When I saw that, I said did you see this, and he says they are crazy, they don't know what the hell they are talking about. He said it is ridiculous. T563-15 to 574-14.

Moreover, as highlighted by the Investigations Officer in his Post-Hearing Memorandum at pp. 9-10, the other Respondents also took a dim view of investigating any of the numerous allegations and findings of corruption in their Local Union:

Other respondents exhibited complete hostility to the self-evident concept that, as fiduciaries, they had an obligation to inquire about and take steps to remedy corruption to the Local. Delsardo, for example, learned about Calagna's indictment "in the papers" and from "scuttlebutt." Tr. 705. He described respondents' reaction to the indictment of the Local's president as follows:

We talked, what the hell is going on. Again, it comes up, this is bullshit. This is more they are throwing at the Teamsters. More of the same, just an ongoing thing. [Tr. 706.]

Delsardo held the same view about Calise's indictment. Tr. 722. Even the convictions of Calagna and Calise have not changed this view. Tr. 724-25. Like the other respondents, Delsardo chose to deliberately ignore the indicia that Local 295 is in the grip of a corrupt element:

Q: When these things kept happening, the FBI visit, the FBI search of those offices, indictment of Calise, and the indictment of Calagna, Calise's guilty plea, then Calagna's guilty verdict, did you or any other member of the board ever discuss the fact that Local 295 might have a problem that the officer's should look into?

A: No.

Q: ... Did you or any other member of the board ever look into these matters?

A: No.

Tr. 736-37; see id at 740. The testimony of each of the other respondents was consistent with this corrupt refusal to act. E.g., Tr. 669-74 (Moran); Tr. 752-753, 776-79 (Cataldo); Tr. 801-02, 804-05 (Calagna, Jr.); Tr. 882-96 (Urso-Pernice).

Beyond a mere failure to investigate or take action in the face of the many allegations of criminal activities in and around Local 295, there was additional evidence presented at the hearing that Respondents and the other members of the Executive Board took affirmative steps to hinder outside investigations into wrongdoing in the Local Union. For example, in 1985, several months after former President, Frank Calise, and former officer, Harry Davidoff, were indicted in United States v. Santoro, et. al., the Local 295 Executive Board asked Davidoff's attorney, Michael Pollack, to have Local 295's offices swept for electronic surveillance devices.

Investigations Officer's Ex. 16. In his sworn testimony before the Investigations Officer, Mr. Pollack stated that the Local Union asked him to arrange a sweep of its offices for "bugs" because the "union was concerned that employers were eavesdropping on them and there also was a concern about law enforcement." Investigations Officer's Ex. 33 at p. 26.

In addition, as more fully discussed in Charge Two, within a few weeks of Calagna's indictment in May of 1989 on charges of extortion of monies from an employer of Local 295 members, Respondents granted Calagna a \$31,200 a year raise and authorized payment by the Local Union of \$150,000, plus additional unspecified costs and expenses, in legal fees to Calagna's attorney for his defense. Investigations Officer's Ex. 28(A) and (B). Moreover, as more fully discussed in Charge Three, when the Local Union was under federal investigation, Respondents and the other members of the Executive Board approved a "severance plan" for their benefit.

Finally, when Respondents Calagna, Urso-Pernice, and Calagna, Jr., were noticed a year ago to give their sworn testimony before the Investigations Officer, they filed motions in the United States District Court in an attempt to evade testifying, and when that failed, they invoked the Fifth Amendment and refused to testify. Investigations Officer's Ex. 21(A) through (F). After they were charged by the Investigations Officer for their refusal to testify, Urso-Pernice and Calagna, Jr., did submit their testimony. Investigations Officer's Ex. 1(N), (P) and (Q). In a separate

decision, I have already found that Calagna brought reproach upon the IBT for his refusal to testify. Investigations Officer v. Anthony Calagna, Sr. (In Re: Charges One and Two), Decision of the Independent Administrator (May 7, 1991).

In an apparent attempt to take some corrective action, on August 30, 1990, Urso-Pernice sent a letter to Calagna's attorney, Mr. Pollack, requesting that he return the legal fees already paid to him by the Local. Respondent's Ex. 8. Pollack refused. Respondent's Ex. 9. Urso-Pernice also sent a letter to the United States Attorney for the Eastern District of New York requesting any information that he may have concerning allegations of the presence of organized crime in Local 295. Respondent's Ex. 7. Urso-Pernice received no response, however, he was aware that there was, at the time, a stay of all discovery by order of the court presiding over the Eastern District civil RICO action. Respondents rely on these actions in defense of the charge.

Respondents' attempts to investigate the allegations of organized crime involvement in Local 295 as embodied in Urso-Pernice's efforts, are too little too late. If Respondents truly wished to do something about the allegations of corruption in their Local, Respondents should have, at the very least, investigated, and probably removed, Local 295 shop steward, Carmelo Amato, who has been under indictment for extortion since 1989. Respondents' unwillingness to take affirmative steps to clean out their Local is perhaps reflected by their decision, under all the circumstances,

to replace Vice-President Calagna following his conviction and forced resignation in January of 1991, with Anthony Cuzzo, the chairman of the Anthony Calagna Defense Fund Committee. T527-11 to 533-22.

B. The Merits of Charge One

In Charge One, the Investigations Officer alleges that Respondents failed to fulfill their fiduciary duties by not investigating, and by not taking remedial action with respect to, the numerous allegations of racketeering, corruption and involvement by La Cosa Nostra in the affairs of Local 295.

The history of Local 295 is replete with many allegations and findings of corruption directed at it and its officers over the years.⁷ The last two presidents of Local 295 (Calagna and Frank Calise), and a former officer (Harry Davidoff), have all been convicted of felonies for misusing their Local Union offices. As

⁷ Respondents argue that the "newspaper articles, indictments or convictions [presented in this case] are [not] the type of 'allegations' Section 13.2 of their Union's bylaws contemplates and, therefore, they did not give rise to a duty to investigate." Respondents' Post-Hearing Memorandum at p. 7. Respondents also argue that allegations of wrongdoing by non-members of Local 295, such as an indictment of an employer of Local 295 members, is not sufficient to trigger the duty to investigate, but rather the allegations must be specifically brought to the Executive Board's attention. Respondents' Pre-hearing Memorandum at p. 34. I do not find that it is necessary to define the precise scope of the term "allegations" as it is used in the Local's by-laws. If that term is to have any meaning at all, then I find that the all too numerous published accounts, publicly available indictments and federal investigations of the Local Union, all of which Respondents were readily aware, amount to an allegation for the purpose of triggering their duty to investigate.

the evidence presented at the hearing and discussed in detail above demonstrates, there have been no less than six separate criminal indictments in just the past six years, most of which resulted in guilty pleas or convictions, directly involving Local 295 in various extortionate schemes.⁸ Scores of newspaper and magazine articles have been published concerning corruption at Local 295. Moreover, Local 295 and several of the Respondents have themselves been the subject of federal criminal and civil investigations including an FBI search of Local 295's offices which uncovered several handguns and two coded books hidden in the ceiling tiles above the Local's offices. Finally, in March of 1990 the United States brought a civil RICO action against Local 295 alleging, among other things, that the defendants have engaged in a pattern of extortion from employers and members of Local 295.

Against this sordid background, there appears to be little, if anything, that any of the Respondents or other members of the

⁸ Respondents argue that the "countless indictments" presented by the Investigations Officer did not give rise to a duty to investigate. They contend, for example, that while they may have been aware of the indictment against George Parker for extortion involving Local 295, "there is absolutely no evidence or any allegation by the I[nvestigations] O[fficer] that any of the Respondents knew about Parker's scheme or otherwise aided or abetted it." Respondent's Post-Hearing Brief at p. 10. Thus, they argue that it would be impossible for them to conduct any type of meaningful investigation.

I find that such indictments do give rise to a duty to investigate, especially in those circumstances in which the officers know nothing about the substance of the indictment. In such a situation, responsible officers should do everything in their power to root out the source of the problem, if any, and correct it.

Executive Board have ever done to cleanse the Local's reputation.⁹ To the contrary, Respondents have placed their stamp of approval on the Local's past conduct. In 1985, after former President Frank Calise was indicted, the Local 295 Executive Board members had their offices swept for "bugs." Later, in 1989, when the Local was under government investigation, Respondents and the other members of the Executive Board approved a "severance plan" for their benefit; and, after Calagna's indictment for extortion of an employer of Local 295 members, Respondents agreed to grant Calagna a substantial raise and to pay his legal fees in connection with the defense of his indictment.

Section 13.2 of Local 295's by-laws expressly provides that the Executive Board has a "duty to investigate any alleged breach of fiduciary duty when circumstances so warrant and to take appropriate action if the investigation so merits." Investigations

⁹ Respondents argue that they had no duty to investigate because once the United States government had undertaken an investigation of wrongdoing with regards to Local 295 and then issued an indictment, "Respondents were completely justified in relying on the Government to prosecute the indicted individual, and any other persons against whom sufficient evidence had been obtained during the course of the Government's investigation." Respondents' Post-hearing Memorandum at p. 11.

Respondents are suggesting that before there is an indictment there is no need to investigate because if there are any allegations, such as newspaper articles, they are simply unjustified rumors unworthy of an investigation. On the other hand, however, they contend that once there is an indictment there is no need to investigate because the government is doing everything that needs to be done. Respondents cannot have it both ways. The issuance of an indictment does not absolve responsible union officers of their duty to investigate. On the contrary, an indictment should be an indication of some wrongdoing in the Local which should be remedied.

Officer's Ex. 6. I find that Respondents, as officers and members of Local 295's Executive Board, had an affirmative duty to investigate the numerous allegations of corruption, including allegations of La Cosa Nostra involvement, in the affairs of Local 295, during their various tenures on the board. See, e.g., United States v. IBT (In re Application XIV, Salvatore), 754 F.Supp. 333, 349 (S.D.N.Y. 1990).

This is not the first time that the issue of an IBT officer's duty to investigate corruption in the union has been addressed. United States District Court Judge David N. Edelstein, in his decision denying defendants' motion to dismiss the underlying civil RICO complaint in this case, stated the general proposition that every IBT officer is "a fiduciary with respect to the Union members. They have a duty to disclose and remedy wrongdoing by the IBT." United States v. IBT, 708 F.Supp. 1388, 1401 (S.D.N.Y. 1989) citing United States v. Local 560 of International Brotherhood of Teamsters, 780 F.2d 267, 284 (3d Cir. 1985). Judge Edelstein reached a similar result in upholding my decision to veto the appointment of Jack Yager to the positions of International Vice President and Central Conference Director, stating that the failure of an IBT officer to act in the face of corruption, when he has an affirmative duty to do so, constitutes aiding and abetting the extortion of the IBT members' rights. United States v. IBT (Application XV), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. 1991).

Respondents' argument that these other decisions are inapplicable because the Investigations Officer has not charged Respondents with an extortion of the members' rights through their failure to investigate, misses the point. Respondents' Pre-hearing Memorandum at pp. 32-34. The fundamental premise of these decisions, which is directly applicable to this case, is that all IBT officers, including Respondents, have a duty to investigate allegations of corruption in their midst. Respondents cannot sit idly by as their Local Union is engulfed by organized crime and not expect to face the consequences of their inaction. In this case, their inaction amounts to a violation of their Local's by-laws and a breach of their fiduciary duty to the Local's membership.

I could accept a failure of responsible people to investigate a single offense ascribed to one of its officers. But that is not what we have here. In my two years as Independent Administrator, I have seen few IBT Locals with the sullied reputation associated with Local 295, a reputation richly deserved, as reflected by the record in this case.

Respondents contend that it is unfair to expect them to conduct an investigation into the numerous allegations of corruption in their Local because they lack the expertise, resources and education to conduct such an elaborate investigation. Respondents' Pre-hearing Memorandum at p. 19. Yet, Respondents' very by-laws, which require such an investigation betray their position. Furthermore, the evidence presented at the hearing

demonstrates that when Respondents choose to take action to remedy problems in the Local, they are capable of doing so. For example, when Respondents wanted to have their offices swept for electronic surveillance devices, they knew to ask Davidoff's attorney, Michael Pollack, to arrange for such a sweep. See Investigations Officer's Ex. 16.

I am aware of the difficulties involved in a Local investigating wrongdoing by one of its officers. However, unless this obligation is placed upon responsible officers, who is going to do it? The lack of experience or investigative background is no excuse. In this case, Respondents, on behalf of the members, simply could have hired a private detective agency, such as Kroll or Wackenhut, to investigate the numerous allegations of corruption in their Local Union. While expensive, it would have cost the Local far less than the \$150,000 in legal fees the Executive Board has agreed to pay Calagna's attorney, and the massive salary increase and "severance" benefits the board voted to give Calagna.¹⁰ Furthermore, Section 13.1.4 of Local 295's by-laws authorizes the Executive Board to secure "special or expert services as may be required for the organization." Thus, I do not find persuasive the argument by Respondents that they do not have the ability to conduct an investigation.

¹⁰ The use of an independent private detective agency would also alleviate some of Respondents' fears that if they personally investigated it might be construed as an attempt to tamper with a witness or as an obstruction of justice. See Respondents' Post-hearing Memorandum at p. 11.

Turning to the other side of the Investigations Officer's claim, that Respondents failed to undertake remedial action, I find that there is absolutely no evidence that any member of the Executive Board ever took one step to cleanse the reputation of the Local. As I have already noted, its members took another path-- to reward Calagna, an indicted fellow officer.

Thus, I find that the Investigations Officer has met his burden of proving just cause that Respondents violated Local 295's by-laws and breached their fiduciary duties to the members by their failure to investigate any of the allegations of wrongdoing surrounding the Local Union, and by their failure to take any remedial action.

III. CHARGE TWO -- RESPONDENTS' EMBEZZLEMENTS TO BENEFIT ANTHONY CALAGNA, SR.

A. Findings Of Fact

My findings of fact with respect to the events leading up to Respondents' decision to authorized payment of Calagna's legal fees have already been made and released in an earlier decision and are incorporated herein by reference. See Investigations Officer v. Anthony Calagna, Sr. (In Re: Charge Three), Decision of the Independent Administrator (May 9, 1991). In summary, the evidence presented demonstrates that on May 3, 1989, Calagna was indicted in United States v. Frank Calise, Anthony Calagna and Richard Schroeder, 89 Cr. 308 (E.D.N.Y.), along with Local 295's former president Frank Calise, for extortion and conspiracy to commit

extortion from P.C. Delivery, an air freight company at Kennedy Airport which employs Local 295 members. Investigations Officer's Ex. 1(BF). In June of 1990, Calise pled guilty to the charge of a conspiracy to commit extortion. Investigations Officer's Ex. 1(BG). Calagna elected to proceed to trial.

After his indictment, Calagna and his attorney, Michael Pollack, agreed upon a legal fee totalling \$150,000, plus additional unspecified costs and expenses, with \$50,000 to be paid "up front" to Pollack. Investigations Officer's Ex. 4(C). Instead of paying the money himself, however, Calagna, with the knowledge of his attorney, decided to have his legal fees paid by Local 295. To implement his decision, on May 16, 1989, at a special meeting of the Local 295 Executive Board, Calagna asked the Board to use Local 295 funds to pay his legal fees in defense of his recent indictment. Investigations Officer's Ex. 1(Q) at p. 14. In response, the Executive Board asked Calagna if it was legal to pay his fees; at which point, Calagna told the Board that his lawyer "said it was alright (sic)." Investigations Officer's Ex. 1(Q) at p. 15. Respondents asked Calagna to have his attorney give the Board a letter stating that the payment was legal. Investigations Officer's Ex. 9 at p. 15. Thereafter, at Calagna's request, Pollack sent Local 295's Executive Board a letter entitled "Retainer Agreement" setting forth the terms of payment by Local 295 of Pollack's legal fees. The letter did not present any analysis of the legality of the payment. Investigations Officer's

Ex. 4(C). On this advice, Respondents (along with the rest of the Board) agreed to pay Calagna's legal fees¹¹ without conducting any investigation whatsoever to determine whether there was any truth to the charges against him.¹² Investigations Officer's Ex. 4(B) and Ex. 9 at pp. 13-14. Thereafter, at the May 31, 1989, general membership meeting, the Local 295 membership "voted to accept the advice of counsel" and agreed to pay Calagna's legal fees. Investigations Officer's Ex. 29.

The Executive Board did not consult with Local 295's own attorney, Ira Drogin, or any other attorney, before agreeing to pay Calagna's legal fees, despite the fact that in the past, when a question of the legality of paying an officer's legal fees arose, the Respondents (and the rest of the Board) have consulted the Local's counsel. Investigations Officer's Ex. 9 at pp. 17-18. For example, in 1987, when Calagna, Urso-Pernice and then Secretary-Treasurer, Michael Hunt, were subpoenaed before the Grand Jury following the FBI's search of Local 295's offices, Local 295's then current counsel, Stephen Kahn, informed the Executive Board that it was legal for the Local Union to pay Michael Pollack for his representation of the officers before the Grand Jury because, in that case, the officers were "not brought before the Grand Jury

¹¹ On June 2, 1989, Local 295 paid Pollack \$50,000 from the Local 295 general fund. Investigations Officer's Ex. 11. By agreement between the Investigations Officer and Pollack, further payments to Pollack were suspended, pending the outcome of these hearings.

¹² On January 3, 1991, Calagna was convicted of extortion and a conspiracy to commit extortion. Investigations Officer's Ex. 44.

because of any alleged wrongdoing." Investigations Officer's Ex. 24 and Ex. 8. Similarly, after the civil RICO action was filed in March of 1990 against Local 295 and several of its officers, Respondents consulted with Mr. Drogin on the issue of whether the Local Union could pay the officers' personal legal fees in that case. Mr. Drogin subsequently informed them that each of the officers charged in the action would have to pay their own legal fees. T969-15 to 23.

The evidence presented at the hearing also shows that on May 16, 1989, less than two weeks after Calagna was indicted, at the same Executive Board meeting in which Respondents authorized the payment of Calagna's legal fees, they also agreed to grant Calagna a \$600 per week (\$31,200 per year) raise effective May 15, 1989.¹³ Respondents' Ex. 13 and Investigations Officer's Ex. 28(A). Just seven months earlier, at the October 26, 1988, Executive Board meeting, the Board had rescinded \$300 per week raises to four of

¹³ The Investigations Officer argues that the raise was unjustifiably retroactive for one year based on the fact that the original minutes of the May 16, 1989, Executive Board meeting state that the raise was to be effective "May 15, 1988," not 1989. See Investigations Officer's Ex. 28(A). At the hearing, however, Reinhardt testified that, in reviewing the documents requested by the Investigations Officer, he discovered a typographical error in the minutes of the meeting. He indicated that the minutes incorrectly listed the date of Calagna's raise, thus he changed it to read "effective May 15, 1989." T937-3 to 939-2 and Respondents' Ex. 13. Given that the Local Union's payroll records reflect that the raise began in May of 1989, and do not indicate any lump sum payments to Calagna in 1989 (see Investigations Officer's Ex. 30), I find that Calagna's raise was not retroactive.

the board members "due to the economic climate in the Air Freight Industry." Investigations Officer's Ex. 26(A).

B. The Merits of Charge Two

Guided by 29 U.S.C. 501(c),¹⁴ concerning the Investigations Officer's allegation of embezzlement, I find that the Investigations Officer must prove that Respondents acted with "fraudulent intent to deprive the Union of its funds." United States v. Welch, 728 F.2d 1113, 1118 (8th Cir. 1989). See also, United States v. IBT, (In Re: Application XIV, Salvatore), 754 F.Supp. 333, 338-339 (S.D.N.Y. 1990). In reaching this issue, it is permissible to infer from circumstantial evidence the existence of fraudulent intent. United States v. Local 560, 780 F.2d 267, 284 (3d Cir. 1985), citing United States v. Burell, 496 F.2d 609, 610 (3d Cir. 1974). See also, United States v. IBT, 754 F.Supp. at 339.

After reviewing the overall record and considering all of the evidence, I find that the Investigations Officer has met his burden of establishing just cause for finding that Respondents acted with

¹⁴ 29 U.S.C. 501(c) provides as follows:

Embezzlement of assets; penalty. Any person who embezzles, steals or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the monies, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

fraudulent intent to deprive Local 295 of its funds. The fact that the payment of Calagna's legal fees was approved by the membership is insignificant in this case, where Calagna and the other Respondents misled the membership into believing that the payment was made "on the advice of counsel" (see Investigations Officer's Ex. 29), when in fact the only advice of counsel was a letter, in the form of a retainer agreement, which was prepared by the very attorney who was to receive the funds.

Plainly, each and every member of the Executive Board actively aided in, and conspired in, the embezzlement of \$50,000 from the Local Union when at a special meeting of the Executive Board on May 16, 1989, they agreed that the Local Union should pay Calagna's attorney's fees of up to \$150,000, plus additional unspecified costs and expenses, to represent Calagna in his criminal case; and, when on or about June 2, 1989, they caused \$50,000 to be paid to Mr. Pollack from the Local Union's funds. As I have noted in my earlier decision concerning the Investigations Officer's embezzlement charge against Calagna, and after considering all of the evidence presented to me, I find that the manner in which this payment was sought and approved constitutes an act of embezzlement. This payment should not have been made.¹⁵ See Investigations

¹⁵ Respondents argue that §13.1.4 of Local 295's by-laws, which authorizes the Executive Board to hire attorneys "as may be required for the organization," and §13.1.5, which authorizes the board to pay for any legal proceedings if, in its judgment, it shall be necessary . . . to protect . . . the interests of the organization" support their claim of "good faith reliance that the
(continued...)

Officer v. Anthony Calagna, Sr., (In Re: Charge Three), Decision of the Independent Administrator (May 9, 1991) at pp. 11-13.

It is incomprehensible to me that thoughtful persons, with the Executive Board members' responsibility, would have agreed to pay out \$150,000 of their membership's money on the basis of Mr. Pollack's "Retainer Agreement" -- the attorney who was to receive the money. It is possible that Calagna lacked the requisite funds. Perhaps, his counsel was not going to be paid for his services, or at least not paid \$150,000, unless Calagna persuaded Respondents to authorize the payment by the Local Union.

This set of circumstances should have made Respondents not only suspicious of the reasons given by Calagna's counsel to justify the payment involved, but should have driven them to go, not only to Calagna's counsel, but also to the Local Union's counsel for advice on the matter. I find that they deliberately refrained from seeking such advice from the Local Union's counsel.

¹⁵(...continued)

payment of legal fees was proper." Respondents' Post-hearing Memorandum at p. 20. Respondents also contend that the fact that the Executive Board knew that their sister Local 851 had made similar payments to Mr. Pollack several years earlier to defend Harry Davidoff after his indictment, without any negative response by the Government, supports their good faith defense. Id.

I disagree. First, as more fully discussed above, I find that Respondents' decision to pay Calagna's legal fees was not made in good judgment and it was not necessary to protect the interests of the Local. In fact, it was not in the best interests of the Local at all. Second, I fail to see how the fact that the Government failed to prosecute a sister Local for the potentially illegal payment of Davidoff's legal fees, a fact which the Government may not have even known, can support a defense that this payment was made in good faith.

The only inference to be drawn is that Respondents did not want advice which would have prevented them from doing what Calagna and his attorney wished. In this regard, I find that Respondents' deliberate failure to consult Local 295's own counsel concerning the legality of paying Calagna's legal fees is evidence of their fraudulent intent. This is especially significant here. Respondents had consulted their own counsel in the past when they were concerned about the legality of paying an officer's legal fees.

In addition, Respondents' decision to give Calagna a salary increase from \$1,800 to \$2,400 per week (a 33% raise) just two weeks after he had been indicted on charges of extorting money from an employer of Local 295's members is an act of extraordinary largesse, of which Calagna was the beneficiary, that resulted from the Executive Board's generosity at the May 16, 1989, special meeting. Respondents contend that "they believed their President when he proclaimed his innocence, and that they felt he was entitled to a raise based on his performance." Respondents' Post-hearing Memorandum at p. 23. I cannot accept this as a reasonable rationale for their actions. Given the poor past performance of Local 295's officers, Respondents should have, at the very least, undertaken an investigation to determine whether there was any truth to the charges against Calagna before so generously rewarding Calagna for his past performance.

Furthermore, Respondents' failure to undertake any investigation of the charges against Calagna before agreeing to pay his legal fees, and rewarding him with a substantial raise, is evidence of Respondents' intent to fraudulently convert Local 295 funds to the benefit of Calagna. See United States v. IBT (In Re: Application XIV, Salvatore), 754 F.Supp. 333, 339 (S.D.N.Y. 1990) ("It is permissible to draw negative inferences from the failure of a union fiduciary to act when he has an affirmative duty to do so.").

I find that this extraordinary behavior is unsupported by any sound basis. Clearly it was done solely to enrich Calagna and did absolutely nothing to advance the Local Union's interests. Accordingly, there is just cause for finding that the Investigations Officer's charges of embezzlement embodied in Charge Two have been established.

IV. CHARGE THREE -- THE SEVERANCE PLAN¹⁶

A. Findings of Fact

In Charge Three, the Investigations Officer contends that Respondents embezzled Local 295 funds through the creation of an improper Local Union severance plan. At the hearing, it was

¹⁶ Respondent Cataldo was not named in Charge Three as he was not a member of the Local 295 Executive Board at the relevant time. Similarly, at the hearing, the Investigations Officer withdrew this charge against Calagna, Jr., based upon a showing that he did not join the Executive Board until a month after the severance plan was created.

established that on January 25, 1989, Local 295's Executive Board adopted a resolution creating a severance plan for the Local Union's officers. The plan provided that each officer, upon his termination, would receive one week's severance pay for every year served. The plan did not place any restrictions on the issuance of the severance pay. Investigations Officer's Ex. 27.

At the time the severance plan was passed, Respondents were well aware of the fact that the affairs of Local 295 were under investigation by the federal government. As explained in greater detail in the discussion of Charge One, supra at pp. 7-25, Respondents must have been aware of the Government's inquiries after the FBI had searched the Local's offices in 1987 and found several guns and two coded books concealed above the office's ceiling tiles. See Investigations Officer's Ex. 8. Furthermore, Respondents received direct notice of the investigations into Local 295's affairs when Calagna, Urso-Pernice and then President, Michael Hunt, were subpoenaed by a grand jury after the FBI's search of the Local's offices to provide fingerprints, photos and handwriting exemplars to assist the grand jury in its investigation. Id. Moran and Delsardo were also personally interviewed by the FBI regarding the ongoing investigation of corruption at Kennedy Airport. T619-19 to 625-17; T691-3 to 696-4 and T831-24 to 840-24. In 1988 and 1989, Urso-Pernice was questioned by the FBI as well. T215-5 to 19. In addition, the federal investigations into racketeering activity at Kennedy

Airport, including investigations into Local 295's role, were widely reported in the press. Investigations Officer's Ex. 1(R).

Respondents were also aware that the Government's actions could result in the indictment and conviction of its officers. In fact, just three months after Respondents created the severance plan, Calagna was indicted for extortion of monies from an employer of Local 295's members.

B. The Merits of Charge Three

As with Charge Two, supra at pp. 4-5, concerning the Investigations Officer's allegation of embezzlement in Charge Three, the Investigations Officer must prove that Respondents acted with fraudulent intent to deprive the Local Union of its funds. Here, I find that the Investigations Officer has established just cause for finding that Respondents acted with fraudulent intent to deprive Local 295 of its funds when they created the severance plan.

The Investigations Officer charges that the severance plan was created "solely for the personal interest of Calagna, and other members of the Executive Board then under investigation by federal law enforcement authorities." I agree. There is little or nothing in the record to support the creation of the aforesaid severance plan on a merit basis. It is clear that the members of the Executive Board determined to do something that would benefit themselves at a time when they knew that the Government was

investigating the affairs of the Local Union and that those investigations could eventually lead to their ouster.

The intended purpose of this newly created severance plan becomes all the more clear when one focuses in on the Executive Board's treatment of Calagna. Approximately three months after the creation of the severance plan, and two weeks after Calagna's indictment at the May 16, 1989, special meeting of the Executive Board, Respondents agreed to pay Calagna's legal fees (up to \$150,000), and approved a salary increase for Calagna of \$31,200 per year for a total of \$181,200 in increased benefits to Calagna. Compounding this invasion of the Local's funds is that this extraordinary salary increase resulted in a far greater severance benefit for Calagna.

In short, one cannot examine this chain of events without reaching the conclusion that Respondents intentionally engaged in a scheme to convert Local Union funds to their own benefit and the benefit of the other members of the Board. The creation of the severance plan, coming at a time when the affairs of the Local were under federal investigation and just prior to Calagna's indictment, was not in the best interest of the Local Union, but rather was done solely to benefit Respondents. See United States v. IBT (In re Application XIV, Salvatore), 754 F.Supp. 333, 351 (S.D.N.Y. 1990) and Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator (May 22, 1991) at p. 16.

V. CHARGE FOUR -- THE GIFT OF A CAR TO MICHAEL HUNT¹⁷

A. Findings of Fact

In Charge Four, the Investigations Officer alleges that Respondents' purchase of a new car for then Secretary-Treasurer, Michael Hunt ("Hunt"), upon his retirement violated Local 295's by-laws and constituted an embezzlement of Local 295's funds. At the hearing, it was established that in November of 1987 Respondents awarded Hunt a new Lincoln Town Car worth approximately \$29,000 purchased by Local 295. Respondents' Ex. 21 and Investigations Officer's Ex. 34. Respondents also spent an additional \$1,200 in Local Union money to insure the car for one year. Investigations Officer's Ex. 34.

Section 15.3 of Local 295's by-laws provides:

The Local Union may provide its officers or representatives with automobiles upon authorization of the membership In such instances where the Local Union provides an automobile, title to the automobile shall remain at all times in the name of the Local Union. . . . Upon authorization of the Local Union Executive Board, the President is empowered to sell, exchange or lease automobiles or arrange financing therefore in behalf of [the] Local Union.
[Investigations Officer's Ex. 6 at p. 11.]

In addition, Section 13.1.9 of Local 295's by-laws gives the Local Executive Board the power to "[s]ell or dispose of any . . . property . . . belonging to the organization whenever in its opinion the Local Union's interests would thereby be promoted,

¹⁷ The Investigations Officer has not charged either Calagna, Jr. or Cataldo under Charge Four as neither Respondents were members of the Executive Board during the relevant time period.

subject to approval (except as to form) at a membership meeting. "
Id. at p. 8.

Before giving Hunt the automobile as a retirement gift, Respondents did not seek authorization by the membership and none was given. Investigations Officer's Ex. 1(N) at p. 34-35 (sworn testimony of Urso-Pernice). Three years later, at a special membership meeting held on January 3, 1991, after the Investigations Officer had filed charges against the officers of Local 295, the membership voted to "retroactively give permission that all past officers who received automobiles upon retirement or resignation be entitled to them." Respondents' Ex. 22.

B. The Merits of Charge Four

Respondents' purchase of a new Lincoln Town Car for retiring officer Hunt clearly violated Local 295's by-laws. Section 15.3 of the by-laws provides that when the Local Union purchases an automobile for an officer, title to that automobile shall always remain with the Local, and such purchase must be approved by the membership.

Respondents argue that "a common practice within Local 295 was to purchase a car and one year's insurance for outgoing Board members who had dedicated many years of service to the Local." Respondents' Posthearing Memorandum at p. 27. Respondents also contend that Section 15.3 of Local 295's by-laws does not apply in this case because "the car in question was purchased new for Hunt

who had already left Union office. . . . [T]his was never a Union car. Rather, it was purchased and registered in Hunt's name." Id. at 27-28.

Respondents' argument misses the point. First, Respondents' reliance on past violations of Local 295's by-laws does not justify this most recent violation. Second, the plain language of Section 15.3 of the by-laws provides that if the Local Union decides to purchase an automobile for an officer, retired or otherwise,¹⁸ the Local Union shall always retain title to that automobile and such purchase must be approved by the membership.¹⁹ See Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator (May 22, 1991) at p. 22 (purchase of automobiles for retired officers violated exact same provision in Local 707's by-laws) and Investigations Officer v. Vitale, Decision of the Independent Administrator, p. 21 (February 21, 1991), aff'd, United States v. IBT, slip op. (June 6, 1991) (interpreting exact same provision in Local 283's by-laws).

As with Charges Two and Three, with regard to the Investigations Officer's allegation of embezzlement, I find that the Investigations Officer must prove that Respondents acted with

¹⁸ I find that Respondents' attempt to distinguish the purchase of a car by the Local Union which is then given to a retiring officer, and the purchase of a car in the retiring officer's name, is without merit.

¹⁹ I find that the membership's approval of the purchase of the automobile for Michael Hunt three years after the fact does not meet the specific requirements of Section 15.3, which requires membership approval before the purchase of the car.

fraudulent intent to deprive the Local Union of its funds. Here, I find that the Investigations Officer has once again met his burden of proving that Respondents acted with fraudulent intent to deprive the Local of its funds.

Respondents' fraudulent intent is evidenced in the first instance by their failure to seek the membership's approval before purchasing the car. Moreover, I find that Respondents' encouragement of the membership to retroactively endorse the past gifts of automobiles to officers, after the Investigations Officer brought charges against them, borders on an admission that their prior actions constituted a misappropriation of the Union's automobile.

Thus, I find that the Investigations Officer has established that Respondents' purchase of an automobile for Hunt constituted an embezzlement and violated Local 295's by-laws.

VI. CHARGE FIVE -- PAYMENTS TO CONVICTED FORMER OFFICER HARRY DAVIDOFF

A. Findings of Fact

In Charge Five, the Investigations Officer alleges that the continuous monthly payments from Local 295 to convicted felon and former Local 295 officer, Harry Davidoff ("Davidoff"), constitutes an embezzlement of the Local's funds. At the hearing, it was established that from 1972 to the present, Local 295 has given Davidoff a monthly payment of \$1,903. Investigations Officer's Ex. 35 and Respondents' Ex. 24. Even after Davidoff was convicted of

racketeering and extortion on December 12, 1986, and sentenced to ten years in prison, supra at p. 8,²⁰ Respondents continued to make these payments to Davidoff from Local 295's treasury. Investigations Officer's Exs. 38 and 39. Respondents have paid Davidoff approximately \$93,000 in Local 295 funds since his conviction.

B. The Merits of Charge Five

As with the previous three charges, to demonstrate Respondents' embezzlement under Charge Five, I find that the Investigations Officer must prove that Respondents acted with fraudulent intent to deprive the Local Union of its funds. Again, I find that the Investigations Officer has met his burden of establishing just cause for finding that Respondents acted with fraudulent intent to deprive Local 295 of its funds.

Even though Respondents were aware of the fact that former Local 295 officer, Davidoff, was indicted and eventually convicted of extortion of employers of Local 295 members, Respondents failed to terminate, or to even undertake any investigation or inquiry into whether they could legally terminate, the monthly payments to Davidoff. T1146-16 to 1147-16. At the hearing, Respondent

²⁰ Davidoff was convicted in a case which contained numerous charges of La Cosa Nostra involvement in the affairs of Local 295, including charges of extortion of employers through the threat of wrongful labor activities by Local 295. Furthermore, both Davidoff and former Local 295 president, Frank Calise, were named in the indictment as associates of the Luchese Organized Crime Family of La Cosa Nostra. Investigations Officer's Exs. 1(L), (AG), (AP) and (AQ).

Reinhardt testified that the only inquiry he made occurred after the Investigations Officer's charges were brought. Reinhardt "asked the administrator of [Local 295's] pension and welfare fund if anything was brought up about the pension payments being paid." Reinhardt added that "[he] was told no, nothing at all." T1146-25 to 1147-11.²¹

Respondents argue that it would have been futile to even inquire into whether the payments to Davidoff could be terminated because the payments are part of a pre-ERISA²² pension plan which cannot be alienated:

First and foremost, exhibit R-24, a letter from the Union's former accountants clearly indicates that when Davidoff left Local 295 he was granted both a severance and pension benefit. Clearly, the payments which continue to be made represent the pension portion of his benefit There is nothing in ERISA that provides that payments to people already receiving payments from pre-ERISA pension plans must terminate. In fact, Local 295 chose to terminate this plan [the Local 295 pension plan] rather than to bring it into conformity with ERISA. Therefore, the establishment of, and payments made under, the pension plan covering Davidoff was [sic] valid.

While the plan may not have been a valid post-ERISA plan, it was certainly valid when enacted in 1968, and when payments to Davidoff began in 1972. Because this was and is a valid pre-ERISA plan, Respondents maintain that it is entitled to the protections of the anti-alienation clause contained in the ERISA law. See 29 U.S.C. § 1956. The purposes and policies behind ERISA are to preserve and protect pension plans and payments made thereunder for the benefit of the recipient and beneficiaries. See 29 U.S.C. § 1001. It follows, therefore, that the antialienation section of ERISA, which was designed to protect pension payments from

²¹ The administrator of the Local 295 pension and welfare fund is Sharon Moskowitz, the daughter of Harry Davidoff.

²² The ERISA statute was enacted in 1974, two years after Davidoff left Local 295.

attack, should apply in full force and effect to the valid payments being made to Davidoff under a pre-ERISA pension.

[Respondents' Posthearing Memorandum at p. 30-32.]

I disagree. Even assuming that the payments made to Davidoff qualify as a pre-ERISA pension plan,²³ there is nothing in the law that supports Respondents' position that the narrowly construed anti-alienation provision of ERISA applies to a pension plan adopted before ERISA was even enacted, and which Respondents concede does not meet any of the strict statutory requirements for a valid pension plan under ERISA. See Guidry v. Sheet Metal Workers National Pension Fund, 110 S.Ct. 680 (1990), quoting Mackey v. Lanier Collections Agency & Service, Inc., 108 S.Ct. 2182, 2189 (1988) ("When Congress was adopting ERISA, it had before it a provision to bar the alienation or garnishment of ERISA plan benefits, and chose to impose that limitation only with respect to ERISA pension benefit plans, and not ERISA welfare benefit plans") (emphasis supplied). Respondents themselves state that "portions of [ERISA] . . . did not go into effect until 1976. This was done to enable employers to either bring their pension plans into

²³ The Investigations Officer argues that the payments to Davidoff do not meet any of the standards to qualify as a valid pension plan. For example, the Investigations Officer states that no contributions were made on Davidoff's behalf to any fund from which payments could be made, no fiduciaries are named to manage funds and no assets were held in trust for Davidoff. The Investigations Officer claims that the payments to Davidoff are simply made from the Local 295 General Fund pursuant to a Board resolution. Investigations Officer's Post-Hearing Memorandum at p. 37. See also, Investigations Officer Ex. 35. Respondents simply assert, without providing any supporting evidence, that the payments are made pursuant to a valid pre-ERISA pension plan. Respondents' Posthearing Memorandum at p. 32.

conformity with ERISA's requirements, or to terminate them Local 295 chose to terminate [its pension plan] rather than to bring it into conformity with ERISA." Respondents' Posthearing Memorandum at p. 31-32.

Respondents cannot expect to benefit from the anti-alienation provisions of ERISA when Local 295 willfully chose to terminate its earlier plan rather than modify it to conform to the strict standards of ERISA. Thus, if Respondents had even bothered to inquire as to whether they could terminate their monthly payments to Davidoff after his conviction, they would have discovered that they could have readily done so. In fact, before the Investigations Officer's charges were brought, Respondents thought that these payments to Davidoff were merely severance payments and never inquired as to their basis. Investigations Officer's Ex. 1(N) (sworn statement of Urso-Pernice).

I find that Respondents deliberate failure to investigate or inquire into the basis for the continuous monthly payments to Davidoff or whether they could terminate them, especially in light of Davidoff's extortion conviction, is evidence of their fraudulent intent to deprive the Local Union of its funds, for the benefit of Davidoff.

VII. PENALTIES TO BE IMPOSED

A. Charge One

Throughout its history, Local 295 has been at the center of a virtual avalanche of criminal activity rooted in organized crime.

The record in this case is replete with numerous allegations, indictments and convictions of various officers and former officers of Local 295, of employers of Local 295 members and of others closely tied to the affairs of the Local Union for various crimes of racketeering, including La Cosa Nostra involvement. The last two presidents of Local 295 have been convicted of crimes directly related to the misuse of their Local Union office. As I determined in an earlier decision, the Local 295's most recent president, Calagna, was and is a member of La Cosa Nostra. The number of indictments and subsequent convictions in which Local 295 has been used as a club to threaten and extort employers is but one further example of the extent to which organized crime has a stranglehold on the members of Local 295.

Despite this barrage of criminal activity, Respondents have failed to take one affirmative step to either investigate the innumerable allegations of corruption in their Local or to cleanse the Local's reputation. Rather, Respondents sat idle as their Local Union was taken over by organized crime or worse, actively aided its demise. In 1985, after former President Frank Calise was indicted, Respondents had their offices swept for "bugs." Later, in 1989, when the Local was under government investigation, Respondents and the other members of the Executive Board approved a "severance plan" for their benefit. Then, immediately after Calagna's indictment for extortion of an employer of Local 295 members, the Respondents agreed to grant Calagna a 33% raise and to pay \$50,000 in legal fees for his defense. These are not the

actions of officers committed to cleansing the IBT of the influence of organized crime.

There is only one just and reasonable penalty to be imposed when Union officers, such as Respondents, reap the many benefits of Union office and then sit and watch as the very Union that they are meant to protect is overrun by organized crime -- permanent debarment from the IBT. Without the cooperation of these officers, Local 295 may not have reached the corrupt state it is in now. It is only by removing these officers that Local 295 may now have a chance of solving its problems.

In reaching this result, I am not unmindful of the fact that not all of the Respondents were members of the Executive Board at the time each of the various allegations and findings of criminal activity involving Local 295 arose. Each Respondent, however, has been a member of the board since at least 1989 and a member of Local 295 for at least 10 years. Even Calagna, Jr. and Cataldo, the most recently appointed members of the board, have been on the Executive Board since early 1989 and, when they joined the Executive Board, they were certainly aware of the prior indictments, convictions and other allegations of criminal corruption at Local 295.

Given my determinations, each of the Respondents is to permanently remove himself from all of his IBT-affiliated union

positions (including membership in the IBT) and draw no money or compensation therefrom, or from any other IBT affiliated source.²⁴

B. Charges Two and Three

Respondents' authorization of the payment of \$150,000 in legal fees, of which \$50,000 has already been paid, to defend Calagna against charges of extortion from an employer of Local 295 members and their decision to give him a 33% raise just two weeks after he had been indicted on those charges are both extraordinary acts of embezzlement which were done solely to enrich their fellow officer at the expense of the Union's membership. Furthermore, Respondents' creation of a severance plan for the Local Union's officers just a few months before Calagna's indictment, at a time when the Local was under federal investigation, is yet another example of the cavalier attitude with which Respondents have ignored their fiduciary duty to their members, and have been willing to embezzle the Union's funds.

Accordingly, as a penalty on Charge Two, Respondents shall be suspended for a period of five years. With regard to Charge Three, Respondents' creation of a severance plan in the midst of a federal investigation is another example of Respondents' willingness to ignore their fiduciary obligations to protect the Local Union's assets. As a penalty on Charge Three, I impose a period of

²⁴ Given the penalty imposed on Charge One, the penalties imposed on Charges Two through Five are meaningless; however, penalties on these charges are set forth herein in the event that, upon judicial review by Judge Edelstein, my decision on Charge One is not upheld.

such a contribution ceiling based upon 20 years of service, I will not disturb Reinhardt's, Moran's or DelSardo's vested lifetime welfare coverage. I ask that Respondents submit a copy of the Local 851 Employee Group Welfare Plan for the Investigations Officer's review to verify their claim.

Respondent Cataldo asserts that he has approximately 19 years and 6 months credit toward the Local 851 Welfare Plan. Cataldo further asserts that he has already resigned from the Local 295 Executive Board and is employed by Airborne Express who continues to make his welfare fund contributions. I will not disturb Cataldo's vested benefits in Local 851's Welfare Plan. No further contributions, however, may be made to this Plan by any IBT-affiliated entity, including the IBT itself.²⁷

Respondent Urso-Pernice asserts that he has 17 years 3 months credit in the Local 851 Welfare Plan. Urso-Pernice further asserts that the Local 851 Welfare Plan allows self-funding for up to 18 months. Urso-Pernice's vested benefits will not be disturbed. He is also free to use his personal funds to maintain his benefits.

Anthony Calagna, Jr. claims no right to any vested rights in the Local 851 Welfare Plan.

²⁷ To the extent Cataldo's current employer, Airborne, makes contributions, it may continue to do so as Airborne is not an IBT-affiliated entity. Moreover, Cataldo may also self-fund the plan if he chooses to do so.

C. The Severance Plan

Counsel for Respondents informs me that any of the Respondents found to have violated either the IBT Constitution or the Local 295 by-laws would not be entitled to severance pay. As Respondents have been permanently banished from the IBT for violating Article II, § 2(a) and Articles XIX, § (6)b of the IBT Constitution, no severance payments may be made.

D. Vacation Pay

Respondents are entitled to their accrued vacation pay as it is considered a vested benefit. However, I direct that Local 295 and Respondents supply the Investigations Officer with sworn certifications as to the amount of vacation pay accrued for each individual Respondent. Moreover, as the Local clearly has a duty to recoup its embezzled assets (see Investigations Officer v. Vitale, Supplemental Decision of the Independent Administrator (February 21, 1991)), I direct that the Local use any of Respondents' accrued vacation pay as a set-off for Respondents' embezzlement of Local 295 assets.

E. The Legal Fees

In short, consistent with the well-recognized general prohibition on the payment of legal fees by a Union on behalf of Union officials charged with misconduct and found to have committed misconduct (see, e.g., United States v. Local 1804-1, 732 F. Supp.

suspension on Respondents of two years, to run concurrently with the five year suspension imposed as a penalty on Charge Two.²⁵

C. Charge Four

Respondents' embezzlement in Charge Four is equally egregious. Respondents' purchase of a new Lincoln Town Car for retiring officer Michael Hunt clearly violated Local 295's by-laws and breached their fiduciary duties to the membership. Respondents' reliance on past gifts of automobile to retiring officers does not mitigate Respondents' willingness to once again violate their position of trust with the membership.

Accordingly, as a penalty on Charge Four, I impose a period of suspension on Respondents of two years, to run concurrently with the five year suspension on Charge Two and concurrently with the two year suspension on Charge Three.²⁶

D. Charge Five

From 1972 to the present, Local 295 has paid former Local 295 officer Harry Davidoff a \$1,903 per month stipend. Even though Respondents were aware of Davidoff's indictment and subsequent conviction for extortion of employers of Local 295 members, they failed to terminate, or to even undertake any investigation or

²⁵ The penalty under Charge Three does not apply to either respondent Cataldo or Calagna, Jr. as they have not been charged thereunder.

²⁶ The penalty under Charge Four does not apply to either respondent Cataldo or Calagna, Jr. as they have not been charged thereunder.

inquiry into whether they could legally terminate, these monthly payments to a convicted felon and fellow former officer. This act of continuous embezzlement is another give-a-way to a felon whose style of living the poor rank-and-file members have been supporting for years. Such conduct is an egregious breach of Respondents' fiduciary obligations to the Local's members.

Accordingly, as a penalty on Charge Five, I impose a period of suspension of two years on Respondents to run concurrently with the five year suspension on Charge Two and concurrently with the other two year suspensions for Charges Three and Four.

VIII. SANCTIONS ON BENEFITS

By letter dated April 24, 1991, I asked Respondents' attorney to submit a schedule listing any and all IBT-related benefits to which Respondents are entitled, as well as a statement setting forth his position on my authority to impose sanctions on those benefits. In addition, in that letter I also asked Respondents' attorney to advise me whether his clients' legal fees in these proceedings have been, or will be, paid by an IBT-affiliated entity.

By letter dated May 7, 1991, Respondents' attorney discussed Respondents' varying entitlements regarding the following IBT-related benefits:

1. Local 851 Employee Pension & Welfare Group Plan;
2. Teamster Affiliate Pension Plan;
3. Teamsters Joint Council No. 16 Pension Fund;
4. Local 295, IBT Severance Plan; and
5. Vacation Pay.

Consistent with my opinion in Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT (Application XVI), slip op. (S.D.N.Y. December 28, 1990), the following sanctions will be imposed on these benefits.

A. The Pension Benefits

Counsel for Respondents indicates that Anthony Calagna, Jr. is not entitled to pension benefits for none have vested, however, all other Respondents have some vested pension benefits. It is now well-settled that vested pension benefits will not be disturbed. Thus, Reinhardt, Urso-Pernice, Cataldo, Moran and DelSardo are all entitled to their vested pension benefits. Also well-settled is the ruling that no future contributions from the IBT or any IBT-affiliated entity may be made on Respondents' behalf to any of these plans.

B. The Health and Welfare Benefits

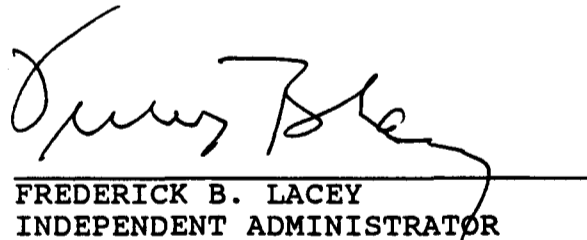
The Local 851 Welfare Plan involves non-IBT trustees and participants, thus it is a so-called "third-party" plan. In Senese, at pp. 11-12, I found that I lacked jurisdiction over such plans.

Three Respondents, Reinhardt, Moran and DelSardo, assert that they are entitled to lifetime welfare coverage under the terms of the Local 851 Plan based on their accruing more than twenty years of service in Local 295. If in fact this "third party" plan has

434, 437 (S.D.N.Y. 1990)), no IBT-affiliated entity may pay Respondents' attorney fees.

IX. MY STAY

In the past, I have voluntarily stayed my decisions and the penalties imposed pending review by Judge Edelstein. With one exception, I will follow that practice here. The IBT International Convention is scheduled for June 24-28, 1991, and Respondent Moran has been elected to represent Local 295 as a delegate. It would be unreasonable to expect Judge Edelstein to complete his review of this matter and issue a decision prior to the Convention. Thus, in an effort to protect the Convention from the likes of Moran, I hereby strip Moran of his delegate status and prohibit him from attending the IBT Convention in any capacity. This directive will not be stayed and is effective immediately. All other provisions of this decision will be voluntarily stayed pending Judge Edelstein's review


FREDERICK B. LACEY
INDEPENDENT ADMINISTRATOR

DATE: June 14, 1991