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INVESTIGATIONS OFFICER,

Claimant,

-against-

MICHAEL J. MORRIS and  
JAMES E. McNEIL,

Respondents.

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DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter concerns charges filed by the Investigations Officer against Michael J. Morris ("Morris"), the Secretary-Treasurer of IBT Local Union 707 located in Woodside, New York, and James E. McNeil ("McNeil"), the President of Local 707,<sup>1</sup> (collectively the "Respondents"). A hearing was held before me and post-hearing briefs were submitted. Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has met his burden in proving the charges against the Respondents.

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<sup>1</sup> Charges were originally filed against Ralph J. Alimena, a former Trustee of Local 707, as well. The Investigations Officer withdrew the charges against Mr. Alimena, prior to the hearing, upon reaching a settlement with counsel in which Mr. Alimena agreed to permanently resign from the IBT.

**I. THE CHARGES**

There are two charges at issue.

**A. Charge One**

In the first charge, the Investigations Officer charges that the Respondents acted in a manner to bring reproach upon the IBT by embezzling over \$300,000 from Local 707. The Investigations Officer specifically charges Respondents with violating Article XIX, Section 6(b)(1), (2), (3)<sup>2</sup> and Article II, Section 2(a)<sup>3</sup> of

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<sup>2</sup> 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 . . . .

<sup>3</sup> 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  
(continued...)

the IBT Constitution by "fraudulently appropriating and converting to [their] use and to the use of others, Local 707 monies, assets and property."

Factually, the Investigations Officer alleges that Respondents, and others on the Executive Board of Local 707, caused the severance plan for the officers and staff of the Local to be terminated and \$299,081 to be distributed to the Local's employees, including themselves, even though they continued to be employed by the Local. The Investigations Officer alleges that the distribution of union assets was unknown to, and concealed from, the members. The Investigations Officer further contends that Morris received \$68,904.59 and McNeil received \$45,368 from the distribution.

In addition, the Investigations Officer charges that, in January of 1987 and again in June of 1988, Respondents caused the officers of Local 707 to receive a \$100 per week raise, in violation of Local 707's by-laws. Furthermore, the Investigations Officer charges that Respondents "falsely caused the members to believe that the January 1987 salary increase was necessary because the 'severance plan' termination created a diminution of officer remuneration, without informing and by concealing from the members

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<sup>3</sup>(...continued)

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].

that [they] had just received . . . 'severance plan' distribution[s]."

**B. Charge Two**

In the second charge, the Investigations Officer alleges that Respondents have violated Article XIX, Section 6(b)(1), (2) and (3) and Article II, Section 2(a) of the IBT Constitution by "fraudulently appropriating and converting to the use of others, Local 707 monies, assets and property, valued at over \$60,000." The Investigations Officer alleges that "on three separate occasions, [Respondents] violated [their] duties under the IBT Constitution and the Local 707 bylaws and ignored and disregarded the fiduciary duties owed to the membership of Local 707, by causing and agreeing with others to have Local 707 give money and automobiles to departing union officials."

Factually, the Investigations Officer alleges that:

(1) On October 31, 1989, Respondents caused Local 707 to purchase and give Nicholas Grancio ("Grancio"), then the Vice President of Local 707, a 1989 Jeep worth \$24,981.09, while representing to the membership that this gift was given because Grancio had "diligently, faithfully and effectively" served the local, even though Respondents "knew, or should have known, that Grancio was linked to organized crime" and knew that "Grancio decided to retire rather than be examined under oath by the Investigations Officer." The Investigations Officer also alleges

that Respondents "falsely represented to the membership of the Local that the gift was justified because 'severance pay has been discontinued' knowing that Grancio, even before his resignation, had received \$55,637 in severance pay in 1987."

(2) In August of 1989, Respondents caused the Local to give Anthony Distinti ("Distinti"), who had been an officer of Local 707 since 1984, a 1988 Lincoln Town Car valued at \$13,800 as a retirement gift. This gift was made even though Respondents knew that Distinti had refused to answer questions in United States v. IBT, 88 Civ. 4486 (DNE), and even though they knew Distinti had already received, before his resignation, \$5,677.27 from the severance plan distribution.

(3) On February 2, 1988, Respondents caused Local 707 to give Vincent J. Guarna ("Guarna"), a retiring officer of Local 707, a 1988 Lincoln Town Car valued at \$22,000, while falsely representing to the members that the "gift was justified, in part, because 'severance pay has been discontinued'" even though they knew Guarna had already received \$62,717.88 from the severance plan distribution.

**II. CHARGE ONE -- THE FRAUDULENT RAISES AND TERMINATION OF THE SEVERANCE PLAN**

**A. Findings of Fact**

At the hearing, the following was established:

1. Article III, Section 3 of Local 707's by-laws provides:

The salaries of the Business Agents shall be increased from time to time by the percentage wage increases contained in the "General Freight Agreement" covering Local 707 members. The Executive Board shall have the power to reduce but not increase the amount of any such increase.

[Investigations Officer's Ex. 26 at p. 4.]

Thus, Local 707's by-laws explicitly prohibit the Executive Board from raising the salaries of the Local's officers (including, of course, their own salaries), beyond the level of salary increases given to the members under the National Master Freight Agreement (referred to in the by-laws as the "General Freight Agreement").

2. At the general membership meeting held on January 28, 1986, Local 707 member Jack Lynch made a motion to increase the salaries of all officers. Investigations Officer's Ex. 2 at p. 2; T104-23 to T105-7.<sup>4</sup> In response, then President Distinti stated that "this was not possible even though the officers of Local 707 have relinquished increases because of the financial status of treasury in the past, the present by-laws would have to be changed in the form of a petition by the membership." Investigations Officer's Ex. 2 at p. 2; T105-16 to 23. Distinti was saying that the by-laws would have to be amended in order for the Executive Board to grant raises to the Local's officers above that provided for in the Master Freight Agreement. At the meeting, Lynch then made an oral motion to so amend the by-laws. Investigations Officer's Ex. 2 at p. 2.

3. Article XIX, Section 1 of Local 707's by-laws provides the exclusive method for amending the by-laws:

**Section 1.** Proposed amendments to the By-Laws shall be submitted in writing at a regular meeting of the Local Union only in January of each year upon initiation either by petition of seven (7) members in good standing, or by resolution of the Local Union Executive board. Under no circumstances may these By-Laws be

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<sup>4</sup> All transcript references are to the transcript of the January 9 and 15, 1991, hearing. The cite refers to the transcript page number followed by the line number. In this case "T104-23 to T105-7" refers to transcript page 104, line 23 through transcript page 105, line 7.

amended during a term of office to affect or modify the powers and duties of the incumbent officer. Such amendments may be made effective only as to the beginning of the next term of office.

[Investigations Officer's Ex. 26 at p. 47.]

4. The minutes of the Executive Board Meeting held on February 12, 1986, state that "at the general membership meeting held on January 28, 1986, a request for modification of the by-laws [Article III, Section 3] was made and duly presented to the Secretary-Treasurer [Morris] in writing on January 29, 1986." Investigations Officer's Ex. 3 at p. 2. The written petition allegedly submitted to Morris on January 29, 1986, proposed that the by-laws be amended to allow the Executive Board to set officers' salaries subject to the approval of the membership. The petition is dated January 28, 1986, the day of the general membership meeting. Attachment to Investigations Officer's Ex. 3.

I find that the evidence presented at the hearing establishes that the petition was not prepared and signed by the petitioning members on January 28, 1986, as the date of the petition suggests, and that the Executive Board minutes falsely report that Secretary Treasurer Morris received the petition on January 29, 1986. Apparently, the minutes were falsified and the petition backdated in an attempt to comply with the by-law's provision that "[p]roposed amendments to the By-laws shall be submitted in writing at a regular meeting of the Local Union only in January . . . ."

The members were not even told that an amendment was necessary, and that it had to be presented in writing, until the membership meeting itself held on January 28, 1986. This meeting, according to the minutes, did not adjourn until 9:00 p.m. that evening. Investigations Officer's Ex. 2 at p. 2.

In addition, testimony at the hearing shows that the petition was not prepared and signed until several days after the January 28, 1986, general membership meeting. Jack Lynch testified that he signed the petition "within a week or ten days" after the January 28 membership meeting. T131-16 to 132-2. Member Salvatore Ruggiero testified that "it was awhile, maybe several weeks later that I had -- whenever I was available to go to the hall and sign [the petition]." T137-18 to T138-1. Furthermore, the evidence shows that the petition was

prepared after the January 28 meeting by the Local's attorney and thereafter the Recording Secretary Vincent Guarna summoned the petitioners to the Local's offices to sign it. T167-10 to 20. The petition could not possibly have been prepared by January 28, 1986, or presented to Morris in writing by January 29, 1986.

Even if the petition had been given to Morris by January 29, 1986, this would not satisfy the by-laws, which require that a motion to amend the by-laws be presented, in writing, at a regular meeting of the Local. Investigations Officer's Ex. 26 at p. 47.

5. In a further attempt to comply with the requirements for amending Local 707's by-laws, the falsely dated petition was read by Recording Secretary Guarna at two successive membership meetings and approved by a vote of the membership at the third meeting held on October 28, 1986. Investigations Officer's Ex. 4 at p. 2; Ex. 5 at p. 1 and Ex. 9 at p. 1.

6. Turning for a moment away from the pay raises to the severance plan; a severance plan for Local 707 officers was first approved by the membership in 1965. In April of 1980, the membership approved a resolution transferring the severance plan to an annuity and changing the contribution to the plan from a fixed amount to a rate of 5% of each participant's salary. Investigations Officer's Ex 1 at p.2-3; T199-15 to 25. The membership resolution approving the transfer to an annuity expressly provided that the plan's funds are payable to the participants upon termination of their employment for any reason. The resolution also provided that the severance benefits will not be forfeitable under any circumstances except expulsion from the International Brotherhood of Teamsters. Investigations Officer's Ex.1 (attachment No. 2).

7. Several years later, in 1986, Respondents and the other board members decided to terminate the severance plan at the request of then President Distinti. Because Distinti simultaneously held office, and had a severance plan, in both Local 707 and Local 277, he had a tax problem that could be solved by terminating the Local 707 severance plan. As Morris testified at the hearing:



[T]he whole reason [for terminating the severance plan] is that Mr. Distinti, who was the President at the time had told us that there was IRS problems, that he had a severance plan in another Local that he was president -- he was president of two Union locals at the time and that he recommended that we do away with the severance plan and get rid of it.<sup>5</sup>

[T200-14 to 20.]

The minutes of the October 28, 1986, general membership meeting also state that the "Executive Board recommends termination of said plan because of restrictions placed by the Internal Revenue Service." Investigations Officer's Ex. 9 at p.2.

8. On October 1, 1986, a special meeting of the plan participants was held where Respondents and the other board members passed a resolution terminating the plan effective September 10, 1986, and instructing the annuity provider to begin the termination process. Investigations Officer's Exs. 7 and 8.

9. Turning back to the pay raises; as noted in ¶ 5, supra, at the general membership meeting held on October 28, 1986, the falsely dated petition to amend the by-laws was put to the membership for a vote.

10. After the amendment was unanimously approved, President Distinti explained to the membership "that this revision is still subject to the approval of General President Jackie Presser." Investigations Officer's Ex. 9. Article XIX, Section 3 of Local 707's by-laws provides that "[a]mendments to these by-laws are subject to the approval of the General President, as provided in Article VI, Section 4 of the International Constitution, and shall not be effective until such approval has been given."

11. At the same general membership meeting, after the membership vote approving the amendment to the by-laws, the Executive Board recommended the termination of the Local's severance plan. The Board, however, did not

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<sup>5</sup> I give little weight to Morris' eleventh hour suggestion at the hearing that the severance plan was terminated in order to avoid lawsuits seeking the assets of such a large fund. T313-5 to 17.

disclose that it had already terminated the plan effective September 10, 1986. As stated earlier, the Executive Board suggested that the severance plan be terminated "because of restrictions placed by the Internal Revenue Service." Investigations Officer's Ex. 9 at p. 2. Respondents and the other board members did not tell the membership that these restrictions were only applicable to Distinti because he had a severance plan in another Local and that terminating the Local 707 severance plan would give him a tax break.

12. In addition, the minutes of the membership meeting do not reflect a disclosure of the fact that the severance plan would be distributed among the officers upon its termination, even though they continued to hold office.

13. There is conflicting testimony as to whether Respondents actually disclosed to the membership that a distribution of the severance fund would be made to the officers, even though it is not reflected in the minutes. Member Michael Necco testified that he did not learn at the meeting what was going to happen to the money in the severance plan once it was terminated, but he could infer that it would be distributed to the officers. He also testified that he had "no way of knowing" how much money any one officer would get. T96-18 to 98-16. At the hearing, however, the following discourse ensued with member Salvatore Ruggiero:

Q. When the severance plan was terminated, did Mr. Morris and Mr. McNeil tell you how much they were going to get in the distribution?

A. No, dollars and cents, no.

Q. Did they discuss at the meeting the fact they were going to get the distribution?

A. Yes.

Q. They didn't tell you in dollars and cents?

A. No.  
[T147-8 to 16.]

14. The financial reports printed in the Local 707 newsletter never disclosed the distribution of the

severance fund to Respondents and the other plan participants. While the plan was in place, a single line item in the financial reports entitled "purchase of annuities" reflected amounts spent by the local each year on the severance plan." See Respondents' Ex. 31 at p. 6; Ex. 32 at p. 6; Ex. 33 at p. 6; Ex. 34 at p. 5; Ex. 35 at p. 4; Ex. 36 at p. 4 and Ex. 37 at p. 4. After the fund was terminated and divided up, this item simply disappeared from the financial statements, with no explanation. See Respondents' Ex. 38 at p. 7. Similarly, the Local 707 LM-2 forms filed with the Department of Labor reported the purchase of annuities. After the distribution, mention of the annuities simply disappeared from the statements. Investigations Officer's Exs. 31 and 32.

15. Eventually, approximately \$299,081 in severance money was distributed to officers and employees who remained employed by the local. Investigations Officer's Ex. 15. From this distribution, Morris received \$68,904 and McNeil received \$46,368. This was never disclosed to the membership.

16. Regardless of whether the members inferred or were told that a distribution of the severance fund would occur, it is clear that Respondents never fully disclosed, at a membership meeting or in the local's various financial reports, who would receive the funds and how much they would receive. As the distribution list shows, Investigations Officer's Exhibit 15, Respondents had this information.

17. The minutes of the October 28, 1986, general membership meeting show that immediately after the membership's approval of the termination of the severance plan, the Executive Board recommended that the officers receive a raise:

The Chair further reported in light of the discontinuance of the severance benefits which represents a decrease in earnings to the working staff and looking for the approval of our revised by-laws, the Executive Board after reviewing the situation, places before the membership at this time a recommendation of \$100.00 per week increase for all officers starting January 1, 1987 subject to the by-laws being approved at that time.  
[Investigations Officer's Ex. 9 at p. 2.]

The motion to concur with the recommendation of the Executive Board was unanimously approved. Id.

18. By letter dated November 5, 1986, then General President Jackie Presser, approved the pay-raise amendment to Local 707's by-laws, but ruled that:

[C]onsistent with the provisions of Article XXII, Section 3(d) of the International Constitution, [the amendment] may not be given effect until the beginning of the next term of office, January 1, 1989. No action under any circumstances may be taken to affect or modify the basic powers and duties of the incumbent officers.

[Investigations Officer's Ex. 10.]

Local 707's by-laws contain the same prohibition. See Investigations Officer's Ex. 26 at p. 47 (Article XIX, Section 1 of Local 707's by-laws). The letter from General President Jackie Presser was read to the officers at the November 26, 1986, Executive Board meeting. Investigations Officer's Ex. 11 at p. 2. Presser's letter was never disclosed to the membership. T118-16 to 21.

19. Despite the prohibition contained in both the IBT Constitution and Local 707's by-laws and despite the explicit reference to this prohibition in Jackie Presser's letter to the Local, at the Executive Board meeting held on December 17, 1986, Respondents gave themselves a \$100 per week raise. Investigations Officer's Ex. 12 at p. 2. The minutes of this meeting state:

The Chair [Distinti] then raised the issue of salary increases of all business agents of \$100.00 per week voted upon by the membership at the October 28, 1986 membership meeting, commencing January 1, 1987. A motion was made, duly seconded, unanimously approving said increase. Id.

20. Respondents and the other members of the board gave themselves another \$100.00 per week raise in 1988 as well. T352-23 to 353-5.

21. Respondents never disclosed to the membership that, according to the IBT Constitution and the Local's by-laws, the amendment allowing the Executive Board to

set the officers' salaries would not be applicable until the beginning of the next term of office in January of 1989. T117-21 to 119-7; T149-18 to 150-16.

**B. The Merits of Charge One**

With regard to the Investigations Officer's allegations of embezzlement found in Charge One, I am guided by 29 U.S.C. § 501(c), which provides:

**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.

To sustain this charge, the Investigations Officer must prove that Respondents acted with "fraudulent intent to deprive [Local 707] 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, 338-39 (S.D.N.Y. 1990) (hereinafter "Salvatore").

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 707 of its funds. The fact that the raises and the termination of the severance plan were approved by the membership is insignificant in this case, where Respondents have engaged in a pattern of egregious non-disclosure to the membership.

The back-dating of the petition regarding the pay-raise amendment to give the impression of compliance with the by-laws, and the falsifying of the minutes of the February 12, 1986, Executive Board meeting to show that Morris received the petition on January 29, 1986, can be characterized as nothing less than direct evidence of a fraudulent intent to deprive Local 707 of its funds.<sup>6</sup>

In addition, it is permissible to infer from circumstantial evidence the existence of fraudulent intent. United States v. Local 560, 780 F.2d 267, 284 (3rd Cir. 1985), citing United States v. Burrell, 496 F.2d 609, 610 (3d Cir. 1974). See also, Salvatore, 754 F.Supp. at 339. In this regard, I find that Respondents knowing disregard for Local 707's by-laws and the letter from General President Presser, combined with their pattern of non-disclosure to the membership, proves their intent to defraud the Local. See United States v. Stockton, 788 F.2d 210, 218 (4th Cir. 1986). The record clearly supports this conclusion:

1. At the general membership meeting held on January 28, 1986, Local 707 member Jack Lynch made a motion to increase the salaries of all officers. Investigations Officer's Ex. 2 at p. 2; T104-23 to 105-7. Knowing that the Local's by-laws prohibit salary increases for the officers greater than that provided for the members in the National Masters Freight Agreement, then President Anthony Distinti explained to the membership that the by-laws would have to be changed in

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<sup>6</sup> Respondents argue that the Investigations Officer's Charge One fails to specify any allegations concerning the fraudulent petition and therefore it failed to provide them with notice. I find that Charge One clearly contemplates that the raises violated the by-laws and thus provided Respondents with sufficient notice.

order for the raise, proposed by Local member Lynch, to be put into effect. Investigations Officer's Ex. 2 at p. 2; T105-16 to 23.

2. Once the unwitting membership approved the falsely dated petition, the Executive Board, including Respondents, recommended to the membership at the October 28, 1986, general membership meeting that the officers receive a \$100 per week raise. Investigations Officer's Ex. 9 at p. 2. Then, in flagrant violation of the local's by-laws and the IBT Constitution and despite the fact that General President Jackie Presser informed Respondents that the amendment would not be effective until the next term of office in January of 1989, Respondents and the other members of the board gave themselves a raise, effective January 1, 1987. They gave themselves a raise in 1988 as well. See Investigations Officer's Ex. 10; Ex. 12 at p. 2 and T352-23 to 353-5.<sup>7</sup>

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<sup>7</sup> Respondents now argue that the officers' raises in 1987 and 1988 did not violate Local 707's by-laws or the IBT Constitution because "the membership was entitled to vote the officers a larger increase than the Executive Board could grant on its own without membership action." Respondents' Post-Hearing Memorandum at P. 18. I disagree.

If the membership had the power all along to grant the officers raises greater than that provided for the members in the National Master Freight Agreement, as Respondents argue, then the membership would not have had to go through the long and complicated process of amending the by-laws in order to give the officers just such a raise in 1986. At the January 28, 1986, general membership meeting, Local 707 member Jack Lynch made a motion to increase the salaries of all officers. At that time, the motion was denied because, in the words of then President Distinti, "the present by-laws would have to be changed in the form of a petition by the membership." Investigations Officer's Ex. 2 at p. 2.

Respondents also argue that they "did not violate the spirit of Article III of the Local Constitution and By Laws" because Respondents were not making more money after the 1987 raise than they would have been making if they had taken the increases provided for in the National Master Freight Agreement from April 1978 to April 1987. I find that the plain language of Article III, Section 3 does not permit the stockpiling of passed over raises as Respondents suggest.

3. Turning to the severance plan; in putting the recommendation to terminate Local 707's severance plan to the membership, Respondents failed to disclose that the real reason for terminating the severance plan was to give President Distinti a tax break. T200-14 to 20. Viewed in this light, the Executive Board's recommendation to terminate the severance plan "because of restrictions, placed by the Internal Revenue Service" can best be characterized as a half-truth. What is clear is that the membership was misled. Investigations Officer's Ex. 9 at p. 2. Moreover, the Executive Board did not bother to tell the membership that it had already terminated the plan.

4. Even though some of the members may have guessed that the severance fund would be distributed to the officers, Respondents knew the exact amounts to be received by every plan participant, totalling to approximately \$300,000, and still failed to fully disclose this information to the membership. See Investigations Officer's Ex. 15. Morris failed to disclose that he received \$68,904 and McNeil failed to disclose that he received \$46,368 from the distribution of the severance fund. Id.

5. Furthermore, the minutes of the October 28, 1986, general membership meeting show that the members were told that the officers needed a raise in order to compensate for the lost severance pay. Investigations Officer's Ex. 9 at p. 2. The members may not have been so willing to approve the raise if Respondents had fully disclosed the distribution of the severance fund.

In short, a review of Respondents' conduct leads to the conclusion that they intentionally engaged in a scheme to convert union funds to their own benefit and to the benefit of their cronies on the Executive Board.<sup>8</sup>

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<sup>8</sup> The Investigations Officer also contends that the termination and distribution of the severance plan itself is, independently, an act of embezzlement. Given my finding that Respondents' many and various omissions and misstatements proves their fraudulent intent to embezzle, it is unnecessary for me to determine whether the termination and distribution of this particular severance plan, standing alone, constitutes an act of embezzlement.



**III. CHARGE TWO -- THE FRAUDULENT CONVEYANCE OF THE CARS**

**A. Findings of Fact**

In Charge Two, the Investigations Officer alleges that Respondents embezzled over \$60,000 from Local 707 by fraudulently conveying three cars to departing Local officers in violation of Local 707's by-laws and in breach of their fiduciary duties to the membership. At the hearing, the following was established:

1. Article VIII, Section C of Local 707'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.

[Investigations Officer's Ex. 26 at p. 20.  
(Emphasis supplied)]

2. At the October 17, 1989, general membership meeting, a resolution was read to the membership and adopted, awarding a 1989 Jeep worth \$24,981 to retiring Vice President Grancio for "diligently, faithfully, and effectively" serving the membership of Local 707 for many years. Investigations Officer's Exs. 22 and 23.

3. Grancio joined Local 707 as a Trustee in 1966, the same year he was convicted of perjury by a jury in the United States District Court for the Southern District of New York for lying to a grand jury about his knowledge of "sweetheart contracts" and labor payoffs. Investigations Officer's Exs. 20 and 28. Grancio received a three year suspended sentence and was placed on probation. Investigations Officer's Ex. 20. In 1969, Grancio became Vice President of the Local and Morris, who had been the Vice President since Grancio's arrival, moved up to Secretary Treasurer. McNeil was a Trustee at the time. Investigations Officer's Ex. 29.

4. The Investigations Officer alleges that "[d]uring Grancio's tenure with respondents on the board, respondents were or should have been aware of Grancio's affiliation with organized crime." Investigations Officer's Post Hearing Memorandum at p. 13. In this regard, the Investigations Officer presented evidence showing that Grancio was identified as a member of the Colombo Family of La Cosa Nostra before the Permanent Subcommittee on Investigations of the United States Senate during hearings entitled "Organized Crime: 25 Years After Valachi." Investigations Officer's Ex. 17 at 767, 777. In addition, during Grancio's tenure on the board, numerous newspaper and magazine articles were published which refer to Grancio as a member of organized crime. See Investigations Officer's Ex. 16. For example, an article in the October 27, 1986 issue of "New York" magazine states that "[w]itnesses at a recent labor racketeering trial in Manhattan testified that Local 707's vice-president, Nicholas "Nickie Black" Grancio, is a Colombo associate and the crime family's connection to the union." Also, in 1986, after the shooting death of Local 707 member Bruno Bauer, on several occasions the police questioned Grancio about the murder at Local 707's offices. T296-21 to 25; T363-25 to 364-9. See also, Investigations Officer's Ex. 33 at p. 15-18 (McNeil's Sworn statement taken before the hearing) and Ex. 34 at p. 39-42 (Morris' sworn statement taken before the hearing).

5. Both Morris and McNeil were well aware of the numerous allegations over the years that Grancio was associated with organized crime. T297-5 to 22; T365-5 to 366-2. When asked at the hearing whether he had ever heard allegations that Grancio was a member of organized crime, McNeil testified that he "read it in the paper and [he] saw it on TV." T365-5 to 7. Furthermore, Respondents were at the Local's offices when the police came to question Grancio about the murder of Bruno Bauer. T363-14 to 364-9.

6. Respondents were also aware of the fact that the government, in the underlying civil RICO case, United States v. IBT, 88 Civ. 4486 (DNE), had subpoenaed Grancio to testify about La Cosa Nostra involvement in the IBT but that Grancio had invoked the Fifth Amendment and refused to testify. T323-18 to 324-24. See also, Investigations Officer's Ex. 34 at 17-20.

7. Grancio also refused to testify before the Investigations Officer. On or about July 28, 1989, the Investigations Officer, pursuant to the Consent Order, served a notice upon Grancio requiring his sworn testimony. Investigations Officer's Ex. 38; T375-5 to 11. Upon receiving the Investigations Officer's notice of examination, Grancio immediately resigned from the Local. Although his letter of resignation cited medical reasons for his retirement, see Investigations Officer's Ex. 21, Respondents knew that the real reason Grancio resigned was to avoid giving his sworn testimony before the Investigations Officer.<sup>9</sup> T301-9 to 304-3; 325-3 to 21; T376-2 to 25. See also, Investigations Officer's Ex. 33 at p. 21-22 and Ex. 34 at p. 64-68. In this regard, the following discourse ensued between Morris and the Investigations Officer at the hearing:

Q. Mr. Grancio told you that the reason he was going to retire was because he didn't want to testify before the Investigations Officer; isn't that correct?

A. Right. He said he didn't need any of that horseshit or bullshit or whatever he called it.

Q. And that seemed suspicious to you at the time, didn't it?

A. Yeah, it seemed suspicious.

8. Despite the fact that Respondents knew about the various allegations that Grancio was associated with organized crime and that the police had questioned him about the murder of Bruno Bauer and despite the fact that Grancio had invoked the Fifth Amendment when questioned in United States v. IBT and had resigned rather than testify before the Investigations Officer, Respondents conducted no independent inquiry or investigation whatsoever into these matters. T297-1 to 22; T325-22 to 326-5 and T372-19 to 374-23. Article VII, Section B of Local 707's by-laws provides that the Executive Board has

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<sup>9</sup> At the hearing, the Investigations Officer presented evidence showing that even after Grancio's retirement in August of 1989, he attended, as a union participant, contract negotiations with Waldbaums, a Local 707 employer. T221-22 to 225-13. After the contract negotiations ended, Grancio showed up as a paid employee for Waldbaums. Respondents Ex. 49; T215-21 to 223-18.

"the duty to investigate any alleged breach of fiduciary duty . . . and to take appropriate action if the investigation so merits." Investigations Officer's Ex. 26 at p. 18.<sup>10</sup>

9. Moreover, Respondents failed to disclose to the membership any of the allegations of Grancio's association with organized crime, including the real reason for his decision to retire. Instead, Respondents assisted in the passage of a resolution, approved by the misinformed membership, awarding Grancio a \$25,000 Jeep for his "diligent, faithful and effective service" to the Local over the years.

10. Respondents also participated in the gift of a 1988 Lincoln Town Car, valued at \$13,800, to then President Anthony Distinti upon his retirement in July of 1989. Investigations Officer's Ex. 24. Local 707 previously held the title to this car. Id.

11. Distinti first joined Local 707 as its President in 1984, replacing departing President Louis Alimena. T305-24 to 306-14. See also, Respondents' Ex. 19. At the time, Distinti had no prior experience with Local 707 and remained in office at another IBT local as well. T330-8 to 21.

12. Respondents were aware of the fact that Distinti, like Grancio, had been subpoenaed by the government to testify in United States v. IBT and had invoked the Fifth Amendment and refused to testify. T324-7 to 24 and Investigations Officer's Ex. 39. Respondents also knew that the police had questioned Distinti about the murder of Bruno Bauer at Local 707's offices. T296-16 to 25. In spite of this knowledge, Respondents failed to investigate the suspicious nature of Distinti's activities. Consistent with their practice, Respondents made no disclosures to the membership regarding Distinti. See, e.g., T324-18 to 325-2 and T337-18 to 338-4. Instead, Respondents supported giving Distinti a Local 707 car as a retirement gift.

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<sup>10</sup> Morris did testify that: "[E]very time I saw something in the paper and I saw Nick either the next day or two days, three days later in the office, I'd say, 'There was another article in the paper about you. Are you a member of this organization?' And he said, 'No, definitely not.'" T297-15 to 20.

13. At the October 27, 1987, general membership meeting, Recording Secretary Vincent Guarna's retirement was announced. At the same meeting, the membership passed a resolution stating:

WHEREAS, severance pay has been discontinued . . . . NOW, BE IT RESOLVED, that as a parting gift, each Local 707 paid official who terminates his service with the Local after having served three years as an official and who is deserving of a gift shall receive on the date of his termination, without cost to him, the automobile he used in his capacity as an official.

[Investigations Officer's Ex. 14 at p. 2.]

Pursuant to this resolution, Respondents gave a 1988 Lincoln Town Car Cartier, valued at \$22,000 to Guarna as a retirement gift. Investigations Officer's Ex. 25.

14. Even though the gift of the car was allegedly given to Guarna in part because his severance pay had been discontinued, Respondents knew, and failed to disclose to the membership, that approximately one year earlier Guarna had received \$62,717 from the undisclosed distribution of the severance plan. Investigations Officer's Ex. 15. At the hearing, Guarna himself testified that there was no connection between the termination of the severance plan and his retirement gift of an automobile. T177-20 to 178-4.

#### **B. The Merits of Charge Two**

There is no question that the gifts of the cars to Grancio, Distinti and Guarna violated Local 707's by-laws. Article VIII, Section C of the by-laws clearly prohibits the transfer of Union-owned cars. See Investigations Officer's Ex. 26 at p. 20. Respondents argue that Article VII, Section A(9) of the Local's by-laws, which gives the Executive Board the power to "sell or dispose of" any Local 707 real or personal property subject to membership approval, authorizes the Local to give cars to third parties.

Respondents contend that Article VIII, Section C's restriction on this general rule does not apply to the gifts of cars to retiring officers because that restriction only prohibits the transfer of title to current "officers or representatives" of the Local. Respondent's Post-Hearing Memorandum at p.28-30.

This argument, however, ignores the plain language of Local 707's by-laws. Article VIII, Section C can be no clearer -- "if the Local decides to purchase an automobile for the use of an officer, the Local shall always retain the title to that automobile. There are no qualifications placed on this prohibition." Investigations Officer v. Vitale, Decision of the Independent Administrator at p.21 (interpreting exact same provision in Local 283's by-laws). The 1987 Resolution providing cars for retiring officers and the subsequent gifts of cars to Grancio, Distinti and Guarna violate this provision. Respondents' reliance on the fact that cars have been provided as retirement gifts to every trustee or officer who has retired since 1966 (see Respondents' Post Hearing Memorandum at p.30), does not justify the most recent violations of the by-laws.

Thus, I find that the Investigations Officer has satisfied his burden of proving just cause that Respondents violated Article VIII, Section C of Local 707's by-laws by participating in the conveyance of Local 707 cars to retiring officers Grancio, Distinti and Guarna.

With regard to the Investigations Officer's allegations of embezzlement and conversion, I find that the Investigations Officer has also met his just cause burden of proving that Respondents acted with fraudulent intent in converting to the use of Grancio, Distinti and Guarna automobiles that should have remained with Local 707. As with Charge One, in reaching this decision I am guided by the provisions in 29 U.S.C. §501(c).

As for the issue of proving Respondent's intent, "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." Salvatore, 754 F. Supp. at 339. See also, United States v. Local 560, International Brotherhood of Teamsters, 780 F.2d 267, 284 (3d Cir. 1985). Under federal law, Respondents, as Local Union Officers, have a fiduciary duty to hold the Local's money and property "solely for the benefit of the organization and its members. . . ." 29 U.S.C. §501(a). The transfer of Local 707 automobiles under questionable circumstances, such as these, is a breach of this fiduciary duty.

Under Article VII, Section B of Local 707's by-laws, Respondents also have a duty "to investigate any alleged breach of fiduciary duty." Investigations Officer's Ex. 26 at p. 18. Thus, not only do Respondents themselves have a fiduciary duty to protect the Local's assets, but they also have an affirmative duty, under the by-laws, to investigate allegations of other officers' breaches of fiduciary duty. See, e.g., United States v. IBT, 88 Civ. 4486

(DNE), slip op. (S.D.N.Y. April 18, 1991) (Discussing obligation of Union fiduciaries to take action to redress wrongdoing).

Respondents argue that the Investigations Officer's evidence does not support a finding that Grancio was a member of organized crime or that it was improper for Grancio to retire rather than testify before the Investigations Officer or for Grancio and Distinti to invoke the Fifth Amendment when required to testify in the underlying civil RICO action. Respondents' Post-Hearing Memorandum at p. 31-45. Thus, they argue, "any aspect of Count Two based on the premise advanced by the Investigations Officer must be dismissed." Id. at p. 37.

This argument misses the point. I do not, and need not, determine whether the Investigations Officer's allegations surrounding Grancio's organized crime connections have been proven. The Respondents are not charged with "knowingly associating" with Grancio. Rather, the evidence regarding Grancio's organized crime ties is offered to show that responsible officers of Local 707 should have been on notice of allegations concerning the activities of Grancio and they should have investigated the truth of these matters. The same holds true for their failure to make proper inquiries of Distinti.

I find that, as officers of Local 707, Respondents had an affirmative duty to investigate the various allegations and suspicious activities surrounding Grancio and Distinti. The evidence shows that Respondents were well aware of the allegations



over the years that Grancio was associated with organized crime. Respondents also knew that both Grancio and Distinti were questioned by the police concerning the murder of Bruno Bauer. Moreover, Respondents were aware of the fact that Grancio and Distinti had invoked the Fifth Amendment and refused to testify concerning organized crime's links to the IBT when subpoenaed by the Government. In fact, they knew that Grancio had resigned rather than testify before the Investigations Officer. Despite this knowledge, Respondents failed to perform any investigation or inquiry into these matters, other than Morris asking Grancio himself, in passing, if he was a member of organized crime.<sup>11</sup>

Instead, Respondents actively participated in the transfer of automobiles to the retiring officers, without disclosing to the membership their knowledge of the allegations of Grancio's organized crime connections or the suspicious nature of Grancio and Distinti's failure to testify. Respondents also falsely represented to the membership that Guarna was deserving of an automobile because his severance pay had been terminated knowing full well that he had received over \$62,000 from the distribution of the severance plan only a year earlier.

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<sup>11</sup> Respondents contend that the Investigations Officer's evidence is not even sufficient to show that they had notice of the allegations against Grancio. As they suggest, "[i]f a reporter had claimed that Mr. Grancio was influenced by 'little green men from Mars,' that would not be sufficient to put Local No. 707 on notice that they should look out for 'alien' control." Respondents' Post-Hearing Memorandum at p. 34, n. 31. I find that allegations, admittedly known by Respondents, that an officer in their IBT Local Union has ties to organized crime cannot be so easily disregarded.

I find that Respondents' failure to investigate or disclose to the membership the serious allegations and suspicious activities surrounding the retiring officers, in the face of circumstances which demanded at least a minimum of scrutiny, is evidence of Respondents' fraudulent intent to convert to the use of Grancio, Distinti and Guarna automobiles that should have remained with Local 707. See Salvatore, 754 F.Supp. at p.349-51.<sup>12</sup>

#### IV. PENALTIES

Respondents embezzled money and property from Local 707 in violation of their fiduciary responsibility and in violation of the plain language of the Local's by-laws. Accordingly, their suspension from the IBT is in order.

As a penalty on Charge One, Respondents shall be suspended for a period of five years. The length of this suspension is warranted given the flagrant disregard to their obligations demonstrated by Respondents. Officers of IBT Locals must understand that their Local Union coffers are not their personal piggy banks that can be cracked open whenever it serves their personal benefit. The Local's assets belong to the Local's members. The Local's officers are mere trustees of those assets.

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<sup>12</sup> Respondents argue that the Investigation's Officer's Charge Two must fail because there is no evidence that Respondents "took actions which redounded to their own personal benefit in any way." Respondents' Post-Hearing Memorandum at p.30-31. This argument fails, however, because 29 U.S.C. §501(c) clearly contemplates that a violation occurs whenever any person embezzles or unlawfully converts union assets "to his own use, or the use of another."

The violation on Charge Two is equally egregious. The IBT has committed itself to ridding its ranks of organized crime's taint. Respondents took no steps to investigate the veracity of the allegations that the Local's Vice-President -- Nicholas Grancio -- was linked to organized crime. Neither did they concern themselves with Grancio's possible involvement in the murder of Bauer. Moreover, when that Vice-President resigned rather than submit to questioning by the Investigations Officer, Respondents chose to reward him by giving him a new car in blatant disregard of the Local's by-laws.

Similarly, Distinti was rewarded despite his failure to testify in the underlying Civil RICO suit concerning his knowledge of organized crime's links to the IBT. As with Grancio, no concern was given to Distinti's possible link to the Bauer murder.

The transfer of the car to Guarna is no less reprehensible. That transfer was prefaced by a blatant misrepresentation to the membership that Guarna's severance had been terminated when in fact he had just received over \$62,000 in severance pay.

Accordingly, I also impose a period of suspension of five years on Respondents as a penalty on Charge Two. This period of suspension is to run concurrently with the suspension on Charge One.

Thus, Respondents are to remove themselves from all of their IBT-affiliated Union positions (including membership in the IBT)

and draw no money or compensation therefrom, or from any other IBT-affiliated source during their period of suspension.

**V. SANCTIONS ON BENEFITS**

At my direction, by letter dated February 19, 1991, Respondents attorney informed me that Respondents are entitled to the following benefits:

1. Pension benefits from Road Carriers Local 707 Pension Fund, as set forth in the written pension plan.
2. Pension benefits from Joint Council 16, as set forth in the written pension plan.
3. Pension benefits from the Teamster Affiliates Pension Fund, as set forth in the written pension plan.
4. Health and welfare benefits as set forth in Road Carrier 707 Welfare Fund, including Life Insurance and Disability Benefits, Accident and Sickness Benefits, Hospitalization and Home Care Benefits, Maintenance Drug Benefits, and Dental Benefits.
5. Payment for unused vacation up to five weeks.
6. Payment of \$500 for attendance at Joint Council meetings.

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 29, 1990), the following sanctions will be imposed on these benefits.

#### **The Pension Benefits**

With regard to the pension benefits from Local 707, Joint Council 16 and the Teamsters Affiliates Pension Fund, Respondents can retain their vested pre-paid benefits. No further contributions, however, from the IBT or any IBT-affiliated entity may be made on Respondents' behalf to any of these plans during their five-year suspension.

#### **Health And Welfare Benefits**

As with the pension plans, Respondents can retain their vested pre-paid health and welfare benefits. No further contributions from the IBT or any IBT-affiliated entity may be made on Respondent's behalf to any of these plans during their suspension. Respondents may continue their coverage by making payments of premiums from their own personal funds.

#### **Vacation Pay**

Respondents are entitled to their five weeks accrued vacation pay. I consider this earned compensation. So that there is no confusion regarding payment of this accrued vacation allowance, I direct Local 707 and Respondents to supply the Investigations Officer with sworn certifications that Respondents are indeed entitled to this accrued vacation pay.

Moreover, I direct that the Local is to use this accrued vacation pay as a set-off from Respondents' unauthorized pay

raises. 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).

#### **Joint Council Attendance Fees**

Respondents are entitled to their fee for attending Joint Council meetings. I also consider this earned compensation. As with the vacation pay, however, I direct Joint Council 16 and Respondents to supply the Investigations Officer with sworn certifications setting forth the details of this allowance, i.e., the exact dates of the meetings attended and a statement that Respondents have not previously been compensated for their attendance at the meetings.

#### **Legal Fees**

Respondents' attorney represented that:

[R]espondents have paid their own attorney's fees since receipt of the charges from the Investigations Officer. If respondents are found not to have committed the improper conduct as alleged in whole or in major part, they intend to seek reimbursement and indemnification from their individual cost.

Given that Respondents have been found culpable, they are not to have any portion of their legal fees paid by the Local. See, e.g., United States v. 1804-1, 732 F. Supp. 434, 437 (S.D.N.Y. 1990).

### **Retirement Gifts**

Lastly, Respondents' attorney states:

[T]here is on record a standing membership resolution that any officer who retires after three years of service who is deserving of a retirement gift may be given the last car which he or she was provided for use as a union officer. If the membership determines that respondents are deserving of a gift after their retirement due to their past service to the membership, they intend to accept such gift.

It is simply beyond belief that Respondents would stake claim to the Local's cars as "retirement gifts" when they are being driven from the Union for five years, based, in part, upon their embezzling cars for the benefit of Grancio, Distinti and Guarna.

It is clear that the Local's by-laws would prohibit such a transfer. Moreover, under no circumstances can Respondents exit from this Local be characterized as a retirement. Accordingly, I direct that Respondents are prohibited from accepting any "retirement gifts."


### **VI. MY LIMITED STAY**

In the past, I have voluntarily stayed my decisions and the penalties imposed pending review by United States District Court Judge David N. Edelstein. With one exception, I will follow that practice here.

Respondents have been elected as delegates to the 1991 IBT International Convention on behalf of Local 707. That Convention is scheduled for June 24-28, 1991. 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 shield the Convention from the likes of Respondents -- whom I have found to have abused their Union offices for their personal financial gain and the financial gain of others -- I hereby strip Respondents of their delegate status and prohibit them 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.

I shall immediately submit this Decision to Judge Edelstein for his review by way of Application.

  
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Frederick B. Lacey  
Independent Administrator

Dated: May 22, 1991