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INVESTIGATIONS OFFICER,

Complainant,

v.

ROBERT J. FEENEY,

Respondent.

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: SUPPLEMENTAL OPINION OF THE  
: INDEPENDENT ADMINISTRATOR  
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On December 18, 1990, I issued a decision in the above-captioned matter in which I found that the Investigations Officer had satisfied his just cause burden of proving that Robert J. Feeney ("Feeney") had engaged in a scheme to extract money from lunch truck caterers in New Jersey, while he was president of IBT Local 11 and a trustee of IBT Joint Council 73. As a penalty I permanently debarred Feeney from the IBT, directing that he 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. I further decided that "given the overwhelming proof of Feeney's guilt" I would not voluntarily stay my decision and the penalty imposed, as I had in previous disciplinary matters.

I further recognized that the only matter left to be considered is whether I should impose sanctions impacting upon Feeney's employee benefits, including pension, health and welfare benefits. See Investigations Officer v. Senese, et. al.,

Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd., United States v. IBT (Application XVI), slip op. (S.D.N.Y. December 28, 1990).

Submissions on this issue were received from Feeney, Local 11, the Investigations Officer, the IBT, and the Government. Having reviewed these submissions, the following determination is rendered regarding Feeney's benefits.

Feeney and Local 11 submitted separate schedules listing Feeney's benefits. Although the two schedules are similar they differ in certain respects. The Local 11 schedule appears the most comprehensive and thus will be relied upon.

Feeney is a participant and beneficiary in the following plans:

1. Teamster Affiliated Pension Plan;
2. Teamster Joint Council No. 73 Pension Fund;
3. Teamster Local 11 Defined Contribution Fund;
4. Vacation Pay Plan;
5. Annual Bonus Plan;
6. Organizing Bonus Plan;
7. Severance Pay Plan;
8. Health and Welfare Plan;

In addition, Feeney's Local has indicated that it has paid the cost of Feeney's defense of the underlying charges.

**A. The Teamster Affiliated Pension Plan and The Teamster Joint Council No. 73 Pension Fund**

In accordance with these two plans Feeney will be entitled to a pension upon reaching "normal retirement age." The Investigations Officer does not challenge Feeney's receipt of these two pensions. This is consistent with my decision in Senese wherein I concluded that while the Consent Order does not preclude the termination of health and welfare benefits, I do not have jurisdiction over benefit plans that are not exclusively controlled by the IBT or an IBT-affiliated entity. Given that such plans involve non-IBT trustees and participants, I found that I do not have jurisdiction over such plans and can not require them to discontinue payment of such benefits to Senese. I also recognized the Supreme Court's prohibition on the preclusion of vested pension benefits. See Guidry v. Sheet Metal Workers National Pension Fund, 110 S. Ct. 680 (1990). However, in order to protect the assets of Senese's Local and prevent that Local's association with a member of organized crime (Senese), I directed the Local and any IBT-affiliated entity that may have contemplated doing so, to discontinue making payment of union funds to any health, welfare, or employee benefit plan on Senese's behalf.

While Feeney was not found to be a member of organized crime he was found to have engaged in an extortion scheme while president of his Local and a trustee of a Joint Council. In fact I found the Investigations Officer's case "highly persuasive". As I stated, "[i]ndeed, given the entry of [Feeney's] guilty plea [on related

criminal charges], I could reasonably make no other finding." Given the gravity of Feeney's wrongdoing, and following the same reasoning as adopted in Senese, I find that Union assets should not be squandered on Feeney at any time in the future. Thus, I direct the IBT, Local 11, Joint Council 73, and any other IBT-affiliated entity that may contemplate doing so, to cease making contributions to the Teamster Affiliated Pension Plan and the Teamster Joint Council No. 73 Pension Fund on Feeney's behalf. This ruling, of course, does not interfere with Feeney's right to receive his vested pension benefits.

**B. The Teamster Local 11 Defined Contribution Fund**

Feeney describes this Fund as a "pension." Local 11 describes it as a "defined contribution plan." Local 11 indicates that the Fund was established by resolution of Local 11's Executive Board in February, 1985. No matter what the description, following the rationale set forth in Senese, Feeney can continue to enjoy whatever benefits may be vested in this Fund. Consistent with my treatment of the pension plans discussed above, however, no future contributions are to be made on Feeney's behalf to this Fund by any IBT-affiliated entity, including of course Local 11 and the International Union itself.

**C. Vacation Pay**

Local 11's schedule of benefits reflects that Feeney is entitled to two weeks vacation pay, totaling \$22,900. In 1990, based upon his years of service and work in 1989, Feeney was entitled to four weeks vacation, but only took two. Thus, Feeney is entitled to two weeks unused vacation pay--his earned compensation. The Investigations Officer does not dispute this. See Investigations Officer v. Salvatore, Supplemental Opinion of the Independent Administrator (January 10, 1991) at pp.5-6. Local 11 must, however, use this two weeks vacation pay as a set-off against legal fees paid on Feeney's behalf to date. See para. H. supra.

**D. Annual Bonus**

Local 11 lists on its schedule of benefits an annual bonus for 1990 totalling \$1,000. Local 11 explains that this organizing bonus program has been in effect since 1978, and is based upon service to the Local. The Local also concedes that given that the payment of this bonus is under the exclusive purview of the Local, I do have jurisdiction over the payment of these monies.

As highlighted by the Investigations Officer, during 1990, Feeney was convicted for extortion in a New Jersey State criminal prosecution and expelled from the IBT by me. Feeney's own notes and diaries indicate that his extortionate activities continued into early 1990, when his arrest brought his activities to a halt.

Given all this, I agree with the Investigations Officer when he states that "[i]t is difficult to understand why Local 11 wishes to reward Feeney with a bonus for these activities." Thus, I direct that this unearned compensation not be paid to Feeney.

**E. Organizing Bonus**

Local 11 claims Feeney is entitled to be paid a "bonus" of \$6,000 under a organizing program in effect since 1978. Apparently, Mr. Feeney brought into Local 11 six hundred new members with the merger of another Local -- Local 867. That is the basis for the calculation of the \$6,000 organizing bonus. In support of this, Mr. Feeney's attorney submitted a letter dated January 25, 1991, in which he noted that he is "personally aware ... that [his] client engineered the merger of Teamster Local 867 into Local 11 in 1990." In addition, it is noted that Local 11 approved the annual bonus program at a meeting held on November 25, 1989. Here, Local 11 again concedes that the payment of this bonus is under its exclusive purview and thus that I have jurisdiction over its payment to Feeney.

Given the lack of documentation to support this bonus, and given the fact that Feeney relied upon a trumped-up "organizing program,"<sup>1</sup> when he testified at the hearing before me, I do not

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<sup>1</sup> It is unclear whether this organizing bonus is tied to the "organizing program" Feeney testified to at the hearing. In his submission to me, however, the Investigations Officer states that "[t]his, presumably, is the organizing program about which Feeney lied at the hearing."

view it as proper for Local 11 to pay these monies to Feeney. Thus, I direct that the organizing bonus not be paid.

**F. Severance Pay**

In a March 18, 1991, letter to me, Local 11's attorney stated:

Please be advised that this firm is counsel to Teamsters Union Local No. 11. This letter will serve to supplement my letters to you dated January 9, 1991 and February 5, 1991 regarding the above referenced matter.

As I reported to you in the above letters, pursuant to the Decision rendered in the matter Investigations Officer v. Senese, the Administrator has jurisdiction over the payment of Mr. Feeney's severance pay which comes from the Union's treasury. Based upon the Senese case, the Administrator may deny payment to Mr. Feeney of his severance benefit. The Severance Pay Program enacted by Teamsters Union Local No. 11 provides the same. The Executive Board Minutes of June 26, 1990 reflect that if an employee employed by Local Union No. 11 is "fired for just cause" said individual will not receive severance pay. Since Robert J. Feeney was removed from membership by the Administrator for "just cause" pursuant to the terms of the Severance Pay Program of Teamsters Union Local No. 11, Robert J. Feeney is not eligible to receive a severance pay benefit from the Union.

Given the recent revelation, both in the State criminal proceedings and in the hearing before me, concerning Feeney's reprehensible activities, I can not, and will not, condone the transfer of any additional benefits from Local 11 to Feeney. Thus, I incorporate herein by reference Local 11's decision not to pay Feeney his severance.

**G. Health and Welfare**

In Feeney's December 28, 1990, submission he indicates that:

Local 11 makes contributions for hospital and medical coverage for Mr. Feeney. These contributions are being, or have been, made for the period of Mr. Feeney's employ and are continuing pursuant to the Local 11 Severance Plan.

Local 11's January 9, 1991, submission, however, states that "[a]s of December 18, 1990, Local 11 has withheld the payment of" contributions to the Union's Health and Welfare Fund, on Feeney's behalf. It is unclear whether the Local has terminated such contributions or has merely "withheld" them pending my decision. So that there is no confusion, Local 11 and any other IBT-affiliated entity that I contemplate doing so is not to make any future contributions to this Fund on Feeney's behalf. This is consistent with my Senese ruling and with my treatment of Feeney's other benefits. Feeney is, of course, free to make future contributions to this Fund from his own personal funds.

**H. Legal Fees**

Local 11 has paid over \$44,000 in legal fees on behalf of Feeney in connection with Feeney's defense of the charges filed by the Investigations Officer. The Local has withheld payment of an additional \$9,139.55 in fees pending this decision.

Local 11 recognizes and does not dispute that it is improper for unions to pay for defense costs incurred by Union officials in criminal cases, in civil RICO suits, and in civil suits filed



pursuant to the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 401, et seq. Letter of January 9, 1991, from David Grossman at p. 2, citing, inter alia, United States v. Local 30, 686 F. Supp. 1139, 1166 (E.D. Pa. 1988) ("The use of Union funds to pay for ... criminal defense ... incurred in criminal cases against Union officials is a breach of the Union officers fiduciary responsibilities ... and constitutes illegal disbursements."); Highway Truck Drivers and Helpers Local 107 v. Cohen, 215 F. Supp 938, 941 (E.D. Pa. 1963), aff'd, 334 F. 2d 378 (3d Cir.), cert. denied 379 U.S. 921 (1964) ("Defendants should not be allowed to use Union funds to assist them in their defense."); United States v. Local 1804-1, 732 F. Supp. 434, 437 (S.D.N.Y. 1990) ("In advance of a determination on the merits of the allegations in the [RICO] Complaint, the Local and the [International Union] should be prohibited from providing any financial support to the ... Defendants for their individual defense."); and Urichuck v. Clark, 689 F. 2d 40, 44 (3d Cir. 1982) (Following resolution of an LMRDA action the Court held that "[a]s to those individual defendants who were not found liable [in the underlying action] the union is, of course, now free to reimburse them for their counsel fees.").

Local 11 argues, however, that "the proceeding before the Administrator is neither criminal nor civil in nature. Instead, the proceeding before the Administrator is merely an internal union disciplinary proceeding." Thus, the Local suggests that "[t]he

question of whether it is improper for a union to pay an officer's or member's legal fees for defense in an internal union disciplinary proceeding is a novel question." Ibid.

The Consent Order (Para. F.12(A)) grants the Independent Administrator the "same rights and powers as the IBT's General President and/or General Executive Board under the IBT's Constitution (including Article VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to: disciplinary corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences) . . . ." In addition, the Consent Order provides at para. F.12(A)(c) and (d) that when the Investigations Officer files charges "a fair and impartial hearing shall be conducted before the Administrator" and "the hearing shall be conducted under the rules and procedures generally applicable to labor arbitration hearings." Notwithstanding, these provisions, Local 11's characterization of the disciplinary proceedings conducted pursuant to the Consent Order as nothing more than an "internal union disciplinary proceeding" is a mischaracterization. The Local itself recognizes that:

Generally, internal union disciplinary proceedings are initiated by, prosecuted by, and determined by, union members or officers. Generally, a union member is not allowed to have an attorney present during internal union disciplinary proceedings . . . . The proceedings before the Administrator are quite different . . . . [January 9, 1991, letter from David Grossman at pp. 2-3 (Emphasis supplied)].

In short, given the unique nature of the disciplinary proceedings arising under the Consent Order it cannot be said that they are "merely internal union disciplinary proceedings." (Emphasis supplied). Thus, the 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 is fully applicable here.

Local 11 also relies upon its Bylaws which purportedly permits the Local to pay the legal fees of its officers to defend "any legal proceedings or action" if "in its judgment, it shall be necessary or desirable to protect, preserve or advance the interests of the organization."<sup>2</sup>

First, I am not bound by the Local's interpretation of its own Bylaws. As noted, the Consent Order grants me the "same rights and powers as the IBT's General President and/or General Executive Board . . . to disciplin[e] corrupt or dishonest officers . . . ." The IBT Constitution grants the General President the right "to interpret the Bylaws of subordinate bodies, and to decide all questions of law thereunder between meeting of the General Executive Board." IBT Constitution, Article VI, Section 2(a). In the context of my disciplining Feeney I find it necessary and appropriate to interpret Local 11's Bylaws provision regarding the

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<sup>2</sup> A copy of the Bylaws was not submitted. The portion quoted by Local 11 in its papers appears to be out of context and thus, is not clear.

payment of legal fees. In so interpreting that provision I find that it cannot be applied to the instant situation.

Feeney's actions were so repugnant to the concept of a corruption free Union that under no circumstance can it be said that Local 11's interests would be "protect[ed], preserv[ed] or advanc[ed]" by the payment of Feeney's fees. While "[t]here are undoubtedly situations in which a suit against a Union officer would have a direct and injurious effect upon the union itself," which would warrant the union's payment of that officers legal fees, this is not one of those situations. Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F. Supp. 608, 620 (E.D. Pa.), aff'd, 284 F.2d.162 (3d. Cir. 1960), cert. denied, 365 U.S. 833 (1961).

As the Investigations Officer states in his January 22, 1991, submission:

The executive board began to pay Feeney's legal fees on August 30, 1990, after the conclusion of the hearing. It made its last payment on November 14, 1990, a few weeks before Feeney entered his guilty plea . . . . By that date, the board knew, or would have known if it had conducted any investigation, at all, of the following facts, among others:

- (i) Feeney had been indicted for extortion;
- (ii) Feeney had repeatedly invoked the Fifth Amendment at his sworn statement on June 18, 1990;
- (iii) Feeney resigned as President on June 18, 1990 and entered into an agreement with the Investigations Officer on June 22, 1990 to withdraw for life from the IBT;

- (iv) Feeney was at that time negotiating to enter a guilty plea in his criminal extortion case;
- (v) Feeney testified at his second deposition on July 26, 1990 to the existence of a "catering truck organizing program" the board knew did not exist;
- (vi) Feeney repeated at the hearing before the Administrator his patently false testimony about the catering trucks;
- (vii) The evidence of Feeney's guilt introduced at the hearing, which the Administrator has described as "overwhelming." (Ad. Dec. at 20)

As concluded by the Investigations Officer "an officer charged with conducting an extortion scheme, headquartered at his local offices, may not have his legal fees to defend such charges paid by the union."

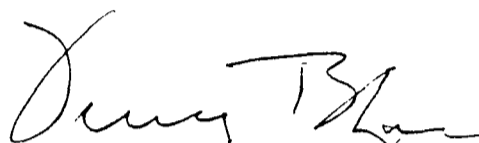
Accordingly, I direct that no further fees should be paid on Feeney's behalf by Local 11. In addition, I adopt the Investigations Officer's suggestion that the Local Executive Board should take all necessary steps to recover the \$40,000 it already has paid on Feeney's behalf. Moreover, the vacation pay that is due Feeney is to be withheld as an offset against the legal fees paid to date.

#### **CONCLUSION**

Consistent with my decision not to stay my permanent banishment of Feeney from the IBT, I will also not stay the

imposition of these penalties. Thus, this Supplemental Opinion is to take effect immediately.

I will, however, as indicated in my decision of December 18, 1990, file my earlier decision on the merits and this Supplemental Opinion with Judge Edelstein by way of Application.

  
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Frederick B. Lacey  
Independent Administrator

Dated: March 26, 1991