
INVESTIGATIONS OFFICER,

Claimant,

v.

ANGELO MISURACA,

Respondent.

OPINION OF
THE INDEPENDENT
ADMINISTRATOR

This matter involves a charge filed by the Investigations Officer against Angelo Misuraca ("Misuraca"). Angelo Misuraca is the former Vice President and former Business Agent of IBT Local Union 398 ("Local 398") in Rochester, New York, having resigned both of these positions in October of 1990, following the filing of the Investigations Officer's charge.

The charge against Misuraca reads in pertinent part:

You are charged as follows:

Violating Article II, §2(a) and Article XIX, 6(b) of the Constitution of the International Brotherhood of Teamsters ("IBT"), by conducting yourself in a manner to bring reproach upon the IBT and violating your oath.

TO WIT, during the time you were an officer of Local 398 in Rochester, New York, you knowingly associated with Angelo Amico, a member of organized crime.

A hearing on this charge was held before me on November 20, 1990, and post-hearing submissions were received. Misuraca was represented by counsel at the hearing. Having reviewed the evidence submitted and the post-hearing submissions, I find that the Investigations Officer has proven, by a fair preponderance of the evidence, the charge against Misuraca.

I. The IBT Constitutional Provisions

The charge against Misuraca implicates the following two provisions of the IBT Constitution:

1. Article II, Section 2(a), which 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 By-laws and laws of 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]

2. Article XIX, Section 6 (b)¹, which 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 By-laws or rules of order, or failure to perform any of the duties specified thereunder.

¹ At a November 1, 1989, special meeting of the IBT's General Executive Board ("GEB") a resolution was adopted purporting to review and interpret certain provisions of the IBT Constitution, including Article XIX, Section 6(b). In a decision dated January 11, 1990, in the matter of Investigations Officer v. Friedman and Hughes, I rejected the GEB's interpretation as unreasonable. United States District Judge David N. Edelstein endorsed and approved my ruling in his Opinion and Order dated March 13, 1990. U.S. v. International Brotherhood of Teamsters, 735 F.Supp. 506 (S.D.N.Y. 1990). In an Opinion dated June 1, 1990, the United States Court of Appeals for the Second Circuit affirmed Judge Edelstein's March 13, 1990, ruling. U.S. v. International Brotherhood of Teamsters, 905 F.2d 610 (2d Cir. 1990).

- (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.
- (4) Secession, or fostering the same.
- (5) Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations. Causing or participating in an unauthorized strike or work stoppage.
- (6) Disruption of Union meetings, or assaulting or provoking assault on fellow members or officers, or failure to follow the rules of order or rulings of the presiding officer at meetings of the Local Union, or any similar conduct in, or about union premises or places used to conduct union business.
- (7) Crossing an authorized primary picket line established by the member's Local Union or any other subordinate body affiliated with the International Union.

II. The Investigations Officer's Case

A. The Declaration of Robert D. Ulmer

At the hearing, the Investigations Officer introduced, as Investigations Officer Ex. 1, the sworn declaration of Robert D. Ulmer (the "Ulmer Declaration"). Agent Ulmer is a Supervisory Special Agent of the Federal Bureau of Investigation ("FBI") in charge of the organized crime squad in Buffalo, New York. Ulmer Declaration at ¶1. Agent Ulmer is also the Coordinator of the Organized Crime Program for the Buffalo Office of the FBI.

As a Supervisory Special Agent, Agent Ulmer is responsible for supervising the activities of several Special Agents who conduct investigations of organized criminal activities, primarily concerning members and associates of the Buffalo Family of La Cosa Nostra. Id. at ¶2. As the Coordinator of the Organized Crime Program in Buffalo, Agent Ulmer is responsible for the monitoring, coordinating, and arranging of all organized crime investigations in the geographical territory of the Buffalo Office which includes the city of Rochester, New York, and its surrounding area. Ibid. The primary focus of his assignment as the Coordinator of the Organized Crime Program has been to monitor, coordinate, and manage investigations regarding criminal activities of members and associates of the Buffalo Family and Rochester Family of La Cosa Nostra. Ibid.

Agent Ulmer has been involved in numerous organized crime investigations in the geographic territory of the FBI's Buffalo Office, including those in the vicinity of Rochester. Id. at ¶3. He has also reviewed La Cosa Nostra activities in and around Rochester and criminal activities involving Local 398 with other Special Agents of the FBI who are familiar with those areas of investigation. Ibid. Agent Ulmer has also reviewed documentary and electronically recorded information maintained by the FBI regarding La Cosa Nostra activities in the vicinity of Rochester and concerning Local 398 in particular. Ibid.

Immediately prior to his current argument, Agent Ulmer was assigned from June of 1989 to March of 1990 as a Supervisory Special Agent in the Organized Crime Section of the Criminal Investigative Division. Id. at ¶4. In that capacity, he was responsible for monitoring, coordinating, and authorizing organized crime investigations regarding La Cosa Nostra in several FBI field offices, including the Buffalo Office. Ibid.

From 1972 to 1978, Agent Ulmer was assigned to various regional offices of the FBI, in which he conducted investigations regarding organized crime, white collar crime and labor racketeering. Id. at ¶¶5-6.

Given this vast experience, Agent Ulmer is familiar with FBI investigations involving La Cosa Nostra members and associates, and intelligence information gathered by the FBI regarding La Cosa Nostra activity. Id. at ¶7. In connection with his employment as a Special Agent, Agent Ulmer has also met, interviewed, observed, and arrested members and associates of La Cosa Nostra. Ibid.

Agent Ulmer has testified in numerous criminal trials and other legal hearings and proceedings concerning members and associates of La Cosa Nostra in federal courts. Id. at ¶8.

Agent Ulmer has also provided instruction to newly hired Special Agents in training at the FBI Training Academy in Virginia, regarding various subjects, including the nature of organized crime and ways to conduct investigations concerning organized crime. Id. at ¶9. He has also lectured to officials from other Federal,

State, local and foreign law enforcement agencies concerning the nature and investigation of organized crime at a conference held by the Pennsylvania Crime Commission in Norfolk, Virginia, in September of 1989. Ibid.

Misuraca made no challenge to Agent Ulmer's credentials. Given Agent Ulmer's extensive background and experience, I accept him as an expert knowledgeable in the investigation into organized crime and the structure of organized crime, specifically in the Buffalo and Rochester areas of New York.

B. Angelo Amico's Organized Crime Ties

In paragraphs 22-26 of his Declaration, Agent Ulmer details the existence and historic activity of the Rochester Family of La Cosa Nostra.

As for Angelo Amico, Agent Ulmer indicates that "Amico is considered by the Federal Bureau of Investigation to be a high-ranking member of the Rochester Family." Ulmer Declaration at ¶27. He is also identified as a member of the faction of the Rochester Family of La Cosa Nostra, known as the "A Team." Ibid. This conclusion is corroborated by many sources. In 1987, Amico was listed by the Permanent Subcommittee on Investigations of the United States Senate as the Acting Boss of the Rochester Family of La Cosa Nostra. Ibid. and Ex. A. thereto. Amico was also named as a defendant and described as a leading member of a criminal racketeering "enterprise" in the Western District of New York in

the case of United States v. Angelo Amico, et al., CR-87-00177L. Ibid. and Exs. D, E & F thereto. Agent Ulmer describes the "enterprise" in that case as identical to the Rochester Family of La Cosa Nostra. Ibid. Amico entered a guilty plea in that prosecution to two counts. Ibid. and Ex. G thereto. Moreover, during his testimony in the case of United States v. Rosotti, et al., CR-82-156, Anthony Oliveri, a self-admitted member of the Rochester Family of La Cosa Nostra and a participant in the Government's Federal Witness Security Program, testified that Amico was present at Oliveri's induction into the Rochester Family of La Cosa Nostra. Ibid. and Ex. V at pp. 2895-2896.

I find the evidence in the Ulmer Affidavit to be credible and, noting it was not refuted by any evidence from Misuraca, hold that it establishes that Amico has been at all pertinent times a high-ranking member of the La Cosa Nostra Rochester Family.

C. Misuraca's Association With Amico

In his deposition taken by the Investigations Office prior to the November 29, 1990, hearing, Misuraca testified that he knew Amico socially and he denied ever discussing union business with him. Ulmer Declaration at ¶71 and Ex. Y thereto at pp. 20-29. This is refuted by John Grande, a witness called to testify on behalf of the Investigations Officer. Since 1987, Mr. Grande has worked as a Special Agent with the Office of Labor Racketeering of the United States Department of Labor assigned to the Newburgh

Field Office in Rochester, New York. T11-6 to T17.² Prior to joining the Department of Labor, Agent Grande served as a member of the Rochester Police Department for 20 years, retiring with the rank of sergeant. T12-2 to 4. Since 1974 up to the time of his retirement, Agent Grande served as the supervisor in charge of the Intelligence Unit of the Special Criminal Investigation Section of the Rochester Police Department. T12-10 to 15. As part of his work in this Special Criminal Investigation Section, Agent Grande conducted investigations into organized crime. T12-16 to 18. Agent Grande was specifically involved in the investigation of Amico, which investigation led to his (Amico's) prosecution and subsequent conviction. T13-23 to T14-13.

As part of his work with the Rochester Police Department, Agent Grande was closely involved in the 1985 application for a court order authorizing the installation of an electronic eavesdropping device and video camera in the premises located at 169 St. Paul Street, Rochester, New York, "a commercial location known as a gambling establishment operated by Angelo Amico and others." T22-1 to T23-25. Later, authorization was received to transfer the surveillance equipment to 273 Central Avenue, another gambling establishment in Rochester where Amico had relocated to. T24-1 to T25-9. At the time the surveillance devices were moved to

² All transcript citations are to the transcript of the November 20, 1990, hearing. The first reference in the citation, in this case "T11," refers to the page number. The second reference, in this case "6 to 17," refers to the line numbers.

273 Central Avenue, Agent Grande began working with the Department of Labor, but maintained an interest in the Rochester Police Department's investigation and was kept apprised of the status of that investigation. T26-22 to T27-15.

As part of that surveillance, a March 4, 1986, conversation between Misuraca and Amico was intercepted. T31-14 to 18. At the hearing before me the audiotape of the meeting was played and a transcript of the conversation was also submitted. Investigations Officer Exs. U and 1AU1. Agent Grande listened to the tape of the March 4 intercepted conversation at the hearing, read along with the transcript, and confirmed that the tape reflected the same conversation that he had heard when he had first listened to the "duplicate working original." T52-20 and T53-4. Agent Grande also identified both voices on the tape, being familiar with Misuraca's voice and Amico's voice. T55-4 to 20.

I found Agent Grande qualified to offer opinion testimony regarding organized crime and its structure in the Rochester, New York area, pursuant to Fed. R. Evid. 702; and he testified as to his interpretation of the conversation between Misuraca and Amico. Agent Grande established that the conversation took place in Amico's office behind a newly opened gambling establishment in Rochester. T56-6 to 10. To enter that office you either had to be accompanied by Amico or directed to enter by him. T56-13 to 16. Agent Grande further testified that there was a specific purpose to the meeting. T55-21 to 27.

Agent Grande further states that the conversation eventually turned to IBT Local 398, and employment with that Local. T57-17 to 19. He noted that Misuraca and Amico were discussing the state of affairs in the Union and the "apparent disdain that other labor organizations within the Rochester community have for the Teamsters." (T59-7 to 13).

At one point during the intercepted conversation, Amico tells Misuraca that:

I don't care who it is, before ya get going, ya gotta check with me. Regardless who the job is for.
[Investigations Officer Ex. (A)(U)(1) at p. 3].

At another point Amico tells Misuraca:

You know, it gotta, it's gotta to the point where ya just can't assume that somebody's alright when he's going ta work. They have to check with us first, no matter who it is.
[Investigations Officer Ex. (A)(U)(1) at p. 6].

As for these segments, Agent Grande stated that Amico is instructing Misuraca how to assign, appoint and clear people for employment in Local 398. T62-6 to 11. As Agent Grande put it:

In my opinion, it refers to Amico giving instructions to Misuraca that he's not to put anyone to work without Amico and LCN in a larger picture.
[T62-1 to 4]

At another point during the conversation, where Amico tells Misuraca: "I don't want anybody moved," (Investigations Officer Ex. (A)(U)(1) at p. 7), Grande indicates that Amico is again directing Misuraca how to handle internal IBT Local 398 matters. T63-22 to 25. Agent Grande stated that Amico again was addressing Local 398 business when he tells Misuraca, "No, they made a deal along with

the company that's there, we let 'em stay." (Investigations Officer Ex. (A)(U)(1) at p. 8). T63-25 to T64-24.

Agent Grande's interpretation of the intercept is consistent with my own interpretation. More importantly, Misuraca's own attorney concedes "that the tape recording and the transcript admit to this allegation of association [a]nd not only admits, but it goes on to . . . the discussion of union activities" T50-7 to 15.³

D. Misuraca's Objection To The Introduction of The Intercept and the Transcript

While Misuraca does not dispute that the tape accurately depicts the exchange between Misuraca and Amico, he does challenge its admissibility as violative of the "applicable sections of the wiretapping law." Misuraca Post-Hearing Memorandum at p. 8.

Misuraca specifically alleges a violation of 18 U.S.C. §2518(8)(d), which provides that the Judge who issued the intercept order shall "cause to be served on persons named in the order . . . and such other parties to the intercepted conversations as the Judge may deem in his discretion that is in the interest of justice, an inventory which shall include notice of" the entry of the order and the fact that oral communications were intercepted. Misuraca is contending that he never received such notice and was not advised of the intercept until the Investigations Officer

³ Agent Ulmer's interpretation of this intercept is also consistent with Agent Grandes. Ulmer Declaration at para. 72.

deposed him in December of 1989. At the hearing before me, however, Agent Grande testified that Misuraca has been notified of the interception. Agent Grande had been informed of the service on Misuraca of the notice of intercept by the office that actually served the notice on Misuraca. T35-20 to T37-13. Agent Grande was not cross-examined on this issue. Moreover, Misuraca did not testify before me and thus I have no denial of record that he received the notice of intercept. Even though Agent Grande's testimony regarding the service of the notice is based on hearsay, in this instance, especially given that it has not been challenged by any evidence, I find the Agent's testimony reliable. It is well settled that given the nature of these proceedings hearsay testimony if reliable is admissible. United States v. IBT (Application XII), slip op., (S.D.N.Y. August 27, 1990) at p. 12.

Misuraca also relies on 18 U.S.C. §2517 which describes the uses which may be properly made by any "investigative or law enforcement officer," of information acquired under a federally authorized intercept. Subsections (1) - (3) provide respectively that such information may be: (1) disclosed, in the line of duty, to "another investigative or law enforcement officer;" (2) used, as appropriate, in the performance of one's duties; or (3) disclosed in the form of testimony in any federal or state proceeding. Subsection (5) provides that where the information in issue relates to offenses other than those specified in the order of authorization, the uses discussed under subsections (1) and (2) are

unaffected, but prior judicial application must be made before the testimony discussed in subsection (3) is given.⁴ In this matter we are dealing with information which relates to offenses other than those specified in the original order.

Misuraca's objection is apparently based on the assumption that the intercepted recordings used at the hearing were made available and disclosed to the Investigations Officer in violation of 18 U.S.C. §2517. In other words the "law enforcement officers" did not comply with either subsection (1) or (2), as described above, in making the recording available to the Investigations Officer. It is apparently further contended that subsection (3) was violated given that Agent Grande testified about the intercept without the benefit of a prior judicial application.

The protections embodied in 18 U.S.C. §2517 serve to preserve the privacy interest of those captured on intercepts. Once the intercepted material has been disclosed in a public proceeding the requirements of disclosure found in the statute "no longer govern." County of Oakland v. City of Detroit, 610 F. Supp. 364, 369 (E.D. Mich.S.D. 1984). In this matter, the intercept in question was court-approved and tapes from it have already been used in a federal criminal proceeding against Amico. T33-5 to 22. "Under

⁴ Misuraca also claims a violation of 18 U.S.C. §2518(8)(a) which provides, in pertinent part, that the Judge who issued the authorization order shall seal such intercepted conversations. Section 2518(8)(a), however, contemplates disclosure of duplicate recordings in accordance with 18 U.S.C. §2517(1), (2) and (3), thus, the merit of Misuraca's reliance on §2518(8)(a) hinges on the applicability of §2517.

such circumstances the privacy interests of [Misuraca] cannot stand as an obstacle" to the Investigations Officer's use of the tapes in the hearing before me. County of Oakland, supra, 610 F. Supp. at 364.

Moreover, it seems clear that had the "law enforcement" authorities not determined that disclosure here would "be in accordance with the overall public interest . . . [and] compatible with the purposes of Title III," no disclosure would have been made in the first instance. National Broadcasting Co. v. U.S. Dept. of Justice, 735 F. 2d 51, 54-55 (2d Cir. 1984) ("[T]he government is in a position to make a judgment whether disclosure of the intercepted evidence will or will not be in accordance with the overall public interest . . . [and] compatible with the purposes of Title III.")

Lastly, Misuraca alleges a violation of 18 U.S.C. §2518(5) which provides in part:

Every order . . . shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter

This objection is without merit. First, whether the surveillance was conducted so as "minimize the interception of communications" cannot be determined on the basis of one intercepted conversation as Misuraca attempts to do here. See e.g. United States v. Garcia, 785 F.2d 214 (8th Cir. 1986). Moreover, there is nothing before me to indicate that the surveillance was conducted unreasonably.

Given my disposition to Misuraca's objections I need not determine whether the Investigations Officer is correct when he states that the wiretapping "statute is inapplicable to an internal labor union disciplinary proceeding such as this hearing."

E. Misuraca's Knowledge of Amico's Organized Crime Ties

At his deposition taken by the Investigations Officer, Misuraca testified that he read newspaper articles that Amico "ran the Rochester organized crime family." Ex. Y to the Ulmer Declaration at p. 20. While in the ordinary course, newspaper allegations would not impart knowledge of Amico's organized crime associations to a casual reader of the newspapers, Misuraca had direct access to Amico, met with him in his gambling establishment, and took directions from him regarding union activities. It is now settled that, "[i]n the absence of direct evidence of knowledge of the organized crime ties of an associate . . . such knowledge may be inferred from the duration and quality of the association." Investigations Officer v. Senese, Decision of the Independent Administrator (July 12, 1990) at p. 37, aff'd, U.S. v. IBT, slip op. (S.D.N.Y. August 27, 1990). In this case, Misuraca's admitted knowledge of the media publicity surrounding Amico, combined with the nature and circumstances surrounding their March 4, 1986, meeting, leads to the conclusion that Misuraca knew of Amico's mob connections when he met with him in 1986.

F. Misuraca's Other Defenses

Misuraca raises two additional defenses to the charges against him. Both of these defenses have been addressed in previous disciplinary hearings before me and thus can be dismissed in short order.

First, Misuraca argues that the charge against him is unconstitutionally vague. In raising this objection, Misuraca complains that the Investigations Officer should have charged Misuraca with violating Article XIX, Section 6(b)(2) and Article II, Section 2(a) of the IBT Constitution. Misuraca Post-Hearing Memorandum at p. 4. Article XIX, Section 6(b)(2) lists the "[v]iolation of . . . the oath of loyalty to the Local Union and the International Union" as a basis of a disciplinary charge. Article II, Section 2(a) prohibits a Union officer or member from "divulging union business with non-members." That the Investigations Officer may have charged Misuraca with violating other provisions of the IBT Constitution does not render the charge that was brought unconstitutionally defective. Moreover, Judge Edelstein has found such charges to be sufficiently specific and well within the requirements of the Labor Management Reporting And Disclosure Act (29 U.S.C. §411), the IBT Constitution and the Consent Order. United States v. IBT, 735 F.Supp 506 (S.D.N.Y.) (Application VII), aff'd, 905 F.2d 610 (2d Cir. 1990).

Misuraca also complains that the charge violates the one year statute of limitation found in the IBT Constitution, and that the

Consent Order's attempt to amend that period of limitation violates his "rights under the due process clause of the Federal Constitution and his rights against impairment of his contract with IBT in violation of Article I, Section 10 of the United States Constitution." Misuraca Post-Hearing Memorandum at pp. 6-7. It has been made clear for some time now that the Investigations Officer and the Independent Administrator are not limited by any period of limitation. United States v. IBT (Application II), 725 F.Supp 162, 166-167 (S.D.N.Y.), aff'd, 905 F.2d 610 (2d Cir. 1990). Misuraca's attempt to distinguish the District Court's ruling on Application II (involving Respondents Friedman and Hughes) is without merit. Misuraca notes that in his case, unlike the case under consideration in Application II, his prosecution "was barred by the one-year statute of limitations for some two years before entry of the Consent Decree purporting to enlarge the limitations period to five years." Misuraca Post-Hearing Memorandum at p. 6. To accept Misuraca's argument would be the same as imposing a limitation period on the Investigations Officer and the Independent Administrator of one year prior to the entry of the Consent Decree. Such an outcome would render the authority of the Court-officers to root out corruption in the IBT a virtual nullity. As stated by Judge Edelstein:

I find that the plain language of ¶ D.5, [of the Consent Decree], taken together with the spirit and intent of the Consent Decree as a whole, support the Independent Administrator's conclusion that the Court Officers are bound by no statute of limitations. The Consent Decree intended for the Court Officers to have no

less disciplinary power than the General President. To deduce a background one year statute of limitations would eviscerate the spirit and intent of that portion of the Consent Decree. I find that Friedman's and Hughes' analysis of the applicable statute of limitations for the Court Officers is flawed and must be rejected.

G. The Penalty To Be Imposed

1. Misuraca's Membership In The IBT And Local 398

The Investigations Officer has met his burden of proving this charge. Misuraca met with Amico in March of 1986, knowing Amico to be a leader of the La Cosa Nostra Rochester Family. While a single meeting of relatively short duration may, under other circumstances, require some mitigation of the penalty to be imposed, in this case no mitigation is warranted. The nature of this meeting concerned IBT Local 398, Misuraca's Local. Amico was giving orders to Misuraca concerning Local 398 and Misuraca posed no objection to accepting the orders. This conversation is all the more troubling when considered against the factual background that numerous individuals, identified as members and associates of the Rochester Family of La Cosa Nostra, have been members, shop stewards, business agents, or elected officers of that Local over the years. Ulmer Declaration at ¶¶ 42-57. See also T40-11 to T46-5.

In light of all the circumstances, I find that the only just penalty is to permanently bar Misuraca from holding any IBT-affiliated Union position and from drawing money or compensation therefrom, or from any other IBT-affiliated source. Thus, Misuraca

is forever barred from again seeking the positions he forfeited following the filing of this Charge. He is also permanently barred from seeking any new positions. Misuraca is also barred from continuing in any other IBT-affiliated positions he may currently still hold. In this connection, I note that the IBT current "ALPHA" list designates Misuraca as a Trustee of Joint Council 17 in Rochester.

As for Misuraca's membership in the IBT, Misuraca "requests the imposition of a sanction that will permit him the opportunity to continue his employment as an independent trucker with union membership." Misuraca Post-Hearing Memorandum at p. 11.

As argued by Misuraca:

To have this privilege revoked would be to impose a Draconian consequence on an individual who for over thirty years of his lifetime has known no other kind or type of employment other than that associated with his being a truck driver under union auspices.
[Id.]

I sympathize with Misuraca's plight and will allow him to retain his IBT membership so that he can continue to work as an independent truck driver, but Misuraca is permanently barred from membership in Local 398.

2. Misuraca's Benefits

a. The Pension Funds

Misuraca is eligible for two pension benefits. One pension, the Local 398 Pension Fund, was funded with Local 398's

contributions during Misuraca's tenure as Vice President and Business Agent of that Local.

The second pension, the Utica Pension Fund, was also funded by contributions by Local 398, but these contributions were discontinued in July 1990 following Misuraca's resignation as Vice President and Business Agent.

Misuraca is entitled to receive these two pensions. This is consistent with my decision 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), as well as 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). In Senese, however, in order to protect the assets of Senese's Local and prevent the Local's association with a member of organized crime (Senese), I directed the Local and any other IBT-affiliated entity that may have contemplated doing so, to discontinue making payments of Union funds to any health, welfare, or employee benefit plan on Senese's behalf.

I recognize that Misuraca was not found to have been a member of organized crime, but rather was found to have associated with a member of organized crime. Under these circumstances, I find that it would be equally egregious for an IBT-affiliated entity to squander its funds on Misuraca, thus I direct that no further contributions are to be made by the IBT or any IBT-affiliated

source on Misuraca's behalf to either the Local 398 Pension Fund or the Utica Pension Fund. See Investigations Officer v. Cozza, Supplemental Opinion of the Independent Administrator (February 22, 1991).

b. The Severance Pay

At the time of Misuraca's resignation as Vice President and Business Agent of Local 398, IBT Joint Council 17 paid Misuraca the sum of \$5,000 as severance pay. Misuraca indicates that this severance pay "accrue[s] to those having served as a member of Joint Council 17." February 16, 1991, letter of Norman A. Palmiere, Esq., at p. 2. If it is discovered that this payment was made to Misuraca in anticipation of disciplinary action, the Investigations Officer may, if he deems it appropriate, bring charges against Misuraca and the officers responsible for such payment.

c. The Local 398 Health And Welfare Fund

Misuraca is also a participating member of the Local 398 Health and Welfare Fund. Local 398 pays a monthly premium of \$313 on Misuraca's behalf. Consistent with my treatment of the two pension funds, I direct that no further contributions are to be made by the IBT or any IBT-affiliated source, including, of course, Local 398, on Misuraca's behalf to the Local 398 Health and Welfare


Fund. Misuraca may, if he wishes, make future contributions from his own personal funds to maintain future coverage.

d. Attorneys Fees

Misuraca has represented that none of the legal fees in connection with this matter have or will be paid by either the IBT or any IBT-affiliates. Notwithstanding this representation, it must be noted that none of Misuraca's legal fees should be paid by the IBT, Local 398 or any other IBT affiliated source. Union officials charged with misconduct and found to have committed misconduct, may not have their legal fees paid by the Union. United States v. Local 1804-1 ILA, 732 F.Supp. 434, 436-437 (S.D.N.Y. 1990).

H. The Voluntary Stay

I will stay the imposition of the penalties imposed herein until such time as Judge Edelstein reviews these finding and the penalties imposed, all of which I will submit to him by way of Application.



Frederick B. Lacey
Independent Administrator

Dated: March 6, 1991.