

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

LYNN R. LANPHEAR, :
Defendant. :

06-CR-6099 T

PLEA AGREEMENT

The defendant, LYNN R. LANPHEAR, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a one count Information charging a violation of Title 29, United States Code, Section 501 (embezzlement and theft of labor union assets), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$10,000, or both, a mandatory \$100 special assessment and a term of supervised release of at least 2 years and up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that the Court must require restitution to be paid to Graphics Communications, Local Union #503-M, as part of the sentence pursuant to Sentencing Guidelines §5E1.1 and Title 18, United States Code, Section 3663A.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 2 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in Paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

4. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE CRIME

5. The defendant understands the nature of the offense set forth in Paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

First, the entity embezzled from was a labor union organization within the meaning of 29 U.S.C. §§ 402(i) and 402 (j);

Second, the defendant was an officer of the labor organization within the meaning of 29 U.S.C. §§ 402(n) during the period when the offense occurred;

Third, the actions of the defendant constituted embezzlement, stealing, or unlawful and willful abstraction or conversion to his own use or that of another; and

Fourth, the assets taken were moneys, funds, securities, properties, or other assets of the labor organization.

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

a) Graphic Communications, Local Union #503-M ("GCIU") is, and was at all applicable periods, an independent labor organization engaged in an industry affecting commerce within the meaning of 29 U.S.C. §§ 402(i) and 402(j) as evidenced by a collective bargaining agreement with Hammer Lithograph Corporation, an employer engaged in interstate commerce.

b) The defendant, LYNN R. LANPHEAR, was President of GCIU from 1995 through August 2003.

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c) Between March 1998 and July 2003, during the time that LANPHEAR was GCIU's President, LANPHEAR willfully and unlawfully converted union funds to his own use by receiving duplicate reimbursements from GCIU's Training Fund and General Fund.

BASE OFFENSE LEVEL

7. The government and the defendant agree that § 2B1.1 of the Sentencing Guidelines Manual, effective November 5, 2003 applies to the offense of conviction and provides for a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS
USSG CHAPTER 2 ADJUSTMENTS

8. The government and the defendant agree that the following specific offense characteristic does apply:

(a) § 2B1.1(b)(1)(B): the total loss (including relevant conduct) was in excess of \$5,000 (namely, \$8,441.29) and thus there is a 2 offense level increase.

USSG CHAPTER 3 ADJUSTMENTS

9. The government and the defendant agree that the following adjustments to the base offense level does apply:

The 2 level upward adjustment of Guidelines § 3B1.3 (abuse of trust/special skill).

ADJUSTED OFFENSE LEVEL

10. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 10.

ACCEPTANCE OF RESPONSIBILITY

11. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines § 3E1.1(a) (acceptance of responsibility), which would result in a total offense level of 8.

CRIMINAL HISTORY CATEGORY

12. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

13. It is the understanding of the government and the defendant that, with a total offense level of 8 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 0 to 6 months, a fine of \$1,000 to \$10,000, and a period of supervised release of 2 to 3 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in Paragraph 1 of this agreement.

14. The defendant understands that the Probation Office will make an independent determination of the defendant's total offense

level and criminal history category and that the Court will ultimately determine the appropriate total offense level and criminal history category. The defendant will not be entitled to withdraw the plea of guilty because of the Court's failure to adopt any Sentencing Guidelines calculations set forth in this agreement or because of the imposition of a sentence imposed above the advisory range.

15. The government and the defendant reserve the right to recommend a sentence outside the Sentencing Guidelines range set forth above. This paragraph reserves the right to the government and the defendant to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

III. STATUTE OF LIMITATIONS

16. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to the embezzlement of assets which is not time barred as

of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

IV. GOVERNMENT RIGHTS AND RESERVATIONS

17. The defendant understands that the government has reserved the right to:

a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

c. advocate for a specific sentence [including the amount of restitution and/or fine and the method of payment];

d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor.

e. oppose any application for a sentence outside the advisory range.

18. The defendant agrees that any financial records and information provided by the defendant to the Probation Office,

before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

V. APPEAL RIGHTS

19. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II above, notwithstanding the manner in which the Court determines the sentence. The defendant further agrees not to appeal a restitution order which does not exceed the amount set forth in Section I of this agreement.

20. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

21. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section II above, notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VI. TOTAL AGREEMENT AND AFFIRMATIONS

22. This plea agreement represents the total agreement between the defendant, LYNN R. LANPHEAR, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

TERRANCE P. FLYNN
United States Attorney
Western District of New York

BY:


RICHARD A. RESNICK
Assistant U. S. Attorney

Dated: June 12, 2006

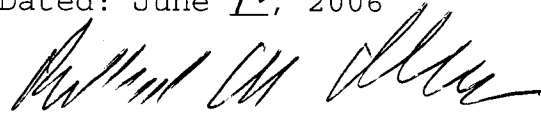
I have read this agreement, which consists of 11 pages. I

have had a full opportunity to discuss this agreement with my attorney, Richard W. Ohlson, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.



LYNN R. LANPHEAR
Defendant

Dated: June 12, 2006



RICHARD W. OHLSON, Esq.
Attorney for the Defendant

Dated: June 12, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

06-CR-60997

-vs-

INFORMATION
(Felony)

LYNN R. LANPHEAR,

Defendant.

Violation:
29 U.S.C. § 501

COUNT 1

The United States Attorney Charges That:

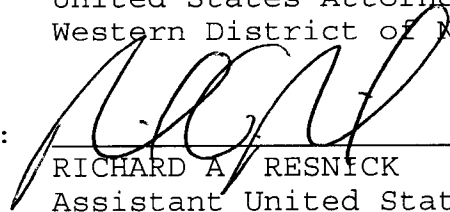
Beginning in or about March 1998^{5 RAR}, and continuing until in or about July 2003, in the Western District of New York, the defendant, LYNN R. LANPHEAR, while President of Graphic Communications, Local Union #503-M, a labor organization engaged in an industry affecting commerce, did embezzle, steal, and unlawfully and willfully abstract and convert to his own use, the moneys, funds, securities, property, and other assets of said labor organization, in the approximate amount of \$8,441.29.

All in violation of Title 29, United States Code, Section 501.

Dated: Rochester, New York, June 12, 2006.

TERRANCE P. FLYNN
United States Attorney
Western District of New York

BY:



RICHARD A. RESNICK
Assistant United States Attorney