



DEPARTMENT OF JUSTICE
THOMAS E. JOHNSTON
 UNITED STATES ATTORNEY
 NORTHERN DISTRICT OF WEST VIRGINIA

P. O. BOX 190
 ELKINS, WV 26241
 (304) 636-1739 (304) 636-1967 FAX

P. O. Box 591
 WHEELING, WV 26003

♦♦♦♦

CLARKSBURG FEDERAL CENTER
 320 WEST PIKE STREET, SUITE 300
 CLARKSBURG, WV 26301-2710
 (304) 623-7030 (304) 623-7031 FAX

(304) 234-0100
 (304) 234-0110 FAX (MARR) ♦ (304) 234-0111 FAX (CRIMINAL)
 (304) 234-0112 FAX (CIVIL)

U. S. COURTHOUSE
 217 W. KING STREET, SUITE 400
 MARTINSBURG, WV 25401-3286
 (304) 262-0590 (304) 262-0591 FAX

August 29, 2003

Thomas Dyer, Esq.
 349 Washington Avenue
 P.O. Box 1332
 Clarksburg, WV 26302-1332

In re: **United States v. James D. Cooper**

Dear Mr. Dyer:

This will confirm conversations with you concerning your client, James D. Cooper (hereinafter referred to as Mr. Cooper or "defendant").


All references to the "Guidelines" refer to the guidelines established by the United States Sentencing Commission, effective November 1, 1987, as amended.

It is agreed between the United States and your client as follows:

1. The defendant [Mr. Cooper] will waive his right to have his case presented to a Federal Grand Jury and plead guilty to a one-count Information to be filed in this district charging him with **Falsifying, Concealing, and Destroying Records**, in violation of Title 29, United States Code, Section 439(c).


 James D. Cooper, Defendant

9/10/03
 Date Signed


 Thomas Dyer, Esq.
 Counsel for Mr. Cooper

9-10-03
 Date Signed

2. The maximum penalty to which the defendant will be exposed by virtue of his plea of guilty, as stated in paragraph 1 above, is:

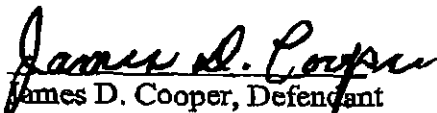
- A. imprisonment for a period of one (1) year, a fine of \$10,000.00, and a term of not more than 1 year of supervised release

and a special mandatory assessment of \$100.00 (18 U.S.C. Section 3013) which must be paid before the date of sentencing by money order or certified check, made payable to the United States District Court. It is also understood that the defendant might be required by the Court to pay the costs of his incarceration.


3. The defendant agrees to cooperate fully with the Office of the United States Attorney and other law enforcement agencies by meeting with them, if requested, and divulging to them information about his activities and the activities of others to the best of his knowledge. In providing such information, the defendant will be completely forthright and truthful. The defendant agrees to provide signed, sworn statements and truthful testimony relative thereto before any grand jury and petit jury upon request. The defendant will agree to submit to a polygraph examination if requested to do so.

4. Nothing contained in any statement or any testimony given by the defendant pursuant to paragraph 3 will be used against him as the basis for any subsequent prosecution. It is understood that any information obtained from the defendant in compliance with this cooperation agreement will be made known to the sentencing Court; however, pursuant to Guideline 1B1.8, such information may not be used by the Court in determining the defendant's applicable guideline range. However, this agreement does not prevent the defendant from being prosecuted for any violations of other Federal and state laws he may have committed should evidence of any such violations be obtained from an independent legitimate source, separate and apart from that information and testimony being provided by him pursuant to this agreement. In addition, nothing contained in this agreement shall prevent the United States from prosecuting the defendant for perjury or the giving of a false statement to a federal agent, if such a situation should occur by virtue of his fulfilling the conditions of paragraph 3 above.

5. At final disposition, the United States will advise the Court of the defendant's forthrightness and truthfulness, or failure to be forthright and truthful, and ask the Court to give the same such weight as the Court deems appropriate.


James D. Cooper, Defendant

9/10/03
Date Signed


Thomas Dyer, Esq.
Counsel for Mr. Cooper

9-10-03
Date Signed

6. There have been no representations whatsoever by any agent or employee of the United States, or any other law enforcement agency, as to what the final disposition in this matter should and will be. This agreement includes **nonbinding** recommendations by the United States, pursuant to Rule 11(e)(1)(B); however, the defendant understands that the Court is **not** bound by these sentence recommendations, and that the defendant has **no** right to withdraw a guilty plea if the Court does not follow the sentencing recommendations set forth in this plea agreement.


7. Provided the defendant pays the \$100.00 special assessment fee on or before the day of sentencing, and provided the United States Probation Office recommends, the United States will make the following **nonbinding** recommendations: 1) if, in the opinion of the United States Attorney's Office, the defendant accepts responsibility, and the probation office recommends a two-level reduction for "acceptance of responsibility," as provided by Guideline 3E1.1, the United States will concur in the recommendation; In order to be eligible for this further reduction, the defendant must execute the plea agreement on or before **September 12, 2003** and return an executed copy to the United States by 5:00 P.M. that day; 3) the United States will recommend that the defendant receive a sentence of unsupervised probation.

8. The defendant agrees to never again hold a position of trust, authority, or leadership in a labor organization.

9. If in the opinion of the United States, the defendant either engages in conduct defined under the Application Notes 3(a) through (i) of Guideline 3C1.1, fails to cooperate as promised, fails to pay the special assessment prior to the sentencing hearing, or violates any other provision of this plea agreement, then the United States will not be bound to make the foregoing recommendations, and the defendant will not have the right to withdraw the plea.


James D. Cooper, Defendant

9/10/03
Date Signed


Thomas Dyer, Esq.
Counsel for Mr. Cooper

9.10.03
Date Signed

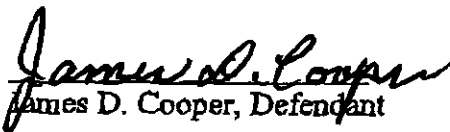
10. Pursuant to Sections 6B1.4, and 1B1.3 of the Guidelines, the parties hereby stipulate and agree that the total relevant conduct of the defendant with regard to the Information is as follows:

The defendant was the president of the PACE AFL-CIO Local Union 5-276. During his presidency, the defendant falsified and submitted numerous Lost Time and Expense Vouchers in order to obtain reimbursements from the Union to which he was not entitled. The defendant did in fact obtain these monies. The parties agree in their estimation that the appropriate United States Sentencing Guideline is § 2B1.1 (a). The parties further agree that the monetary loss resulting from the defendant's activities does not exceed \$5,000.00. 2B1.1(b)(1)(A). The parties further agree that there are no other applicable Specific Offense Characteristics and no applicable Cross References.


The parties understand that, pursuant to Section 6B1.4(d), the Court will make its own determination with the help of the pre-sentence report and is not bound by the above stipulation or required to accept same. The defendant understands and agrees that, should the Court not accept the above stipulation, he will not have the right to withdraw his plea.

11. The defendant agrees to pay restitution for the monetary loss attributable to his criminal conduct during the entire February 25, 1997 to October 25, 2001 time period even though the Statute of Limitations might otherwise exclude from consideration and tabulation some instances of misconduct occurring during that period. Specifically, the defendant agrees to repay the amount of \$5,000.00.

12. The United States reserves the right to provide to the Court and the United States Probation Office, in connection with any pre-sentence investigation that may be ordered pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, or in connection with the imposition of sentence should the Court, pursuant to Rule 32(c)(1), not order a pre-sentence investigation, relevant information including the defendant's background, criminal record, offense charged in the indictment and other pertinent data appearing at Rule 32(c)(2) of the Federal Rules of Criminal Procedure as will enable the Court to exercise its sentencing discretion. The United States also retains the right to respond to any questions raised by the Court, to correct any inaccuracies or inadequacies in the anticipated pre-sentence report to be prepared by the Probation Office of this Court, and to respond to any written or oral statements made by the Court, by the defendant or his counsel.


James D. Cooper, Defendant

9/10/03
Date Signed


Thomas Dyer, Esq.
Counsel for Mr. Cooper

9.10.03
Date Signed

13. The defendant is aware that Title 18, United States Code, Section 3742 affords him the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. The defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section 2255. In exchange for the defendant's waiver, the United States waives its right to appeal the sentence. In the event that there would be an appeal, however, each party reserves the right to argue in support of the sentence.

14. If the defendant's plea is not accepted by the Court or is later set aside or if the defendant breaches any part of this agreement, then the Office of the United States Attorney will have the right to void this agreement.

15. The above Fourteen (14) paragraphs constitute the entire agreement between Mr. Cooper and the United States of America in this matter. There are no agreements, understandings or promises between the parties other than those contained in this agreement.

Very truly yours,

THOMAS E. JOHNSTON
United States Attorney

By:

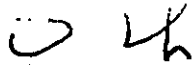
David J. Perri
Assistant United States Attorney

Thomas Dyer, Esq.
Aug. 29, 2003
Page 6

As evidenced by my signature at the bottom of the six (6) pages of this letter agreement, I have read and understand the provisions of each paragraph herein and, hereby, fully approve of each provision.


James D. Cooper, D.

9/10/03
Date Signed


Thomas Dyer, Esq.
Counsel for Mr. Cooper

9.10.03
Date Signed

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES D. COOPER,

Defendant.

Criminal No. _____

Violation: 29 U.S.C. 439(c)

INFORMATION

The United States Attorney charges that:

COUNT ONE

(Falsifying, Concealing, and Destroying Records)

At all times material to this Information, the PACE AFL-CIO Local Union 5-276 was a labor organization in an industry affecting commerce within the meaning of Title 29, § 402(i) and § 402(j) of the United States Code.

In or between December, 1998 and April, 2001 at or near Clarksburg, Harrison County, West Virginia, within the Northern District of West Virginia, defendant **James D. Cooper**, did willfully falsify, conceal, withhold, and destroy books, records, reports, and statements required to be kept by any provision of Subchapter III, Chapter 11, Title 29 of the United States Code; which is to say that he willingly falsified PACE AFL-CIO Local Union 5-276 records and statements relating to his lost time claims which were required to be kept under 29 U.S.C. § 436.

IN VIOLATION OF TITLE 29, UNITED STATES CODE, SECTION 439(c).

THOMAS E. JOHNSTON,
United States Attorney