

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

UNITED STATES OF AMERICA            )  
  )  
  )     No. 05 CR 50034  
  )     Judge Philip G. Reinhard  
  )  
MICHAEL T. MOORE                    )

**WAIVER OF INDICTMENT**

I, MICHAEL T. MOORE, individually and through my attorney, PAUL FLYNN, acknowledge as follows:

1. I have been provided with a proposed criminal information, a copy of which is attached hereto, charging me with the offense of embezzlement of approximately \$47,939.53 from Machinists, AFL-CIO Local Lodge 1269 of the International Association of Machinists and Aerospace Workers (hereinafter "Lodge 1269") in Genoa, Illinois, from on or about February 6, 2002, to on or about October 7, 2002, in violation of 29 U.S.C. § 501(c).


2. I understand that I have the right to have the charge against me contained in the proposed criminal information prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members.


3. I hereby waive my right to have the charge against me contained in the proposed criminal information prosecuted by an indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that I have been prosecuted by information.

4. Other than as provided in paragraph three, I understand that by waiving indictment

I am not giving up any defenses which I may have to the charge against me contained in the proposed criminal information.

5. I have read this waiver, carefully reviewed each provision of it with my attorney, and understand its meaning. Understanding the meaning of this waiver, I knowingly and voluntarily enter it in open court, this 13<sup>th</sup> day of APRIL, 2005.

  
\_\_\_\_\_  
MICHAEL T. MOORE  
Defendant

  
\_\_\_\_\_  
PAUL FLYNN  
Attorney for Defendant  
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Rockford, Illinois 61101  
815-961-0800

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) No. 05 CR 50034  
 ) Judge Philip G. Reinhard  
MICHAEL T. MOORE )

**PLEA AGREEMENT**

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, MICHAEL T. MOORE, and his attorney, PAUL FLYNN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the present case. This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Plea Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Plea Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, MICHAEL T. MOORE, and his attorney, PAUL FLYNN, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the information in this case with embezzling \$47,939.53 of union funds, a felony violation of Title 29, United States Code, Section 501(c).

2. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to the charge contained in the information filed in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in the information filed in this case. In pleading guilty, the defendant admits the following facts and that those facts establish his guilt and relevant sentencing facts beyond a reasonable doubt.

(a) In general, from on or about February 6, 2002, to on or about October 7, 2002, while he was the Secretary/Treasurer of AFL-CIO Local Lodge 1269 of the International Association of Machinists and Aerospace Workers (hereinafter "Lodge 1269"), in Genoa, Illinois, defendant embezzled, stole, and unlawfully and willfully converted to his own use, without authorization or approval of Lodge 1269 or any of its other officers, approximately \$47,939.53 of the money and funds of Lodge 1269.

(b) In particular, during the time period of February 6, 2002 through October 7, 2002, Lodge 1269 was a labor organization engaged in an industry affecting interstate commerce. Members of Lodge 1269 were employed by AG Communication Systems Corporation, in Genoa, Illinois. AG Communication Systems Corporation develops and manufactures communications products and provides telephone services to government, businesses, and residential customers in interstate commerce. Defendant held the position of Secretary/Treasurer of Lodge 1269 from October 2001 to October 7, 2002. In that position, defendant's duties included keeping and maintaining Lodge 1269's financial records, depositing all funds received by the union into Lodge

1269's bank accounts, and paying union debts by writing checks drawn on Lodge 1269's bank account. All checks drawn on Lodge 1269's account required the signature of two officers, one of which could be the Secretary/Treasurer.

On fifty-two (52) occasions, between February 6, 2002 through October 7, 2002, defendant embezzled a total of \$47,939.53 belonging to Lodge 1269. Defendant wrote the checks payable to himself, then signed and negotiated the 52 unauthorized checks written on Lodge 1269's checking account at Citizens's First National Bank in Genoa, Illinois. Defendant was not entitled to those funds. On fifty (50) of these checks, defendant forged the co-signature of the President of Lodge 1269. Defendant cashed thirty-four (34) of the checks, totaling \$17,492.00, at Lodge 1269's bank in Genoa, Illinois, and deposited the proceeds from the remaining eighteen (18) checks, totaling \$30,447.53, into his personal accounts at the Illinois Community Credit Union in DeKalb, Illinois. The funds defendant embezzled were used for his own personal use and benefit. In an attempt to conceal the embezzlement, defendant destroyed the original cancelled checks and bank statements which were mailed to his home address, and created false monthly bank account statements of Lodge 1269 on his home computer which he provided to Lodge 1269's auditors for a routine internal audit of the financial records of Lodge 1269.

As a result of his actions to conceal the embezzlement, Lodge 1269 incurred \$1,191.75 in additional loss of union funds to obtain copies of missing bank records.

6. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28 United States Code, Section 994, the parties agree on the following points:

(a) The parties agree that pursuant to Guideline Section 1B1.1(a), the November 5, 2003, Sentencing Guideline Manual is applicable to this case.

(b) The parties agree that pursuant to Guideline Section 2B1.1(a), the base offense level for this offense is level 6.

(c) The parties agree that pursuant to Guideline Section 2B1.1(b)(1)(D), the offense level must be increased by 6 levels to level 12, because the loss exceeded \$30,000, but was less than \$70,000.

(d) The parties agree that pursuant to Guideline Section 3B1.3, the offense level must be increased by 2 levels to level 14, because defendant abused a position of private trust in a manner that significantly facilitated the commission or concealment of the offense.

(e) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline Section 3E1.1, a two-level reduction in the offense level is appropriate. Defendant acknowledges that if he falsely denies or frivolously contests facts which the court determines to be true, such action by defendant would be inconsistent with acceptance of responsibility, and the government's position as the defendant's acceptance of responsibility could change.

(f) Defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently within the meaning of Guideline Section 3E1.1(b); an additional one-point

reduction in the offense level is therefore appropriate, provided the court determines the offense level to be 16 or greater prior to the operation of Guideline Section 3E1.1(a).

(g) On or about April 13, 2004, in the Circuit Court of DeKalb County, Illinois, Case No. 03 CF 624, defendant was convicted of theft and was sentenced to 30 months conditional discharge, resulting in the assignment of one criminal history point pursuant to Guideline Section 4A1.1(c).

(h) On or about October 28, 2004, in the Circuit Court of Boone County, Illinois, Case Nos. 04 TR 1451 and 04 TR 1452, defendant was convicted of driving on a suspended license and operating an uninsured motor vehicle, and was sentenced to one year of supervision, resulting in the assignment of one criminal history point pursuant to Guideline Section 4A1.1(c).

(i) Based upon the calculations set forth above, the offense level after acceptance of responsibility is 12, the criminal history category is II, and the sentencing range is 12-18 months of imprisonment.

(j) Defendant and his attorney and the government acknowledge that all of the above calculations are preliminary in nature and are based on facts known to the government as of the time of this Plea Agreement. The defendant understands that the United States Probation Department will conduct its own investigation and that the court ultimately determines the facts and law relevant to sentencing, and that the court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Plea Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

Further, defendant understands that the court, while guided by the Applicable Sentencing Guidelines, may depart from those Guidelines under some circumstances.

8. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Plea Agreement will not be affected by such corrections and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

9. Defendant understands that he may be entitled to have any disputed sentencing fact which could increase his sentence determined at a jury trial under a proof beyond a reasonable doubt standard. Defendant further understands that by pleading guilty, he agrees:

- (a) To have his sentence determined under the Sentencing Guidelines; and
- (b) To waive having sentencing facts alleged in the information and found by a jury beyond a reasonable doubt; and
- (c) To have the court determine his sentencing facts by a preponderance of the evidence; and
- (d) To allow the court to consider any reliable evidence, including hearsay, in determining his sentence.

10. Defendant understands that the charge to which he will plead guilty carries a maximum penalty of 5 years imprisonment, a period of supervised release of at least two but not more than three years, a maximum fine of \$250,000, and any restitution ordered by the court.



11. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

12. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

(f) Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

13. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal or contest, under Title 18, United States Code, Section 3742 or Title 28, United States Code, Section 2255, or otherwise, his conviction and the resulting sentence, in exchange for the concessions made by the United States in

this Plea Agreement. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or its negotiation.

14. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or district court.

15. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant.

16. Defendant agrees that the information and this Plea Agreement shall be filed and become part of the record in this case. Defendant understands that this Plea Agreement is a matter of public record and may be disclosed to any party.

17. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. At the time of sentencing, the government shall recommend that the Court impose a sentence of imprisonment within the applicable guideline range. The parties agree that there exists no aggravating or mitigating circumstances of any kind or to any degree not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from the range determined by the court. Accordingly, the parties agree not to seek or support any departure from or sentence outside of the applicable guideline range.

19. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and, subject to the limitations of the sentencing guidelines, may impose the maximum penalties as set forth in paragraph 9 above. However, the sentencing court is obligated

to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea. The defendant understands that the court is required to consider the applicable sentencing guidelines but may depart from these guidelines under certain circumstances.

20. Regarding restitution, the parties agree that the amount of restitution which the defendant must be ordered to pay is at least \$49,131.28 to Lodge 1269, less any payments made in advance of sentencing. The defendant understands that Title 18, United States Code, Sections 3663, 3663A, and 3664, and Sentencing Guidelines Sections 5E1.1 and 5E1.2, set forth the factors to be weighed in setting a fine and imposing any additional restitution in this case. The defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances in order to determine the fine and proper restitution, if any, which the defendant shall be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

21. Defendant acknowledges that because of his conviction in this case, Title 29, United States Code, Section 504 will prohibit him from holding the following positions with any labor organization for a period of thirteen years following the date of his conviction or the end of his period of imprisonment, whichever is later: consultant, adviser, officer, director, trustee, member of an executive or governing board, business agent, manager, organizer, employee, representative, or any position that involves decision-making authority or custody and control of the moneys, funds, or assets of a labor organization. Defendant further acknowledges that, pursuant to Title 29, United

States Code, Section 504, for a period of thirteen years following the date of his conviction or the end of his period of imprisonment, whichever is later, he will be barred from acting as a labor relations consultant or adviser of any person engaged in a business affecting commerce, or as an officer, director, agent, or employee of any group or association dealing with a labor organization, or in a position that has collective bargaining authority or direct responsibility for labor relations management in any corporation or association engaged in an industry or activity affecting commerce. Defendant also acknowledges that, pursuant to Title 29, United States Code, Section 504, for a period of thirteen years following the date of his conviction or the end of his period of imprisonment, whichever is later, he will be barred from holding the positions of officer, executive, or administrative employee, or any position which entitles the occupant to a share of the proceeds of, any entity whose activities are in whole or substantial part devoted to providing goods or services to a labor organization. Defendant further acknowledges that if he violates this prohibition, he may be punished by imprisonment for not more than five years and a fine of not more than \$250,000.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Plea Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be

commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions.

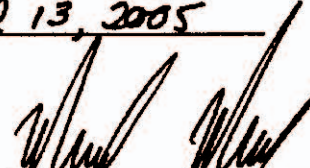
23. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause defendant to plead guilty.


24. Should the judge refuse to accept the defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.


25. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision of this Plea Agreement with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Plea Agreement.

AGREED THIS DATE: April 13, 2005

  
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United States Attorney

  
MICHAEL T. MOORE  
Defendant

  
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