

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

Case No. CR-1-05-038
(Sr. J. Spiegel)

v.

PLEA AGREEMENT

TIMOTHY C. BURKE

It is hereby agreed between the United States Attorney for the Southern District of Ohio and the Defendant, **TIMOTHY C. BURKE** and his attorney as follows:

1. **TIMOTHY C. BURKE** (hereinafter "the defendant") will enter a plea of guilty to Count 1 of the Indictment, filed in the Southern District of Ohio.

2. The defendant understands that Count 1 of the Indictment charges that, he did embezzle, steal and unlawfully and willfully abstract and convert to his own use the moneys, funds, securities, property, and other assets of Roofers Local 42 in the approximate amount of \$31,470.64, in violation of the laws of the United States, 29 U.S.C. §501(c).

3. The defendant admits that he 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 Southern District of Ohio.

4. The defendant understands that the punishment prescribed by law for the

offense of Embezzlement of Union Funds, as charged in Count 1 of the Indictment pursuant to 29 U.S.C. § 501(c), is up to five (5) years of imprisonment, a fine up to \$10,000, a three (3) year term of supervised release, and restitution.

5. The United States Attorney for the Southern District of Ohio and the defendant agree, that pursuant to the Supreme Court decision in United States v. Booker and United States v. Fanfan, 2005 WL 50108 (Jan.12, 2005), the United States Sentencing Guidelines are no longer mandatory and binding on sentencing courts. Instead, the Guidelines are now advisory.

6. The United States observes that the November 1, 2000 edition of the sentencing guidelines must be applied as the current edition is more onerous and thus subject to ex post facto considerations.

7. The defendant agrees to make full restitution in the amount of \$31,470.64 (less any amount already recovered).

8. Based upon the amount of loss reasonably foreseeable to the defendant and all relevant conduct not protected by §1B1.8 of the United States Sentencing Guidelines, the defendant understands that the government will recommend that the base offense level for purposes of the United States Sentencing Guidelines is level 10. The defendant agrees with this recommendation.

9. The defendant understands that the government will recommend a two point upward adjustment for abusing a position of trust in accordance with § 3B1.3 of the United States Sentencing Guidelines. The defendant agrees with this recommendation.

10. The United States Attorney for the Southern District of Ohio recommends that as of the time of the execution of this Plea Agreement the defendant has accepted responsibility for the offense to which he has agreed to plead guilty.

11. In exchange for the defendant's plea of guilty, the United States Attorney for the Southern District of Ohio agrees not to bring any additional charges against the defendant based on the defendant's involvement in the conduct described in the pending indictment, and the Statement of Facts to be admitted by the defendant at the guilty plea proceeding.

12. The defendant will, at the time he enters his plea of guilty, acknowledge the truth of the attached Statement of Facts, and agrees that, had the facts been presented to a jury, the jury would have found them to be proven beyond a reasonable doubt.

13. It is understood that, should the United States Attorney's Office determine that the defendant has not complied with the terms of this Plea Agreement in any manner, the government may move the Court to re-sentence the defendant and apply for any sentencing enhancements that may be applicable in this case. Such an action will not entitle the defendant to withdraw his guilty plea once it is entered.

14. The defendant understands that the United States Probation Department will conduct a pre-sentence investigation and will recommend to the Court a sentencing guideline range. The defendant understands that the Probation Department's recommendations are not binding upon the Court. The defendant understands that if the Court does not follow the recommendations contained in this Plea Agreement, he does not have the right to withdraw his plea of guilty.

15. The defendant understands that there is no agreement concerning his ultimate sentence. The defendant could receive the maximum penalty provided by law.

16. The defendant understands and agrees that he is not a prevailing party as defined under 18 U.S.C. § 3006A, and he, therefore, waives any rights he may have under that statute.

17. Prior to or at the time of sentencing, the defendant will pay to the Clerk of Courts a special assessment in the amount of \$100.00 as required by Title 18 U.S.C. § 3013.

18. This is the entire Plea Agreement. There are no other agreements or promises and **TIMOTHY C. BURKE** understands that any conversations, discussions, or understandings not contained herein are not a part of this Plea Agreement.

5-16-05
Date

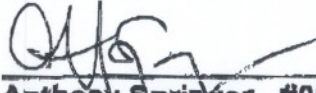
Timothy C. Burke Sr.
TIMOTHY C. BURKE
Defendant

5/16/05
Date

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Counsel for the United States

05/24/05
Date

STATEMENT OF FACTS

From 1991 to 2001 the defendant served as a full-time business manager/financial secretary for Roofers Local 42. His duties and responsibilities included running the union office, handling grievances, servicing and negotiating contracts, attending union and executive board meetings, preparing and signing union checks, paying union bills, collecting and depositing dues receipts, making entries in and maintaining all financial records, and preparing and submitting government and union financial reports.

The defendant received a weekly salary for serving as business manager, a monthly salary for serving as financial secretary, and a monthly vacation payment.

Between March 15, 2000 and September 2001, the defendant abused his position of trust as business manager/financial secretary for Roofers Local 42 by engaging in the following acts:

The defendant paid himself 11 extra salary checks at the end of 2000. These checks resulted in a total of \$7,360.00. The defendant paid himself 4 extra salary checks in 2001. These checks were also \$680.00 each which resulted in a total of \$2,840.00.

The defendant paid himself one extra financial secretary payments at the end of 2000. This payment was for \$75.00.

Between on or about March 15, 2000 and September 1, 2001, the defendant failed to deposit \$21,195.64 in dues receipts collected.

As a result, the defendant received \$31,470.64 in unauthorized union funds.