

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OCT - 4 2011

AT 8:30M
CHAMBERS OF THE
HON. MICHAEL A. SHIPP
U.S.M.J.

UNITED STATES OF AMERICA

: CRIMINAL COMPLAINT

v.

:

JAMES J. KEARNEY, Sr.

: Magistrate Number: 11-6182 (MAS)

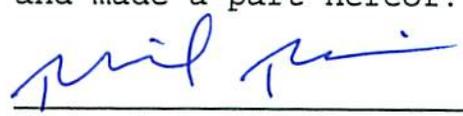
I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

SEE ATTACHMENT A

I further state that I am a Special Agent, and that this complaint is based on the following facts:

SEE ATTACHMENT B

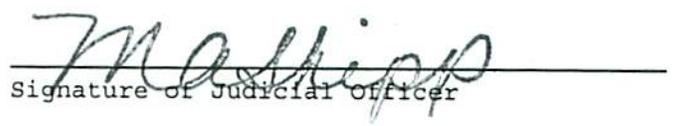
continued on the attached page and made a part hereof.



Michael C. Mikulka
United States Department of
Labor, Office of Inspector
General, Office of Labor
Racketeering and Fraud
Investigations

Sworn to before me and subscribed in my presence,
October 4, 2011, at Newark, New Jersey

HONORABLE MICHAEL A. SHIPP
UNITED STATES MAGISTRATE JUDGE


Signature of Judicial Officer

ATTACHMENT A

Count One:

On or about August 1, 2011, in Hudson County, in the District of New Jersey and elsewhere, defendant James J. Kearney, Sr., being an officer and employee of Local 45 of the International Association Of Bridge, Structural, Ornamental and Reinforcing Ironworkers, a labor organization, unlawfully and willfully requested, demanded, received, and accepted, and agreed to receive and accept the payment of and delivery of a thing of value, namely, United States currency in an amount exceeding \$1,000, from an employer and a person acting in the interest of an employer, as described in Attachment B of this Criminal Complaint, whose employees were employed in an industry affecting commerce and whom Local 45 would represent, seek to represent, and would admit to membership, in violation of Title 29, United States Code, Sections 186 (a)(2), (b)(1) and (d)(2), and Title 18, United States Code, Section 2.

Count Two:

On or about August 31, 2011, in Hudson County, in the District of New Jersey and elsewhere, defendant James J. Kearney, Sr., being an officer and employee of Local 45 of the International Association Of Bridge, Structural, Ornamental and Reinforcing Ironworkers, a labor organization, unlawfully and willfully requested, demanded, received, and accepted, and agreed to receive and accept the payment of and delivery of a thing of value, namely, United States currency in an amount exceeding \$1,000, from an employer and a person acting in the interest of an employer, as described in Attachment B of this Criminal Complaint, whose employees were employed in an industry affecting commerce and whom Local 45 would represent, seek to represent, and would admit to membership, in violation of Title 29, United States Code, Sections 186 (a)(2), (b)(1) and (d)(2), and Title 18, United States Code, Section 2.

ATTACHMENT B

I, Michael C. Mikulka, am a Special Agent of the Department of Labor, Office of Inspector General, Office of Labor Racketeering and Fraud Investigations. I have knowledge of the facts set forth herein through my personal participation in this investigation and through oral and written reports from other federal agents or other law enforcement officers. Where statements of others are set forth herein, these statements are related in substance and in part. Since this Criminal Complaint is being submitted for a limited purpose, I have not set forth every fact that I know or other law enforcement officers know concerning this investigation. I have only set forth those facts that I believe are sufficient to show probable cause exists to believe that the defendant has committed the offenses set forth in Attachment A. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Background

1. At all times relevant to this Criminal Complaint:

a. Defendant James J. Kearney, Sr. was the Business Manager and an employee of Local 45 of the International Association Of Bridge, Structural, Ornamental and Reinforcing Ironworkers (hereinafter "Local 45"). Under Title 29, United States Code, Section 501(a), defendant James J. Kearney, Sr. occupied a position of trust in relation to the union and its members as a group.

b. Local 45, headquartered in Jersey City, New Jersey, was a "labor organization" as that term is defined in Title 29, United States Code, Sections 142(3), 152(5), 402(i) and (j). It represented, sought to represent, and would admit to membership iron workers. Local 45 represented approximately 285 members, many of whom were employed at various construction projects in New Jersey, particularly in Hudson County, New Jersey. The members of Local 45 participated in several employee benefits plans, including a Welfare Fund, which plans were administered by the District Council Ironworkers Funds of Northern New Jersey. These plans were subject to the Employee Retirement Income Security Act of 1974, Title 29, United States Code, Section 1001, et seq.

c. An individual, who was cooperating in this investigation (hereinafter the "Cooperating Witness"), was a representative of a construction company headquartered in New Jersey (hereinafter the "Company"). The Company worked at construction projects in New Jersey and employed ironworkers. As

such, Local 45 would represent, would seek to represent, and would admit to membership the employees of the Company.

The Payment of Bribes for Non-Union Labor and Union Books

2. On or about August 1, 2011, the Cooperating Witness met defendant James J. Kearney, Sr. in Jersey City, New Jersey at a coffee shop near Local 45's union hall. During this consensually recorded meeting (audio and video) with defendant James J. Kearney, Sr., the Cooperating Witness asked if the Company could use a crew of non-union ironworkers at an upcoming construction project in Hudson County, New Jersey. Defendant James J. Kearney, Sr. stated he would need to talk to the "guy" about allowing the Company to use non-union ironworkers at this upcoming construction project. The Cooperating Witness stated he would be willing to obtain union books (*i.e.*, union membership) for some of his guys. (See Paragraph 7 below of the Criminal Complaint for an explanation of union books). Thereafter, defendant James J. Kearney, Sr. stated that it might be possible to obtain a union book for the Company's foreman, and he stated that he would talk with the other "guys" about obtaining a book (*i.e.*, union membership) and that it would cost approximately \$5,000 to obtain a union book. During this meeting, defendant James J. Kearney, Sr. further indicated that any union book would need to come from another ironworker's local union, not Local 45. The Cooperating Witness and defendant James J. Kearney, Sr. then left the coffee shop and entered the Cooperating Witness' vehicle. After entering the vehicle, the Cooperating Witness gave defendant James J. Kearney, Sr. approximately \$3,000 in cash, stating that the money was "good will" for an upcoming construction project in Hudson County, New Jersey where the Company sought to use non-union ironworkers. Defendant James J. Kearney, Sr. took possession of this approximate \$3,000 cash payment from the Cooperating Witness.

3. Your Affiant has listened to and observed the consensually recorded audio and video footage of this meeting, and Your Affiant has observed and heard, on the video and audio recording, the cash transfer from the Cooperating Witness to defendant James J. Kearney, Sr.

4. On or about August 22, 2011, the Cooperating Witness met defendant James J. Kearney, Sr. in Jersey City, New Jersey at a coffee shop near Local 45's union hall. During this consensually recorded meeting (audio and video), defendant James J. Kearney, Sr. stated that he could obtain union books for some employees of the Company; however, the books would need to come from another ironworkers' local, not Local 45. Defendant James

J. Kearney, Sr. advised the Cooperating Witness that it would cost approximately \$5,000 for each union book plus the required initiation and dues fees of approximately \$728 per book. Defendant James J. Kearney, Sr. stated that he had already spoken with someone at a union convention and put a plan in motion to obtain books from another local. Defendant James J. Kearney, Sr. also remarked that the Cooperating Witness could "never say it [the books] came from me . . . please." Defendant James J. Kearney, Sr. also told Cooperating Witness that he would need to provide a check or money order for the required initiation and dues fees (\$728 per new member); however, defendant James J. Kearney, Sr. stated that \$5,000 payment for each book to defendant James J. Kearney, Sr. "had nothing to do with" and was unrelated to the initiation and dues fees. Defendant James J. Kearney, Sr. further advised that he needed the personal identifying information of the individuals who would be receiving the union books. Defendant James J. Kearney, Sr. wrote a note and provided it to Cooperating Witness containing the following, in substance and in part: "Name, address, Soc Sec [social security number], D.O.B. and check \$728.00 each." Immediately after the meeting, the Cooperating Witness provided this note to federal law enforcement officers, and it was retained as evidence.

5. On or about August 31, 2011, the Cooperating Witness met defendant James J. Kearney, Sr. in Jersey City, New Jersey at Local 45's union hall. During this consensually recorded meeting (audio and video) with defendant James Kearney, the Cooperating Witness provided defendant James J. Kearney, Sr. with the personal identifying information of two purported Company employees. Unbeknownst to defendant James J. Kearney, Sr., these identities belonged to two undercover federal law enforcement officers. The Cooperating Witness also gave defendant James J. Kearney, Sr. two blank U.S. Postal money orders in the amount of \$728 each. Defendant James J. Kearney, Sr. completed the money orders and then the Cooperating Witness inquired about the next step in the process. Defendant James J. Kearney, Sr. replied, in substance and in part, "you know what it is . . . cash." The Cooperating Witness then handed defendant James J. Kearney, Sr. \$10,000 in cash (\$5,000 for each book), and defendant James J. Kearney, Sr. placed the cash in his desk drawer. Your Affiant has listened to and observed the consensually recorded audio and video footage of this meeting, and Your Affiant has observed, on the video and audio recording, the cash transfer from the Cooperating Witness to defendant James J. Kearney, Sr.

6. On or about September 2, 2011, an Ironworkers' local located in southern New Jersey issued, through the U.S. mail, a receipt, in the amount of \$728, for initiation and union dues

fees for one of the undercover federal law enforcement officers. Both money orders provided to defendant James J. Kearney, Sr. were cashed by the same local in southern New Jersey.

7. Based on my education, training, and experience, Your Affiant knows that a "union book" is a union member's proof of admission into, and membership in, a labor union, and the union book is often used to verify the individual's union membership status at construction projects. Your Affiant also knows that the "union book" is property of the union that issues the book. Before admittance into a union, the prospective member must complete an application and pay an initiation fee and several months of dues in advance, among other requirements. Lastly, Your Affiant knows that under federal law, it is unlawful for a union officer to request or receive anything of value from an employer, such as the Cooperating Witness, or a person acting in the interest of an employer, where the employer's employees are employed in an industry affecting commerce, such as the construction industry, and which employees the union would represent, seek to represent, and would admit to membership. Because Local 45 would represent, would seek to represent, and would admit to membership the Company's ironworkers, Your Affiant submits that the \$10,000 cash payment made by Cooperating Witness to defendant James J. Kearney, Sr. in exchange for two books from another union constitutes an illegal bribe under federal law, namely, Title 29, United States Code, Section 186.