

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

SEAN M. O'BRIEN

General President

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FRED E. ZUCKERMAN

General Secretary-Treasurer

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September 18, 2023

VIA EMAIL

Mr. Michael Bergen
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Mr. Michael Pharris
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Mr. John Searcy
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Mr. Leonard A. Smith
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Dear Brothers Bergen, Pharris, Searcy and Smith:

Enclosed please find the Report and Recommendations of the Panel that conducted the hearing on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions and hereby adopt them as my own. The Panel's recommendations are hereby reissued as the decision of the General President.

Brothers Bergen, Searcy, and Smith have been found guilty of Charge One, which constitutes a violation of: IBT Constitution, Art. II, Sec. 2(a) ("bringing reproach..."); IBT Constitution, Art. XIX, Sec. 7(b)(2) (violation of oath of office and oath of loyalty); IBT Constitution, Art. XIX, Sec. 7(b)(5) (conduct which is disruptive of, interferes with, or induces others to interfere with, the performance of the union's legal or contractual obligations); and Final Order, para. 2(D) (failure to cooperate with the independent disciplinary process).

Brother Pharris was not found guilty of Charge One. Brother Searcy was not found guilty of Charge Two.

Fraternally yours,

A handwritten signature in black ink, appearing to read "Sean M. O'Brien".

Sean M. O'Brien
General President



Mr. Michael Bergen
Mr. Michael Pharris
Mr. John Searcy
Mr. Leonard A. Smith
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EMG/pjp

Enclosure

cc: Hearing Panel
General Executive Board
Robert D. Luskin, Esq., Independent Investigations Officer
Hon. Barbara Jones, Independent Review Officer
Elizabeth Rosenfeld, Esq.
J. Bruce Maffeo, Esq.
Alex Higgins, Esq.
Karen D. Williams, Esq.
Brian Kelly, Esq.
Edward M. Gleason, Jr., General Counsel

MEMORANDUM

TO: General President Sean M. O'Brien

FROM: Mike Smith, Panel Chairman
Dennis Roberts, Panel Member
Randy Korgan, Panel Member

CC: Ed Gleason, General Counsel

DATE: September 7, 2023

RE: Report and Recommendation in re. IIO charges against Mike Bergen and Mike Pharris (Teamsters Local No. 166) and John Scearcy and Leonard Smith (Teamsters Local No. 117)

Pursuant to your request and appointment, we conducted a hearing on the Independent Investigations Officer's charges against the above-named parties.

Attached for your consideration is our Report and Recommendation.

It is our understanding that the deadline for IBT action is September 11, 2023, and that Judge Jones has indicated she would grant a further one-week extension to September 18, 2023.

**REPORT AND RECOMMENDATION ON CHARGES AGAINST
MIKE BERGEN AND MIKE PHARRIS, OF LOCAL UNION 166; AND
JOHN SCEARCY AND LEONARD SMITH, OF LOCAL UNION 117**

I. Introduction

Pursuant to your appointment, hearings were convened before the undersigned Panel on June 22, 2023, and June 28, 2023, to consider charges against the above-referenced current and former officers for their involvement with Rome Aloise who was, during the relevant time period, a suspended Teamster. The first hearing pertained to charges brought against Mike Bergen, former Secretary-Treasurer and principal officer of Teamsters Local Union No. 166 (Bloomington, California), and Mike Pharris, current Secretary-Treasurer and former President of Teamsters Local Union No. 166. The second hearing pertained to charges brought against John Searcy, Secretary-Treasurer and principal officer of Teamsters Local Union No. 117 (Tukwila, Washington), and Leonard Smith, Director of Organizing at Teamsters Local Union No. 117. Together, these individuals will be referred to herein as the "Charged Parties."

At each of the Panel hearings, the Charged Parties were represented by legal counsel, with the exception of Bergen. Bergen did not appear, nor did he submit a written statement explaining his absence. Pharris was represented by attorney Elizabeth Rosenfeld, of Wohlner Kaplon Cutler Halford Rosenfeld & Levy. Searcy was represented by attorneys Bruce Maffeo and Karen Williams, of Cozen O' Connor. Smith was represented by attorney Alex Higgins. The IBT, as the Charging Party, was represented by Brian Kelly and Joshua Sharp, of Nixon Peabody, LLP. The Charged Parties had a full and fair opportunity to review the evidence, submit additional evidence, testify, confront witnesses, cross examine witnesses, and submit post-hearing briefs. No party has claimed any denial of due process.

II. Procedural Background and History

On May 22, 2023, Robert D. Luskin, the Independent Investigations Officer (IIO), referred two charges to the IBT General President and General Executive Board. The charges alleged:

First Charge: That BERGEN, PHARRIS, SCEARCY, and SMITH, individually and in concert with another, during the period that Rome Aloise was suspended by order of the Independent Review Officer, knowingly and with the purpose or effect of circumventing, frustrating, evading, and disregarding said suspension, did permit, empower and enable Aloise to exercise authority from which the IRO's suspension order barred him, such acts and omissions by BERGEN, PHARRIS, SCEARCY, and SMITH constituting a failure to cooperate with the independent disciplinary process of the Final Order and the IBT constitution and thereby bringing reproach upon the IBT and violating his oath as a member and officer.

Second Charge: That SCEARCY as a member of the IBT, did fail to cooperate with the independent disciplinary process of the Final Order and IBT constitution, by making a false and materially misleading statement that had the purpose or effect of inducing other members to disregard the suspension order against Aloise; in so doing, SCEARCY brought reproach upon the IBT and violated his oath as a member.

(Charge Report at 1.¹)

The specific charges and evidence are discussed below, first as to events pertaining to Local Union No. 166 and thereafter, as to events pertaining to Local Union No. 117. It was alleged that each of these Charged Parties, by interacting with Aloise and allowing Aloise to participate in high-level discussions, negotiations, and other Teamster affairs during the time period of Aloise's suspension, violated his duties as an IBT officer and member, and brought reproach upon the IBT, in violation of the Final Agreement and Order in *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D. N.Y), and the Oath of Office contained in the IBT Constitution. See IBT Constitution, Preamble (officers' Oath of Office) and Art. II, Sec. 2(a) (membership requirement "to conduct himself ... at all times in such a manner as to not bring reproach upon the Union").

Aloise, who was formerly principal officer of Local Union No. 853 and Joint Council No. 7, was suspended for two years from December 22, 2017, to December 21, 2019. (CR Exh. 3.) The suspension was imposed as a result of charges related to: (1) the improper receipt of things of value, in violation of 29 U.S.C. § 186(b) of the Taft-Hartley Act; (2) negotiating a "sham" collective bargaining contract and failing to ensure a collective bargaining process that complied with the IBT Constitution and local union bylaws; and (3) repeatedly using union resources to improperly influence a local union election in violation of the Labor Management Reporting and Disclosure Act.

Shortly after the suspension order issued, Independent Review Officer ("IRO"), the Honorable Barbara S. Jones (Ret.), responding to an inquiry from Aloise, clarified her Order in a January 19, 2018, letter, stating:

The intent of my Order was to prohibit Mr. Aloise from being employed by or consulting for (whether paid or unpaid) any affiliate entity of the Teamsters as that word, "affiliate," is used in the normal course. Meaning, any entity officially attached or connected to the Teamsters...

(CR Exh. 7.)

¹ The May 22, 2023 Memorandum from IIO Luskin on recommended charges against Bergen, Pharris, Scearcy and Smith is referred to herein as "Charge Report" and the supporting exhibits are referred to herein as "CR Exh. ___."

Subsequently, the IRO found that Aloise violated his suspension and permanently barred Aloise from the Union.²

The charges against the parties here arise from specific events alleged to have occurred during the suspension period in relation to business conducted at, or with officers or employees of, each of the respective Local Unions. The Panel has been called upon to resolve numerous factual disputes. Our factual findings are based on an extensive review of the testimony and documents submitted, and we make these findings based on a preponderance of the evidence.

III. Evidence and Analysis

A. Events involving Local Union No. 166

The Charge Report from IIO Luskin alleged that meetings were held in Southern California, at which Aloise participated. The charges allege that both Bergen and Pharris consented to Aloise's participation and participated themselves.

Evidence presented at the hearing focused on two meetings. The first meeting concerned a project labor agreement ("PLA") for a proposed high-speed rail project that was held at the office of Local Union No. 166. The other concerned ongoing negotiations in the liquor industry, specifically a meeting related to a Quota Incentive Pay Program ("QIPP") for driver-salesmen held at a hotel near the John Wayne Airport in Orange County.

1. PLA meeting on high-speed rail at Local Union No. 166

Records and testimony established that the PLA meeting occurred at the Local Union on November 25, 2019. (Tr. 22, 31, 36-37.) The Panel heard conflicting testimony as to exactly who was present at the meeting. It was undisputed that at the very least the meeting involved Bergen; a Local Union No. 166 Business Agent named Robert Stanley; a contract compliance and apprenticeship coordinator for the Local named John Davidson; representatives from Skanska, a construction company; Rome Aloise; and Stu Helfer. Unrebutted testimony from Stanley established that Teamster business was discussed at that meeting (ready-mix concrete operations and manpower needs), and no other trade unions or crafts attended. Stanley also testified that Aloise said during the meeting that he brought Helfer with him because he knew nothing about ready mix or construction. (Tr. 39.) Nonetheless, Aloise claimed that he represented the State Building and Construction Trades Council ("SBCTC" or "Building Trades") at the meeting. (Tr. 41.)

² In proceedings brought in October and December of 2021, Aloise was charged with and found guilty of violating his suspension, as well as other violations of the IBT Constitution and his Oath of Office. He was permanently barred from the IBT and barred from discussing or conducting Teamster business, or participating in Teamster elections "in any way," effective January 31, 2022. (IRO Orders of 10/7/2021, Exh. SS2, and 12/10/2021.)

Leaving aside the issue of whether Aloise's consultancy with the SBCTC itself violated the terms of his suspension³, here, the facts strongly suggested that the business being conducted was very specific, if not exclusive, to the Teamsters. Although other unions may have had an interest in the matters under discussion, Aloise did not actually focus his role on representing the Building Trades, as a distinct entity. In fact, the un rebutted testimony of Stanley was that Aloise did not know anything about construction and relied on Helfer to assist him in this regard.⁴ (Tr. 39.) The Panel finds that citing Aloise's purported role with the SBCTC was not a defense here since that role was indiscernible.⁵

On the issue of who was present, the Panel heard testimony from both Stanley and Andrew Budai that Pharris was present either at the PLA meeting itself (according to Budai), or immediately before the meeting (according to Stanley). (Tr. 32, 41-43.) By contrast, Pharris testified that he was *not* present at the PLA meeting and submitted time records and other records to support his account of events.

According to Pharris, the PLA meeting was scheduled for approximately 9am at the Local Union's office. (Tr. 77-78.) He stated that he stopped by the Local briefly between 7:00 and 7:30am, between performing other work duties. (Id.) He heard of the meeting from Bergen and Davidson, who were present at the Local. (Id.) He then drove to a meeting held at Joint Council No. 42 in Pomona, California, and called Stanley on the way to his meeting. (Id.) He suggested that Stanley attend the meeting since it concerned an important construction project and Stanley was the "construction [business] agent." (Id.) He denied having knowledge, at the time, that Aloise was in attendance. (Tr. 79.) Pharris' time records were consistent with his account, as well as sign-in sheets from the meeting held at Joint Council No. 42.⁶

Based on a review of the record, the Panel finds that there is insufficient evidence to conclude that Pharris attended or participated in the PLA meeting at Local Union No. 166. Since Bergen offered no contradictory evidence or defense of any kind, we accept all the facts alleged against him as true and conclude that he *did* attend the November 25, 2019 meeting at the Local. We also find that Aloise attended and that Teamster business was conducted at the meeting.

2. Airport pickups and car washes

The Panel reviewed evidence on airport pickups to and from the PLA meeting. Budai testified at the hearing that Bergen and Pharris directed him to pick up Aloise and Helfer from

³ The Charge Report alleged that Aloise's consultancy with the SBCTC violated the suspension order (CR at 5, ¶ 7), but we need not resolve that question to make the findings and recommendations called for here.

⁴ Stanley also testified that when he asked Pharris about Aloise's presence at the Local, Pharris said "They're telling me he's working for the building trades" and Pharris looked shocked. (Tr. 41.) Pharris did not rebut this testimony.

⁵ The IRO made a similar finding in her decision concluding that Aloise violated his suspension, stating: "Even though Mr. Aloise was consulting for the Cal Fed and the Building Trades, that did not excuse him from the prohibitions of his suspension order." (IRO Opinion of 10/7/2021, Exh. SS2, at 25.)

⁶ The sign-in sheets were produced by Pharris after the hearing. (See attachment to Post-Hearing Brief on Behalf of Mike Pharris.)

the airport to attend the PLA meeting.⁷ (Tr. 21.) Stanley testified that Bergen instructed him to drive Aloise and Helfer to the airport after the meeting had adjourned. (Tr. 38.) No evidence was offered to rebut the testimony as to Bergen's instructions. On the other hand, Pharris vehemently denied that he provided rides to Aloise during Aloise's suspension, stating flatly, "I never transferred Rome Aloise while he was suspended." (Tr. 80-81.)

Much was made of Pharris' use of the term "dignitaries." The Panel reviewed his testimony, both at the hearing and in prior proceedings, and we conclude that he used this term in a general, joking sense, and that it did not refer specifically to Aloise, Helfer, or any predetermined set of people.⁸ Similarly, we find that Pharris' reference to "car washes" did not prove, to any reliable degree, that he provided transportation to Aloise on particular days, as the Charging Party suggested at the hearing. (Tr. 97-98.)

We find, based on the evidence, that Bergen directed staff at Local Union No. 166 to transport Aloise to the PLA meeting, but we find insufficient evidence that Pharris either transported or directed others⁹ to transport Aloise during the suspension period.

3. QIPP meeting at John Wayne Airport Hyatt

The "QIPP" program was a compensation scheme proposed by a signatory employer, and under consideration by Teamster Local Unions that were party to statewide agreements with the employer. (Tr. 61-64; Exh. MP-G.) Negotiations over the proposal were conducted by the Federal Mediation and Conciliation Service (FMCS) over the course of multiple years. (Tr. 65.) Over 20 Teamster Local Unions were represented at these meetings. (Tr. 62, 66-67.)

Meetings over the QIPP program and other liquor-industry negotiations were held during the Aloise suspension period, and one meeting in particular was at issue during the hearing. Evidence established that the meeting was held at the Hyatt hotel near John Wayne Airport on July 26, 2018, and it was not disputed that Pharris was in attendance. (Exh. MP-E, Mike Pharris Summary of Liquor Negotiations.)

Charging Party argued that Aloise also attended the July 26, 2018 meeting, citing a flight confirmation email showing that Aloise had flown into the John Wayne Airport on July 24, 2018, and flown out on the evening of July 26, 2018.

Charging Party cited an inconsistency in Pharris' testimony, casting doubt on his credibility. At the hearing, when asked whether Aloise had attended the QIPP meeting on July

⁷ Notably, Budai did not mention getting such an instruction from Pharris at his deposition on July 18, 2022. (See Exh. MP-H at 16-17.)

⁸ For instance, Pharris testified before the IIO and at the hearing that he picked up the FMCS mediator from the airport as well (Exh. BP3 at 80; Tr. 86). He stated that he used the term as a "joke" to refer "[a]nybody that [he] would pick up from the airport" (Exh. BP3 at 60, 72; Tr. 80).

⁹ By denying he ever "transferred" Aloise during his suspension, we assume Pharris' position is that he similarly did not direct others to transport Aloise. Because Budai's testimony was contradictory on this point, we resolve the credibility determination in favor of Pharris.

26, 2018, or any other liquor-industry negotiation meetings during Aloise's suspension period, Pharris responded, "Never." (Tr. 69-70.) By contrast, in prior testimony before the Independent Disciplinary Office (IDO) on August 31, 2022, Pharris responded, "He may or may not have. I don't remember specifically he was or not." (Exh. BP-3 at 96-98.) Charging Party has argued that this inconsistency shows Pharris' testimony is not believable, asking the Panel to draw a negative inference against Pharris. (Post-Hearing Brief of IBT in the Matter of Mike Bergen and Mike Pharris at 10.) In rebuttal, Pharris explained at the hearing that he had not reviewed his records in detail on that specific point, prior to giving the IDO testimony. (Tr. 88-92.)

The Charge Report relied on the testimony of Budai, who claimed that he had heard through Pharris that Aloise was present at multiple "liquor meeting[s]"; but Budai admitted that he did not attend any liquor-industry negotiations himself. (Charge Report at 11, n. 41; CR Exh. 19 at 15-23.)

After reviewing the record in detail, the Panel concludes there was insufficient evidence to establish Aloise actually attended the July 26, 2018 QIPP meeting, or any other liquor-industry meetings. Even if Aloise *had* attended, there was no evidence to establish what, if any, role Aloise played.

B. Events involving Local Union No. 117

Regarding Local Union No. 117, the Charge Report identified a series of interactions between Aloise and Smith for which both Smith and Searcy are alleged to be responsible. The IIO made an additional allegation against Searcy involving the circulation of an email to the Local Unions of Joint Council No. 28, concerning a pension fund training meeting at which it was known that Aloise planned to attend.

1. Interactions between Aloise and Smith

The Charge Report alleged that "[d]uring the period of Aloise's suspension, SMITH and SCEARCY sought and accepted Aloise's assistance in a variety of organizing campaigns, collective bargaining, and benefits and insurance matters." (Charge Report at 12-13.) The charges identified three matters: (a) a neutrality agreement being negotiated by Local 117 with Chariot Transit, Inc., a ride service that planned to operate in the Seattle, Washington area; (b) the organizing of Uber and Lyft drivers in the Seattle area; and (c) benefits packages that could be offered to drivers by Ullico and the Workers' Benefit Fund. (Id. at 13-14.)

The Charge Report exhibits included a series of email exchanges between Aloise and Smith on these matters. (CR Exhs. 21-30.) Based on the emails, and Smith's own testimony, the Panel finds that Smith welcomed and received Aloise's input on a range of Teamster-specific business matters.¹⁰ The interactions went beyond "historical knowledge" and they went beyond

¹⁰ Smith conceded at the hearing that the exchanges with Aloise were about ongoing "Teamster business." (Tr. 159-160; 165-66: "Q. But either way, it was regarding Teamsters, right? A. Yes. and "Q. And so that was an ongoing negotiation that he did on behalf of the Teamsters at the time when he was suspended, right? [...] A. Yes.")

what a rank-and-file member¹¹ would normally do to provide input to an Organizing Director.¹² These were matters of organizing strategy and negotiations that affected the future growth of the Teamsters in the Seattle area and beyond. Importantly, these matters impacted the organizing potential of similar groups of drivers in California.

The IRO cited some of these interactions in her decision finding Aloise in violation of his suspension. *See* IRO Opinion of 10/7/2021, Exh. SS2 at 25 (on efforts to organize Uber and Lyft drivers, and the drafting of a “term sheet” with Local 117 on benefits to be provided to Seattle drivers through the Workers’ Benefit Fund); CR Exhs. 27-30.

As with the PLA meeting at Local Union No. 166, the claim that Smith dealt with Aloise in his capacity as a “representative of the SBCTC” in these interactions is doubtful and does not fit the facts in evidence.¹³ Moreover, the defense was rejected by the IRO. *See* IRO Opinion of 10/7/2021, Exh. SS2 at 25 (“The email evidence, however, demonstrates that his involvement went beyond representing those labor organizations and that he was also specifically directing Teamster officials regarding the organizing campaign.”) There was little evidence in the record showing that Aloise conducted work specific to the building and construction trades during these interactions.¹⁴ In his interactions with Smith, Aloise negotiated agreements on behalf of Local 117, and helped Smith advance campaign initiatives of Local 117. The evidence suggests that Aloise did this with an eye towards establishing a similar model in California, for Teamsters affiliates that Aloise wished to lead again soon.

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¹¹ Smith testified that he understood Aloise’s input could be received if it was limited to “historical knowledge” and attending meetings as “a member.” (Tr. 118-19; 152-53.)

¹² On this issue, we note the IRO made a similar finding, stating, “Mr. Aloise contends that he complied with the terms of his suspension because he was merely acting as a rank-and-file member and, beyond that, only provided ‘historical perspectives’ on union matters... I disagree. ... I find that Mr. Aloise’s communications and conduct were not nearly so limited. Mr. Aloise continued to involve himself in union affairs as if he were still an officer, not a rank-and-file member, and not simply by providing the benefit of a ‘historical perspective.’ His claim that his conduct was merely that of an IBT member is disingenuous.” (IRO Opinion of 10/7/2021, Exh. SS2 at 18-19.)

¹³ Such claims, that Aloise represented the “Building Trades” and the Charged Parties dealt with him in this capacity, were made throughout the proceedings, for example, by Smith at Tr. 129; 137-38 (“A. He says, ‘Obviously, I cannot be on a Teamster-only call as I have been representing the state fed and the BTs in these discussions’”).

¹⁴ *See, e.g.,* Tr. 159 by Smith (“Q. This is Teamster business? A. That’s correct. Q. It’s not this business about these other unions that he was representing. This is Teamster work right here? A. Yes.”) There is one exchange over proposed legislation concerning Uber/Lyft drivers, where Aloise cited a “meeting” he would have with the State Fed and the making of “commitments on behalf of the State Fed” (Exh. IIO 038), but the evidence shows that the vast majority of Aloise’s interactions with Smith were indistinguishable from communications between one Teamster official and another on direct Teamster affairs.

2. Extent of Searcy's involvement

At Local 117, as with all Teamster locals, the principal officer has a general duty to “supervise, conduct and control the business and affairs” of the Local “and its officers and employees.” Local 117 Bylaws, Sec. 9(A).¹⁵

Searcy claimed he was ignorant of the emails between Smith and Aloise and he was not involved in their interactions. He further claimed to have consulted with the Local Union’s attorney Tracey Thompson, and asked her to speak with both Smith and Aloise, and asked Smith to “build a wall” when it came to Aloise and work interactions. (Tr. 240-24.) Searcy has also argued that, with respect to the Chariot neutrality agreement, he specifically instructed his staff to draft their own document and not accept the document drafted by Aloise.

The evidence shows that Searcy did take steps with Smith and Thompson to “curtail their involvement” with Aloise (Post-Hearing Brief of Searcy , hereafter “Searcy’s Brief”, at 13, Tr. 239-40), including directing a conversation between Thompson, Smith, and Aloise on October 1, 2018, for Local 117 staff to perform work independent of Aloise on the Chariot matter (Smith Exh. 104; Searcy Exh. 2; Tr. 244). Yet, the involvement continued, and Searcy was aware or should have been aware of this fact.

On October 5, 2018, Searcy received an email from a Chariot attorney, addressed to himself; Thompson; Smith; and Aloise about an upcoming meeting. (Searcy Exh. 4.) Searcy also heard from Smith on or about October 18, 2018, about the “term sheet” of benefits for drivers proposed by the Workers’ Benefit Fund. (Exh. IIO 036, Tr. 250-52.) Searcy has claimed ignorance of Aloise’s involvement with the term sheet. But given the situation with Chariot, he had reason to know or suspect that Aloise was involved. Indeed, at some point after the Chariot conversation, Searcy discussed with Thompson a planned trip to California regarding the Uber/Lyft campaign. Searcy raised a question with Thompson about whether it was appropriate for Local 117 representatives to attend, given Aloise’s involvement. (Tr. 223-26.) She assured him it was alright, that “[h]e’s going to be “strictly there” and “[t]hey’re going to have separate rooms for Teamsters” (Tr. 225). Still, Searcy admitted that Aloise’s continued involvement had “raised a flag” for him (Tr 224). He was concerned enough to ask the attorney and he admitted that he felt it was “uncomfortable and unnecessary” for Aloise to be involved in Teamster matters (Tr. 229-30). All of this begs the question why Searcy did not draw a clear line and put a stop to the interactions.

Assurances from an attorney are not needed if one is confident that one’s actions are within the law. Searcy’s arguments – that: (1) no one clarified the suspension order sufficiently for him; and (2) he relied on the advice of an attorney in allowing the conduct to occur at his

¹⁵ The Bylaws of Local 117 were not offered into evidence, but the Panel takes judicial notice of this governing document, and asks the IRO to take judicial notice, if necessary. A true and correct copy of the relevant excerpt is attached hereto as Exhibit A.

Local Union – are no defense. He knew that a clear way to avoid the issue would have been to end the interactions with Aloise. Yet, he did not end to them.

Although the evidence reflects that Searcy did not engage in discussions with Aloise to the same extent as Smith, and he took steps to instruct his staff to keep their distance from Aloise (Tr. 210-213, 238-39), he had or should have had sufficient knowledge of what was occurring at his Local Union (Tr. 150-51, 247) to put a complete stop to the conduct.

3. Searcy's email to Joint Council No. 28 Locals

Searcy's involvement becomes more apparent when seen in light of an incident occurring the month prior to the conversations about Chariot.

On September 18, 2018, the Joint Council's President, Rick Hicks, sent an advisory to the Local Unions within the Joint Council, stating that an upcoming meeting of the Western Conference of Teamsters Pension Trust would be cancelled due to Aloise's planned attendance. (CR Exh. 32.) In emails with IBT attorney Gary Witlen on September 19 and 20, 2018, Thompson, at Searcy's behest, sought Witlen's views on the advisory, asking whether "anyone who has contact with [Aloise] will be subject to charges." (CR Exh. 38.) Witlen replied, stating that Aloise was not "barred from associating with other Teamsters, just holding office and employment with the union for 2 years." (Id.) On that basis, Searcy sent his own communication to these Local Unions on September 20, 2018, citing the Witlen email and stating that "Rome's attendance is not a violation of his ruling."

Searcy enmeshed himself in a controversy involving Aloise in the same time frame as the discussions about Uber/Lyft and Chariot were occurring. This suggests Searcy may not have been as ignorant as he had claimed about Aloise's dealings with Local 117.

Searcy's email was an unfortunate attempt to draw others to his side, but examining the email itself and the surrounding evidence, we find that he did not intend to mislead others. Searcy appears to have had a sincere belief that his statements about the meeting were correct.

IV. Liability Determinations and Recommended Penalties

Based on the evidence presented, the Panel concludes that Bergen did "permit, empower and enable Aloise to exercise authority from which the IRO's suspension order barred him," and in so doing, he failed to cooperate with the independent disciplinary process of the Final Order and the IBT Constitution, thereby bringing reproach upon the IBT and violating his oath as a member and officer.

By hosting Aloise at the Local Union's office for a meeting over a PLA that involved Teamster business, and by instructing members of his staff to transport Aloise to and from the airport in connection with this meeting, Bergen acted in a manner that was contrary to the suspension order and undermined the suspension order. As the principal officer of the Local, the Panel finds that he had the authority and responsibility to refrain from such conduct. Bergen

failed to offer any defense to the charges. We, therefore, sustain Charge One as to Bergen and accept the Charging Party IBT's recommendation of a three (3) year suspension from employment or holding office.¹⁶

As to Pharris, the Panel finds that the evidence was insufficient to sustain Charge One, both as to Pharris' alleged involvement in the PLA meeting and his attendance at the QIPP meeting. We note, as was observed by defense counsel, that the IIO has not issued charges based purely on an officer's attendance at a meeting at which Aloise was discovered to be present. Similarly, the IRO has not sustained charges against Aloise for his mere attendance at a Teamster meeting.¹⁷ Nonetheless, Pharris, who currently serves as the principal officer of Local 166, is admonished that he must take all necessary steps to ensure that he and his Local are in total compliance with the Final Order and the IBT Constitution going forward.

With respect to Smith, we find that Charge One should be sustained. The interactions between Aloise and Smith were prohibited. Aloise violated his suspension by engaging in the conduct. Smith, by engaging with him, allowed and assisted in the violation. We accept Charging Party IBT's recommendation of a suspension from employment or holding office for Smith for a period of 18 months.

With respect to Searcy, we find that Charge One should be sustained, but insufficient evidence was presented to sustain Charge Two. Searcy, as with Bergen, had overall responsibility for his Local Union. He had misgivings about the extent of Aloise's interactions with his staff, but he did not take sufficient or effective steps to end it.

On Charge Two, however, the evidence was insufficient to find that Searcy made a "false and materially misleading statement." To the extent Searcy's statement that, "Rome's attendance [at the pension meeting] is not a violation of his ruling" was incorrect, we find that this called for a legal determination and was not a statement of fact. Since the Charging Party's recommended penalty of 18 months was premised on liability for *both* charges (IBT's Post-Hearing Brief in the Matter of John Searcy and Leonard Smith at 19), we recommend modifying the penalty to a 12-month suspension from employment or holding office.

V. Conclusion

As the court in *Friedman* observed, the community around a suspended officer must share a "grave sense of respect" for the suspension "and do everything within their power to see that the suspension is truly effectuated." *U.S. v. IBT (Friedman)*, 838 F.Supp. 800, 890 (SD NY

¹⁶ The IBT's Post-Hearing Briefs did not specify the exact nature of the recommended suspensions, but the Panel subsequently confirmed, through legal counsel, that the recommended suspensions are from holding IBT employment or office, not membership.

¹⁷ Searcy Brief at 5. See generally IRO Opinion of 10/7/2021, Exh. SS2 (finding liability based on Aloise's active participation and involvement in Teamster affairs).

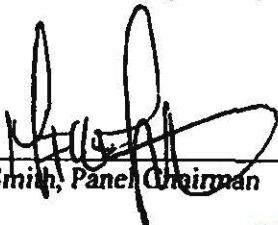
1993). Here, the officers found liable did not share this “grave sense of respect,” nor did they do “everything within their power” to effectuate Aloise’s suspension.

To the extent the penalties imposed here depart from the 18-month penalty imposed in *Friedman*, we considered the arguments made in the IBT’s Post-Hearing Briefs and found them to be persuasive. We also note that the *Friedman* case involved a somewhat different factual situation where executive board officers at the Local Union of the barred Teamster (*Friedman*) were charged with allowing him to perpetuate his authority over affairs at his Local Union. Here, officers of entirely separate local unions were charged with allowing a suspended Teamster to engage in Teamster business at their Local Unions. We have not found any prior cases that offer clear guidance in the exact situations we were faced with, and none have been cited to us.¹⁸

It is arguable that the penalties imposed here could be either more lenient or more severe than those imposed in *Friedman*. More lenient, because the conduct was less pervasive and did not involve financial misconduct; but more severe in that the officers here had the benefit of prior decisions holding Teamsters accountable when they assisted barred or suspended individuals and thus, the officers charged here knew or should have known that their actions could result in serious consequences. Accordingly, we weighed these considerations to determine the penalties recommended herein.

The Panel respectfully submits this report and recommendation for your consideration.

By:



Mike Smith, Panel Chairman

Dated: 9/7/23



Dennis Roberts, Panel Member

Dated: 9/6/23



Randy Korgan, Panel Member

Dated: 9/7/2023

¹⁸ Cases cited to us by Searcy’s legal counsel involve quite different situations (Searcy Brief at 19-20). Thomas Ryan was found to have violated the terms of his own suspension from all IBT positions and membership by involving himself in campaign affairs related to the Hoffa campaign; as a result, he was permanently barred from the IBT. Anthony Rumore’s case was a complex one. After the two-year suspension cited by counsel, Rumore was ultimately expelled from membership for, among other things, directing union staff to perform services for his family and causing staff to have contact with his father, a barred individual. The closest of the cited cases would be that involving Joseph G. Vitta, who agreed to a one-year suspension from membership, participation in union affairs, and holding positions with (or accepting compensation from) all IBT-related entities for his contacts with Anthony Rumore. Although more severe, this penalty is in line with the discipline we are recommending herein.

Exhibit A

SECTION 7 PRESIDENT'S DUTIES

It shall be the duty of the President to preside at the Local Union meetings in the absence of the Secretary-Treasurer. He/she shall perform such other duties as may be assigned by the Secretary-Treasurer, and during such time as the President is presiding, he/she shall not vote on motions pending before the membership meeting except to cast the deciding vote when a tie occurs on any question.

SECTION 8 DUTIES OF THE VICE PRESIDENT

He/she shall perform such duties and render such assistance as may be directed by the Secretary-Treasurer.

SECTION 9 DUTIES OF THE SECRETARY-TREASURER

(A) The Secretary-Treasurer shall be the principal executive officer of this organization. He/she shall preside at the membership meetings of this Local Union and preserve order therein. He/she shall in general supervise, conduct and control all of the business and affairs of this organization and its officers and employees. He/she shall determine the number of clerical employees of the Local Union. He/she shall also select the attorneys, accountants or other special or expert services to be retained by the Local. He/she shall secure an audit of the books of this organization by a certified public accountant at least once a year. However, the Secretary-Treasurer shall not have the authority to bind the Local Union for personal services to be rendered to the Local Union, such as, but not limited to, legal, accounting, consulting, public relations and editorial services, by contract, agreement or otherwise, beyond the expiration of the term of the Secretary-Treasurer in office at the time such action is taken. This shall not prevent the Local Union from entering into a *bona fide* collective bargaining agreement with another Union covering Local Union employees.

(B) The Secretary-Treasurer, subject to the provisions of Article XXIII, Section 3, of the International Constitution, together with one other officer designated by the Executive Board, shall sign all official documents, deeds, mortgages, bonds, contracts (other than collective bargaining agreements), or other instruments, all checks on bank accounts, and perform such other duties as the International Constitution, these Bylaws or law may require of him/her. The Secretary-Treasurer shall sign all collective bargaining agreements.

(C) The Secretary-Treasurer, in conjunction with one other officer (not a Trustee) designated by the Executive Board, shall have the authority to disburse or order the disbursement of all moneys necessary to pay the bills, obligations and indebtedness of the Local Union, which have been properly incurred as provided herein. He/she shall have the authority to pay current operating expenses of the Local Union, including rents, utilities and maintenance of the Union Hall, and salaries and expenses of officers and employees, along

with the authority to purchase and sell assets of up to five thousand dollars (\$5,000) with the approval of the President, up to ten thousand dollars (\$10,000) with the approval of the Executive Board, and otherwise as set forth in Sections 13 and 15.

(D) The Secretary-Treasurer shall have charge and supervision of all the officers and employees of the Local Union. He/she shall have power to appoint, suspend, or discharge all employees. Elected officers are not disqualified from also serving as employees appointed by the Secretary-Treasurer.

(E) The Secretary-Treasurer shall also have charge of all labor controversies involving this Local Union.

(F) The Secretary-Treasurer shall have authority to interpret these Bylaws and to decide all questions of law thereunder, between meetings of the Local Union Executive Board. Disputes within the Executive Board over the interpretation of these Bylaws that cannot be resolved shall be referred to the General President for action, consistent with the International Constitution.

(G) The Secretary-Treasurer shall preside at meetings of the Local Union Executive Board, shall enforce the International Constitution, these Bylaws and rules of order adopted by this Union and shall ensure that all officers perform their respective duties. He/she shall also have the right to serve on all committees by virtue of his/her office.

(H) The Secretary-Treasurer shall perform all the duties imposed upon Local Union Secretary-Treasurers by the International Constitution and these Bylaws and in general perform all duties incidental to the office and such other duties as from time to time may be assigned to him/her by the Local Union Executive Board or the members by resolution. He/she shall see that all notices and reports shall be given in accordance with the provisions of the International Constitution and these Bylaws or as required by law. He/she shall make at least quarterly a report including the assets and liabilities of the Local Union, and shall keep itemized records, showing the source of all moneys received and spent, and shall keep records, vouchers, worksheets, books and accounts and all resolutions to verify such report.

(I) The Secretary-Treasurer upon request of any member shall make available to the member a copy of the last annual report. He/she shall also make available for inspection by any member or members at the Local Union's principal office during regular business hours any prior annual report and any other document which is subject by statute to such inspection. Copying of any financial record to which a member is entitled by law shall be permitted provided that the member pays the actual cost of duplication. Membership lists may not be copied.

(J) The Secretary-Treasurer shall have custody of the Local Union seal and the records of the proceedings of all meetings of the Local Union and the Local Union Executive Board, as prepared by the Recording Secretary, or such person as is authorized to take such proceedings, and shall keep important documents, papers, correspondence, as well as files on contracts and agreements with employers. Upon the request of any person in writing or made in person to the Secretary-Treasurer during regular hours at the principal office, he/she shall provide one (1) copy of the collective bargaining agreement made by the Local Union with the employer of such person, if the person making such request establishes that he/she is an employee directly affected by such an agreement. The Secretary-Treasurer may require a receipt from such person. He/she shall also maintain at the principal office of the Local

Union copies of agreements made or received by the organization where another labor organization subordinate to the International Brotherhood of Teamsters has negotiated such a contract, and the employees represented by this Local Union are directly affected by such agreement, which agreements shall be available for inspection by any member or by any employee who establishes that his/her rights are affected by such agreement, during the regular hours maintained at the principal office of the Local Union.

(K) The Secretary-Treasurer shall keep a correct account of all moneys paid to and paid out by the Local Union and shall provide receipts for any dues, initiation fees, or other fees, assessments or fines or other moneys received. The Local Union Secretary-Treasurer shall enter all receipts in the name of the Local Union and shall deposit all moneys in accordance with Article X, Section 9 of the International Constitution.

(L) The Secretary-Treasurer must report the names and addresses of all new members coming into the Local Union to the General Secretary-Treasurer and shall send to the General Secretary-Treasurer a revised list of the names and addresses of all members in good standing in the Local Union on a current basis. Membership lists shall not be open to inspection by any member except as, and to the extent, required by law.

(M) Whenever a Secretary-Treasurer's term of office expires or otherwise terminates, he/she must see that his/her successor is properly bonded and a copy of the bond sent to the office of the General Secretary-Treasurer before he/she transfers to his/her successor in office the funds, papers, documents, records, vouchers, worksheets, books, money and other property of the organization. All such records, vouchers, worksheets, receipts, books, reports, and documents shall be preserved and retained at the Local Union's principal office for a period of six years.

(N) The Secretary-Treasurer shall make available to the Trustees all documents necessary for them to verify and complete the monthly Trustees' Report, including but not limited to, items identified in Subparagraph (K) of this Section.

(O) The Secretary-Treasurer shall make available for inspection by the International Auditor any documents necessary for the Auditor to complete the audit schedules or to complete assignments from the General Secretary-Treasurer.

(P) Upon completion of an election of officers that results in a new Secretary-Treasurer, the incumbent Secretary-Treasurer or designee shall meet with the principal officer-elect during the period between the date of the election and the end of the term of office to review pending grievances, open contract negotiations and the Local's financial records.

(Q) The Secretary-Treasurer shall provide each new member with a free copy of the International Constitution, upon request. The Secretary-Treasurer shall provide any member with a copy of the International Constitution and of these Bylaws. F

SECTION 10 DUTIES OF RECORDING SECRETARY

It shall be the function of the Recording Secretary to attend general membership meetings of the Local Union and the Local Union Executive Board and to keep minutes of the proceedings. Minutes shall accurately record the motions made at meetings and shall include