

INDEPENDENT REVIEW BOARD
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Administrator:
John J. Cronin, Jr.

February 11, 2016

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1776 K Street, NW, Suite 737
Washington, DC 20006

The Honorable William H. Webster
1850 K Street, NW, Suite 1100
Washington, DC 20006

James P. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Re: Proposed Charge Against Local 853 Member
Charles Bertucio

Dear Mr. Hoffa:

Enclosed is a Computer Disk, containing the Cover Letter,
Charge Report and Exhibit List. The Exhibits will follow
shortly.

A printed copy of the materials may be obtained by printing
the contents of the Computer Disk.

Very truly yours,

Members of the
Independent Review Board

By: 

John J. Cronin, Jr.
Administrator

Enclosure:

Cc: General Executive Board
Bradley T. Raymond, Esq., w/Exhibits
Charles M. Carberry, Esq., w/Exhibits
Tara M. La Morte, AUSA, w/Exhibits
William Keane, Esq., w/ Exhibits
Charles Bertucio, w/Exhibits

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

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1850 K Street, NW, Suite 1100
Washington, DC 20006

IBT General President, James P. Hoffa
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Re: Proposed Charge Against Local 853
Member Charles Bertucio

Dear Mr. Hoffa:

Enclosed are the Independent Review Board's (IRB) report and accompanying exhibits concerning Local 853 Member Charles Bertucio. This report is forwarded to you for appropriate action under Section G, paragraphs (d) and (e) of the March 14, 1989 Consent Order entered in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.).

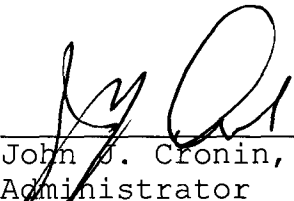
Upon review of the report, if you deem it appropriate, charges under Article XIX of the IBT Constitution should be filed. You have ninety days within which to file the charges, hold a hearing and forward a final written report to the IRB. Pursuant to paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Copies of hearing transcripts should be furnished to the IRB and to the Chief Investigator.

If you decide to reject the IRB's recommendation, you must provide a written explanation with the specific reasons for failing to accept. Within seven days of receipt of this letter, please inform the IRB of the actions planned.

Very truly yours,

Members of the
Independent Review Board

By:



John J. Cronin, Jr.
Administrator

Enclosures

cc: General Executive Board
Bradley T. Raymond, Esq., w/Exhibits
Charles M. Carberry, Esq, w/Exhibits
Tara M. La Morte, AUSA, w/Exhibits
William Keane, Esq., w/ Exhibits
Charles Bertucio, w/Exhibits

TO: IBT General President James Hoffa
FROM: Members of the Independent Review Board
DATE: February 11, 2016
RE: Proposed Charge against Former Local 853 Member Charles Bertucio

I. RECOMMENDATION

The Independent Review Board recommends to the IBT General President that a charge be filed against former Local 853 member Charles Bertucio (“Bertucio”) for bringing reproach upon the IBT and violating the IBT Constitution by knowingly engaging in a scheme to become and remain a member when he was not eligible in violation of Article II, Section 2(a) and Article XIV, Section 3 and Article XIX, Section 7(b) (1) and (2) of the IBT Constitution.¹

II. JURISDICTION

Pursuant to Article XIX, Section 14 (c) of the IBT Constitution, this disciplinary matter is within the original jurisdiction of the General President. Paragraph G (e) of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I (6) of the court-approved Rules and Procedures for Operation of the Independent Review Board (“IRB Rules”) require that within 90 days of the IRB’s referral of a matter to an IBT entity, that entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph I (9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Pursuant to Paragraphs 27, 32 and 33 of the Final Order in United States v. International Brotherhood of

¹ On December 11, 2015, after the IRB investigation began, Bertucio was issued a withdrawal card. (Ex. 24) Pursuant to Article XIX, Section 1(g) of the IBT Constitution, charges can be filed against a member who has been issued a withdrawal card. (Ex. 27)

Teamsters, 88 Civ. 4486, if this matter is not completed until after February 17, 2016, the General President's action should be forwarded to the Independent Review Officer within the 90 day period.

III. INVESTIGATIVE FINDINGS

A. Charles Bertucio and The GrandFund

Bertucio was a member of Local 853. (Ex. 24)² He is the sole owner and President of The GrandFund ("GrandFund"), which has had a collective bargaining agreement with Local 853 since March 2004. (Ex. 2 at 6, 19; Ex. 21) Bertucio became a member of Local 853 in 2012. (Ex. 24) Rome Aloise ("Aloise"), the Secretary Treasurer and principal officer of Local 853, has been the sole business agent for the GrandFund. (Ex. 1 at 4, 56-57, 59, 61-66; Ex. 70)³ Aloise has signed all the collective bargaining agreements on behalf of the Local with the GrandFund. (Exs. 21-23) As of December 9, 2015, there were three Local 853 members at the GrandFund. (Exs. 24, 30, 32) They were Bertucio, his sister, Lisa Ramsey ("Ramsey") and a marketing specialist, Vicki Lanini ("Lanini"). (Exs. 24, 30, 32; Ex. 4 at 6)

Bertucio is a principal of the GrandFund which on its website represented itself as a family of companies that provide services to the Taft-Hartley fund community. (Ex. 10; Ex. 2 at 6) One of its companies, the GrandFund Investment Group, LLC, is a broker dealer registered with the SEC. (Ex. 11) Bertucio testified that he and his company assist other companies or firms to sell services, insurance and other products to union funds. (Ex. 2 at 10-11) For example, Optum, a division of United Health Group, that among other things provided Pharmacy Benefits Manager ("PBM") services to union funds, used Bertucio and GrandFund essentially as a broker to assist it

² On December 11, 2015, Bertucio was issued a withdrawal card. (Ex. 24)

³ Aloise is also President of Joint Council 7 and an International Vice President at Large and a Trustee on several funds. (Exs. 7, 63; Ex. 1 at 4-5, 9-10)

in securing contracts with Teamster funds. (Ex. 2 at 10-11, 21-22; Ex. 12; Ex. 1 at 38-40; Ex. 3 at 15-17, 29)⁴ Several Teamster Health Funds on which Aloise was a Trustee used Optum as a PBM. (Ex. 1 at 104-105, 114-116; Exs. 13-14)⁵ In Aloise's experience, until recently, large companies dealt with the Funds directly through their own sales force and using intermediaries like Bertucio was unusual. (Ex. 1 at 37-40)⁶

Bertucio and Aloise have been friends for over 20 years. (Ex. 2 at 5-6; Ex. 1 at 35) Indeed, in 2003, Aloise intervened to stop the IBT General Secretary-Treasurer from prohibiting Teamster entities from doing business with Bertucio and a company he was assisting. (Ex. 15)⁷ This benefitted Bertucio's business. Bertucio had personal relationships with other high ranking Teamsters in addition to International Vice-President Aloise. For example, the IBT General President and other IBT officials involved with Trusts went on European golf vacations with Bertucio and other vendors to the IBT and IBT funds in 2013 and 2014. (Ex. 2 at 28-33; Ex. 16)⁸

⁴ Bertucio had a company, My Union RX, that provided similar services to Optum's predecessor company, Prescription Solutions, which also was used by Teamster Funds. (Ex. 2 at 8-9; Ex. 60)

⁵ These funds included the Teamsters Benefit Trust and the IBT's Voluntary Employee Benefits Trust. (Exs. 13-14)

⁶ Aloise indicated that now some other companies used the services of intermediaries to deal with the Funds. (Ex. 1 at 38-39) The current intermediaries often are ex-Teamster employees. (Ex. 1 at 39-40) Bertucio never worked for any union. (Ex. 2 at 6)

⁷ In a March 13, 2003 email to Bertucio, Aloise stated, ". . . I headed off a letter from Keegel telling locals not to use you, so that didn't go out until the final thing happens." (Ex. 15)

⁸ The following IBT officials and vendors to the IBT or its affiliated funds went on a golf trip to Scotland in August 2013: IBT General President Hoffa, Executive Assistant to the IBT General President Willie Smith, IBT Trade Division Director Stephen Mack, Bertucio, Richard Leebove, a political advisor to the Teamsters, Greg Tarpinian from EnTrust and Edward Sullivan from Labor Benefits, LLC. (Ex. 1 at 24, 30-34; Ex. 2 at 29-32; Exs. 7, 16-19, 69) The same individuals and International Trustee Kevin Moore went on a golf trip to Ireland in 2014. (Ex. 2 at 29-31) In addition, David Laughton, the IBT's Trade Conference Director, President of Joint Council 10 and Chairman of the New England Benefit Trust and the New England Teamsters and Trucking Industry Pension Fund, went on the 2014 golf trip. (Ex. 2 at 29-31; Ex. 20) Bertucio testified that in 2013 and 2014 the trips were arranged through a travel agent and each individual was responsible for payment of his costs. (Ex. 2 at 29, 33)

In addition, Bertucio was on the Executive Committee of the James R. Hoffa Memorial Scholarship Fund. (Ex. 2 at 24-25) Bertucio and the GrandFund made contributions to the Fund in 2009 of \$25,000 and 2010 of \$20,000. (Ex. 68) In the years 2012 through 2015, the GrandFund made donations of \$10,000, \$20,000, \$30,000 and \$20,000 respectively. (Ex. 64)

B. Local 853's contract with The GrandFund

Since March 1, 2004, Local 853 has had a collective bargaining agreement with Bertucio's company, The GrandFund. (Exs. 21-23)⁹ Bertucio signed for the company. (Exs. 21-23) Aloise signed for the Local and has been the assigned business agent for this shop in which membership has ranged from two to four members since 2004. (Exs. 21-23; Ex. 1 at 56-65; Exs. 24, 30-32, 34)

Bertucio was GrandFund's sole owner. (Ex. 2 at 6, 19) On May 11, 2012, Bertucio became a Local 853 member. (Ex. 24)¹⁰ As described below, Bertucio was ineligible for membership under the collective bargaining agreement and the IBT Constitution. (Exs. 21-23, 27)¹¹ The other current Local 853 members listed as GrandFund employees in Local records were Lanini, a marketing specialist, and Ramsey, Bertucio's sister, who described herself as a secretary and bookkeeper. (Exs. 28, 30, 32; Ex. 2 at 7; Ex. 4 at 5-6; Ex. 3 at 8)¹²

The GrandFund collective bargaining agreements with Local 853 provided for monthly employer contributions to the Teamsters Benefit Trust ("TBT") for each employee member. (Ex. 21 at 4; Ex. 22 at 4; Ex. 23 at 4)¹³ The employees received "Health and Welfare, Life Insurance,

⁹ The agreement entered into in 2012 expired in February 2015. (Ex. 23) The Local through Aloise indicated its intent to negotiate a new contract. (Ex. 25) The 2012 contract provided that it continued in force after the expiration date. (Ex. 23 at 8)

¹⁰ Bertucio's membership application was dated March 30, 2012. (Ex. 24) It was stamped received at the Local on April 18, 2012 and his initiation payment was paid on May 11, 2012. (Ex. 24) On July 25, 2012, he paid dues of \$213 covering May, June and July. (Ex. 24)

¹¹ During his IRB sworn examination, Aloise acknowledged that Bertucio should not be a Local member. (Ex. 1 at 67-68)

¹² From May 2004 through June 2006, there were three members employed at GrandFund: Ramsey, Lanini and Logue. (Exs. 30-32) After Logue died in July 2006 (Ex. 33), there were two members until May 2012 when Bertucio joined the Local. (Exs. 24, 30, 32) For the period from March 2013 through June 2014, there were four Local members when Neal Wilkinson was a member. (Exs. 24, 30, 32, 34) From June 2014 through December 11, 2015, when Bertucio was issued a withdrawal card, there were three Local members at the company: Bertucio, Ramsey and Lanini. (Exs. 24, 28, 30, 32)

¹³ After the initial contract in 2004, the company and Local 853 entered into contracts in 2007 and 2012. (Exs. 22-23) The 2012 contract expired in February 2015 and is allegedly under negotiation. (Exs. 23, 25; Ex. 3 at 12) By its terms, it remains in effect. (Ex. 23 at 8) Following his November 4, 2015 sworn examination, Aloise wrote in a declaration that when he learned that Bertucio was a member Aloise, "told him he is ineligible for

Dental Plan, Orthodontia Coverage, Vision Care Benefits, Prescription Drugs Benefits.” (Ex. 21 at 4; Ex. 22 at 4; Ex. 23 at 4) There were also employer contributions to the Teamsters Benefit Trust Retirement Security Plan and the Supplemental Income 401(k) Plan Trust. (Ex. 21 at 4-5; Ex. 22 at 4-5; Ex. 23 at 4-5) In connection with the initial contract, the subscriber’s agreement Aloise signed between the company and the Fund allowed Bertucio, the owner, to receive these benefits as a non-union supervisor. (Exs. 35-37; Ex. 1 at 65-66; Ex. 2 at 17-19)

For several reasons, the collective bargaining agreements between the GrandFund and Local 853 have been shams. As described below, Aloise and Bertucio entered into the initial collective bargaining agreement before there were Local members at the company or the union had any authorization cards from the GrandFund employees. The employer selected the bargaining agent for his employees in violation of 29 U.S.C. §158(a) (1) and (2), unfair labor practices that Aloise assisted. In addition, Aloise caused the Local to commit an unfair labor practice violating the employees’ right to select their own representative, 29 U.S.C. §§ 158(b) (1)(A); International Ladies Garment Workers Union v. NLRB, 366 U.S. 731, 738-39 (1961).¹⁴ Moreover, in violation of the Local’s Bylaws and the IBT Constitution, members were not consulted about bargaining demands and did not vote on the Local’s contracts with their employer.

Further evidencing the sham nature of the collective bargaining agreements, the agreements did not govern the terms of compensation for the member employees. Contrary to every other contract Local 853 had that included compensation through commission, each agreement with the GrandFund provided that a commission rate for certain sales employees was

union membership and that his membership will terminate.” (Ex. 66 at 3) On December 11, 2015, Bertucio was issued a withdrawal card. (Ex. 24)

¹⁴ For reasons explained below, it continues to be an employer dominated union in violation of 29 U.S.C. §§158(a)(1) and (2).

“to be determined.” (Ex. 1 at 60; Ex. 21 at 4; Ex. 22 at 4; Ex. 23 at 4) For eleven years, under that language, the union allowed the employer unfettered discretion both as to any commission and its amount. In the 2007 collective bargaining agreement that Aloise entered into on behalf of the Local with Bertucio, the wages for the hourly employee, his sister, were reduced by 9% from those allegedly paid at the end of the prior contract. (Ex. 21 at 5; Ex. 22 at 5; Ex. 29) In the then two person shop, Bertucio’s sister, the only member affected by this alleged reduction, never had a conversation with Aloise, the only union employee involved. (Ex. 4 at 10; Ex. 30; Ex. 1 at 57-63) Moreover, the hourly rate in the 2012 current contract that continues in effect, as explained below, did not govern Bertucio’s sister’s compensation. (Ex. 23 at 4-5; Ex. 4 at 7-9) Furthermore, Aloise’s friend Bertucio was a member as of 2012, despite his membership being excluded under the collective bargaining agreement and the IBT Constitution. With Bertucio’s uninhibited power over the compensation for the salesperson at the GrandFund, Local 853 remains an employer dominated union. (Exs. 21-23; Ex. 2 at 17; Ex. 3 at 10-12)

Aloise, Bertucio, Ramsey and Lanini claimed Edward Logue (“Logue”), a former GrandFund employee, was the impetus for the employees joining Local 853. (Ex. 1 at 57; Ex. 2 at 19; Ex. 4 at 9-10; Ex. 3 at 12; Ex. 66 at 1-2) Logue died in 2006. (Ex. 33) According to his Local 853 membership application, Logue had been employed at the GrandFund since 1996. (Ex. 31) He allegedly handled all dealings with Local 853 in 2004. (Ex. 4 at 9-10; Ex. 3 at 12) The “dead man did it” story does not match the facts in the documents. The chronology showed the catalyst for union membership with its benefits was Bertucio’s sister joining the company. According to her membership application, Ramsey began work at GrandFund on Monday, March 1, 2004. (Ex. 30; Ex. 4 at 6) Three days later on March 4, even before there was a contract, Aloise signed the subscriber’s agreements with the Fund and the Company. (Exs. 21, 35-37) Days after

that, Aloise signed the collective bargaining agreement on Sunday, March 7. (Exs. 21, 38) Bertucio signed the next day. (Ex. 21) At that point, Logue had been there for years, was not a Local 853 member and had not signed an authorization card. (Ex. 31) It was Ramsey's employment that caused Bertucio and Aloise to rapidly get GrandFund into the Fund and then enter into a collective bargaining agreement before the Local had authorization to represent any employees at the company. (Exs. 21, 30-31, 35-37) The evidence showed it was a collusive arrangement in which Aloise ignored his duties to represent members and chose to accommodate an employer. The collective bargaining agreement provided for medical insurance as well as other benefits for Ramsey, Logue, Lanini and Bertucio, through the subscriber's agreement Aloise approved before there was a contract.¹⁵ (Exs. 21, 35-37; Ex. 2 at 18-19) The union group rate would have been less expensive than comparable individual policies. Bertucio, who did not join the Local until 2012, was allowed with Aloise's consent to obtain health and other benefits from the TBT as a non-bargaining unit employee. (Exs. 24, 35-37; Ex. 2 at 18-19)

As noted, the two employees as of March 1, 2004 did not sign authorization cards or become members until weeks after Bertucio and Aloise had signed the agreement. (Exs. 21, 30-31) According to IBT records, Ramsey and Logue each signed combined authorizations and applications for IBT membership on March 24, 2004, seventeen days after Aloise signed the collective bargaining agreement. (Exs. 21, 30-31) Ramsey's initiation fee was paid on March 31, 2004. (Ex. 30) Her first dues payment was on April 13, 2004. (Ex. 30) Logue transferred from Local 70. (Ex. 31) His first dues payment to Local 853 was on March 31, 2004. (Ex. 31) The third employee did not join the company until after the contract was entered into. (Ex. 32) Lanini's

¹⁵ In a submission, Aloise suggested that Bertucio had repurchased GrandFund from Ullico, an insurance company, in January 2004. (Ex. 66 at 1) What difference this would make is unclear. This was, he claimed, the impetus for the collective bargaining agreement. (Ex. 66 at 1-2) If true, since Bertucio no longer was receiving benefits as a Ullico employee, he needed to get them somewhere else. Aloise accommodated him.

application was undated and stated that she began work at GrandFund on May 3, 2004, two months after the contract was entered into. (Exs. 21, 32) Her first dues and initiation fee payments were dated May 19, 2004. (Ex. 32) Her membership began with those payments.¹⁶ The documents established that Bertucio, the employer, selected the bargaining representative for his employees with the collusion of his friend, Aloise. They agreed to the terms of the collective bargaining agreement, and earlier to the subscriber's agreement, ensuring Bertucio's participation in union benefits, before any employee had authorized the Local to act as his bargaining agent. Indeed, Aloise agreed to the fund subscriber's agreement before there was a contract with the employer. (Exs. 21, 35-37) From the start, Bertucio and Aloise violated the right guaranteed employees under 29 U.S.C. §157 to select their own bargaining representative.

As further evidence of the collusive arrangement, Aloise failed to follow the procedures for contract negotiations and ratification in the Local Bylaws and the IBT Constitution with respect to any of the three GrandFund contracts. Article XII, Section 1(b) of the IBT Constitution and Article XVIII, Section 6 of the Local's Bylaws required that members vote to approve collective bargaining agreements. (Ex. 39 at 25-26; Exs. 27, 40-41)¹⁷ Article XVIII, Section 6 of the Local's

¹⁶ Pursuant to Article XIV, Section 1(b) of the IBT Constitution and Article IV, Section 2 of the Local's Bylaws, if an individual has signed a check-off authorization permitting the initiation fee to be withheld from his pay, such individual becomes a member upon the Local's receipt of the first dues payment. (Ex. 27; Ex. 39 at 2) The GrandFund employees signed check-off authorizations allowing the initiation fee to be withheld. (Exs. 24, 30-32, 34)

¹⁷ Article XII, Section 1(b)(1) of the IBT Constitution provides in pertinent part:

Agreements shall either be accepted by a majority vote of those members involved in negotiations and voting, or a majority of such members shall direct further negotiations before a final vote on the employer's offer is taken, as directed by the Local Union Executive Board. During negotiations, the Local Union Executive Board may order a secret ballot strike vote to be taken and when, in the judgment of the Local Union Executive Board, an employer has made a final offer of settlement, such offer must be submitted to the involved membership for a secret ballot vote as hereinafter provided:

(1) If at least one half of the members eligible to vote cast valid ballots, then a cumulative majority of those voting in favor of the final offer shall result in acceptance of such offer. . .

(Ex. 27)

current Bylaws provided, "Ratification of agreements or amendments shall be subject to vote in the same manner as provided for in connection with bargaining demands as set forth in Section 27(A). . . ." (Ex. 39 at 25) The IBT Constitution and the Bylaws did not contain a Section 27(A). (Ex. 41) When the IRB requested clarification from the Local, Aloise responded it was an error. (Ex. 40) Aloise explained that a section of the Model Bylaws had been incorporated into the Local's Bylaws "without correction for the applicable section references. . ." (Ex. 40) He described the procedures in the Section 27(A) referenced in the Bylaws that the Local followed as follows:

Whenever a collective bargaining agreement is about to be negotiated, modified or extended at the request of this Local Union, the principal executive officer shall call a meeting at which the membership shall determine and authorize the bargaining demands to be made. The Local Union Executive Board shall determine whether such meeting shall be limited to the members in a particular division, craft or place of employment.

(Ex. 40) Aloise as the Local's "principal executive officer" was required to call a meeting of the members to address bargaining demands. (Ex. 39 at 12; Ex. 40) After that, pursuant to the Bylaws and Aloise's statements in his letter, a contract ratification vote was to be conducted in the same manner as votes on bargaining demands. (Ex. 39 at 25; Exs. 40-41)¹⁸ The IRB requested from Local 853 all records relating to contract ratification votes, negotiation meetings and other meetings with GrandFund members to discuss the contracts. (Exs. 42-43) The Local provided none. (Exs. 44-46)¹⁹

¹⁸ According to Aloise, the Local would take steps ". . . to address this drafting error immediately by starting the process for amendment of the Bylaws to add this paragraph and correct the cross reference in Section 6." (Ex. 40)

¹⁹ In response to an IRB document request, the Local produced alleged bargaining demands dated February 19, 2015. (Ex. 26) These demands included a wage increase of 7% each year for the office clerical employees. (Ex. 26) Ramsey was the only office clerical employee. (Ex. 4 at 5-6) She never spoke to anyone at the Local about any bargaining demands. (Ex. 4 at 9-10) The other two members were Bertucio and Lanini.

In addition, in the over eleven years she had been a Local member, Ramsey never met any representative from the Local at any time. (Ex. 4 at 10) Although she was the only hourly employee at GrandFund, no one from the Local ever discussed her demands with her, even when Aloise was negotiating a new contract in 2012 for the then two member-employees at the GrandFund. (Ex. 4 at 6-7, 9-10; Ex. 23; Ex. 9) Ramsey never spoke with anyone from the Local about voting on any collective bargaining agreement. (Ex. 4 at 10)

Lanini was not at GrandFund when the 2004 contract was entered into. (Exs. 21, 32) She admitted she did not vote on the 2007 contract. (Ex. 3 at 12) She claimed that she and Ramsey, at lunch one day, voted by themselves on the 2012 contract. (Ex. 3 at 12-13)²⁰ If a lunch meeting had occurred between two employees, it would not have satisfied the Bylaw requirement which called for the Local's principal officer to call a meeting to ratify contracts. (Ex. 39 at 25; Ex. 40) Nor would it be consistent with Local practice. (Ex. 5 at 26-27, 30; Ex. 6 at 25-29)²¹ Local 853 President and business agent Robert Strelo ("Strelo") and Vice President and business agent Bo Morgan ("Morgan") testified that a Local representative always conducted the contract ratification votes. (Ex. 5 at 26-31; Ex. 6 at 26-27) Local 853 President and business agent Strelo testified that he always conducted secret ballot contract ratification votes. (Ex. 6 at 27)²² The absence of any Local record of member approval of any of the three contracts, Ramsey's testimony, that the 2004

Aloise claimed he did not know Bertucio was one of the three members he represented at GrandFund until after Bertucio received an IRB sworn examination notice. (Ex. 1 at 67; Ex. 62)

²⁰ Lanini as a sales person is highly dependent on Aloise's good graces in her attempts to sell her business partners' products and services to Teamsters funds. (Exs. 47, 56)

²¹ Aloise testified that sometimes stewards would conduct votes without a business representative being present. (Ex. 1 at 61-62) There was nothing in the Local's records to show any steward notified Aloise a vote had occurred in the manner he suggested. (Exs. 42-46) Aloise's testimony was inconsistent with the testimony of two other Local 853 officers who stated a Local business agent was always present. (Ex. 5 at 26-31; Ex. 6 at 26-27)

²² Vice President Morgan testified that he generally conducted secret ballot contract ratification votes, but at smaller companies he may conduct the vote by a show of hands. (Ex. 5 at 27, 30)

contract resulted from unfair labor practices and was entered into before any employee authorized the Local to represent him, Lanini's testimony that no vote took place for the 2007 contract, the business agents' testimony regarding Local practice and Aloise's admission he was never present at a GrandFund employee contract vote, all evidenced that no valid vote as the IBT Constitution required was ever held. (Ex. 1 at 61-65; Ex. 3 at 12-13) The Local had no documentary evidence that established it had any notification that the GrandFund members voted on any contract as Article XII, Section 1(b) of the IBT Constitution required. (Exs. 27, 42-46; Ex. 1 at 62-64) Moreover, there was no documentation that the GrandFund members had the pre-negotiation discussions Article XVIII, Section 6 of the Bylaws required. (Ex. 39 at 25-26; Ex. 40)²³

There is additional evidence. In the first and all subsequent contracts, Bertucio and Aloise agreed to two classes of employees among members. (Ex. 21 at 4-5; Ex. 22 at 4-5; Ex. 23 at 4-5) One was hourly salaried employees. From 2004 through September 2015, according to Bertucio and Ramsey, Ramsey was the only hourly employee. (Ex. 2 at 17-18; Ex. 4 at 5-6) Bertucio thus had Aloise and the union in the position of allegedly negotiating as the employer-selected employee representative the wages and benefits that he as the employer, who picked the union, would pay his sister, the sole hourly employee for eleven years. As additional evidence of its sham nature, when the contract expired in 2007, Bertucio agreed with Aloise, according to the contract they signed, to a 9% reduction in Ramsey's hourly pay in the second contract from the \$22.00 an hour she supposedly was paid in the final year under the first contract, to \$20.00 an hour in the first year of the second contract. (Ex. 29; Ex. 21 at 5; Ex. 22 at 5) Aloise agreed to this wage

²³ As discussed below, after reading about an IRB improper contract case, Aloise in December 2014 wrote Bertucio that for the contract that expired on February 28, 2015, they had to have "actual negotiations" and a vote. (Ex. 48; Ex. 1 at 63) In addition, the Local produced bargaining demands dated February 19, 2015. (Ex. 26) Ramsey testified that she never spoke with anyone from the Local. (Ex. 4 at 10) Aloise claimed that he spoke to Logue about how to structure the 2004 contract. (Ex. 1 at 58-59) The Local did not provide any documentation regarding contract proposals for that contract.

reduction for the sole hourly employee he represented without any discussion with the employee and with no member vote on this contract in the then two person shop. (Ex. 4 at 6, 10; Exs. 21-22)²⁴

Aloise's notable inability to negotiate with Bertucio did not end with the hourly employee. The description of compensation for sales representatives also remained the same in the second contract as in the first, like hourly wages did. (Ex. 21 at 4-5; Ex. 22 at 4-5) In contrast to the compensation section of the contract, the employer contributions to the benefit fund were adjusted. (Exs. 21-22) Aloise was the sole union representative for GrandFund. (Ex. 1 at 57-65) At that point in 2007, there were only two members at the employer. (Exs. 9, 21-22, 30, 32) Aloise, an experienced negotiator, obtained lower pay in the new contract for the hourly employee and negotiated that the sales employee's compensation, as discussed below, remained in the unguided discretion of the employer for five years more than the initial three of the original contract. (Exs. 21, 22)

That this second contract was not the result of arms-length negotiations was further evidenced from Aloise's past experience as a negotiator. He was not always this out bargained. Indeed, Aloise proclaimed during his IRB sworn examination, "I think I can – I'll bargain anybody". (Ex. 1 at 82) The Local records provide no justification for Aloise agreeing to the reduction of the employee's compensation. The second contract evidenced no bargaining and was another sham arrangement between Bertucio and the union. What it did evidence was the actual contract terms were unimportant to the two parties.

²⁴ Under the 2007 collective bargaining agreement, the hourly rate for clerical employees decreased by 9% from \$22.00 per hour or \$880 a week to \$20.00 per hour or \$800 a week. (Exs. 21-22, 29) Under the contracts, clerical employees would be back to the same pay required at the end of the 2004 contract in 2009. (Exs. 21-22, 29)

There was evidence the contracts did not govern Ramsey's wages. Under a bogus claim of privacy, she refused at her IRB testimony to state how much she currently made for the 40 hour week she claimed to work. (Ex. 4 at 7-9) This information from Ramsey was necessary for the IRB to determine if the contract governed her wages. The member's refusal to supply this relevant information permits an inference to be drawn against her employer that her compensation was not determined pursuant to the contract. (Ex. 4 at 7-9)²⁵ E.g., Brink's, Inc. v. City of New York, 717 F.2d 700, 710 (2d Cir. 1983); RAD Services, Inc. v. Aetna Cas. Sur., Co., 808 F.2d 271, 280-81 (3d Cir. 1986). Indeed, corroborating this, Ramsey's attorney admitted that the Local did not know what she was paid. (Ex. 4 at 7-9) She unreasonably obstructed the IRB investigation in violation of Article XIX, Section 14(i) of the IBT Constitution by not answering the question.

In all three contracts, in addition to the hourly employee classification, there was a classification for employees who were sales representatives. (Ex. 21 at 4; Ex. 22 at 4; Ex. 23 at 4) For these employees, each of the three contracts covering eleven years provided identically, "Monthly Base \$5,000, Commissions To be determined." (Ex. 21 at 4; Ex. 22 at 4; Ex. 23 at 4) The base pay did not change in over a decade. In Local agreements, Aloise routinely negotiated commission rates for salesmen members with other employers. (Ex. 49 at 36-37; Ex. 50 at 35-36; Ex. 1 at 60) There were no other Local contracts with open commission rates. (Ex. 1 at 60) Here, Bertucio was not obligated to pay anything at all above the base pay. In fact, he did not pay commissions as the contracts asserted. (Ex. 2 at 16-17; Ex. 3 at 10-12; Exs. 21-23) He paid his employees bonuses, the very payment of and the size of which he determined in his sole discretion.

²⁵ Her claim that the information was private and not subject to the IRB's ability to gather information is unpersuasive. If she was actually paid contract wages, her salary could be determined mathematically and would be publicly known to anyone who reviewed the contract. Only a salary not governed by the contract would have been unknown and not capable of being determined. As a consequence, her failure to provide information regarding how much she made supports an inference that such testimony would have disclosed she was not paid pursuant to the contract.

(Ex. 2 at 17; Ex. 3 at 10-12) Aloise, experienced in negotiating commission rates for other members, agreed to have the union surrender a key part of compensation determination to his friend the employer to solely dictate whether the employee would receive any payment above base pay and, if he did, how much the company would pay, without any input for over 11 years. (Ex. 1 at 59-60; Exs. 21-23) The open commission rate in each contract was an indication that the contract was a sham.

In 2012, without Aloise's objection, Bertucio became a member of Local 853. (Ex. 24) Bertucio's initiation fee was paid on May 11, 2012. On July 25, 2012, he paid three months of dues. (Ex. 24) The initial contract and the two subsequent ones provided the union was the sole collective bargaining agent for "all office employees, except all regularly elected officers and appointed officers of the Employer." (Ex. 21 at 1; Ex. 22 at 1; Ex. 23 at 1) This provision excluded Bertucio, as Aloise admitted. (Ex. 1 at 67-68) On his union membership application, Bertucio described himself as "President", an excluded category from membership. (Ex. 24; Ex. 23 at 1) In addition, on the 2012 subscriber's agreement for the Supplemental Income Trust Fund Bertucio also described himself as GrandFund's President. (Ex. 51) During his sworn examination, Bertucio confirmed that he was the GrandFund President. (Ex. 2 at 6)

Moreover, as the sole owner of GrandFund, obviously Bertucio had not delegated to the Local, as required under Article XIV, Section 3 of the IBT Constitution for membership, the exclusive authority to negotiate his compensation. (Ex. 27)²⁶ Yet, Bertucio and Aloise, despite

²⁶ Article XIV, §3 of the IBT Constitution states:

Every member covered by a collective bargaining agreement at his place of employment authorizes his Local Union to act as his exclusive bargaining representative with full and exclusive power to execute agreements with his employer governing terms and conditions of employment and to act for him and have final authority in presenting, processing, and adjusting any grievance, difficulty, or dispute arising under any collective bargaining agreement or out of his employment with such employer in such manner as the Local Union or its officers deem to be in the best interests of the Local Union, all subject to Article XII and other applicable provisions of the International Constitution relating to such matters.

these obvious bars, knowingly conspired to violate the IBT Constitution to allow Bertucio to become a member.

Bertucio's claimed reason for joining the union was that after a Health and Welfare Fund audit in 2012, he received a call from the Fund and was told, ". . . if you want to maintain your benefits, you have to join the union." (Ex. 2 at 20) Although the first subscriber's agreement had indicated he could receive benefits as a non-union supervisor, the two subsequent agreements in 2007 and 2012 indicated no non-bargaining unit employees were to receive benefits. (Ex. 2 at 18-19; Exs. 35-37, 51-55) Thus, Bertucio was not eligible to receive benefits. He would have known this when he signed both the 2007 and 2012 contracts and subscriber's agreements. (Exs. 22-23, 51-55) Obviously given his conversation with the fund auditor, despite his knowing lack of eligibility he continued to receive the benefits improperly after the first contract's termination.

The subsequent inappropriate grant of union membership through Local 853 to Bertucio was consistent with his and Aloise's earlier action under the first contract to allow Bertucio to receive fund benefits, though not a member of the union. At the time they agreed on this and the subscriber's agreement was signed, there was no collective bargaining agreement and no employees whom had authorized Local 853 to represent them. (Exs. 9, 21, 30-31, 35-36; Ex. 1 at 64-67) For Bertucio and Aloise it was obviously "first things first" and that was not employees' rights to select their own representative. In 2012 when union membership was essential for Bertucio to continue benefits, he improperly claimed membership, with Aloise's concurrence, even though he knew he was not eligible to join the union. Bertucio had no eligible employment with a Local 853 employer as executives were explicitly excluded from the contract. (Ex. 23 at 1)

(Ex. 27)

Further evidencing the over decade's long sham contractual arrangements between Bertucio and the Local, was that on Saturday, December 20, 2014, shortly after Aloise read about an IRB matter involving an improper collective bargaining agreement, Aloise emailed Bertucio to alert him that for the next contract the Local and GrandFund were to enter into in 2015, he and his friend, now a Local member, would have to "have actual negotiations and a vote, signed into by all people covered by the contract or I have to disclaim interest" as opposed to the phony negotiation they had been doing. (Ex. 48; Ex. 1 at 62-63)²⁷ This was an admission the earlier contracts were shams. Aloise and Bertucio met for breakfast on Christmas Eve in 2014, reportedly to discuss the GrandFund contract. (Ex. 58)²⁸ At that time there were only three members at GrandFund, which included Bertucio, and his sister. (Exs. 9, 28, 24, 30, 32) Aloise, as the business agent, at a minimum, would have known the number of members at the employer when he met, if not all the employees. (Ex. 28; Ex. 1 at 57-64)²⁹ He would have to know which employees were eligible to be involved in contract negotiations and votes. If Bertucio was involved in any discussion of the employees' contract demands, it would have been an unfair labor practice, 29 U.S.C. §158(a) and a violation of Article XIV §4 of the Local 853 Bylaws. (Ex. 39 at 19-20)

The Local produced to the IRB a document which it purported to be Local bargaining demands for GrandFund employees dated February 2015. (Ex. 26) The sole business agent for GrandFund was Aloise. (Ex. 1 at 57-64) Since Aloise had never spoken to Ramsey and claimed he did not know Bertucio was a member, he never held the required meeting under the Bylaws to

²⁷ This was not copied to anyone else at GrandFund. (Ex. 48)

²⁸ They apparently exchanged personal communications for holidays. For example, in 2014, they had a personal email exchange on Thanksgiving Day evidencing their personal relationship. (Ex. 67)

²⁹ Aloise claimed that he did not know Bertucio was a Local 853 member until after Bertucio received an IRB sworn examination notice. (Ex. 1 at 67) Bertucio's sworn examination notice was dated September 4, 2015. (Ex. 62)

discuss the members' negotiating demands this document purported to represent. (Ex. 4 at 10; Ex. 1 at 67) If he had discussed with Bertucio what he wanted as a member or allowed him to participate in discussions with other employees on the subject, it would also have been an unfair labor practice. As of November 4, 2015 there had been no vote on a new contract to replace the one that expired on February 28, 2015. (Ex. 1 at 64; Ex. 23)

C. Analysis

Bertucio violated the IBT Constitution and brought reproach upon the IBT by becoming a member when he knew he was not eligible to join the union. In 2012, he signed a contract which provided he was not to be a member. (Ex. 23) He was not an employee covered under a contract between the union and employer. He also never in fact delegated to the union the sole authority to negotiate his compensation as Article XIV, Section 3 of the IBT Constitution required and as he represented on his membership application he did. (Exs. 24, 27) His GrandFund employment was not covered by the contract. (Ex. 23 at 1) All the contracts between his company and the Local had been shams. Membership became one more necessary step in the scam in 2012 and he took it.

Because of the Local 853 contract for his employees and his membership, not only was Bertucio able to secure health insurance and other benefits for himself and his employees through a Teamster fund, he also was permitted to claim GrandFund was a union employer. (Ex. 21 at 4-5, 7; Ex. 22 at 4-5, 7; Ex. 23 at 4-5, 7) In addition, his sales employee Lanini and himself were able to attend IBT meetings at which many of their sales targets, the union officers who were union fund trustees, would congregate. (Ex. 3 at 19-20; Ex. 2 at 23, 29-33)³⁰ The ultimate sales targets

³⁰ One of the benefits of membership to Lanini as a salesperson was the ability to attend IBT events such as the Unity conference. (Ex. 3 at 20; Ex. 1 at 72-73) This was a significant advantage for those looking to convince IBT decision makers to buy their product. It had been the motivation for sham contracts at other Locals in the past. (Ex. 59 at 3-6; Ex. 61 at 10, 25-26)

were the union funds to which GrandFund marketed the services and products of its business partners. (Ex. 1 at 72-76)

Union membership giving salespeople access to union officials with influence in Funds, was an advantage for someone in Bertucio's business. Joint Council 43 noted in an opinion on an IRB-recommended charge against an owner who entered into a sham contract with a Local providing him with union membership and who also had a second company that provided financial services to Teamster funds, the owner "was an investment entrepreneur who concluded that joining the union would in some way further his opportunities to exploit or deal in investments held by Teamster entities and/or their jointly administered trusts." In re Christopher Roach, Joint Council 43 opinion at 6 (Feb. 12, 1999). (Ex. 59 at 6) Roach was found to have violated Article XIV, Section 3 of the IBT Constitution (member must authorize the Local union to act as their exclusive bargaining representative in negotiating and administering collective bargaining agreement). (Ex. 59 at 5) He was barred from the union. (Ex. 59 at 6)³¹

In another IRB-recommended matter, a union officer who allowed a company owner that sold insurance to IBT members to have a sham contract so he could claim he was a union employer was found to have entered into a sham contract to give the employer greater access to his company's intended market. In re Slawson, Sr., Decision of IBT General President at 26 (April 1, 2013). (Ex. 61) In Slawson, Sr., the IBT found that the sham nature of a collective bargaining agreement was demonstrated by among other evidence: the officer's failure to hold contract proposal meetings, the officer's failure to conduct a contract ratification vote and that the employer retained complete discretion regarding employee compensation. In re Slawson, Sr., Decision of the IBT General President at 26. (Ex. 61)

³¹ The IRB found the Joint Council's sanction not to be inadequate. (Ex. 59)

IV. PROPOSED CHARGE

Based upon the foregoing, it is recommended that former Local 853 member Charles Bertucio be charged as follows:

While an IBT member, you brought reproach upon the IBT and violated Article II, Section 2 (a) and Article XIV, Section 3 of the IBT Constitution in violation of Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution to wit:

In 2012, you became a Local 853 member and, as the sole owner of the GrandFund, never delegated to the IBT the sole right to negotiate your compensation as required when you became an IBT member. You continued during your membership to have a sham contract between your company, the GrandFund, and Local 853, as detailed in the above report. You signed a contract as owner that excluded your compensation from IBT control. When you applied for membership, you agreed to make Local 853 the sole bargaining representative between you and the company which you totally owned, a condition not capable of being fulfilled.

Exhibits to the Charge Report Involving Charles Bertucio

Exhibit	Description
1	Sworn Examination of Rome Aloise dated November 4, 2015
2	Sworn Examination of Charles Bertucio dated November 13, 2015
3	Sworn Examination of Vicki Lanini dated November 13, 2015
4	Sworn Examination of Lisa Ramsey dated November 13, 2015
5	Sworn Examination of Bo Morgan dated November 3, 2015
6	Sworn Examination of Bob Strelo dated November 3, 2015
7	Form LM-2 for 2014 for IBT (Excerpts)
8	Not Used
9	Schedule of GrandFund Members Dues Payments
10	Excerpt from GrandFund website
11	S E C Annual Audited Report Form X-17A-5 Re: GrandFund Investment Group, LLC
12	Excerpt from United Health Group website
13	Form 5500 Teamsters Benefit Trust excerpt for 2012 (10/1/12-9/30/13)
14	Form 5500 IBT Voluntary Employee Benefits Trust excerpt for 2013
15	Email dated March 13, 2003 at 3:00 & 3:43 PM from Rome Aloise to Charles Bertucio
16	August 5, 2013 Email with Photo
17	Form 5500 for Western Conference of Teamsters Pension Plan 2013 excerpt
18	Tarpinian Entrust Capital Inc. invoice dated January 30, 2015
19	Ed Sullivan/Labor Benefits Lexis report
20	Local 633 Website excerpt
21	Collective Bargaining Agreement between The GrandFund and Local 853 3/1/04 - 2/28/06
22	Collective Bargaining Agreement between The GrandFund and Local 853 3/1/07 - 2/28/12
23	Collective Bargaining Agreement between The GrandFund and Local 853 3/1/12 - 2/28/15
24	Dues Record and Application for Charles Bertucio
25	Letter from Rome Aloise to GrandFund dated December 5, 2014
26	Contract Proposals to GrandFund from Local 853 dated February 19, 2015
27	IBT Constitution (Excerpts)
28	Local 853 Membership Roster excerpt
29	Schedule of Pay Raise Increases/Decreases Per Collective Bargaining Agreements
30	Dues Record and Application for Lisa Ramsey
31	Dues Record and Application for Edward Logue
32	Dues Record and Application for Vicki Lanini
33	Lexis Report on Edward Logue
34	Dues Record and Application for Neal Wilkinson
35	Application and Subscriber's Agreement TBT Health & Welfare for The Grand Fund dated March 4, 2004
36	Application and Subscriber's Agreement Retirement Security Plan for The Grand Fund dated March 4, 2004
37	Subscriber's Agreement for 401(k) Plan Supplemental Income Trust Fund for The Grand Fund dated March 1, 2004
38	March 2004 Calendar
39	Bylaws of Local 853
40	Letter from Local 853 dated August 21, 2015
41	Letter dated August 19, 2015 from IRB to Rome Aloise
42	Letter from IRB to Local 853 dated September 11, 2015
43	Letter to Local 853 from IRB dated September 25, 2015

Exhibits to the Charge Report Involving Charles Bertucio

44	Letter from Local 853 to the IRB dated September 17, 2015
45	Letter from Local 853 to the IRB dated September 24, 2015
46	Letter from Local 853 to the IRB dated October 1, 2015
47	Email dated February 3, 2012 at 11:36 AM from Rome Aloise to Laninicrookside@aol.com
48	Email dated December 20, 2014 at 12:22 PM from Charles Bertucio to Rome Aloise
49	Collective Bargaining Agreement for Young's Market Co. (6/1/12 - 5/31/15)
50	Collective Bargaining Agreement for Southern Wines & Spirits of California (6/1/12 - 5/31/15)
51	Subscriber's Agreement for 401(k) Plan Supplemental Income Trust Fund for The Grand Fund dated March 1, 2012
52	Application and Subscriber's Agreement TBT Health & Welfare for The Grand Fund dated February 21, 2007
53	Application and Subscriber's Agreement Retirement Security Plan for The Grand Fund dated February 21, 2007
54	Application and Subscriber's Agreement TBT Health & Welfare for The Grand Fund dated July 16, 2012
55	Application and Subscriber's Agreement Retirement Security Plan for The Grand Fund dated July 16, 2012
56	Email dated February 4, 2013 @ 6:20 PM from Rome Aloise to Vicki Lanini
57	NOT USED
58	December 24, 2014 Receipt, Rome Aloise and Charles Bertucio breakfast
59	IRB "Not Inadequate" Decision and Joint Council 43 Decision Re: Christopher Roach
60	March- May 2003 Emails
61	IBT Decision Re: Bradley D. Slawson, Bradley A. Slawson and Todd Chester
62	Sworn Examination notice to Charles Bertucio dated September 4, 2015
63	Form LM-2 for 2014 for Joint Council 7
64	GrandFund donations to James R. Hoffa Memorial Scholarship Fund
65	Submission of Edward A McDonald dated December 7, 2015
66	Declaration of Rome Aloise dated December 4, 2015
67	Email dated November 27, 2014 from Charles Bertucio to Rome Aloise
68	GrandFund Donations to James R. Hoffa Memorial Scholarship Fund in 2009 & 2010
69	Form LM-2 for IBT for 2013 (excerpt)
70	Form LM-2 for Local 853 for 2012