

## MEMORANDUM

**TO:** IBT General President and members of the General Executive Board

**FROM:** Robert D. Luskin, Independent Investigations Officer

**RE:** Recommended charges against Mike Bergen and Mike Pharris, Local Union 166; and John Searcy and Leonard Smith, Local Union 117

**DATE:** May 22, 2023

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### RECOMMENDED CHARGES

Under authority granted by Paragraphs 30, 31, and 32 of the Final Agreement and Order<sup>1</sup> in *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D.N.Y.), the Independent Investigations Officer (IIO) recommends the following charges be laid against Mike Bergen and Mike Pharris, of Local Union 166, and John Searcy and Leonard Smith, of Local Union 117<sup>2</sup>:

**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 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.

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<sup>1</sup> Exh. 1, Final Agreement and Order, Dckt. 4409-1 (1/14/2015), in *U.S. v. International Brotherhood of Teamsters*, 88 Civ. 4486.

<sup>2</sup> This is the second of three charge referrals arising solely from misconduct of persons who enabled and permitted Aloise to violate his suspension order. The first, *In Re: Hart*, was referred February 28, 2023. The third will issue shortly.

## JURISDICTION

Under Paragraph 32 of the Final Order, the IIO designates this matter “as an original jurisdiction case for the General President to review.” Upon receipt, the General President “shall promptly take whatever action is appropriate in the circumstances and shall, within ninety (90) days of the referral, make written findings setting forth the specific action taken and the reasons for that action.”<sup>3</sup>

## INVESTIGATORY FINDINGS

### *A. Findings of fact relevant to all charges against all respondents*

1. In 2017, on *de novo* hearing of three misconduct charges against Rome Aloise, Independent Review Officer Barbara Jones held that Aloise’s actions repeatedly brought reproach upon the union. She found he twice solicited and accepted things of value from separate employers he bargained against, that he negotiated a sham contract with a third employer, and that he used his authority to manipulate a local union election in favor of one of his political allies.<sup>4</sup> To punish this serious misconduct and deter its recurrence, the IRO imposed a disciplinary penalty on Aloise as follows:

1. For two years after the date of this decision, [Aloise] shall be suspended from his positions as International Vice President, President of Joint Council No. 7, and Secretary-Treasurer and Principal Officer of Local 853.
2. For two years after the date of this decision, he shall not hold any position, elected or appointed, with the IBT, Joint Council No. 7, Local 853, or any other IBT affiliate.
3. For two years after the date of this decision, no IBT entity shall pay him, nor shall he accept, any salary, gratuities, gifts, payments, allowances, fees, benefit payments or contributions or any other compensation of any kind, except that he may receive compensation that has accrued prior to the date of this decision.<sup>5</sup>

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<sup>3</sup> Exh. 1, Final Agreement and Order.

<sup>4</sup> Exh. 2, *In Re: Rome Aloise*, Opinion of the IRO (10/24/2017).

<sup>5</sup> Exh. 3, *Re: Rome Aloise*, Order of the IRO (12/22/2017).

The order was made effective immediately the date it issued, December 22, 2017.<sup>6</sup>

2. Three weeks later, on January 12, 2018, Aloise through his counsel Edward McDonald petitioned IRO Jones *ex parte* for permission to become a paid consultant to the Western Conference of Teamsters Pension Trust Fund (WCTPTF).<sup>7</sup> Aloise's petition described what he said was his lengthy and influential history with the fund, its expansion from a regional to a national organization under his leadership, and the unique skills and knowledge he said he would bring as a paid consultant to address problems associated with that expansion. He stated his anticipated "duties would include working with members, employers, Local Union representatives and the Fund's administrator to explain, enroll, troubleshoot and solve issues" in the expanded area and that his "familiarity with many of the Local Union officials, contracts, and members will help ease the mistrust that has arisen to date with respect to the many troubled pension plans the WCTPTF is replacing."<sup>8</sup> The WCTPTF provides pension benefits exclusively to retired Teamsters, *i.e.*, retired employees of employers in collective bargaining relationships with Teamster local unions, yet Aloise argued that the fund is "an independent entity not affiliated with the Teamsters."<sup>9</sup>

3. In the same *ex parte* petition, Aloise also sought permission to continue to serve as a union trustee to the Teamsters Benefit Trust fund (TBT), a health and welfare benefit fund that provides benefits exclusively to active Teamsters, and the SIP 401(k) Plan (SIP Plan), a multi-employer/multi-union retirement fund that provides retirement benefits to retired members of the Teamsters as well as of other unions.<sup>10</sup> As with the WCTPTF, Aloise argued that these funds were

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<sup>6</sup> *Id.*

<sup>7</sup> Exh. 4, Aloise letter to IRO Jones, 1/12/2018.

<sup>8</sup> *Id.*, pp. 2-4.

<sup>9</sup> *Id.*, pp. 2, 4.

<sup>10</sup> *Id.*, pp. 4-5.

not affiliated with the Teamsters, even though they provided benefits to active or retired Teamsters and were funded as the result of Teamsters collective bargaining agreements.<sup>11</sup>

4. In a letter that accompanied Aloise's petition,<sup>12</sup> lawyer McDonald repeated this point, declaring flatly that the WCTPTF, the TBT, and the SIP Plan "are independent entities and are not 'IBT affiliates.'"<sup>13</sup> He stated, "[a]s the Second Circuit held specifically with respect to the Western Conference Fund, 'We conclude that the Consent Decree, of its own force, is not binding upon the Trust and its trustee,'" citing *United States v. International Brotherhood of Teamsters (Ballew)*.<sup>14</sup> From this premise, McDonald argued by implication that IRO Jones could not prevent Aloise from consulting with or being a trustee of these funds because her authority under the Final Order did not reach those entities.

5. McDonald's letter overstated the *Ballew* holding because it failed to acknowledge the court's authority under the All Writs Act "to require an entity that was not a party to the underlying IBT litigation to take action deemed necessary to implement the Consent Decree."<sup>15</sup> Indeed, the WCTPTF in *Ballew* conceded that "the All Writs Act can be used ... to command some course of future conduct" on it, a non-party.<sup>16</sup> The Second Circuit agreed, finding permissible "a prospective

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<sup>11</sup> *Id.*

<sup>12</sup> Exh. 5, McDonald letter to IRO Jones, 1/12/2018.

<sup>13</sup> *Id.*

<sup>14</sup> Exh. 6, *United States v. International Brotherhood of Teamsters (Ballew)*, 964 F.2d 180 (2d Cir. 1992). This appeal arose from an election protest decision finding that Ballew, a trustee of the WCTPTF, impermissibly used union resources to distribute a letter attacking a pension issue Ron Carey raised during his 1991 candidacy for IBT General President. The protest decision directed Ballew to remedy the past action by reimbursing the costs of the letter and to cease and desist from such further violation in the future. The Second Circuit vacated the monetary remedy for the past action because Ballew and the WCTPTF were not parties to the Consent Decree. The court determined that the "cease and desist" order to enjoin future action would be appropriate but was mooted when Carey was elected despite Ballew's election rules violation against him.

<sup>15</sup> Exh. 6, *Ballew*, 964 F.2d 180, at 184.

<sup>16</sup> *Id.*

order requiring Ballew to take or refrain from taking some action in order to assure the effective implementation of the Consent Decree.”<sup>17</sup>

6. IRO Jones rejected the Aloise petition and McDonald letter in all respects.<sup>18</sup> Where her initial order suspended Aloise from his positions as IBT vice president, joint council president and local union secretary-treasurer and directed that he not hold any position with those entities “or any IBT affiliate” for two years,<sup>19</sup> IRO Jones broadened her suspension order in response to the petition “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, such as pension, welfare or benefit fund or the like. ... [M]y Order is directed solely at Mr. Aloise’s participation in Teamster activities.”<sup>20</sup>

7. Aloise subsequently violated the suspension order by taking a paid consulting position with a labor organization affiliated with the Teamsters, the State Building and Construction Trades Council of California (Building Trades),<sup>21</sup> and by continuing to serve as vice president of the California Labor Federation (Cal Fed).<sup>22</sup> In these roles, he worked “with members [and] Local

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<sup>17</sup> *Id.*, at 185. That the appellate court did not affirm the district court’s “cease and desist” order against Ballew was solely because the order was mooted by Carey’s election. *See* footnote 12.

<sup>18</sup> Exh. 7, IRO letter, 1/19/2018.

<sup>19</sup> Exh. 3, *Re: Rome Aloise*, Order of the IRO (12/22/2017).

<sup>20</sup> Exh. 7, IRO letter, 1/19/2018.

<sup>21</sup> Exh. 8, Building Trades LM-2 filing excerpts for 2018, 2019 and 2020, showing Aloise as a paid consultant under the name “Rome Solutions,” at a monthly rate of \$8,333 plus expenses, beginning May 2018 and continuing through December 2019.

<sup>22</sup> Exh. 9, legal opinion of Charles Scully, counsel to Cal Fed, dated 1/10/2018, justifying retaining Aloise as a Cal Fed officer. Scully addressed only whether the Cal Fed constitution barred Aloise from continuing to serve as vice president of the organization. Scully concluded that because Aloise retained his Teamster membership, he met the requirements under the Cal Fed constitution to remain in office. “[N]othing in the discipline imposed prevents Rome from continuing membership in Local 853 ... He thus remains a member of an affiliated labor organization which is the key qualification for any [Cal Fed] Officer.” *Id.* Scully’s letter predated IRO Jones’s 1/19/2018 clarification of the suspension order and did not – nor could it – speak authoritatively on the question of whether IRO Jones’s suspension barred Aloise from Cal Fed office.

Union representatives” of the Teamsters to advise on, “explain, ... troubleshoot and solve issues,”<sup>23</sup> including working with those Teamster leaders a high-speed rail project in Southern California, to organize Uber and Lyft drivers and shuttle bus drivers. Unlike his petition seeking permission for a paid consultancy with the WCTPTF and remain as trustee of other funds – or because of it – Aloise did not request permission of IRO Jones for a paid consultancy with the Building Trades or to continue as an officer of the Cal Fed, despite that both were affiliated with Teamster local unions and joint councils and received per capita tax payments from them. Joint Council 7 counsel Geoffrey Piller’s advice<sup>24</sup> that Aloise alone assumed the risk of violating the suspension order by taking or retaining leadership roles with these affiliates was incorrect, for the Teamsters he consulted with under the guise of these roles also were at risk of enabling and permitting Aloise to violate his suspension.

8. Use of suspension as a disciplinary penalty under the Consent Decree has been endorsed by the Court. Thus:

Suspension is one of the most useful penalty options available under the Consent Decree. Properly enforced, it allows the removal of individuals from officer or trusteeship positions in the Union where they may be disserving the membership and undermining the IBT Constitution and, indeed, the Union itself. The availability of suspension as a sanction in IBT disciplinary matters lends to the Consent Decree credibility and respect, and sends to the membership the message

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While acknowledging the official affiliation relationship between Cal Fed and the Teamsters, Scully’s letter did not address the IRO’s prohibition against Aloise providing services to “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.” Exh. 7, IRO letter, 1/19/2018. Counsel to Joint Council 7, Geoffrey Piller questioned Scully’s legal opinion, *see* Exh. 10, Piller letter to Joint Council 7 (2/6/2018), observing that whether “the Federation is ‘affiliated’ with the Joint Council in a way that *is* analogous to a Teamster-sponsored benefit trust plan would rest primarily on Joint Council 7’s payment of per capitās to the Federation.” (Italics emphasis in original). He also noted that Cal Fed is an independent labor organization in which Joint Council 7 participates, that vice presidents are elected at Cal Fed conventions and not by affiliated organizations, and that vice presidents are not required to act for the labor organizations in which they hold membership, which he opined might permit Aloise’s continued role in that organization. Piller concluded that whether Aloise’s continued service as a Cal Fed vice president was permitted or not by IRO Jones was his risk, not that of the joint council.

<sup>23</sup> Exh. 4, Aloise letter to IRO Jones, 1/12/2018, p. 4.

<sup>24</sup> *See* Exh. 10, Piller letter to Joint Council 7, and footnote 22, *supra*.

that its union is under the direction of honest officials that respect the IBT Constitution. By contrast, the suspension that is enforced only in form undermines the Consent Decree and sends the message to the membership that dishonest IBT officials are immune from the law. Moreover, the spectacle of a suspension that has become a caricature of itself deflates the morale and dampens the zeal of those who attempt to live within the law and work within the rules.

The suspended IBT official must approach his suspension with a grave sense of respect. He must accept its provisions not only in form but also in substance and spirit.

*United States v. International Brotherhood of Teamsters (Friedman)*, 838 F.Supp. 800, 809 (S.D.N.Y. 1993) (Edelstein, J.).<sup>25</sup>

9. Within days after IRO Jones suspended Aloise in December 2017, Aloise was instructed by IBT General Counsel Bradley Raymond that he “need[ed] to be extremely circumspect,” that “association socially is all that is allowed.” Raymond wrote, “I was very emphatic that he needs to be very careful to keep himself from any situation that could be regarded as questionable,” that the “best thing for him would be to just take two years off and be quiet,” and that “showing up at Unity [Conference], or other Union functions could get him into trouble, since it will be presumed that he is involving himself in union business affairs.”<sup>26</sup>

10. The General Counsel advised others concerning the import of the IRO suspension order:

What this means is that it is permissible for members to communicate with Brother Aloise about purely social matters, such as holiday or birthday greetings and the like. That said, I must caution that care should at all times be taken to avoid interactions with Brother Aloise that could be alleged to violate the suspension Judge Jones imposed. Conversations with Brother Aloise about Union affairs, Union politics and Union business should be avoided during the two year period of his suspension.<sup>27</sup>

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<sup>25</sup> Exh. 11, *Friedman*. Under paragraph 49 of the Final Agreement and Order, Exh. 1, *supra*, “All matters of construction and interpretation of the Consent Decree ... and obligations imposed upon members under the IBT Constitution shall continue to be governed by the decisional law established in this action by the Independent Administrator, the IRB, ... this Court, and the United States Court of Appeals for the Second Circuit.”

<sup>26</sup> Exh. 12, email of General Counsel Bradley Raymond to Leah Ford, Executive Assistant and Counsel to IBT General Secretary-Treasurer, 12/27/2017 (redacted of extraneous material).

<sup>27</sup> Exh. 13, email of Raymond to Ford, 1/3/2018.

11. The advice of the IBT's General Counsel was consistent with and indeed mandated by the Court's long-established opinion in *Friedman* decision, cited above in paragraph 8. There, Judge Edelstein instructed:

The suspended IBT official must approach his suspension with a grave sense of respect. He must accept its provisions not only in form but also in substance and spirit. Those around him must share this sense of respect and do everything within their power to see that the suspension is truly effectuated. Indeed, a suspension is not a matter of concern solely to the suspended individual, but also to the IBT community around him. Thus, when an IBT member is suspended from holding any officer or trusteeship position with the Union, but is permitted to retain his membership in the IBT, the suspended individual is afforded the opportunity to remain a member of the IBT in return for the covenant that he and his IBT community will scrupulously abide by the terms of the suspension. A violation of the suspension is a breach of this covenant, and merits the imposition of a more serious penalty.

*U.S. v. IBT (Friedman)*, 838 F.Supp. at 809.<sup>28</sup>

12. *Friedman* echoed Independent Administrator Frederick Lacey's instructions in *Yontek* (June 21, 1993), pp. 22-23, *viz.*

“[O]nce an individual is suspended from all IBT-affiliated Union positions, he must not seek to exert any measure of authority over the Union. He must not put any pressure, no matter how subtle, upon those who have learned to follow his lead. He must not seek to give direction of any type to any IBT body, no matter what the means. In short, he must not in any way attempt to give the impression, either to the Union leadership or membership, that he still retains any power of any sort.

It is the duty of all IBT officials to take every reasonable step to prevent a suspended or barred individual from violating this standard. This duty is an affirmative one; acquiescence in the face of a violation of a suspension order or a statutory debarment is a violation of that duty. In sum, all IBT officials in a position to do so must take positive steps toward ensuring that a suspension order or statutory debarment is effectively implemented.<sup>29</sup>

13. A member or union official is required to take affirmative steps to prevent a suspended official from violating his suspension, whether by reporting the violation to the Independent

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<sup>28</sup> Exh. 11, *Friedman*.

<sup>29</sup> Exh. 14, *Yontek*.



Investigations Officer, protesting the suspended official's intrusion in local union affairs, or refusing to meet or speak with the suspended official. *Yontek*, pp. 24-25.<sup>30</sup> A union official who knowingly permits the suspended official to violate his suspension, even through acquiescence or sitting idly by, violates his obligation under the IBT constitution and the Final Order. *Id.* at 25.

14. Aloise violated his suspension by participating with local union officials on Teamster activities, whether directly or cloaked as a paid consultant or officer of an affiliated labor organization. As this Charge Report details, respondents BERGEN, PHARRIS, SCEARCY, and SMITH failed in this most fundamental obligation; their individual failures in this regard brought reproach upon the IBT.

***B. Findings of Fact relevant to First Charge against BERGEN and PHARRIS.***

15. BERGEN became principal officer of Local Union 166 in January 1999<sup>31</sup> and held that position through December 2022. In 2013, Local Union 166 joined a project labor agreement (PLA) for construction of a high-speed rail line from Los Angeles to Las Vegas.<sup>32</sup> The PLA was negotiated under the aegis of the Building Trades, and more than 60 labor unions<sup>33</sup> – including Teamsters Local Union 166 – signed on.

16. BERGEN knew he could not deal with Aloise on Teamster business during Aloise's suspension.<sup>34</sup> Despite this knowledge, BERGEN hosted and met with Aloise at Local Union 166's

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<sup>30</sup> *Id.*

<sup>31</sup> Exh. 15, Bergen sworn examination, p. 11.

<sup>32</sup> Exh. 16, High-Speed Rail Project Labor Agreement

<sup>33</sup> *Id.*, pp. 54-65. Unions as diverse as the Carpenters, Roofers, Electricians, Plasterers, Sheet Metal Workers, Laborers, Elevator Constructors, Sprinkler Fitters, Bricklayers, Cement Masons, Pipefitters, Ironworkers, Tile Layers, Boilermakers, Insulators – in addition to the Teamsters – were signers to the agreement. The agreement was executed in 2013 but long lay dormant awaiting approval of the project by regulators and financial backers. BERGEN signed the agreement on behalf of Local Union 166 and Joint Council 42. *Id.*, p. 58.

<sup>34</sup> Exh. 15, Bergen sworn examination, p. 28: “My understanding was that we could talk to him, but we couldn't do any business with him, [but] [j]ust talk to him socially.”sTA

hall on November 25, 2019 to discuss the high-speed rail project labor agreement.<sup>35</sup> Business agent Robert Stanley was present in the meeting, which consisted of Aloise, Bergen, Stanley, Local Union 166 contracting compliance officer John Davidson, IBT representative Stu Helfer, and two employer representatives. Stanley was concerned about Aloise's presence. According to his sworn examination, Stanley "actually asked my president. I said, 'Is he supposed to be here?' And I was told that he's working for the state building trades."<sup>36</sup> Local Union 166's part in the high-speed rail project was Teamster business, and Bergen knew he could not deal with Aloise on Teamster business. He did so regardless.

17. At the time of Aloise's suspension, PHARRIS was president (non-principal officer) of Local Union 166.<sup>37</sup> He served as business agent for bargaining units of his local union in the liquor industry.<sup>38</sup> He knew Aloise to be the IBT liquor chairman, a post he held "for quite some time" before and after his suspension.<sup>39</sup> One of the employers within the local union's jurisdiction was Southern Glazer Wines (Southern). In 2018 and early 2019, during Aloise's suspension, Southern sought to negotiate a new compensation scheme, the Quota Incentive Pay Program (QIPP), for its driver-salesmen who were represented by the Teamsters. The negotiations were facilitated by a mediator from the Federal Mediation and Conciliation Service.<sup>40</sup>

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<sup>35</sup> Exh. 15, Bergen sworn examination, p. 39: "I saw [Aloise] – he was at the local union. ... He was – he was not working for a Teamster local. He was working for the building trades, and he was bringing the high speed rail PLA for us to look at – because I'm the construction guy – to look at on behalf of the building trades."

<sup>36</sup> Exh. 17, Stanley sworn examination, p. 20. Following the meeting, Bergen instructed Stanley to return Aloise and Helfer to the airport for the trip home; Stanley complied. *Id.*, p. 24.

<sup>37</sup> Exh. 18, Pharris sworn examination, p. 6.

<sup>38</sup> *Id.*, pp. 16-18.

<sup>39</sup> *Id.*, p. 42.

<sup>40</sup> *Id.*, pp. 80-82.

18. PHARRIS attended and participated in bargaining sessions with Southern at which Beck and the suspended Aloise were present and participating.<sup>41</sup> On occasion during the period of Aloise's suspension, PHARRIS also provided airport transportation for Beck and Aloise, referring to them to his colleagues at the local union as "the dignitaries."<sup>42</sup>

19. On one occasion during the period of Aloise's suspension, principal officer BERGEN instructed Local Union 166 business agent Andrew Budai to provide airport transportation for Helfer and Aloise for high-speed rail negotiations. When Budai received the instruction to pick up Aloise at the airport, he questioned BERGEN: "I asked Mike Bergen – I said, Mike, '[I]s this guy under suspension?' He says, '[D]on't worry about it. Just do what you're told.' So – obviously, I didn't want to lose my job, so I went and picked him up. ... I let you guys [referring to the IIO lawyer and investigator questioning him] that I had done that."<sup>43</sup>

20. Budai "over and over again" heard PHARRIS refer to Aloise and Beck as "the dignitaries." Budai asked PHARRIS, "[W]hat is dignitaries, who are they?" [A]nd he mentioned, "[E]verything goes through Rome, and obviously Steve Beck, because he was down here all the time."<sup>44</sup>

21. In his sworn examination before the IIO, PHARRIS first contended that he only picked up Beck at the airport during the period of Aloise's suspension. As the examination continued, he repeatedly used the term "dignitaries" – plural – and he explained his use of that term as follows: "To me it [the term 'dignitaries'] was funny. I told my boss, ... 'I might leave a little early today. I'm going to go to the car wash 'cause I got to pick *those guys* up at the airport. *They* don't like

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<sup>41</sup> Exh. 19, Budai sworn examination, p. 19.

<sup>42</sup> *Id.*, p. 13.

<sup>43</sup> *Id.*, pp. 16-17.

<sup>44</sup> *Id.*, p. 16.

being picked up in a dirty car.”<sup>45</sup> PHARRIS finally conceded that Beck was not his sole passenger:

Q So who were the dignitaries you were picking up?

A Beck.

Q By himself?

A Sometimes, I guess, if I picked up Rome, it would be Rome also.<sup>46</sup>

21. BERGEN and PHARRIS enabled and permitted Aloise to violate his suspension. BERGEN facilitated Aloise’s attendance at Southern bargaining sessions by directing his business agent Budai to pick him up from the airport. BERGEN also did Teamster business directly with Aloise, face-to-face, on the high-speed rail project labor agreement. PHARRIS engaged with Aloise repeatedly on Southern liquor negotiations for the QIPP compensation program, both as a driver and as a negotiator. Such conduct by BERGEN and PHARRIS allowed Aloise to circumvent the IRO’s suspension order and brought reproach upon the union.

***C. Findings of Fact relevant to First Charge against SCEARCY and SMITH and Second Charge against SEARCY.***

22. SCEARCY has been secretary-treasurer (principal officer) of Local Union 117 since April 2015. Local Union 117 shares a building with Joint Council 28 and Local Union 174 in Tukwila, Washington. Rick Hicks is the principal officer of the joint council and Local Union 174; SCEARCY is a longtime political rival of Hicks.

23. SMITH is an organizer and director of strategic campaigns for Local Union 117. During the period of Aloise’s suspension, SMITH and SCEARCY sought and accepted Aloise’s assistance

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<sup>45</sup> Exh. 16, Pharris sworn exam, p. 61 (italics emphasis added).

<sup>46</sup> *Id.*, p. 61.

in a variety of organizing campaigns, collective bargaining, and benefits and insurance matters.

Thus:

- a. In 2018, during the period of Aloise's suspension, SCEARCY, SMITH, and Aloise collaborated by email, phone, and in-person on an organizing campaign of the employees of Chariot Transit, Inc., a shuttle service to operate in Seattle WA, with Aloise providing a draft "employer neutrality" agreement for Local Union 117's use with that employer and Aloise unilaterally meeting with the employer concerning that agreement on the local union's behalf<sup>47</sup>;
- b. Also in 2018, Aloise consulted with SMITH on organizing Uber and Lyft drivers, with Aloise initiating meetings and developing strategy for Local Union 117 to use in organizing this group. In November 2018, Aloise insisted to SMITH and others that any deal would require Uber and Lyft to "stay[] out of certain functions which

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<sup>47</sup> Exh. 20, Aloise email to SMITH, 6/28/2018, subject line: "Chariot." Aloise attached to the email a memorandum of understanding between Chariot Transit and Local Union 117 on "Employer Neutrality and Union Organizing." In the body of the email, Aloise wrote: "Take a look at this. This is what I suggested to Chariot." The next day, Aloise prompted SMITH about the neutrality agreement, and SMITH replied that he received but had not yet reviewed it. Aloise confirmed that he and SMITH would meet the following Monday to discuss the agreement further. Exh. 21, Aloise/SMITH email exchange, 6/29/2018, subject line: "Chariot." Following SMITH's meeting with Aloise, SMITH emailed Aloise on 7/11/2018, subject line: "Chariot Card Check Agreement," stating, "Approved, I don't think that we need to include the addendums, but I'll leave that to your judgement." Exh. 22, Smith email to Aloise, 7/11/2018. SMITH followed this email with another on 8/15/2018, acknowledging that Aloise was dealing directly with Chariot on Local Union 117's behalf and asking if there was "[a]ny word on the neutrality agreement with Chariot." Exh. 23, Smith email to Aloise, 8/15/2018. *See also*, Exh. 24, Aloise email to SMITH, sent 9/4/2018, affirming that Aloise was the point of contact with Chariot by stating that he "need[ed] your version of the Card check neutrality deal for Chariot, sign[ed] by you guys so I can expedite it;" and Exh. 25, excerpt of text message from Aloise to SMITH, 9/22/2018, in which he acknowledged his risk in carrying on with Chariot, ("We can work Chariot through John Williams and I will disappear from the process. But for the good of everyone I dont [*sic*] want it to stop moving forward."), and Exh. 26, Aloise email to SMITH to same effect, 10/1/2018 "(Any chance of getting the card check document back signed, and I will get you and Chariot together on this. If you want to hand it off to John Williams that will work if it is more comfortable. Then we can get them together with you guys. I will stay away.")

are core industries to the Teamsters, *i.e.*, such as package delivery, freight transportation, etc. ... I will meet with Hoffa next week to get him on board.”<sup>48</sup>

- c. Further in 2018, Aloise consulted with SMITH concerning plans to have Ullico, an insurer, provide benefits to members of Local Union 117. Aloise also worked with SMITH, including face-to-face, to have Workers Benefit Fund (WBF), another insurer, design a benefits program for Uber and Lyft drivers, with Aloise discussing terms directly with WBF on the local union’s behalf.<sup>49</sup>

SCEARCY and SMITH ignored their obligations to hold Aloise to the terms of his suspension, instead finding it to their advantage to have Aloise take the lead in efforts to organize shuttle and gig drivers into Local Union 117. Such conduct by SCEARCY and SMITH brought reproach upon the union.

24. In contrast to SCEARCY and SMITH, Rick Hicks, president of Joint Council 28 in Washington State, took seriously the obligations all Teamsters had to insure that Aloise complied with the terms of his suspension. When Hicks learned that Aloise planned to attend an educational seminar/meeting of the Western Conference of Teamsters Pension Trust meeting in late September 2018, he first prevailed on the union chair of the trust, Chuck Mack, to insist that Aloise not be permitted to attend. Mack told Hicks that the educational seminar was Aloise’s idea.<sup>50</sup> Aloise’s

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<sup>48</sup> Exh. 27, Aloise email to SMITH, *et al.*, 11/21/2018, subject line: “RE: Uber Basic Terms.”

<sup>49</sup> Exh. 28, Benjamin Geyerhahn of WBF email to SMITH and Aloise, 7/19/2018, attaching PowerPoint deck they requested that “lays out a structure that would work for the procurement and delivery of benefits to drivers.” *See also*, Exh. 29, Geyerhahn (WBF) email to Aloise and Andy Stern (also of WBF), 10/18/2018, inviting Aloise to edit a term sheet for the Teamsters benefit plan: “Rome – As we roll forward with 117, we want to get some sort of short term sheet in place which gives us a deal when/if they get a program rolling. ... I’ve attached a basic term sheet that is truly basic, for your thoughts.” Aloise forwarded it to SMITH for comment, which he did by email the same day, “First read it looks ok. I want to shop it around with key staff,” including SCEARCY. Exh. 30, Smith email to Aloise, 10/18/2018.

<sup>50</sup> Exh. 31, Hicks sworn examination, pp. 32-33. Hicks described a series of phone calls with Mack in which he prevailed upon Mack to instruct Aloise, Mack’s brother-in-law, not to attend the seminar. When

participation in the meeting there would violate Judge Lacey's instructions in *Yontek* (The suspended individual "must not seek to give direction of any type to any IBT body, no matter what the means. ... [A]ll IBT officials in a position to do so must take positive steps toward ensuring that a suspension order ... is effectively implemented."<sup>51</sup>) Aloise's consultation with the trustees at the meeting would also violate IRO Jones's instructions that Aloise "shall not be permitted to be employed by or consult (in a paid or unpaid capacity) for any health, benefit, welfare or like fund affiliated, associated or connected to the IBT for two years from the date of the Order."<sup>52</sup> When Mack refused to instruct Aloise not to attend the seminar, Hicks wrote to all local union officers, business agents, and staff in Joint Council 28, canceling the meeting.<sup>53</sup> Hicks's action was consistent both with *Yontek* and *Friedman*. It was also in line with IBT General Counsel Raymond's instructions with respect to Aloise's behavior – and the behavior of other Teamsters – during Aloise's suspension ("[C]are should at all times be taken to avoid interactions with Brother Aloise that could be alleged to violate the suspension Judge Jones imposed. Conversations with Brother Aloise about Union affairs, Union politics and Union business should be avoided during the two year period of his suspension."<sup>54</sup>).

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Mack did not do so, Hicks said, "I don't understand, Chuck, why, as the chairman of this fund, you can't call your brother-in-law and tell him he's not to come to this meeting.' And [Mack] said, 'Well, because this [seminar] was kind of [Aloise's] idea.'"

<sup>51</sup> Exh. 16, *Yontek*, pp. 22-23.

<sup>52</sup> Exh. 12, IRO letter, 1/19/2018.

<sup>53</sup> Exh. 32, Hicks memo to Joint Council 28 officers & staff, 9/18/2018:

I have been approached by several of you with your concerns regarding Rome Aloise attending the Western Conference of Teamsters Pension Trust meeting next week. I will not put you in this uneasy position. I have told Chuck Mack that as the Union Chairman, he could insist that Rome does not attend but he is unwilling to do so.

Please be advised that the Western Conference of Teamsters Pension Trust meeting scheduled for September 27, 2018 at the Tukwila Teamsters Building has been cancelled due to Rome Aloise's insistence on attending.

Therefore, in a show of solidarity, we are asking no Joint Council Officer or Agent participate. Thank you for your understanding.

<sup>54</sup> Exh. 13, email of Raymond to Ford, 1/3/2018.

25. Aloise responded to Hicks's cancellation with ridicule. He emailed the Joint Council 7 executive board that Hicks's action was "[t]he height of idiocy,"<sup>55</sup> elaborating that "I don't know if I am more pissed, or hurt or disgusted by this. And unfortunately the total lack of balls of those locals up there."<sup>56</sup> Aloise also contacted SMITH to gain Local Union 117's support in Aloise's effort to retaliate against Hicks for canceling the seminar because of Aloise's plan to attend.<sup>57</sup> After Aloise spoke with SMITH, he emailed SMITH a proposed open letter to Hicks. Aloise asked SMITH in the email, "What do you think? I am asking my attorneys what they think about mailing this, or if I should just convert it to a letter to [Hicks] and have it circulated to others or email it to [principal officers]. Your opinion on this is valuable."<sup>58</sup> SMITH replied, complimenting the letter but suggesting that Aloise have a third party appear as the author rather than Aloise himself.<sup>59</sup> He did not reply that Aloise was impermissibly inserting himself in Teamster business in violation of his suspension.

26. Aloise enlisted Local Union 117 further with respect to the canceled pension meeting. At Aloise's suggestion, Local Union 117, through its counsel, contacted IBT Legal to ascertain

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<sup>55</sup> Exh. 33, Aloise email to HART *et al.*, 9/18/2018, 10:57 a.m.

<sup>56</sup> Exh. 34, Aloise email to HART *et al.*, 9/18/2018, 11:49 a.m.

<sup>57</sup> Exh. 35, Aloise email to SMITH, 9/17/2018: "I will call you with a story about our boy Hicks. Unbelievable even for him."

<sup>58</sup> Exh. 36, Aloise email to Smith, 9/19/2018. The attachment to the email read as follows: "Dear Sisters and Brothers: It is with a sense of disbelief I find it necessary to respond to the Memorandum put out by your Joint Council President on September 18, 2018. Frankly, I am shocked that someone in his position would allow their personal ambition and need to self-promote to interfere with a meeting that is as important as the one scheduled by the WCTPTF for September 27<sup>th</sup>. This meeting is not the normal 'Progress of the Fund' meeting that we have become accustomed to over the last few years, but rather a seminar designed to enhance our officers and officials knowledge of the inner workings of the plan, how to negotiate more favorable clauses for our members, how to understand the plan more deeply, and to obtain a greater overall understanding of the plan that is so beneficial to our members... I have advocated for trustee education and officer/official education or my entire career. I have been the Co-Chair of the IBT Trustee committee since it's [*sic*] inception and have always felt it is necessary for us all to have a greater knowledge of the benefits that cover our members and their families. Thus, my interest in attending the meeting to observe the process that I hope will continue into the future, and that I hope to be part of upon my return."

<sup>59</sup> Exh. 37, Smith email to Aloise, 9/19/2018.



whether the suspension order barred Aloise from associating with Teamsters.<sup>60</sup> Gary Witlen, director of the Legal Department, replied it did not.<sup>61</sup> SCEARCY then emailed the local unions in Joint Council 28 and declared, citing Witlen's reply, that "Rome's attendance is not a violation of his ruling."<sup>62</sup> This statement was false; and it materially misled other Teamster leaders and broadly overstated Witlen's statement. When Hicks received the SCEARCY email, he contacted Witlen, who learned context for the earlier inquiry from Local Union 117's attorney. Witlen replied to Hicks's email immediately, stating: "I received an email from Tracey Thompson asking whether there was an associational bar involving Rome Aloise. I replied that he was only barred from holding office or employment for a 2 year period. The question was not raised as to his participation in or attendance at a training program conducted by the Western Region Pension Fund. So I am somewhat dismayed to see Brother Scearcy has sent an email that can easily be interpreted as stating that I endorse Rome's attendance at a Pension fund training meeting."<sup>63</sup> Witlen elaborated that, had he known the purpose of the inquiry, he would have noted that IRO Jones had barred Aloise from consulting on a paid or unpaid basis with any fund or serving as a fund trustee. Witlen then stated: "I have no details as to the nature of Rome's potential participation in the Pension Fund meeting and will not opine as to what he might do, if anything, without violating the terms of the IDO's letter. However, no participant at the Fund meeting should be misled by my statement to [Local Union 117 attorney] Tracey [Thompson] that Rome was not barred from associating with Teamster officers or members."<sup>64</sup>

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<sup>60</sup> Exh. 38, Thompson/Witlen email exchange, 9/19 & 20/2018.

<sup>61</sup> *Id.*

<sup>62</sup> Exh. 39, Scearcy email to multiple recipients, 9/20/2018.

<sup>63</sup> Exh. 40, Witlen email to Hicks, 9/20/2018.

<sup>64</sup> *Id.*

**D. Submission**

27. By permitting, empowering and enabling Aloise to exercise authority that the IRO's suspension order barred him from, as detailed in paragraphs 15 through 26, above, BERGEN, PHARRIS, SCEARCY, and SMITH, knowingly and with the purpose or effect of circumventing, frustrating, evading, and disregarding said suspension, permitted, empowered and enabled Aloise to avoid the suspension. Such conduct constituted a failure by BERGEN, PHARRIS, SCEARCY, and SMITH to cooperate with the independent disciplinary process required by the Final Order and the IBT constitution and thereby brought reproach upon the IBT and violated his oath as a member and an officer, as alleged in the First Charge.

28. By misrepresenting IBT counsel's statement about the parameters of Aloise's suspension, SCEARCY actively and purposely induced other Teamsters to permit Aloise to circumvent and avoid his suspension. Such conduct constituted a failure by SCEARCY to uphold the suspension and thereby brought reproach upon the IBT and violated his oath as a member and an officer, as alleged in the Second Charge.

**The foregoing charges and findings are submitted to the General President in accordance with the Final Order for action that is appropriate under the Final Order and the IBT constitution.**

Respectfully submitted,

ROBERT D. LUSKIN  
Independent Investigations Officer

Dated: May 22, 2023

By: David Kluck  
Daniel K. Healy, *Senior Counsel*  
Jeffrey Ellison, *Senior Counsel*  
David Kluck, *Senior Counsel*