

**TO:** The Members of the Executive Board of IBT Local 817

**FROM:** Joseph E. diGenova, Independent Investigations Officer

**RE:** Proposed Charge against former Local 817 Member James Norizsan

**DATE:** November 28, 2018

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**I. RECOMMENDATION**

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer ("IIO") recommends to the Executive Board of Local 817 that a charge be filed against former Local 817 member James Norizsan ("Norizsan") for violating the IBT Constitution Article II, Section 2(a) and Article XIX, Sections 7(b) (1), (2), and (9), by knowingly associating with a prohibited person under the Final Agreement and Order, Frank Radice ("Radice"), who was permanently barred from the IBT. After an Independent Review Board ("IRB") hearing, Radice was found both to be a member of the Gambino Organized Crime Family and to have unreasonably failed to cooperate with the IRB. By his actions, it appears that, while an International Brotherhood of Teamsters ("IBT") member, Norizsan violated Article II, Section 2(a) and Article XIX, Sections 7(b) (1), (2), and (9) of the IBT

Constitution by associating with Local 817 barred member, Radice a member of Organized Crime.

## **II. JURISDICTION**

Pursuant to Paragraph 32 of the Final Agreement and Order, the IIO designates this as a matter within the jurisdiction of the Executive Board of Local 817 as the appropriate Union entity. (Ex. 1 at 17-18) Paragraph 32 of the Order requires that within 90 days of the IIO's referral, the Local 817 Executive Board must file with the Independent Review Officer ("IRO") written findings setting forth the specific action taken and the reason for such action. (Ex. 1 at 17) Failure to meet this legal obligation may be found to be an act taken to hinder the work of the Independent Disciplinary Officer in violation of the permanent injunction. (Ex. 1 at 3, paragraph (2) (D))

## **III. INVESTIGATIVE FINDINGS**

### **A. Local 817**

Local 817, located in Great Neck, New York, has approximately 1,034 members. (Ex. 2 at 2) The Local's members are employed in various industries including theatrical, radio, television, motion picture and truck driving.

### **B. James Norizsan's Local 817 Membership**

Norizsan became a member of Local 817 on May 13, 2004. (Ex. 4; Ex. 5 at 372-373, 442) The IIO notified Norizsan by letter dated July 19, 2018, that his in-person sworn examination was

scheduled for August 2, 2018<sup>1</sup>. Pursuant to his attorney's request, the sworn examination was postponed until August 7, 2018. The day before his scheduled testimony, Norizsan resigned in writing from Local 817 and the IBT. (Exs. 6, 7) He did not appear for the scheduled examination.

According to IBT records, Norizsan's dues were paid through December 2018. (Ex. 4) Under the IBT Constitution, Norizsan remains liable for conduct committed while a member before his resignation. (Ex. 8, Article XIX, Section 1(g))

### **C. Frank Radice**

On December 19, 2013, the Independent Review Board ("IRB") recommended to the General President that Local 817 member Radice be charged both with being a member of the Gambino organized crime family and with unreasonably failing to cooperate with the IRB by not appearing for his sworn examination on October 11, 2013. (Ex. 9) The Gambino Family is an established organized crime family operating in the New York area. (Ex. 10 at D.18)

On December 20, 2013, the General President adopted and filed the charges against Radice. (Ex. 11) The General President referred the charges back to the IRB for adjudication. (Ex. 11) On January 16, 2014, Radice was served with an IRB notice of

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<sup>1</sup> A typographical error in that letter mis-stated its date as July 19, 2017. (Ex. 6)

hearing on the charges and the evidence to be presented against him. (Ex. 12) On March 12, 2014, the hearing on the charges was held. (Ex. 14) On June 18, 2014, after reviewing the evidence the IRB found both that Radice was a member of the Gambino Organized Crime Family and that he had failed to reasonably cooperate with the IRB. (Ex. 15) The evidence included an affidavit from an FBI Special Agent concluding that in the FBI's expert opinion Radice is a member of the Gambino Organized Crime Family. (Ex. 10) On June 18, 2014, the IRB permanently expelled Radice from membership in Local 817, the IBT and IBT affiliated entities. (Ex. 15 at 12) Under the IBT Constitution, Art. XIX, Sections 2(b) and 10(c) that decision went into full force and effect on the date of the decision. (Ex. 8, at 135, 147) See Also, Consent Decree, United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (LAP) (SDNY, March 14, 1989). There was no stay of the order. On June 18, 2014, the IRB filed Application 170 with United States District Judge Loretta A. Preska, seeking court approval of the order. (Ex. 16) On March 4, 2015, Judge Preska found the evidence supported the IRB Decision. (Ex. 17)

The Consent Order and Final Agreement and enjoined a member from associating with a person enjoined under the Consent Decree. Radice was a person enjoined under that order. (Ex. 17) United States v. International Brotherhood of Teamsters [Radice], Order, March 4, 2015, Preska, J. All members were prohibited from

associating with him. In addition, IBT members are also barred from associating with members of Organized Crime, such as Radice. IBT Constitution, Article II, Section 3(a); Article XIX, Sections 7, 14. (Ex. 8)

#### **D. IBT's Notice to Members Regarding Frank Radice**

For decades, Radice worked closely with Norizsan. The two also were brothers-in-law. (Ex. 5 at 478, 483, 492, 516) Given their closeness and the change in Radice's employment situation after the IRB decision, Norizsan would have known Radice was expelled from the union. In addition, as a Teamster member, Norizsan received the Teamster Magazine with the notice of Radice's being found to be a member of organized crime. (Ex. 19) In addition, the union orally notified Norizsan that Radice was barred. The Local told Norizsan he was to replace Radice as shop steward because he could no longer act in that role because he was expelled from the union. Norizsan knew that contact with Radice was prohibited. (Ex. 5 at 384, 398-399, 474, 512)

Furthermore, Norizsan was on notice about Radice's bar from notices that appeared in the December, 2014, April/May, 2015 and June/July, 2015 issues of *Teamster* magazine, which were sent to all affiliates and members<sup>2</sup>. (Ex. 19) C.f. In Re: John Kikes, IBT

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<sup>2</sup> In addition, the April/May, 2015 issue of the *Teamster* magazine also included a list of "Persons Permanently Barred from the IBT by Action Initiated by IRB". Radice was on that list. (Ex. 19)

Panel Decision, October 20, 2005, at 8-9, 15. (Publication of a bar in the IBT Magazine is "more than adequate" notice). The published notices noted that Radice, who had been found to be a member of Organized Crime, was banned from the union. Norizsan, as did all IBT members, received copies of the magazine. That was additional notice. In Re: John Kikes, supra.

Subsequently, on April 3, 2015, the union sent to Norizsan and other members of Local 817, notice, dated April 2, 2015, that Radice had been permanently expelled from the IBT. (Ex. 18)<sup>3</sup>

The memorandum of notice stated:

This memorandum discusses the requirements that all members of the IBT, including members of Local 817, must refrain from associating with former Local 817 member Frank Radice. Pursuant to a recommendation by the Independent Review Board ("IRB"), Mr. Radice was charged with being a member of organized crime and unreasonably failing to cooperate with the IRB. Following a hearing on this matter, the IRB permanently expelled Mr. Radice from membership and permanently barred him from holding office or employment with the IBT or its affiliated entities.

Under the Consent Decree in United States v. Teamsters, 88 Civ. 4486 (LAP), every Teamster member or officer is prohibited from "knowingly associating" with anyone who is barred from the Union pursuant to an IRB decision. This prohibition applies to Mr. Radice. It not only prohibits contact that concerns Union affairs but also prohibits purposeful social contact with Mr. Radice even though that contact is completely unrelated to Union affairs. This includes, telephone

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<sup>3</sup> The IBT's April 2, 2015 memo stated it was **addressed** to all Local 817 officers, employees and members, the cover letter of transmittal from Local 817 to the IIO stated that the memo was mailed to all members at ShowBiz, including Norizsan. (Ex. 18) A certified mail receipt for its delivery to Norizsan was received at the Local. (Ex. 18)

conversations, face to face meetings, e-mail, text messages, written communications and any other form of direct or indirect communications. Teamster members have themselves been barred from the Union for having purposeful contact with individuals who have been barred from the Union".

An exception to this ban against knowing association exists for family members of the bared individual. Thus, despite the bar, family members who are members of the Union may still attend family events and may have family-related contact with the barred member. This exception, however, is narrow and does not allow family members to discuss Union business or Union affairs with a barred member.

In addition, to the extent a barred member is lawfully employed in a job which causes him to interact with Teamster members, the members may communicate with the barred member about work matters, but should confine their contacts to that which is necessary to perform their job responsibilities.

Finally, to the extent a barred member is lawfully employed in a job covered by a contract administered by a Teamster affiliate, representatives of the affiliate may communicate with the barred member about the barred member's rights under the labor contract, but again only as necessary to enforce the barred member's contractual rights.

(Ex. 18)

Norizsan admitted he received the letter from Local 817. (Ex. 5 at 474-475) He claimed he did not remember what it stated about Radice, his brother-in-law, friend and co-worker of many years<sup>4</sup>.

(Ex. 5 at 478)

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<sup>4</sup> On September 29, 2016, Norizsan was indicted in the Eastern District of New York. He was charged with falsifying Internal Revenue Service Form 5500, and information required by Title I of ERISA to be certified, to wit: Captain's Reports and Remittance Reports prepared and submitted by Show Biz Trucking,

### **E. Norizsan's Admissions of Post-Bar Contact With Radice**

On July 11 and 12, 2017, Norizsan testified at his first trial that he was Radice's brother-in-law. His wife and Radice's wife were sisters. (Ex. 5 at 373, 405, 439, 516) Radice and Norizsan had a close professional relationship for many years. In approximately 1996, Norizsan and Radice started working together at Lincoln Scenic. (Ex. 5 at 371, 442) Norizsan was a driver; Radice was his helper. (Ex. 5 at 373, 440) Subsequently, Lincoln Scenic changed its name to New York Theatrical. (Ex. 5 at 373-374) Eventually, New York Theatrical started to fail. (Ex. 5 at 443) At that time, in 2009, Show Biz was formed.

Michael Mattarazza, the husband of one of the owners of Show Biz, was Radice's cousin. (Ex. 5 at 434-435, 443, 509-510) In April, 2009, Show Biz hired Radice as the dispatcher. (Ex. (Ex. 5 at 377) Several weeks later, Show Biz hired Norizsan as a truck driver. (Ex. 5 at 377-378, 444-445) Norizsan assisted Radice in the office by answering the phones, doing paperwork and ensuring the clients were satisfied. (Ex. 5 at 378, 379, 381, 442) Eventually, Show Biz hired Norizsan to work full-time in the office with Radice. Norizsan testified he and Radice worked together in

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Inc. which falsely reported the hours worked by Co-Conspirator #1, an individual whose identity is known to the Grand Jury. (Ex. 20) There was a hung jury in his first trial; he was acquitted after a re-trial. (Ex. 21 at 7,9)



the office for Show Biz for seven or eight years. (Ex. 5 at 382, 447)

Given his close professional and familial relationship with Radice, a reasonable inference is that Norizsan knew Radice had been barred and been found to be a Gambino Family member. United States v. IBT [DiGiriamo], 19 F.3d 816, 821 (2d Cir. 1994) cert. denied, 513 U.S. 873 (1994); United States v. International Brotherhood of Teamsters [Cozza], 764 F.Supp. 797, 801-802 (S.D.N.Y. 1991), aff'd, 956 F.2d. 1161 (2d Cir. 1992) (regular contact over many years justified the inference of knowledge of ties to Organized Crime).

After the IRB decision on June 18, 2014, when Radice became a prohibited person, Norizsan testified "[t]he union had called me and said that Frank was being disbarred from the union, and that they wanted me to take over the handling of the sheets, the captain's reports. They said that since I was the senior man with the most time in, I would be the shop steward". (Ex. 5 at 384, 398-399, 474, 512) Norizsan testified he told the President of Local 817, "that Frank (Radice) and I both share office duties, and I told him that since Frank (Radice) was barred from the Union, that he was now working out at our Farmingdale warehouse, because of all those letters that you mentioned before that went out to a lot of the members, that we didn't want to have a conflict with

any of the men coming into our facility to work". (Ex. 5 at 490-491) Norizsan admitted he knew union members' contact with Radice was forbidden. After losing his office position, Radice continued to work for Show Biz at its warehouse in Brooklyn. (Ex. 5 at 395, 399)

Norizsan admitted under oath that he continued to have contact with Radice after he was barred. (Ex. 5 at 395, 449, 473-475, 479-480) Norizsan testified he sought advice from Radice when there were disputes between employees he wanted advice on addressing. For example, when two employees had an issue or argument between each other; when Norizsan's proposed solution did not work, he sought Radice's guidance. (Ex. 5 at 473-475) This was not job-required contact but a deliberate choice by Norizsan to contact Radice. He stated that he continued to learn from Radice through discussions after he was barred from the IBT. (Ex. 5 at 449)

Norizsan admitted that after the bar he continued to meet with Radice "a couple of times a week". A Chase bank branch at Franklin Square was one of the places they met regularly. (Ex. 5 at 478-480) Government surveillance during the Spring of 2015 showed that Norizsan met with Radice regularly every two weeks on Saturday mornings at the Chase bank in Franklin Square, New York.<sup>5</sup> (Ex. 5 at 478-481, 483-484) He admitted that contact. It was a

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<sup>5</sup> Norizsan and Radice both reside in Franklin Square, New York. (Ex. 4; Ex. 5 at 472)

standing regular meeting held on the premises of a bank. It was not a family occasion. (Ex. 5 at 484-485) Norizsan admitted that he and Radice talked about matters that did not involve family. They discussed, among other matters, their salaries. (Ex. 5 at 484-485) Norizsan admitted at the time of his trial in July 2017, he was continuing to associate with Radice. (Ex. 5 at 491-492) He admitted the communications went beyond family matters. For example, Norizsan testified, "I consult with him on issues that he's knowledgeable in and I'm not". (Ex. 5 at 492). That the contact was not for family reasons was further corroborated by their repeated scheduled meetings held at the bank, a location unrelated to family matters.

In addition, Norizsan's decision to surrender his union membership rather than to answer questions about his contacts with Radice after he was barred, supports an adverse inference being drawn that Norizsan avoided testifying because of consciousness of guilt that he knowingly engaged in forbidden contact with Radice. See, E.g., Salinas v. Texas, 570 U.S. 178 (2013) (adverse inference drawn from respondent's not answering questions about matter); Baxter v. Palmigiano, 425 U.S. 308 (1976) (adverse inference drawn from an inmate's silence at his disciplinary hearing).

#### **IV. ANALYSIS**

The standard of proof to establish the charge against Norizsan is a preponderance of evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Section C ("The purpose of the hearing shall be to determine whether the proposed findings, charges, or recommendations regarding discipline or trusteeship found in the Independent Investigations Officer's Investigative Report are supported by a preponderance of reliable evidence"); United States IBT [Simpson], 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F. 3d 341 (2nd Cir. 1997); IBT Constitution, Art. XIX, Sec. 1(e).

In order to establish that an IBT member "knowingly associated" with a barred person, it must be proven that the contact was knowing and purposeful and not incidental or fleeting. See, United States v. IBT [Adelstein], 998 F.2d 120, 125 (2d Cir. 1993); United States v. IBT [DiGirlando], 19 F.3d 816, 821 (2d Cir. 1994) cert. denied, 513 U.S. 873 (1994). Purposeful contact can be in a business or social setting. It does not need to involve an illegal purpose. United States v. IBT [DiGirlando], 824 F. Supp. 410, 414 (S.D.N.Y. 1993); Cf., In Re: Robert Riley, IBT Panel Decision, March 31, 2006 (ongoing social contact with a prohibited person is a violation); In Re: John Kikes, IBT Panel Decision, October 20, 2005, at 3, 14, (association with a prohibited person found through phone calls made for social reasons).

The test for violative association with a prohibited person is "[w]here the [member's] contacts are the result of a 'calculated choice' to associate with persons" of prohibited status, the consent decree is violated. United States v. International Brotherhood of Teamsters, [DiGirlando], supra. DiGirlando involved a member charged with association with members of organized crime who were related to him through marriage<sup>6</sup>. The Second Circuit held that while there might be conduct that could constitute an innocent familial explanation for some contact, family ties could not excuse DiGirlando's contacts with his in-laws, when, as here, non-familial matters were discussed with them. 19 F. 3d at 822.

In sum, Norizsan knew Radice was barred and a member of Organized Crime. He knew his contact with Radice was forbidden. (Ex. 5 at 490-91, Ex. 18) Despite this, he intentionally and knowingly engaged in prohibited contacts, including discussions related to non-familial matters at regularly scheduled bi-weekly Saturday meetings at a bank. (Ex. 5 at 479-481, 483-484) These contacts were outside any permissible contact Norizsan might have had with Radice, his brother-in-law, for familial matters. (Ex. 5 at 484-485) United States v. International Brotherhood of Teamsters, [DiGirlando], supra. The preponderance of the evidence

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<sup>6</sup> DiGirlando's father-in-law and brother-in-law were members of organized crime. DiGirlando conceded his in-laws' underworld ties. 19 F. 3d 816 at 820

demonstrated Norizsan knowingly associated with a prohibited person in violation of the Consent Order.

**V. PROPOSED CHARGE**

Based upon the foregoing, it is recommended that James Norizsan be charged as follows:

While a member of Local 817 and the IBT, from June 18, 2014, you brought reproach upon the IBT in violation of Article II, Section 2(a) and violated Article XIX, Sections 7(b) (1), (2) of the IBT Constitution by knowingly associating with Frank Radice, a prohibited person under the Final Agreement and Order and a member of Organized Crime, as described in the above report.

CC: Hon. Barbara Jones  
Independent Review Officer

Members of the IBT General  
Executive Board

Bradley Raymond  
IBT General Counsel