

TO: James P. Hoffa, International General President
FROM: Joseph E. diGenova, Independent Investigations Officer
RE: Proposed Charge against former Joint Council 25
President and Local 727 Secretary Treasurer John T.
Coli, Sr.
DATE: August 10, 2017

I. RECOMMENDATION

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer ("IIO") recommends to the IBT General President that a charge be filed against former Joint Council 25 President and Local 727 Secretary Treasurer John T. Coli, Sr. ("Coli") by violating the IBT Constitution, Art. XIX Sec 7(b) 1, 2 and 14(a), by unreasonably failing to cooperate with the IIO by refusing to appear for his sworn examination on July 28, 2017. Among the matters the IIO intended to question Coli concerning were his interactions with employees of vendors to the union and union funds and allegations of his receiving things of value from an IBT employer as reflected in a federal indictment for violating 18 U.S.C. §1951 and 29 U.S.C. §186. He also would have been questioned about other union matters, including the awarding of contracts to fund service providers and the funds' and the union's employment of his relatives.

By his actions, it appears that, while an IBT member, Coli brought reproach upon the IBT and violated Article II, Section 2(a) and Article XIX, Sections 7(b) (1), (2), and 14(a) of the IBT Constitution by obstructing, interfering and unreasonably failing to cooperate with the duties of the IIO as set forth in the Final Agreement and Order.

II. JURISDICTION

Pursuant to Paragraph 32 of the Final Agreement and Order, the IIO designates this as a matter within the jurisdiction of the General President. (Ex. 1 at 17-18) Paragraph 32 of the Order requires that within 90 days of the IIO's referral to him, the General President 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 727 and Joint Council 25

Local 727, located in Park Ridge, Illinois has approximately 9,611 members in various industries including auto livery chauffeurs, embalmers, funeral directors, motion picture, theatrical, exposition, convention and trade show employees,

pharmacists, bus drivers, parking lot attendants, and electronic media workers in Chicago, Illinois and vicinity. (Exs. 2-3) The Local held an election for officers in November 2016. (Ex. 3)

Joint Council 25 is composed of Locals that represent over 100,000 members in Illinois and Indiana. (Ex. 24) It is located at 1300 W Higgins Road in Park Ridge, Illinois. (Ex. 24)

B. John T. Coli, Sr.

Coli, who is an attorney, was the Secretary Treasurer and principal officer of Local 727 from 1992 until July 12, 2017. (Ex. 4 at 8-10; Ex. 6) He was the President and principal officer of Joint Council 25 from 2002 until July 12, 2017. (Ex. 5 at 3-5; Exs. 24, 25) Coli was also the Director of the IBT's Parking Division. (Ex. 2 at 227) After his indictment discussed below, on July 12, 2017, Coli resigned from these positions. (Exs. 6, 25) Coli became an IBT member on July 1, 1971. (Ex. 7) According to Coli's dues record his dues were paid through August 2017. (Ex. 7)

In 2016, Coli's salary from the Local and the IBT was \$310,016 (Exs. 3, 21)¹ Coli had been an IBT International Vice-President from approximately 2007 to December 31, 2016. He was defeated in his bid for re-election in 2016. (Ex. 10)

¹ In 2016, Coli was paid \$175,138 from the Local and \$134,878 from the IBT. (Exs. 3, 21)

C. Indictment of John T. Coli, Sr.

On July 12, 2017, in the Northern District of Illinois, Southern Division, a federal grand jury indicted Coli for one count of violating 18 U.S.C. §1951 and five counts of violating 29 U.S.C. §186. (Exs. 8-9) The indictment alleged that Local 727 had a collective bargaining agreement with an employer. The indictment did not identify the IBT employer. The indictment further alleged that Coli, on July 7, 2016, October 4, 2016, November 29, 2016, December 22, 2016 and April 4, 2017, extorted cash payments of \$25,000, \$15,000, \$10,000, \$25,000 and \$25,000 respectively, totaling \$100,000 from the Local 727 employer.

(Ex. 8) The indictment alleged that the employer made the payments as a result of Coli's wrongful use of fear of economic loss from threatened work stoppages and other labor unrest unless such cash payments were made. (Exs. 8-9) Coli was alleged to have received improper money payments from an IBT employer whose employees he represented. These were matters as to which he would have been questioned.

In addition, Coli would have been questioned about his relationship with HMC HealthWorks ("HMC"), a fund service provider, including his request to the IBT Secretary-Treasurer to endorse HMC's wellness services for use by all locals' funds. (Ex. 26) Coli would have been questioned about his relationship

with particular HMC employees. Coli would also have been questioned about the relationship of other service providers for Local funds, including his son's law firm, Illinois Advocates. (Ex. 27)

D. Coli's Unreasonable Failure to Appear

On July 13, 2017, the IIO sent Coli a notice of sworn examination scheduling his sworn examination for July 24, 2017 in Chicago. (Ex. 11) This notice was delivered on July 15, 2017. (Ex. 12) On July 18, 2017, at the request of Coli's attorney, the IIO postponed Coli's sworn examination in Chicago until July 28, 2017. (Ex. 13) At the time, Coli's attorney was advised that Coli's sworn examination would include questions regarding union matters unrelated to Coli's indictment as well as the indictment allegations. (Ex. 13) Coli's attorney who indicated his client might assert his Constitutional privilege against self-incrimination in connection with his sworn testimony was also informed that under the controlling case law IBT members had been found to have failed to unreasonably cooperate after asserting their Fifth Amendment privilege to refuse to answer questions during a sworn examination. (Ex. 13) The attorney was provided with some of these prior decisions under the Consent Order. (Ex. 13)

On July 24, 2017, Coli's attorney sent an e-mail to the IIO's office stating:

On our advice, pursuant to his privilege under the Fifth Amendment to the United States Constitution and the protections afforded by Article XIX, Section 7(a) of the Constitution of the International Brotherhood of Teamster, Mr. Coli respectfully declines to appear and answer questions in response to your notice of examination. Because of the pendency of his criminal indictment, his refusal to appear or answer questions does not constitute non-cooperation and is not grounds for charges against him by the union, but is instead protected by Section 7(a). I wanted to let you know of his decision in advance so you can cancel any arrangements and don't have to unnecessarily prepare for his examination.

(Ex. 14) Also on July 24, 2017, Coli's attorney sent a subsequent email which stated the following:

I wanted to make clear that this is just during the pendency of Mr. Coli's federal criminal case. Any examination should be deferred until after his case is resolved as contemplated by the IBT Constitution.

(Ex. 14)

In response, on July 25, 2017, the IIO sent a letter to Coli's attorney via email and overnight mail informing him that since Coli would not appear for his sworn examination on July 28, 2017, after that date, the IIO would recommend a charge against Coli for failing to cooperate. (Ex. 15)² Coli's attorney was advised that this was consistent with prior actions under

² The IIO's July 25, 2017 letter sent by overnight mail was received by the office of Coli's attorney on July 26, 2017. (Ex. 16)

the Consent Decree. (Ex. 15) Coli's attorney was also advised that there would be no deferral of Coli's sworn examination.

(Ex. 15) Coli did not appear on July 28, 2017.

IV. ANALYSIS

The court-approved Rules Governing the Authorities of the Independent Disciplinary Officers and the Conduct of Hearings empower the IIO,

to take and require sworn statements or sworn in-person examinations of any officer, member, employee, representative, or agent of the IBT, provided that the Independent Disciplinary Officers have given the person to be examined at least ten (10) days advance notice in writing and also provided that the person to be examined has the right to be represented by an IBT member or legal counsel of the person's choosing during the course of said examination...Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate fully with the Independent Disciplinary Officers.

(IIO Rules, Paragraph B (2) (b)) (Ex. 1 at 3-4) On July 28, 2017, the date of his scheduled sworn examination, Coli was an IBT member. (Ex. 7) He intentionally failed to appear. (Ex. 14)

In prior cases under the Consent Decree, the Court and the IBT have held that IBT members who refused to answer questions by asserting their Fifth Amendment privilege during their sworn examinations have violated the IBT Constitution and Consent Order by unreasonably failing to cooperate. E.g., United States

v. IBT [Calagna], 1991 U.S. Dist. LEXIS 11256 (August 14, 1991), approved by the Independent Administrator on May 9, 1991; United States v. IBT [Doyle], 88 Civ. 4486 (S.D.N.Y. August 16, 2004), approved by the IRB on January 11, 2005; United States v. IBT [Hickey], 945 F. Supp. 96 (S.D.N.Y. 1996), approved by the IRB on June 5, 1997; In re: Vincent Feola, Joint Council 16 Decision dated November 17, 1998, approved by the IRB on December 9, 1998; In re: Mark Houmis, Local 211 Executive Board decision dated November 22, 2000, approved by the IRB on January 11, 2001.³

As the court has found, the Constitutional privilege is inapplicable to Coli's sworn examination the IIO scheduled because the IIO is not a state actor. See, United States v. IBT [Simpson], 931 F. Supp. 1074, 1107-1109 (S.D.N.Y. 1996) aff'd, 120 F. 3d 341 (2d Cir. 1997) (Ex. 28) In rejecting an IBT member's application for a stay of a sworn examination on Fifth Amendment grounds until the resolution of the charges in an indictment pending against the member, District Court Judge David N. Edelstein explained,

Because the actions of the IRB and its Investigations Officer do not constitute state action, the Fifth Amendment privilege against self-incrimination is inapplicable to Hickey as a defense against appearing before the Investigations Officer. Moreover, should Hickey

³ These decisions are attached as Exhibits 17, 18, 19, 22, 23. Pursuant to Paragraph 49 of the Final Agreement, Consent Decree precedent controls under the Final Agreement. (Ex. 1 at 25)

elect to invoke the Fifth Amendment during his sworn examination before the Investigations Officer, this invocation will expose him to charges of bringing reproach upon the union for obstructing the IRB's and the Investigations Officer's investigation, and endanger his status as a member of the IBT.

United States v. IBT [Hickey], supra, 945 F. Supp. at 99.

In his correspondence with the IIO's office, Coli's counsel argued that, "[B]ecause of the pendency of his criminal indictment, his refusal to appear or answer questions does not constitute non-cooperation and is not grounds for charges against him by the union, but is instead protected by Section 7(a)." (Ex. 14) That section is not applicable. That was an incorrect interpretation of the IBT Constitution.

Article XIX, Section 7(a) of the IBT Constitution states:

No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal has been concluded.

(Ex. 20) The offense of failure to cooperate rests on different facts than the criminal charge of taking money from an employer against Coli. It rests on his failure to appear to answer questions as required. That is not the same set of facts on which Coli is facing criminal trial.

Moreover, Article XIX, §7(a) relates to hearings on internal union disciplinary charges. Under the Final Agreement Coli's obligation to provide a sworn statement was not the

equivalent of his standing trial on charges. The obligation to cooperate by providing information as requested is not a disciplinary hearing with fact finding.⁴ By its very language, section 7(a) was not applicable.

While a member of Local 727, Coli unreasonably failed to appear for his properly noticed IIO sworn examination on July 28, 2017. (Exs. 7, 11, 13, 14) Serious allegations of breaches of fiduciary duties were made against him and, in addition, information was sought about his conduct as an officer in other areas that concerned his union duties. Accordingly, in his failure to appear and answer questions Coli brought reproach upon the IBT and unreasonably failed to cooperate with the IIO in violation of the IBT Constitution.

V. PROPOSED CHARGE

Based upon the foregoing, it is recommended that John T. Coli, Sr. be charged as follows:

While a member of Local 727 and the IBT, you brought reproach upon the IBT in violation of Article II, Section 2(a) and violated Article XIX, Sections 7(b) (1), (2) and 14(a) of the IBT Constitution by obstructing, interfering and unreasonably failing to cooperate with the Independent

⁴ In addition, as Coli's counsel was notified, the sworn examination would have included union-related questions that did not concern the indictment pending against Coli. (Ex. 13)

Investigations Officer as set forth in the Final Agreement and Order, to wit:

As described above, while a member of the IBT, on July 28, 2017 you willfully failed to appear for a sworn examination duly noticed pursuant to the Final Agreement and Order and Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings.