

TO: Members of the Local 282 Executive Board
FROM: Joseph E. diGenova, Independent Investigations Officer
RE: Proposed Charge against Local 282 Member William Cioffi
DATE: September 3, 2019

I. RECOMMENDATION

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer ("IIO") recommends to the Local 282 Executive Board that a charge be filed against Local 282 member William Cioffi ("W. Cioffi") for violating Article XIX, Section 7(b)(1), (2) and 14(a) of the IBT Constitution by unreasonably failing to cooperate with the IIO when he refused to answer any questions during his sworn examination on July 22, 2019. Cioffi's counsel was made aware that there would be questions related to contact with individuals alleged to have organized crime ties, to which W. Cioffi had testified to under oath in a trial held in the United State District Court, Southern District of New York.¹ Cioffi also testified that his wife's company, a Teamster employer, made sub-standard cash payments to Teamster members employed by his wife's company, and failed to remit pension and welfare benefits contributions to the relevant Teamster funds, in violation of a collective bargaining agreement. As discussed

¹United States v. Joseph Cammarano, Jr., and John Zancocchio, 18 Cr. 15 (AKH) (Exs. 24-26)

below, at the beginning of his sworn examination, W. Cioffi stated that he refused to answer any questions.

By his actions, it appears that, while an IBT member, W. Cioffi 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 Local 282 Executive Board. (Ex. 1 at 17-18) Paragraph 32 of the Order requires that within 90 days of the IIO's referral, the Local 282 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 Officers in violation of the permanent injunction. (Ex. 1 at 3, Paragraph (2)(D))

III. INVESTIGATIVE FINDINGS

A. Background of Local 282

Local 282 is located in Lake Success, N.Y. As of March 29, 2018, it had 3,789 members employed at various construction companies in the New York City area. (Ex. 2) Historically, organized crime has dominated IBT Local 282. (Ex. 3) Past Local 282 officials were closely associated with or controlled by LCN members for decades. According to news reports, between 1977 and 1984, Local 282's then President John Cody was a close associate of the Gambino Crime Family. (Exs. 4-5) In 1982, Cody was convicted of operating Local 282 as a racketeering enterprise through extortion, kickbacks and bribery. (Ex. 6)

In 1991, Salvatore Gravano ("Gravano"), an admitted member and underboss of the Gambino LCN Family, detailed the then-continuing organized crime control over Local 282. (Ex. 7 at 26-27, 46) Gravano explained how John Gotti, then the boss of the Gambino Family, appointed him to control Local 282 for the Gambino Family. (Ex. 3) LCN member Gravano reported that he had a close relationship with Local 282 officers including then Local 282 President Robert Sasso ("Sasso") and former Secretary Treasurer Michael Carbone ("Carbone"). (Ex. 3; Ex. 7 at 26-27, 46) According to Gravano, Sasso and Carbone were Gambino Crime family associates. (Ex. 3; Ex. 7 at 26-27, 46) Gravano further advised that when

employer payoffs were received by Local 282 officers, he would receive money from either Sasso or Carbone. (Ex. 3)²

In December 1991, the Investigations Officer charged Sasso and Carbone with knowingly associating with members of organized crime and Sasso was also charged with failing to investigate former Local 282 President Cody's ties to organized crime. (Exs. 9-10)³ In 1992, Sasso and Carbone signed agreements with the Investigations Officer permanently resigning from all IBT positions, including IBT membership. (Exs. 11-12) In 1992, a federal grand jury indicted then current and former Local 282 officers Sasso, Carbone, Michael Bourgal and John Probeyahn for labor racketeering. (Ex. 13)⁴ All four of the Local 282 officers entered guilty pleas to racketeering charges. (Ex. 14) In 1996, Probeyahn and Bourgal both entered into agreements with the IRB permanently resigning from the IBT to resolve IRB-recommended charges that they engaged in labor racketeering and committed perjury when testifying during an IRB sworn examination. (Exs. 15-16)

² According to evidence presented at John Gotti's 1992 trial, John Gotti, then the head of the Gambino Family, received more than \$1 million a year in racketeering proceeds from Local 282. (Ex. 8)

³ In 1982, Cody was convicted of racketeering and sentenced to 5 years imprisonment. (Ex. 5)

⁴ In 1992, Bourgal replaced Sasso as Local 282 President following Sasso's resignation and Probeyahn replaced Carbone as Secretary Treasurer.

Since 1991, under the Consent Order, thirty-four Local 282 members have been either permanently barred based upon decisions of the Independent Administrator, the IRB or the IBT or permanently resigned from the Local pursuant to an agreement. Seventeen of these members were barred based upon charges that they knowingly associated with members of organized crime or were members of organized crime and six were barred based upon charges that they knowingly associated with a barred IBT member. (Ex. 17)

In 1995, pursuant to a consent judgement in a civil RICO suit, Local 282 was placed in government trusteeship. (Ex. 18) The consent judgement was entered into "to eradicate any influence of organized crime or corruption over Local 282. . ." (Ex. 18 at 2)

In 2011, five individuals, including a Local 282 shop steward, were charged with embezzlement, unlawful payments and health care fraud in connection with a scheme to embezzle payments owed to the Local 282 Benefit Funds. (Ex. 20) The Local 282 shop steward, Stephen Tripodi, pled guilty to receiving unlawful payments from an employer. (Ex. 20)⁵

B. William Cioffi

⁵ In 2013, the IRB recommended that Tripodi be charged with accepting \$20,000 from an employer. (Ex. 21) Based upon these charges, the Local 282 Executive Board permanently barred Tripodi from the IBT. (Ex. 22) The IRB approved the decision. (Ex. 22)

According to IBT records, W. Cioffi has been a member of Local 282 since June 5, 1997. (Ex. 23) W. Cioffi's last dues payment was on March 13, 2019 and he paid through December, 2019. (Ex. 23) During his testimony in sworn examination, W. Cioffi testified that he was employed at LMC Trucking Corp., a company that enjoyed Women-Owned Business Enterprise status. (Ex. 26 at 6)

On February 27-28, 2019, W. Cioffi testified in the U.S. District Court for the Southern District of New York, in a criminal case, United States v. Joseph Cammarano, Jr., and John Zancocchio, 18 Cr. 15 (AKH).⁶ W. Cioffi testified at that trial under a grant of limited immunity through a non-prosecution agreement with the Government. W. Cioffi stated under oath that he knowingly associated with persons known to him to be members of Organized Crime.

- Q. Are you familiar with the term "on record with"?
- A. Yes.
- Q. What does that mean?
- A. You're connected to a wiseguy.

⁶ The original indictment charged 10 individuals with racketeering and other offenses in connection with the activities of the organized crime families of La Cosa Nostra. The Indictment charged eight members of the Bonanno Family - Acting Boss Joseph Cammarano, Jr., Consigliere John Zancocchio, Joseph Sabella, George Tropiano, Albert Armetta, Domenick Miniero, Joseph Santapaolo, and Simone Esposito - with racketeering conspiracy involving a wide range of crimes, including extortion, loansharking, wire and mail fraud, narcotics distribution, and conspiracy to commit murder. Genovese Family member Ernest Montevicchi was charged with participating in that conspiracy as well. Several of the defendants, and Luchese Family member Eugene Castelle, were charged with conspiracy to commit extortion. Armetta was additionally charged with assault resulting in serious bodily injury in aid of racketeering and aiding and abetting the same. (Ex. 24)

Q. When you say a "wiseguy" what do you mean?
A. A figure of organized crime.
Q. Were you ever on record with an organized crime family?
A. Yes.
Q. What family?
A. The Gambinos.
THE COURT: Which one?
THE WITNESS: The Gambino crime family.
BY MS. CASTELLANO:
Q. Who specifically in the Gambino crime family were you on record with?
A. Mike Carbone.⁷
Q. Approximately when did you go on record with the Gambino family?
A. About seven years ago.
Q. And why did you go on record with the Gambino family?
A. I thought I'd get more work.
Q. How specifically did you go about going on record with the Gambinos?
A. I met with Mike.
Q. What happened at that meeting?
A. I wanted to go on record with him, and I offered to pay him for his service.
Q. And you offered him what?
A. I would give him a Christmas present.
Q. When you say a "Christmas present," what do you mean?
A. I would pay him -- at Christmastime, I would give him an envelope.
Q. How much did you give him?
A. \$2,000.
Q. Mr. Cioffi, have you attended Gambino family Christmas parties?
A. Yes.
Q. Even though he didn't get the job, did you stay in touch with Joseph Sabella?
A. Yes.

(Ex. 26 at 684-688)

⁷Michael Carbone was permanently barred from the IBT, and according to testimony by Gravano, Carbone was a Gambino Crime Family associate (FBI Declaration SA Iacovelli - 3/26/1992) (Ex. 3)

W. Cioffi also admitted under oath that he made structured payments to Sabella in order to avoid the scrutiny of the New York City Business Integrity Commission ("BIC"), a regulatory and licensing agency of the New York City government that regulated the carting industry.

Q. Why did you use Joseph Sabella as a broker?

A. He was just a guy that had more jobs and I took them on.

Q. Did you pay Mr. Sabella?

A. Yes.

Q. How much did you pay him?

A. I paid a commission on each job.

Q. Approximately how many times did you pay him?

A. Probably 10 to 20 times.

Q. And what was the most you paid Joseph Sabella?

A. I would say the most would be \$5,000.

Q. Did you pay him by check or by cash?

A. Cash.

Q. Why did you pay him by cash?

A. Because he didn't have a business anymore.

Q. Would it have been a problem to have paid him by check?

A. Yes.

Q. Why?

A. Because Joseph had a criminal history with organized crime.

Q. Why would that have been a problem?

A. Because when BIC goes through your files they would come right up that I was doing business with an organized crime figure.

(Ex. 26 at 709)

W. Cioffi admitted under oath to violations of the collective bargaining agreement by paying his Teamster employees less than the contract rate of pay and failing to remit the required contributions to the pension and welfare funds.

Q. And LMC has a contract with the union?

A. Yes.

Q. What union is that?

A. Local 282 Teamsters.

Q. And has LMC always complied with its contract with the Teamsters union?

A. No.

Q. How has it not complied?

A. I paid drivers in cash, and I didn't pay union benefits on them.

THE COURT: You're paying off the books and avoiding health and welfare payments.

THE WITNESS: That's correct.

(Ex. 26 at 684)

In addition to his admission that he violated the collective bargaining agreement his company had with the Teamsters, W. Cioffi also admitted that he engaged in "structuring" cash withdrawals from LMC Trucking Corp. in order to disguise the source of the funds used to pay members of organized crime.

Q. If you live up to your end of the non-prosecution agreement, what is your understanding of what the government will do?

A. Not prosecute me for any crimes I committed.

Q. What crimes were those?

A. The structuring of cash from my business and not paying the union benefits.

Q. When you say "structuring of cash," what do you mean?

A. I was taking cash out of the business under \$10,000 so the federal government wouldn't know about it.

(Ex. 26 at 742)

C. W. Cioffi's Failure to Cooperate with the IIO

On May 9, 2019, the IIO sent W. Cioffi and L. Cioffi notices of sworn examination scheduling their sworn examinations for July

9, 2019. Based upon a request by the Cioffi's counsel, the sworn examinations were postponed until July 22, 2019.

W. Cioffi's IIO sworn examination was conducted on July 22, 2019. (Ex. 27) W. Cioffi was represented by counsel. (Ex. 27) At the beginning of his sworn examination, W. Cioffi, through his counsel, stated that he did not intend to answer any questions put to him by the IIO. (Ex. 27)

During the sworn examination, W. Cioffi and his counsel were informed that refusing to answer questions could result in internal union disciplinary charges being filed against W. Cioffi. (Ex. 27 at 6)

IV. ANALYSIS

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

[t]o 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. 30 at 3-4) On July 22, 2019, the date of his sworn examination, W. Cioffi was an IBT member. (Ex. 23)

Article XIX, Section 7(b)(11) of the IBT Constitution prohibits IBT members from "[c]ommitting any act of racketeering activity as defined by applicable law." (Ex. 38 at 144) Section 7(b)(9) prohibits IBT members from "[k]nowingly associating (as that term has been defined in prior decisions on disciplinary charges under this Article) with any member or associate of any organized crime family or any other criminal group." (Ex. 38 at 144) The permanent injunction in the Final Agreement provides in pertinent part that members, officers and employees of the IBT ". . . are permanently enjoined from: (A) committing any act of racketeering activity, as defined in 18 U.S.C. §1961; (B) knowingly associating with any member or associate of any Organized Crime Family of La Cosa Nostra or any other criminal group." (Ex. 1 at 3)

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 *8-9 (August 14, 1991); United States v. IBT [Doyle], slip. op. 88 Civ. 4486 (S.D.N.Y.

August 16, 2004; United States v. IBT [Hickey], 945 F. Supp. 96 (S.D.N.Y. 1996); 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, modified on December 22, 2000; approved by the IRB on January 11, 2001; In re: Michael Russo, Local 282 Executive Board decision dated July 17, 2013, modified on August 27, 2013; approved by the IRB on September 19, 2013.⁸ In any case, this is inapplicable here, where there was no jeopardy or danger of self-incrimination for Cioffi, who had a non-prosecution agreement with the Government.

As the Court has found, the Constitutional privilege is inapplicable to W. Cioffi's sworn examination because the IIO is not a state actor. See, United States v. IBT [Simpson], 931 F. Supp. 1074, 1107-1110 (S.D.N.Y. 1996) aff'd, 120 F. 3d 341 (2d Cir. 1997) (Ex. 37) 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

⁸ These decisions are attached as Exhibits 31, 32, 33, 34, 35, 36. 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.

(Ex. 33)

During his sworn examination, W. Cioffi refused to answer any questions including those concerning whether he had contact with individuals alleged to have organized crime ties and whether he had underpaid his employees and failed to remit the pension and welfare contributions to the relevant IBT funds, as required.

Both Article XIX, Sections 7(b)(9) and (11) of the IBT Constitution and Paragraph 2(A) and (B) of the Final Order prohibit IBT members from knowingly associating with members and associates of organized crime and from engaging in racketeering activity. (Ex. 1 at 3; Ex. 38) The questions W. Cioffi refused to answer would have related to such activity. These areas of inquiry were well within the IIO's investigative authority. See, United States v. IBT [Piscopo and Maguire], 2012 U.S. Dist. LEXIS 176879 (S.D.N.Y. December 11, 2012) (Court affirmed the IRB's determination that a state crime analogous to a RICO predicate act brought reproach upon the IBT stating ". . . undue influence and racketeering corruption of the IBT ranks were among . . . the main

purposes of the agreement memorialized as the Consent Decree.”)
(Ex. 39 at 5)

When W. Cioffi chose not to answer any questions at his properly noticed sworn examination, he failed to cooperate with the IIO.

V. PROPOSED CHARGES

Based upon the foregoing, it is recommended that William Cioffi be charged as follows:

While a member of Local 282 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 Section 14(a) of the IBT Constitution by obstructing, interfering and unreasonably failing to cooperate with the Independent Investigations Officer as set forth in the Final Agreement and Order, to wit:

On July 22, 2019, you willfully and without justification refused to answer any questions during your in-person sworn examination conducted pursuant to the Final Agreement and Order and Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings.