Bancroft PLLC

August 5, 2016

Hon. Benjamin R. Civiletti
Independent Review Officer
444 N. Capitol St., NW, Suite 528
Washington, DC 20001

Re: Proposed Charges Against Rome Aloise

Dear Mr. Civiletti:

I write in response to your July 18, 2016 letter. For the reasons articulated in my letter of June 3, 2016, in fealty to its obligations under Article XIX, §7(a) of the Constitution of the International Brotherhood of Teamsters ("IBT"), and pursuant to paragraphs 32-34 of the Final Order, I am authorized by the IBT General Executive Board to advise that the IBT will not be able to convene a hearing on the above-referenced matter. We undertake this action in full compliance with the Final Order and pursuant to your July 18 instructions that if the IBT does not schedule a hearing within 20 days, "the Independent Review Officer will promptly schedule a de novo hearing on the charges against Mr. Aloise."

That instruction, and your recognition that the Final Order specifically provides for this procedure, contradicts the later assertion in your letter that declining to hold a hearing would constitute a "serious violation of the Final Order." Nothing in the Final Order states or suggests that a declination constitutes a violation. To the contrary, paragraph 32 provides: "*In the event that* the Union entity files disciplinary charges based upon the referral [by the Independent Investigations Officer], the Union shall act as the charging party." (emphasis added) This language plainly contemplates that the IBT can decline to file charges. Furthermore, paragraphs 33 and 34 lay out a clear process if the Independent Review Officer disagrees with the IBT's response to a referral: the Independent Review Officer notifies the IBT; the IBT has twenty days to describe how it has corrected or will correct the defects identified in the notice; and if the Independent Review Officer concludes that the IBT "has not responded" or its additional actions remain "inadequate," then "the Independent Review Officer shall convene a de novo hearing on the matter." These provisions thus clearly contemplate the IBT's decision here as one to effectuate, rather than violate, the Final Order. Indeed, the July 18 letter appears to recognize all of this when it cites these provisions and instructs that "the Independent Review Officer will promptly schedule a de novo hearing on the charges against Mr. Aloise."

This is a familiar and well-traveled path. Under provisions of the Consent Decree that are materially identical to paragraphs 32-34 of the Final Order, the Independent Review Board initially referred matters to the IBT but retained the power to convene its own hearing if the IBT declined to conduct a hearing. *See* Consent Decree G(d)-(g). Under that regime, the IBT referred matters

back to the IRB for de novo adjudication without any threats of violation. For example, in 2000, the IRB forwarded to the IBT recommended charges against Michael Bane, an officer of Local 614. *See United States v. Int'l Bhd. of Teamsters ("Bane Discipline")*, 2002 WL 654128 (S.D.N.Y. Apr. 18, 2002), *aff'd*, 59 F. App'x 424 (2d Cir. 2003). "The IRB advised the IBT that, pursuant to Paragraph G(e) of the Consent Decree and Paragraph I(6) of the IRB Rules, the union was required to take appropriate action on the charges within 90 days." *Id.* at *1. Subsequently, the IBT "referred the matter back to the IRB for adjudication," and the IRB proceeded to hold a hearing and issue a decision barring Bane from IBT membership. *Id.* at *2. Indeed, the district court subsequently rejected Bane's argument that "the IBT did not hold a hearing in connection with the IRB's proposed charges against him." *Id.* at *10. The court held that "[t]he IBT's decision to refer the charges back to the IRB without a hearing was entirely appropriate and permissible under the Consent Decree," for "the IBT is not required to hold a hearing with respect to each set of proposed charges referred by the IRB." *Id.*

Similarly, in 2001, the IRB forwarded to the IBT recommended charges against International Representatives Dane Passo and William T. Hogan, Jr. The IBT initially advised the IRB that it would conduct its own hearing. Two months later, however, the IBT General Executive Board "voted to refer the charges back to the IRB for adjudication," and the IRB proceeded to hold a hearing and issue a decision. *United States v. Int'l Bhd. of Teamsters ("Passo and Hogan Discipline")*, 2003 WL 21998009 at *6-7 (S.D.N.Y. Aug. 22, 2003), *aff'd*, 110 F. App'x 177 (2d Cir. 2004). Likewise, in a matter your own letter cites, the IBT General Executive Board referred back to the IRB charges against General President Ron Carey and Director of Governmental Affairs William Hamilton. *See United States v. Int'l Bhd. of Teamsters ("Carey and Hamilton Discipline")*, 992 F. Supp. 601, 602 (S.D.N.Y. 1998). More recently, in June 2009, the IRB recommended charges against Ernest Sowell, an officer of Local 747, and the IBT "returned the matter to the IRB," which proceeded to schedule its own hearing. *See* Application 138 of the Independent Review Board—Agreement Between the Independent Review Board and Ernest Sowell, *United States v. Int'l Bhd. of Teamsters*. Below is a sampling of other cases in which the IBT referred charges back to the IRB for adjudication:

Matter	Citation
Aligo Discipline	2000 WL 769209, at *1 (S.D.N.Y. June 14, 2000)
Festa Discipline	2000 WL 145744, at *1 (S.D.N.Y. Feb. 8, 2000)
Triano Discipline	2000 WL 145743, at *1 (S.D.N.Y. Feb. 8, 2000)
Antoun Discipline	1999 WL 1125240, at *1 (S.D.N.Y. Dec. 7, 1999)
Dyson Discipline	1999 WL 1125238, at *1 (S.D.N.Y. Dec. 7, 1999)
Connelly Discipline	1999 WL 1125234, at *1 (S.D.N.Y. Dec. 7, 1999)
Crea and DiNapoli Discipline	1999 WL 359763, at *1 (S.D.N.Y. June 4, 1999)
Garono Discipline	1999 WL 97920, at *1 (S.D.N.Y. Feb. 23, 1999)
Froncillo Discipline	946 F. Supp. 318, 319 (S.D.N.Y. 1996)
Simpson Discipline	931 F. Supp. 1074, 1080 (S.D.N.Y. 1996)

Lauro Discipline	910 F. Supp. 139, 140 (S.D.N.Y. 1996)
Cammarano Discipline	908 F. Supp. 143, 144 (S.D.N.Y. 1995)
Porta Discipline	908 F. Supp. 139, 140 (S.D.N.Y. 1995)

In short, it offends plain text, confounds logic, and upends settled precedent for your letter to assert that the IBT would violate the Final Order by following its prescriptions to decline a hearing in deference to due process and the IBT Constitution. This is an authority that the IBT General Executive Board exercises with serious deliberation and only in exceptional circumstances. The IBT continues to process charges in the normal course and indeed has scheduled a hearing on charges pertaining to Charles Bertucio.

Of even less moment is the assertion in your July 18 letter that the IBT "violated the provisions of the Final Order" by "basing its indefinite stay of the Aloise hearings on an interpretation of its Constitution that had been expressly rejected by the federal courts." As an initial matter, because the Final Order does not obligate the IBT to conduct a hearing on the Aloise charges in the first place, there is no basis for premising a separate violation of the Final Order on the IBT's asserted legal justification for declining to do so.

More important, the Final Order does not prescribe a mode of legal analysis, and the single case cited, *United States v. International Brotherhood of Teamsters ("Carey and Hamilton Discipline")*, 247 F.3d 370 (2d Cir. 2001), is inapposite. First, *Hamilton* involved an IBT *member's* after-the-fact claim in district court that the *IRB's* refusal to adjourn *IRB* proceedings foreclosed a "full and fair hearing" under the Labor-Management Reporting and Disclosure Act. *Id.* at 378. Here, it is the *IBT* that has declined to conduct *its own* proceedings based on its interpretation of *its own* Constitution. The particular circumstances in *Hamilton*—an LMRDA claim brought by an IBT member, challenging IRB proceedings, untimely invoking a constitutional provision—presented the Second Circuit no occasion to consider the IBT's own construction of Article XIX, §7(a), as raised by the IBT *itself* with respect the IBT's *own* proceedings.

Second, as I explained in my June 3 letter and unlike in *Hamilton*, the IBT General Executive Board here has formally construed that provision to encompass circumstances where a member has been notified by law enforcement that he is a target of a criminal investigation based on the same set of facts underlying a putative IBT hearing, since statements made in an IBT hearing could be immediately used elsewhere against that member to that member's detriment. Under well-established Second Circuit law, that reasonable construction of the IBT's constitutional provision by the IBT is entitled to "great deference." *Sim v. New York Mailers' Union No. 6*, 166 F.3d 465, 470 (2d Cir. 1999); *see also Hughes v. Bricklayers & Allied Craftworkers Local No.45*, 386 F.3d 101, 106 (2d Cir. 2004).

To be sure, you may disagree with the IBT's decision not to hold a hearing, its deference to historical practice, its interpretation of its own Constitution, or its counsel's analysis of legal

precedent. But nothing in the Final Order remotely suggests that a lawyers' squabble is a violation of its provisions and mandate. As you know, the IBT general elections are currently underway, and assertions by the Independent Disciplinary Officers that the IBT is in violation of the Final Order have already been used against the current IBT leadership in the campaign. We respectfully ask for care in not casting arguments as assertions of Final Order violations—lest such aspersions be further misused or misinterpreted to interfere (inadvertently) with the Union elections.

The IBT is proud of the Final Order and values a productive working relationship with the Independent Disciplinary Officers to effectuate its provisions. We requested several times to meet and discuss any disagreement, to pretermit further misunderstandings, and to find ways together to resolve this and other matters. We regret that you were unable to accommodate these requests, but remain available as always to meet and to help your important work in any way we can. I am available any time at (202) 234-0090 or vdinh@bancroftpllc.com.

Sincerely,

Viet D. Dinh

cc: Hon. Joseph E. diGenova
Hon. John J. Cronin, Jr.
Edward McDonald, Esq.