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SENT VIA E-MAIL AND U.S. MAIL

February 21, 2017

Edward A. McDonald
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036-6797

Re: Application of Rome Aloise for a Stay of Disciplinary Proceedings

Dear Mr. McDonald:

I write in response to your letter of February 13, 2017. In that letter, you request a stay of the *de novo* hearing, scheduled for March 14, 2017, on charges against Rome Aloise. You argue that the pendency of a grand jury investigation involving Mr. Aloise requires that disciplinary proceedings against him be put on hold in order to protect Mr. Aloise's rights under the International Brotherhood of Teamsters ("IBT") Constitution and the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 USC § 411. For the reasons that follow, the request is denied.

As an initial matter, this same issue was at least twice before the previously-appointed Independent Review Officer ("IRO"). On each occasion, the IRO determined that the grand jury's investigation does not warrant a stay. (*See* Civiletti Ltrs., dated July 18, 2016 & Sept. 26, 2016; *see also* Civiletti Ltr., dated May 26, 2016.) Accordingly, the issue has been considered and decided.

Additionally, the law is clear that Mr. Aloise is not entitled to the requested stay. Article XIX of the IBT Constitution provides that "[n]o 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." (IBT Const. Art. XIX § 7(a).) The Second Circuit has unambiguously interpreted this provision not to require a stay of disciplinary proceedings when, as is the case with Mr. Aloise, there is no pending indictment. *See United States v. Int'l Bhd. of Teamsters (Hamilton)*, 247 F.3d 370, 387 (2d Cir. 2010) (finding that a member under investigation but not yet indicted was not entitled to a stay under Article XIX because "at the time of his request he was not

Pursuant to the Consent Order of the United States District Court of the S.D.N.Y.
United States v. International Brotherhood of Teamsters, 88 CIV. 4486 (LAP)

facing any trial”).¹ Consistent with the Second Circuit’s holding, I find that Mr. Aloise is not entitled to a stay under Article XIX.

The IBT’s contrary interpretation of Article XIX does not alter my conclusion. Pursuant to the terms of the Final Order, the Second Circuit’s interpretation of section 7(a) is controlling in this case. (See Final Order ¶ 49 (“[a]ll matters of construction and interpretation of . . . the IBT Constitution shall continue to be governed by the decisional law established in this action by . . . the United States Court of Appeals for the Second Circuit.”) Additionally, I find the IBT’s interpretation of Article XIX to be patently unreasonable. See *Sim v. N.Y. Mailers’ Union No. 6*, 166 F.3d 465, 470 (2d Cir. 1999) (courts “defer to [a] [u]nion’s interpretation of its governing documents unless that interpretation is ‘patently unreasonable’”). Section 7(a) plainly requires a stay only when a union member is “facing criminal or civil trial.” It says nothing about requiring a stay during the pendency of a government investigation. Given the plain language of the provision, the IBT’s attempt to interpret 7(a) to include government investigations in the wake of the charges brought against Mr. Aloise is not entitled to deference. See *United States v. Int’l Bhd. of Teamsters (Friedman & Hughes)*, 905 F.2d 610, 619 (1990) (rejecting an IBT resolution interpreting the IBT Constitution passed at a “special meeting just one month after the Administrator had ruled against” the defendants).

With respect to the LMRDA, Mr. Aloise’s claims are premature. Proceeding with the *de novo* hearing at this time does not deny Mr. Aloise his right to a “full and fair hearing” as a matter of law. 29 U.S.C. § 411. Conducting the hearing is not a violation of Article XIX; Mr. Aloise may testify in his defense if he so chooses; and Mr. Aloise may call whatever witnesses he desires to testify in support of his case. Upon the conclusion of the *de novo* hearing and my issuance of a decision, Mr. Aloise may seek review under the LMRDA if he feels his presentation was not full and fair. (See Final Order ¶ 35.)

Finally, I concur with the previously-appointed IRO that a *de novo* hearing before me is warranted because the IBT has not pursued the disciplinary proceedings against Mr. Aloise in a “lawful, responsible or timely manner.” (Final Order ¶ 33; Civiletti Ltr., dated July 18, 2016.) My understanding is that the IBT’s failure to proceed with this case is grounded in its view that section 7(a) of Article XIX of the IBT Constitution requires a stay. As explained above, however, Article XIX does not provide a valid basis for delay.

¹ The Second Circuit’s statement that Hamilton was not entitled to a stay because “at the time of his request he was not facing any trial” is not dicta. *Hamilton*, 247 F.3d at 387. The Court’s additional explanation that even assuming the IBT Constitution did require a stay Hamilton received a fair hearing, does not alter the statement’s binding effect. (*Id.*)

For the reasons set forth above, the request for a stay is denied, and the *de novo* hearing on the charges against Mr. Aloise will proceed as scheduled on March 14, 2017.²

Sincerely,

A handwritten signature in blue ink that reads "Barbara S. Jones" followed by a stylized flourish.

Hon. Barbara S. Jones (Ret.)
Independent Review Officer

Cc: Joseph diGenova, Esq.
Bradley Raymond, Esq.
Viet Dinh, Esq.
Tara M. La Morte, Esq.

² Although you have indicated that you intend to seek review of this decision in the District Court and, if necessary, the Second Circuit, paragraph 35 of the Final Order provides that “[d]ecisions of the Independent Review Officer are final and binding and shall not be subject to further review under the IBT Constitution or to judicial review by this Court” (Final Order ¶ 35.) As stated above, if Mr. Aloise ultimately feels he was not afforded a “full and fair hearing,” he may bring suit under the LMRDA after I render my decision following the *de novo* hearing.