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January 24, 2012

VIA UPS GROUND

Hon. Loretta A. Preska
United States District Court
500 Pearl Street, Room 1320
New York, NY 10007

The Honorable William H. Webster
1850 K Street, NW, Suite 1100
Washington, DC 20006

Re: APPLICATION 156 OF THE INDEPENDENT REVIEW BOARD

Dear Judge Preska:

I transmit herewith one original and one copy of Application 156 of the Independent Review Board, submitting the Opinion and Decision regarding James Deamicis and Thomas Flaherty, approved by the IRB, to Your Honor for review, and if appropriate, to be "so ordered."

In addition to the Application, enclosed please find the original and one copy of:

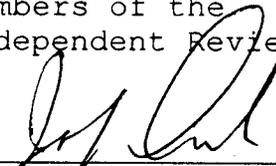
- (a) the January 24, 2012, Opinion and Decision of the IRB;
- (b) an Acknowledgment of Receipt; and
- (c) an Affidavit of Service.

If you find it appropriate, I respectfully request that a member of Your Honor's staff file the original Application, Opinion and Decision, Acknowledgment of Receipt and Affidavit of Service with the Clerk's office.

Respectfully submitted,

Members of the
Independent Review Board

By:



John J. Cronin, Jr.
Administrator

JJC:cft

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

Enclosures

cc: Tara M. La Morte, AUSA
Charles M. Carberry, Esq.
Bradley T. Raymond, Esq.
James Deamicis
Thomas Flaherty

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	88 CIV. 4486 (LAP)
Plaintiff,	:	
	:	APPLICATION 156 OF THE
v.	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION AND DECISION OF
INTERNATIONAL BROTHERHOOD OF	:	THE INDEPENDENT REVIEW
TEAMSTERS, <u>et al.</u>	:	BOARD IN THE MATTER OF
	:	JAMES DEAMICIS AND
Defendants.	:	THOMAS FLAHERTY
	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the IRB for ruling by the Honorable Loretta A. Preska, Chief United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on October 11, 2011 in Boston, Massachusetts.

James Deamicis ("Deamicis") and Thomas Flaherty ("Flaherty") were charged with acting in concert, along with principal officer John Perry ("Perry") and then-President Patrick Geary ("Geary"), to arbitrarily and selectively enforce unauthorized voting rules by knowingly allowing favored ineligible members to vote on a proposed collective bargaining agreement with a trade show contractor, Greyhound Exposition Services ("GES"). These actions brought reproach upon the Teamsters while injuring fellow-members in violation of Article II, Section 2 (a) and Article XIX,

Section 7 (b) (1) and (2) of the IBT Constitution and Section 14 (a) (13) of the Local bylaws.

Perry and Geary have entered into settlement agreements resolving the charges against them. Pursuant to these agreements, Perry permanently retired from the IBT and agreed never again to hold IBT membership. He further agreed never to participate in the affairs of Local 82 or any other IBT entity. Geary permanently resigned from all IBT positions and agreed to a five year suspension from IBT membership.

Deamicis was also charged individually with violating Article II, Section 2 (a) and Article XIX, Section 7 (b) (1) and (2) of the IBT Constitution by bringing reproach upon the IBT and failing to comply with Section 21 (B) (3) of the Local 82 Bylaws and Article XIX, Section 10 (d) of the IBT Constitution. Deamicis, while not a member in good standing because of a continuing suspension resulting from his failure to comply with the terms of discipline imposed on him by his Local's Executive Board, brazenly exercised all rights of membership, including attending meetings, voting on collective bargaining agreements, and serving as chief steward on the GES negotiating committee.

The IRB now finds by a preponderance of the evidence presented at an IRB October 11, 2011 hearing that Deamicis and Flaherty violated the above-noted IBT Constitutional provisions.

Accordingly, since Deamicis also knowingly violated the

terms of a prior suspension, he is hereafter permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity; permanently barred from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and permanently barred from the date of expulsion from having any contributions made on their behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

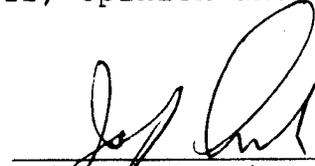
Because Flaherty has no prior record of bringing reproach upon his Local, he is hereafter barred for a period of five years from holding membership in or any position with the IBT or any IBT-affiliated entity; from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and from the date of expulsion from having any contributions made on their behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

Enclosed with our January 24, 2012 Opinion and Decision are the September 29, 2010 IRB Investigative Report (Exhibit A), and Exhibits 1-297 (Appendix to Exhibit A) on CD Disk, IRB Chief

Investigator's Pre-Hearing Memorandum and Supplemental Exhibits 300-433 (Exhibit B) on CD Disk, the October 11, 2011, IRB Hearing Transcript (Exhibit C) and, IRB Reference Documents 1-3 (Exhibit D) and Exhibits IRB-1 to IRB-8 (Exhibit E) introduced at the October 11, 2011 Hearing.

It is respectfully requested that an Order be entered affirming the IRB's January 24, 2012, Opinion and Decision if Your Honor finds it appropriate.

By:



John J. Cronin, Jr.
Administrator

Dated: January 24, 2012

-----X
 IN RE: : OPINION AND DECISION
 : OF THE INDEPENDENT
 James Deamicis and Thomas Flaherty : REVIEW BOARD
 :
 :
 -----X

INTRODUCTION

On October 4, 2010 the IBT General President filed two charges against Local 82 member James Deamicis (“Deamicis”) and one against member Thomas Flaherty (“Flaherty”). Deamicis and Flaherty were accused of acting in concert, along with principal officer John Perry (“Perry”) and then-President Patrick Geary (“Geary”), to arbitrarily and selectively enforce unauthorized voting rules by knowingly allowing favored members to vote on a proposed collective bargaining agreement with a trade show contractor, Greyhound Exposition Services (“GES”). These actions brought reproach upon the Teamsters while injuring fellow-members in violation of Article II, Section 2 (a) and Article XIX, Section 7 (b) (1) and (2) of the IBT Constitution and Section 14 (a) (13) of the Local bylaws. (Ex. 1 at 54-57, Ex. 11 at 50-54, Exs. 227-230, 232-234, 237-239, 248-249, 251-255, Ex. 381)

The purpose of the alleged scheme was to achieve passage of a contract omitting a prior provision, which provided partiality in work assignments to persons with trade show industry experience prior to April 1, 2003. (Ex. 210 at 16-17, 27-28; Ex. 212 at 18-19, 28-29, Ex. 213 at 47-49, Ex. 381) Perry and Geary have entered into settlement agreements resolving the charges against them. Pursuant to these agreements, Perry permanently retired from the IBT and agreed never to hold IBT membership. He further agreed never to participate in the affairs of Local 82 or any other IBT entity. Geary

permanently resigned from all IBT positions and agreed to a five year suspension from IBT membership.

Deamicis was charged individually with violating Article II, Section 2 (a) and Article XIX, Section 7 (b) (1) and (2) of the IBT Constitution by bringing reproach upon the IBT and failing to comply with Section 21 (B) (3) of the Local 82 Bylaws and Article XIX, Section 10 (d) of the IBT Constitution. Deamicis, while not a member in good standing because of a continuing suspension resulting from his failure to comply with the terms of discipline imposed on him by his Local's Executive Board, brazenly exercised all rights of membership, including attending meetings, voting on collective bargaining agreements, and serving as chief steward on the GES negotiating committee.

The IBT held a hearing concerning these charges on February 15, 2011 and determined that they were not proven. On June 7, 2011 the IRB sent a letter to Mr. Hoffa to inform him that it believed the decision to dismiss the charges against Deamicis and Flaherty was inadequate. Subsequently, the IRB held a de novo hearing regarding both of these matters on October 11, 2011 in Boston, Massachusetts. The IRB now finds by a preponderance of the evidence presented at that October 11 hearing that Deamicis and Flaherty violated the above-noted IBT Constitutional provisions.

FACTS

Deamicis and Flaherty's Implementation and Arbitrary Enforcement of

Unauthorized Voting Rules

Deamicis and Flaherty first met during their childhoods in South Boston. (Ex. 19 at 8) The two men spent time together in prison prior to 1998. (Id. at 7-8) Both helped to

originate and lead the Local 82 Strike Unit, which allegedly influenced employers to procure more work for the Local. (Ex. 33 at 19-22, Ex. 54 at 23-24)

Section 14(A) (13) of Local 82's Bylaws state that the Executive Board can:
"Determine the membership which shall vote on agreements and strike, and the composition of other membership meetings, and adopt rules and regulations concerning the conduct thereof not inconsistent with the International Constitution..."

Perry described the policy he and others enforced to determine a member's voting eligibility as follows:

Members vote only on one contract. List employees vote for the companies which they have seniority for. If someone works the same amount for more than one company, they are able to choose which contract to vote on. This is the only procedure, policy, rule or regulation governing Collective Bargaining Agreement ratification votes.

(Ex. 207 at 2)

However, the Local's Executive Board failed to adopt written rules to codify this policy. (Ex. 1 at 52-53, Ex. 209 at 2)

The IBT Constitution provides another mandatory criterion to determine voter eligibility: a member's dues must be paid in full through the month prior to any contract vote. (Article X, Section 5 (c); Ex. 390 at 7)

On April 18, 2009, Local 82 conducted a vote on a proposed collective bargaining agreement with trade show contractor Freeman. (Ex. 209 at 5) The prior agreement with Freeman contained the following provision: "Whenever the Company's seniority lists(s) have been exhausted and the Company needs additional labor, the Company shall take the availability of suitable applicants.... Such applicants shall have had relevant trade

show experience prior to April 1, 2003.” (Ex. 99 at 3) The GES collective bargaining agreement contained almost identical language. (Ex. 144 at 34)

Prior to the Freeman vote in 2009, Perry strongly advocated for the removal of this language (“pre-2003 language”). (Ex. 210 at 18-19, Ex. 212 at 19 and 28-29) Both Flaherty and Deamicis vigorously supported Perry’s view. (Ex. 54 at 53-54, Ex. 212 at 28-29) Perry appointed Flaherty as a Sergeant at Arms for the Freeman vote and for all successive 2009 ratification votes on trade show contracts. (Ex. 1 at 54-55) During the same year, Deamicis, who was already three years delinquent in paying a fine imposed on him by his Local, attended all contract ratification votes despite the Local’s issuance of a notice stating: “All members must have their receipt on their person and be paid through the month of MARCH, 2009 [in order to vote].” (Oct. 11 Tr 30:25-31:1-14; Ex. 301, Ex. 302)

Immediately preceding the April 18 ratification vote, Perry and Flaherty participated in a heated Union meeting concerning the removal of the pre-2003 language. (Ex. 210 at 27-28, Ex. 212 at 18-20 and 28-29, Ex. 213 at 46-48) Thereafter, the members voted to reject the proposed Freeman contract omitting the pre-2003 language. (Ex. 209 at 5)

Eight days after the members defeated the contract, another vote was held at Local 82 on a proposed contract with GES, which also would have omitted the pre-2003 language. (Ex. 209 at 5, Ex. 212 at 14) This time, the members passed the contract. (Ex. 209 at 5, Ex. 217) According to the Local’s sign-in sheet for this vote, and under the rules promulgated but not recorded by Perry, there were only 24 members in the Local eligible to vote on the GES contract. (Exs. 413 and 417) Of these 24, 17 voted. (Exs.

217, 380, 398 413, 417, 418-420). However, 62 individuals (78% of all voters) who were ineligible either because they worked most of their hours for an employer other than GES in 2008 or because they were not members in good standing, were permitted to vote.

(Ex. 13, 39, 217, 380)

During testimony before the IBT, Perry admitted he entrusted Flaherty with enforcing eligibility standards. (Ex. 1 at 54-57) Yet, Flaherty seemed confused as to his exact responsibilities: he didn't think it was his "business to know if people should be there [at the GES contract vote] or not..." while failing to verify if potential voters for the final Freeman contract had voted on a prior contract. (Oct. 11 Tr' 133:15-18 and 134:11-13)

Perry hired a local police officer to control the gate at the union hall that day while utilizing both Deamicis and Flaherty to also control the sole access point into the hall. (Ex. 33 at 93-94, Ex. 210 at 32, Exs. 227, 234, 249, 252, Ex. 300 at 132-134 and 146-147) William MacDonald said Deamicis warned him the officer would arrest any and all non-compliant members. (Oct. 11 Tr' 64:9-12 and 68:19-21). Deamicis testified that it was the first time he had seen a police officer present at a contract vote in his Teamster's career. (Id. at 115:5-8) Flaherty said it was unusual to be standing outside at all during a contract vote. (Id. at 129:2-4)

Eight Local 82 members alleged in written statements, under penalty of perjury, that Deamicis assisted in preventing them from entering the union hall that day. (Exs. 227-229, Ex. 234, Ex. 248, Exs. 253-254) Another member, Paul McManus, testified that between 20 and 25 other members were standing outside the gate with him after being excluded from the hall. (Oct. 11 Tr' 39:13-15) He also stated the sole reasoning used by

Perry and Deamicis to exclude him was, "because [they felt] I was there to cause trouble." (Id. at 39:5-7) At least two Local 82 members, in similar written statements, testified that Flaherty and Perry stood at the gate to screen would-be entrants. (Ex. 234 and 252)

Ten Local 82 members who were not eligible to vote submitted written statements, under penalty of perjury, claiming they were prevented from voting that day, even though 62 other non-eligible voters were allowed to cast ballots. (Exs. 220-221, Exs. 227-228, Ex. 230, Exs. 232-234, Exs. 237-239) None of the ten members' names appeared on the April 26 voter sign-in sheet. (Ex. 217) Not coincidentally, nine of these ten individuals became members of the Local prior to 2003; in other words, they would be likely to vote against the GES contract, since it omitted language that gave preference to those who had such experience. (Exs. 220, 227, 230, 232-234, 237-239, 263, 382, 402) At least three of these excluded members had filed grievances regarding the Local's treatment of the pre-2003 language.¹ (Ex. 213 at 14-18, Ex. 261, Ex. 412)

Deamicis conceded that Flaherty and others verified the dues status of members at the GES vote. (Ex. 54 at 54) Despite this, nearly half of the voters on the GES contract,

¹ At the end of the October 11, 2011 hearing, Donald Windett testified he has been threatened at the Local 82 union hall before and after filing a grievance for being selectively denied an opportunity to receive extra work. He alleged that none of the four or five grievances he filed were ever addressed. He also claims that such malfeasance still occurs to this day, as he has a grievance currently on file relating to another occasion in which he was threatened on the job. He also testified, "When my union dues were a month or two months [behind], I not only got a phone call, but I got a letter from the union stating that if I don't pay my dues, they are going to be delinquent." This heavy-handed approach seems to differ drastically from the leniency shown to Mr. Deamicis, who did not receive any kind of notice about his failure to pay his fine until three years after it was delinquent. Lastly, Mr. Windett testified that he has since been put on the "no-hire list," further compromising his ability to take on extra hours to support his family.

including Deamicis, were ineligible because their dues were delinquent as per the Local's policy and subsequent directive. (Exs. 302 and 380)

At least five members employed in the moving industry were permitted to vote on the GES trade show contract. (Ex. 39, 217, 381) This occurred despite Deamicis' admission that members of the moving industry were only allowed to vote on moving contracts and members of the trade show industry were only eligible to vote on trade show contracts. (Exs. 27, 27A, Ex. 39, Ex. 300 at 133-134)

At least thirteen ineligible GES contract voters likely had personal ties to Perry, Deamicis, and/or Flaherty, including Perry's brother, Flaherty's ex-wife and Deamicis' co-defendant from a 1992 credit card fraud conviction. (Ex. 54 at 11-15, Ex. 217)

Local 82 held another vote in June on a revised version of the Freeman contract that was rejected only two months prior. (Oct. 11 Tr' 44:18-20) In contrast to all the other votes mentioned in this opinion, Local 82's Executive Board decided to hold this vote at 5:00 pm, in the middle of the week, in Charlestown, Massachusetts, some ten miles away from the Local's primary worksite that day. (Id. at 44:24-25 and 45:1-12) William MacDonald claimed that it could take an hour to get to that union hall from Braintree in Boston rush hour traffic. (Id. at 66:22-25) Further, he saw, "a lot of people I didn't recognize" at the vote that day. (Id. at 67:9-22) Paul McManus testified that Perry, when questioned as to why this change in location was implemented, replied, "...they didn't want the outcome of the last meeting." (Id. at 45:17-21) As a result, the subsequent version of the Freeman contract, which omitted the pre-2003 language, was accepted approximately two months after it had been rejected by the very same Local. (Id. at 46:22-23)

Deamicis' Failure to Comply with Sanctions Properly Imposed by Local 82

Deamicis joined Local 82 in 1981. (Ex. 71) The following year, he was convicted of unarmed robbery, assault and battery and was sentenced to three to five year's imprisonment. (Ex. 54 at 8-9) In 1992, he was convicted of credit card fraud and was sentenced to two and a half to seven year's imprisonment. (Ex. 54 at 10-11) After being released from incarceration in 1995, Deamicis returned to Local 82. (Ex. 54 at 14-15, Ex. 71)

On April 8, 2005, then Secretary-Treasurer Perry charged Deamicis with bringing reproach upon the Local while injuring its members by pretending to be a business representative in redirecting work from the Local for personal benefit. (Ex. 54 at 60-61, Ex. 74) Shortly thereafter, that charge was found proven; Deamicis was fined \$3,000 and suspended from membership one year. (Ex. 54 at 60-62, Exs. 74-76) Deamicis failed to pay the fine in full until October 5, 2010 (Ex. 301)

Section 21 (B) (3) of the Local 82 Bylaws states:

In the event of non compliance with the decision handed down by a trial... body, the member... shall stand suspended from rights and privileges under the International Constitution until the provisions of the decision have been complied with, unless the General President has waived payment of a fine or stayed the effectiveness of the decision pending appeal.

(Ex. 77 at 26) The IBT Constitution Article XIX, Section 10 (d) provides:

In the event of non-compliance with the decision handed down by a trial... body, the member... shall stand suspended from all rights and privileges under this Constitution until the provisions... have been complied with...

(Ex. 78)

Despite these provisions, Deamicis exercised full membership rights during his suspension, even though he admitted he neglected to make payments for a substantial

period of time after receiving a notice of suspension. (Oct. 11 Tr' 116-11-25 and 117:1-3) Deamicis served as a Chief Steward in 2007, approximately three years before fully paying the fine. (Exs. 54 at 61-63, Ex. 71, Ex. 77 at 26, Ex. 78 at 151) By acting in this capacity, Deamicis received approximately \$2,130.00 from Local 82 in reimbursements for dues he paid. (Exs. 72-73) Around the same time, Deamicis co-founded and participated in the Local 82 Strike Unit. (Ex. 19 at 51-52, Ex. 33 at 19, Ex. 54 at 23-24) In the same year, Deamicis regularly attended the Local's General Membership meetings and attended at least two Executive Board meetings with Perry's blessing, despite not being an elected member of the board. (Exs. 12, 82, 273-274, 280, 289, 291, 292)

Deamicis worked on the GES 2009 contract negotiating committee, attended all of the relevant contract ratification votes, and sat on a panel that was considering a disciplinary charge against another Local 82 member a full year before fully settling his debt. (Oct. 11 Tr. pg. 77:11-13; Ex. 1 at 66, Ex. 54 at 46-48) He served as a sergeant at arms during all of the contract ratification votes in 2009. (Oct. 11 Tr' 122:11-24) Deamicis admitted to discussing the remaining balance of his fine (\$800) with Perry in December 2009, yet he failed to fully pay that balance until October of 2010, over four years after the fine should have been cleared. (Ex. 54 at 63-64, Ex. 301).

DISCUSSION

The Arbitrary Enforcement of Unauthorized Voting Rules Not Only Violated the IBT Constitution, but also U.S.C.S § 411

U.S.C.S. § 411 (a) (1) and (2) state:

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the

business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws. (2) Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views... upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution...

Justice White declared in American Federation of Musicians v. Wittstein that § 411 (a) (1), "... guarantees to every member of a labor organization equal rights and privileges to vote, to attend meetings, and to participate in the deliberations and business of such meetings." 379 U.S. 171, 181 (1964). It seems clear that many Local 82 members were denied equality in regards to voting rights, privileges, and deliberations. Deamicis and Flaherty assisted Perry by allowing 62 ineligible members to vote on the GES contract while excluding at least ten others who were deemed ineligible for the very reasons that served no bar for the remainder. (Ex. 13, Ex. 39, Ex. 217, EXs. 227-229, Ex. 234, Ex. 248, Exs. 253-254, Ex. 380) By excluding these members from entering the hall, Deamicis and Flaherty prevented them from participating in whatever deliberations occurred before the vote. Both Deamicis and Flaherty consented to holding the final Freeman vote miles away from Local 82, thus preventing equal access for voting purposes; not only was the vote held at 5 pm during weekday rush hour, but many of the union's members were working miles away that day. (Oct. 11 Tr' 44:24-25 and 45:1-12)

"Congress adopted the freedom of speech and assembly provision [§ 101(a)(2), 29 U. S. C. § 411(a)(2)] in order to promote union democracy. It recognized that democracy would be assured only if union members are free to discuss union policies and criticize

the leadership without fear of reprisal.” Steelworkers v. Sadlowksi, 457 U.S. 102, 109-110 (1982). To resolve whether a union rule is valid under 29 U.S.C. § 411 (a)(2), one must consider whether the rule interferes with an interest protected by the first part of the provision. If it does, a determination must be made whether the rule is “reasonable” and thus protected by the proviso in the statute. Id. at 111.

Not only did Flaherty and Deamicis selectively bar members from attending the GES contract vote, but they did so with the help of a uniformed police officer. Deamicis and Flaherty cannot rely on the “subject to the organization’s established and reasonable rules pertaining to the conduct of meetings” provision of the statute as a defense for their behavior. Not only did the excluded members have identical voting qualifications as tens of others who were allowed entry and voting rights, but the use of a police officer, which Deamicis himself admitted he had never seen before in his union career, was far from reasonable conduct during the course of a union meeting. (Oct. 11 Tr’ 115:5-8; Ex. 33 at 93-94, Exs. 227, 243, 249, 252, Ex. 300 at 133-134, 146-147).

In Griffin v. International Union of Automobile Workers, the court stated:

A union must... treat all factions and segments of its membership without hostility or discrimination. Next, the broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty. Finally, the union must avoid arbitrary conduct. Each of these requirements represents a distinct and separate obligation....

469 F.2d 181 (CA 4, 1974); Ruzicka v. General Motors Corporation, 523 F.2d 306, 309-10 (CA 6, 1975). This case also acknowledged that inadequate sign-in procedures demonstrate a strong indication of arbitrary enforcement of local voting procedures. Id. at 309-310.

It seems apparent that Deamicis and Flaherty assisted Perry in treating certain factions with hostility and discrimination. Not only did they prevent a sizable segment of the local from entering the hall for the GES vote despite including 62 other ineligible voters, but they did so with the help of a uniformed police officer. The officer's presence demonstrated obvious hostility towards the excluded members, who were threatened with arrest if they did not comply with Perry's orders. (Oct. 11 Tr' 64:9-12 and 68:19-21) Both Deamicis and Flaherty admitted to engaging in lax sign-in enforcement during many of the votes (Oct. 11 Tr' 133:15-18 and 134:11-13) In all, Flaherty and Deamicis' utilization of inconsistent voting rules and sites, acquiescence to the presence of a uniformed police officer, and denial of entry to a selective few who opposed the GES contract constituted arbitrary and capricious conduct.

Local 82's Treatment of Deamicis Did Not Violate 29 U.S.C. § 158

During the initial IBT hearing on this matter, the union argued that further punishing a voluntary dues-paying member for refusing to comply with a properly imposed sanction would violate 29 U.S.C. § 158 (b) (1). That statute provides in pertinent part:

b) Unfair labor practiced by labor organization

It shall be an unfair labor practice for a labor organization or its agents-

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership there;

Section 157 of Title 29 provides:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining... and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment...

Since Deamicis was a voluntary member of the union who paid dues, no right guaranteed by section 157 would be infringed through additional discipline. His right to refrain from union activities was not impinged; in reality, Deamicis voluntarily exercised full membership rights years before satisfying his punishment in full.

To support its determination that the charge against Deamicis was unfounded, the IBT relied on NLRB v. Granite State Joint Board, 409 U.S. 213 (1972) and its progeny. (Ex. 401 at 15 and 22-23) Doing so was flawed, however, because the Court in that case held it is an unfair labor practice for a union to fine a *former member* for conduct committed *after* his resignation from the union. Id. at 215-218 (emphasis added). Pattern Makers League v. NLRB, 473 U.S. 95 (1985) and Machinists Aerospace Workers v. NLRB, 412 U.S. 84, 89-90 (1973), also deal with unfair labor practices stemming from a union's treatment of former members after their resignation from the union. In fact, United States v. IBT [McNeil] explicitly states the Granite State Joint Board decision does not prohibit "a union from punishing members for pre-withdrawal conduct." 782 F. Supp. 238, 242 (S.D.N.Y. 1992).

Deamicis not only failed to resign from Local 82, but continued to pay dues while suspended (Ex. 71, Ex. 300 at 157, Ex. 301). The IBT Constitution allows a member to resign only after he/she submits written notice the Local Secretary-Treasurer. IBT Const. Art. II, § 2 (i). Deamicis never followed this protocol, and in fact demonstrated contrary

behavior by exercising full membership rights during the time of his suspension. In addition, he was fined and suspended for a violation he committed while a member of the union.

With this in mind, the union's treatment of Deamicis seems to more accurately fall under the scope of Scofield v. NLRB, 394 U.S. 423, 430 (1969), in which the Court upheld a union's ability, "to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule." Deamicis intentionally undermined the local's disciplinary system by disregarding its ruling despite multiple notices informing him of the penalty, all while acting as a member in good standing. The union's policy, which prevents a fined member from acting as a member in good standing until a fine is paid in full, was properly adopted and reflects a legitimate union interest.

What's more, United States v. IBT [Ryan] demonstrates that a member's violation of the terms of his suspension can be a chargeable offense. Summary Order, Application 122, (S.D.N.Y. Jan. 16, 2007). The IBT claimed that Deamicis should be absolved of his wanton disregard because he acted "with the full knowledge and consent, and often at the direction, of the Local's principal officer..." (Ex. 401 at 22) This claim is meritless because Deamicis was reminded to pay the fine by Perry in July 2009, over fourteen months before complying in full. (Ex. 1 at 137-138, Ex. 156)

The IBT Constitution states a member's suspension can only be lifted with the approval of the General President. Art. XIX § 10 (d); Local 82 Bylaws section 21 (B) (3). Thus, even if Perry suggested he would remove the fine, Deamicis falsely relied on

an illusory promise that directly contradicted an explicit IBT Constitutional provision.
(Ex. 300 at 157)

Ignorance of this provision is no defense either, since the IBT Constitution not only commands all members, "to comply with all rules and regulations for the government of the International Union and his Local Union" but also proclaims that, "any alleged failure to receive such copy [of a free Constitution and Local Bylaws] shall not excuse a member from violation of any duty or obligation imposed upon him by his oath of office, initiation, or membership." Art. II, § 2 (a); Art. XIV, §1 (b); Local 82 Bylaws § 20 (A) (5).

CONCLUSION

Deamicis and Flaherty brought reproach upon the IBT by acting in concert with each other, as well as Perry and Geary, in enforcing arbitrary voting rules on proposed collective bargaining agreements in 2009. Furthermore, Deamicis brought reproach upon the IBT by failing to comply with disciplinary measures handed down by his Local chapter, thus knowingly violating the terms of his suspension over several years.

Accordingly, since Deamicis knowingly violated the terms of a prior suspension, he is hereafter permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity; permanently barred from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and permanently barred from the date of

expulsion from having any contributions made on their behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

Because Flaherty has no prior record of bringing reproach upon his Local, he is hereafter barred for a period of five years from holding membership in or any position with the IBT or any IBT-affiliated entity; from seeking or accepting from the IBT or any IBT-affiliated entity any salary, severance payment, allowance, fee, payment for unused vacation, or compensation of any kind except fully vested pension compensation and fully vested welfare benefits; and from the date of expulsion from having any contributions made on their behalf by any IBT entity to any pension, health and welfare, severance, or other benefit fund.

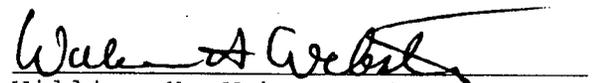
Dated: January 24, 2012

Respectfully submitted,

Members of the
Independent Review Board


Benjamin R. Civiletti


Joseph E. diGenova


William H. Webster

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	88 Civ. 4486 (LAP)
	:	ACKNOWLEDGMENT OF RECEIPT
INTERNATIONAL BROTHERHOOD OF	:	OF THE OPINION AND
TEAMSTERS, <u>et al.</u>	:	DECISION OF THE
	:	INDEPENDENT REVIEW BOARD
Defendants.	:	

This Court hereby acknowledges that the Opinion and Decision of the IRB of Application 156 of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IBT") has been received by this Court, and that this Court has caused to be filed the original documents concerning the Opinion and Decision of Application 156 of the IRB with the Clerk of the Court of the Southern District of New York.

This Court further certifies that the instant Acknowledgment of Receipt ("the Acknowledgment") has been filed with the Clerk of the Court of the Southern District of New York, and that a copy of the Acknowledgment has been forwarded to the following:

John J. Cronin, Jr.
444 North Capitol Street, NW, Suite 528
Washington, DC 20001
Administrator of the Independent Review Board

James Deamicis
66 Campbell Street
Quincy, MA 02169-1417
Respondent

Thomas Flaherty
9 McKone Street
Dorchester, MA 02122-3207
Respondent

Dated: New York, New York
_____, 2012

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<hr/>		:
UNITED STATES OF AMERICA,		:
		:
Plaintiff,		:
		:
v.		:
		:
INTERNATIONAL BROTHERHOOD OF		:
TEAMSTERS, <u>et al.</u>		:
		:
Defendants.		:
<hr/>		:

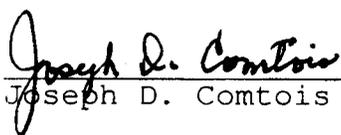
88 Civ. 4486 (LAP)
AFFIDAVIT OF SERVICE

Joseph D. Comtois hereby deposes and says:

1. I am the Assistant to the Administrator in the office of the Administrator of the Independent Review Board. On January 24, 2012, I caused to be delivered via UPS Ground to the Honorable Loretta A. Preska one executed original and one copy of Application 156, the executed original and one copy of the Opinion and Decision of the IRB, and the original and one copy of the Acknowledgment of Receipt.

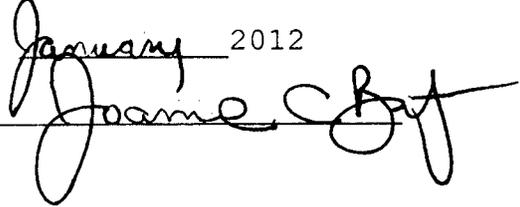
2. I also caused a copy of Application 156 along with the enclosures to be delivered to:

- Tara La Morte, AUSA, via UPS Ground
- Charles M. Carberry, Esq., via UPS Ground
- ✓Bradley T. Raymond, Esq., via Hand Delivery
- James Deamicis, Member Local 82, via UPS Ground
- Thomas Flaherty, Member Local 82, via UPS Ground



Joseph D. Comtois

Sworn to and subscribed
before me this 24th day

of January 2012


JOANNE C. BATZ
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires March 14, 2012