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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	APPLICATION 100 OF THE
	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION AND DECISION OF
INTERNATIONAL BROTHERHOOD OF	:	THE INDEPENDENT REVIEW
TEAMSTERS, <u>et al.</u>	:	BOARD IN THE MATTER OF
	:	THE HEARING OF
Defendants.	:	EDDIE L. JACOBSON
	:	

Pursuant to Paragraph 0. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the Independent Review Board ("IRB") for ruling by the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on October 19, 2001, and thereafter determined, on the charges filed against Eddie L. Jacobson ("Jacobson"), the Trustee of IBT Local 631.

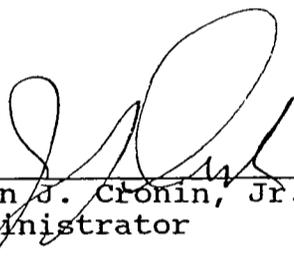
Jacobson was charged with bringing reproach upon the IBT by intentionally failing to cooperate with the IRB in responding to the IRB's request for documents and by testifying falsely during his January 31, 2001 sworn examination.

Having considered the evidence and post-hearing submissions by the Chief Investigator, the IRB found that the charges against Jacobson were not proved.

Enclosed with our February 28, 2002, Opinion and Decision are the March 23, 2001, IRB Investigative Report with Exhibits 1 to 42, the October 19, 2001, IRB Hearing Transcript with exhibits IRB-1 to IRB-5, the Chief Investigator's Added Exhibits 6A and 43 to 47, and Jacobson's Exhibits J. Ex. A to J. Ex. U.

It is respectfully requested that an Order be entered affirming the IRB's February 28, 2002, Opinion and Decision if Your Honor finds it appropriate.

By:



John J. Cronin, Jr.  
Administrator

Dated: February 28, 2002

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: OPINION AND DECISION  
In re charge against: : OF THE INDEPENDENT  
: REVIEW BOARD  
Eddie L. Jacobson :  
:  
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## I. INTRODUCTION

On May 23, 2001, the Independent Review Board ("IRB") issued an investigative Report to General President James P. Hoffa ("Hoffa") of the International Brotherhood of Teamsters ("IBT") recommending that Eddie L. Jacobson ("Jacobson"), the Trustee of Local 631, be charged with intentionally failing to cooperate with the IRB in responding to the IRB's January 22, 2001 document request and testifying falsely during his January 31, 2001 sworn examination in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) and 14(i) of the IBT Constitution.<sup>1</sup>

On May 25, 2001, IBT Secretary-Treasurer C. Thomas Keegel ("Keegel") filed the charge against Jacobson.<sup>2</sup> By letter dated July 31, 2001, Keegel, on behalf of the IBT's General Executive Board, referred the Jacobson charge to the IRB for adjudication. On October 19, 2001, the IRB conducted a hearing on the charge in Las Vegas, Nevada.

Our opinion and decision follow.

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<sup>1</sup> "IRB Ex." refers to exhibits the IRB Chief Investigator introduced during the October 19, 2001 hearing; "Ex." refers to the exhibits to the IRB's investigative report and additional exhibits the Chief Investigator introduced during the hearing; "J. Ex." refers to exhibits Jacobson introduced at the hearing; and "Tr." refers to the transcript of the hearing before the IRB.

<sup>2</sup> General President Hoffa recused himself from this matter.

## II. STATEMENT OF FACTS

Since 1979, Jacobson has been the principal officer of Local 252 in Centralia, Washington. In approximately April 1999, Hoffa appointed him an International Representative assigned to the Building Trades Division. Jacobson became Trustee of Local 631, effective November 6, 2000. He was first approached about the job on October 31, 2000, and told to be in Las Vegas on November 5, 2000 to take over on Monday, November 6, 2000.<sup>3</sup>

Three weeks after he became Trustee, that is between November 27 and December 1, 2000, members of the Chief Investigator's staff started a books and records examination at Local 631. Soon after starting, the investigators showed their interests in activities relating to the convention industry.

On November 30, 2000, the investigators discussed with Jacobson their interest in Local 631 records concerning United Temporaries, Inc. ("United"), including all grievances Local 631 filed concerning United. In January 2001, Jacobson still recalled the investigators' interest in these records.

On December 18, 2000, Jacobson had a meeting with Michael Hogan ("Hogan"), who is the Vice President of United, the Chief Executive Officer of Show Biz USA ("Show Biz"), and the brother of IBT International Representative William T. Hogan, Jr., and other Show Biz representatives, regarding the upcoming Super Show for which show Biz was the general contractor. Jacobson knew Hogan was related to IBT International Representative William T. Hogan, Jr. At the employer's request, Jacobson met with the employer and his representatives

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<sup>3</sup> Prior to being appointed Trustee, in early 2000 Jacobson had negotiated a Local 631 collective bargaining agreement in the ready mix industry. The agreement he negotiated was not ratified.

alone first.<sup>4</sup> These representatives included Hogan and Mike Hardy, who had been the chief steward for the IBT convention industry for Local 714 in Chicago. This meeting was followed shortly afterward the same day by a meeting at which the two Local 631 convention industry business agents, Chuck Benboe ("Benboe") and Roberta Whitfield ("Whitfield"), were present. (Tr. 80-89) The Super Show and the contract obligations were discussed at this meeting. (Tr. 85-89) The use of United employees was not discussed at the meeting the business agents were permitted to attend.

In the first two weeks of January 2001, Jacobson received an undated telefaxed letter addressed to him from Hogan on Show Biz letterhead. This letter stated:

Per our conversation when we met in Las Vegas, so that I have a clear understanding of what I can and cannot do, I would like to confirm with you that on the break of the show, if Teamsters Local 631 cannot supply me with the total amount of manpower needed for the empties, I will be able to supplement the workforce with a labor service, namely United Temporaries.<sup>5</sup>

On or about January 9, 2001, Local 631 business agent Benboe and steward Michael Robertson ("Robertson") filed a grievance against trade show contractor Greyhound Exposition Services ("GES") for using workers from United in violation of the Local's contract. At the time, Jacobson was aware of this grievance being filed. (Tr. 144) Robertson and the Local had filed at least four previous grievances against GES for using United workers in violation of the contract.

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<sup>4</sup> Jacobson testified that his December meeting with the employer was analogous to pre-job meetings he was familiar with in the construction industry. (Tr. 83-84) Jacobson acknowledged he had not read the applicable contract governing the Local 631 convention industry and was totally unfamiliar with the industry. (Tr. 82, 84-85)

<sup>5</sup> In two prior elected administrations and under the prior Trustee, United had attempted to persuade the Local officers to permit its employees to work in the convention industry doing Teamster work at rates less than the governing contract.

On January 11, 2001, Jacobson received a document request from the investigators requesting all Local 631 documents referring to United.<sup>6</sup> The next day, January 12, the Chief Investigator sent Jacobson a sworn examination notice scheduling his sworn examination for January 31, 2001.

On January 16, 2001, Jacobson responded by letter to the investigators' January 11, 2001 document request for all records concerning United. In his letter, Jacobson wrote:

. . . I have had the staff research our files and there are no documents, correspondence, or proposed Agreements located in this Local. When the Independent Review Board Investigators were here in November, they had made a similar request and there were no documents, paperwork or files relating to any of the above named companies.

Although at the hearing Jacobson acknowledged he received the Show Biz letter in the first two weeks of January (Tr. 91, 141), that letter to Jacobson, which made reference to United, was not produced. Nor did Jacobson disclose its existence to Kathy Metoxen ("Metoxen"), the office manager charged with gathering the documents responsive to the January 11, 2001 request. He recalled he had given the original to Roberta Whitfield. (Tr. 61-62, 143-144, 146)

On January 17, 2001, Investigator Raymond Wren ("Wren") received a copy of the undated Show Biz letter from business agent Whitfield. On January 22, 2001, another document request was telefaxed to Jacobson for "copies of any and all correspondence, proposed agreements and agreements between Show Biz USA and IBT Local 631." Jacobson was out of town. (Tr. 39) Metoxen testified during the IRB hearing that she was charged with

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<sup>6</sup> The January 11, 2001 letter requested the following:  
[a]ny and all documents concerning United Service companies, United Temps, United National Maintenance and United Maintenance including, but not limited to, all correspondence and proposed agreements.

This document request was narrow. Besides the United documents requested, it requested the dispatch history of four members.

gathering responsive documents. (Tr. 39-41) She approached Benboe who told her he did not have any correspondence between Show Biz and Local 631. She spoke to Whitfield on the phone. Again, Metoxen replied to the investigator's request by sending back the document request with her handwritten notation "No Agreements" next to the request for records concerning Show Biz. (Tr. at 38-41)

On January 26, 2001, investigator Wren spoke to Jacobson on the telephone and told him that the response to the January 22, 2001 document request was incomplete because it had not addressed the request for Show Biz correspondence. Jacobson told Wren he was not aware of any correspondence from Show Biz. That same day the investigators sent Jacobson a telefax request to supply the documents regarding Show Biz or a written explanation. Metoxen discussed this request with Jacobson. (Tr. 63-65)

On January 31, 2001, Jacobson gave a sworn examination to the Chief Investigator's staff. After at least five questions concerning written communications and agreements with Show Biz and in contrast to his January 26, 2001 written assertion that he was not aware of any, Jacobson finally stated, "I remember receiving a fax from Show Biz USA addressed to me indicating that they had -- if they could not fill the call, that they could hire whomever they wanted. . . ." Jacobson's testimony omitted two important facts concerning the Show Biz letter. First, he testified that the Show Biz letter was from Mike Hardy, a Show Biz employee who had attended the December 18, 2000 meeting with Jacobson. The letter was not from Mike Hardy but was from Mike Hogan. Second, Jacobson did not disclose that the Show Biz letter concerned the use of United.

Also during his January 31, 2001 sworn examination, Jacobson was asked about any meetings and conversations he had with Michael Hogan. He only acknowledged one meeting

and one telephone conversation. In his sworn testimony, Jacobson omitted his most recent interaction with Hogan which took place on or about January 15 or 16, 2001, when he toured the site of the Super Show with Hogan.

On March 14, 2001, a second sworn examination notice was sent to Jacobson and on March 16, 2001, the investigators sent Jacobson a letter outlining the deficiencies in Local 631's responses to the document requests dated February 13 and 15.<sup>7</sup> The letter further stated:

The Local 631 response under your direction has been repeatedly incomplete. At the present time, we believe you have failed to cooperate with the IRB and produce required documents. If this and all previous document requests are not fully complied with by March 22, 2001, the Chief Investigator will recommend to the IRB that you be charged with failure to cooperate.

(Id.)

On March 21, 2001, Jacobson finally produced a copy of the Show Biz letter. In a sworn statement accompanying this copy, Jacobson stated that the letter was obtained from the employer. (Tr. 125) Jacobson relied upon attorney Kaplon's explanation which was inaccurate. A copy was retained and supplied by Whitfield.

At the time of his March 29, 2001 sworn examination, Jacobson knew of the investigators continued interest in the Super Show and he knew that sworn examinations of several Local 631 members had been conducted. Moreover, Jacobson had received the investigators March 16th letter concerning his failure to completely respond to the investigators document requests.

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<sup>7</sup> The February 13 and 15, 2001 document requests sought records concerning grievances Local 631 filed, including those filed against trade show contractor GES.

## OPINION AND DECISION

The evidence supporting a charge may be direct or circumstantial. In re: Brennan, et al, IRB Supp. Dec. at 2 (August 3, 2001) (" . . . the Chief Investigator may rely, whether in whole or in part, on circumstantial evidence, and such evidence is of no less value than direct evidence."), aff'd, United States v. IBT, 2001 U.S. Dist. LEXIS 11322 (S.D.N.Y. August 7, 2001). See, United States v. IBT [Salvatore], 754 F. Supp. 333, 339 (S.D.N.Y. 1991) (" . . . it is hornbook law that circumstantial evidence is of no less value than direct evidence.").

In reviewing the evidence upon which the Chief Investigator relies to prove the charges of intentional failure to cooperate with the IRB in responding to the IRB's January 22, 2001 document request and of testifying falsely during his January 31, 2001 sworn examination, we have examined the record in the light of all of the facts and circumstances known to us and that existed at the time of these alleged infractions.

Jacobson has acknowledged that some of his responses to requests for documents were inaccurate in a number of respects but has insisted that he relied upon the information provided to him by assistants and that he believed the statements to be true at the time they were made. Most of these statements had to do with requests for correspondence or documents that he was asked to produce. Following searches made at his request, he relayed the information to the IRB investigator that was given to him, namely that none could be found. A second charge related to Jacobson's testimony during his January 31, 2001 sworn examination in which he failed to acknowledge a meeting with Hogan which took place on or about January 15 or 16, 2001 when Hogan gave him a 30 minute cart trip around the exhibition room. We have examined the circumstances to determine whether the responses to the requests were made with the intent to deceive or obstruct and whether the January 31,

2001 testimony was known to be intentionally false or simply a failure to recall or a failure to regard the sightseeing trip as a meeting or contact with Hogan.

The alleged infractions occurred not long after Jacobson had taken over as trustee of Local 631. He replaced a previous trustee who had been removed by the General President and he was immediately thrown into the job. At the same time he continued to be the principal officer of Local 252 in Centralia, Washington. He had also been serving as an International Representative assigned to the Building Trades Division. A review of Jacobson's work and travel schedule from November 5, 2000 to April 5, 2001 (Exhibit N) reflects that he was on the move during much of his tenure at Local 631 traveling back and forth from Las Vegas to discharge his various responsibilities. He had to rely upon subordinate officials at Local 631 to keep him advised of pending issues, develop information for him, assist in preparing replies and tracking the various records involved. He had no personal assistant (as had his predecessor trustee) and relied heavily upon Kathy Metoxen to do much of his paper work. She had to intercept much of the incoming correspondence, place it in Jacobson's folder for placement in his in box or notify him by fax copies wherever he might be. Jacobson in turn would try to direct issues to the persons he thought best suited to handle the matter, largely through use of his out box, or by personally carrying such papers to the designated responders.

It is relevant also that Jacobson's previous union responsibilities had been mainly in the construction industry and that he knew little or nothing about the industry practices in the convention industry.

On December 18, 2000 Jacobson attended a "get acquainted" meeting with Michael Hogan and Mike Hardy of Show Biz, alone at their request. Following this meeting he was

joined by business representatives Chuck Benboe and Roberta Whitfield where work arrangements were discussed. Jacobson testified emphatically that such discussions did not take place during the "get acquainted" session and there is no evidence to the contrary.

Jacobson testified that at the December 18 meeting Hardy and Hogan both raised the issue of "what could we do if you did not have enough people available for the show?" According to Jacobson "What was responded to by Roberta and backed up by Chuck was that we will have the man power for this particular show. We will not be short." The union participants were then asked "If you cannot meet the call, can we hire off the streets?" And the response was "You can but we will meet the call." In dealing with this issue Jacobson testified that Roberta Whitfield "did a large percentage of the talking." Jacobson did not participate in these explanations. (Tr. 87-88)

At the time of these discussions Jacobson was not familiar with the "Red Book", the expiring collective bargaining agreement, which contained similar provisions for allowing employers to hire off the street when the union was unable to "meet the call" for additional personnel.

The principal issue in this case is why, despite repeated generalized requests for correspondence and documents, Jacobson failed to turn over the Hogan letter. Jacobson testified that he received it in his in box and passed it along to Whitfield and Benboe for an appropriate response. The letter is undated but the parties stipulated that it had been received by the IRB investigator by January 17, 2001. Jacobson testified that when Mr. Wren reminded him on January 26 that the requests included correspondence as well as agreements he simply did not remember that there was such a letter at that time. Later during his sworn examination on January 31, 2001 he remembered it. "I believe it was the way the question

asked by Celia that triggered something and I remembered. Then it hit me and then that's when I remembered the letter." (Tr. 159)

The letter was technically correspondence and it did include a reference to "United Temporaries". Jacobson did not remember this as well.

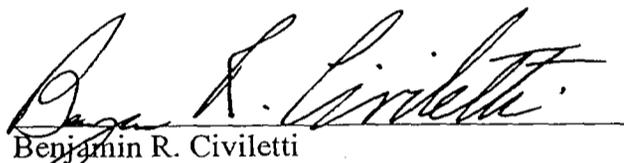
Taking all this into consideration we find nothing in the record to suggest that Jacobson purposely withheld information from the investigators or intentionally lied to them. He was new on the job, had too much on his plate and relied too heavily on subordinates. These weaknesses do not add up to intentional failure to cooperate or intentional falsification.

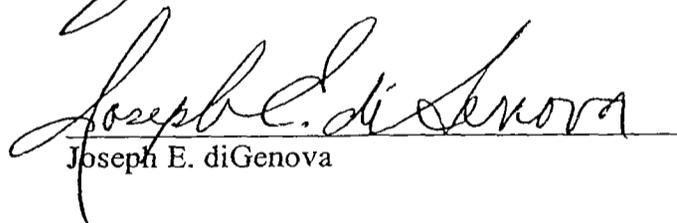
Joseph L. Kaplon, attorney for Local 631, confirmed the circumstances under which the union discovered the Hogan letter. He testified that when he received a copy of the March 16, 2001 letter from Chief Investigator Charles Carberry to Jacobson complaining that his responses had been "repeatedly incomplete", Kaplon got in touch with Investigator Ray Wren who put him in touch with Carberry who told him that he believed Mr. Jacobson didn't tell the truth about a document that was provided. He referred to the document from Show Biz USA that was sent to the local and which Mr. Jacobson did not provide. Kaplon testified that he asked Chuck Benboe, who was sitting across from him, if he knew where the letter was. According to Kaplon, Benboe said no and he asked Benboe to get in touch with Show Biz and get a copy of the letter. Benboe returned with a copy of the letter and Kaplon, who assisted in the preparation of Jacobson's response, assumed that he had gotten it from the company. He promised Carberry to provide it that day. It developed later that the copy came from Whitfield rather than from Show Biz.

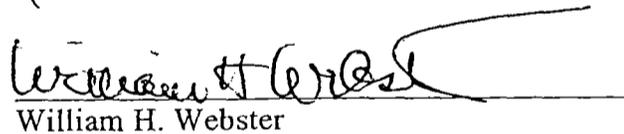
As previously noted, the parties stipulated that Investigator Wren received the Hogan letter from Roberta Whitfield on January 17 by hand. The substance of Hogan's understanding of what he was told at the meeting was not substantially different from the bottom line provisions of the Red Book in terms of "meeting the call", other than it did not mention the requirement to pay union rates to those hired from the street. Whatever the purpose of the cat and mouse game after January 17, the record does not disclose any purposeful effort by Jacobson to conceal the fact of the letter. That the investigator chose not to refresh Jacobson's memory by identifying the Hogan letter, which had been in his possession since January 17, 2001, does not make Jacobson uncooperative or untruthful. In fact every request for information seems to have been processed by one person or another in the local with an effort to satisfy the requirements of the investigators.

Finally, Jacobson's failure to mention the January cart ride with Hogan, a very public event lasting thirty minutes, does not rise to purposeful falsehood or concealment of what was never attempted to be concealed. The chief investigator was aware of the cart ride but offered no evidence to suggest any sinister conduct or activity or even its materiality.

We regard intentional failure to cooperate with the IRB in the discharge of its responsibilities as a serious offense, as we do the giving of false testimony. In this case, however, and under the confusing circumstances described, we do not believe that Jacobson purposefully or intentionally obstructed or misled. The record does not establish any relationships from which circumstantial evidence might lead to a contrary conclusion. This case was part of a broader investigation, and the investigators may have felt frustrated in their efforts to get information from the local. Nevertheless we find that the charges against Eddie L. Jacobson have not been proved.

  
Benjamin R. Civiletti

  
Joseph E. diGenova

  
William H. Webster

Dated: February 28, 2002

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :  
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 Plaintiffs, :  
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 -v- :  
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 INTERNATIONAL BROTHERHOOD OF :  
 TEAMSTERS, et al., :  
 :  
 Defendants. :  
-----X  
APPLICATION NO. 100 :  
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ORDER  
88 Civ. 4486 (LAP)

LORETTA A. PRESKA, United States District Judge:

WHEREAS the Court has received Application No. 100 of the Independent Review Board ("IRB") concerning penalties that the IRB imposed against Respondent Eddie L. Jacobson;

IT IS HEREBY ORDERED THAT should Respondent Jacobson or the International Brotherhood of Teamsters ("IBT") wish to file objections to said Application, such objections must be in writing and filed with the Court and served on the Government, the Office of the Chief Investigator, and the Administrator, IRB, no later than ten business days from the date hereof; and

IT IS FURTHER ORDERED THAT in the event any such objections are filed, any response to said objections must be in writing and filed with the Court and served on Respondent Eddie L. Jacobson and the IBT no later than ten business days of receipt of said objections; and

IT IS FURTHER ORDERED THAT in the event any such response is filed, any reply to said response must be filed with the Court and served on all counsel no later than ten business days of receipt of said response; and

IT IS FURTHER ORDERED THAT courtesy copies of all papers shall be sent to Chambers on the same day they are filed.

SO ORDERED

March 5, 2002

  
LORETTA A. PRESKA, U.S.D.J.