

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

```

-----X
:
UNITED STATES OF AMERICA,      :
:                               : 88 Civ. 4486 (DNE)
:                               :
:                               : APPLICATION LXIV OF THE
:                               : INDEPENDENT REVIEW BOARD
:                               : --OPINION OF THE
INTERNATIONAL BROTHERHOOD      : INDEPENDENT REVIEW BOARD
OF TEAMSTERS, et al.,         : IN THE MATTER OF THE HEARING
:                               : OF JOHN FERRARA
:                               :
:                               :
:                               :
-----X

```

Pursuant to Paragraph O. of the Rules of 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 David N. Edelstein, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on February 16, 1999, and thereafter determined, on the charge filed against Local Union 522 Secretary-Treasurer John Ferrara ("Ferrara").

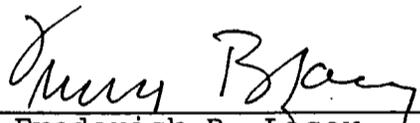
Ferrara was charged with knowingly associating with members of the Luchese La Cosa Nostra Family, including but not limited to Steven Crea and Joseph DiNapoli while he was a member of Local Union 522. Having considered the evidence, the IRB found that the charge against Ferrara was proved. As a penalty, Ferrara has been permanently barred from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Ferrara is also prohibited hereafter from obtaining employment, consulting or other work with the IBT or any IBT-affiliated entity.

Given the IRB's determination, we do not find it appropriate to stay the Opinion or the penalty imposed pending review by Your Honor, as we found it in the best interest of the IBT that Ferrara immediately be barred from IBT membership.

Enclosed with the April 14, 1999, Opinion are the following exhibits:

- A) November 24, 1998, IRB Investigative Report with exhibits Ex.1-30;
- B) February 16, 1999, Ferrara Hearing Transcript with exhibits IRB Ex.1-8.

It is respectfully requested that an Order be entered affirming the IRB's April 14, 1999, Opinion if Your Honor finds it appropriate.

By: 
Frederick B. Lacey
Member of the
Independent Review Board

Dated: April 26, 1999

-----X
In Re: John Ferrara : OPINION AND DECISION
IBT Local Union 522 : OF THE INDEPENDENT
 : REVIEW BOARD
 :
-----X

I. INTRODUCTION

On November 24, 1998, the Independent Review Board ("IRB") forwarded an Investigative Report concerning allegations of wrongdoing by Local 522 member and Secretary-Treasurer John Ferrara ("Ferrara") to the Acting IBT General President. (Exhibit A) The IRB report recommended that Ferrara be charged with bringing reproach upon the IBT by knowingly associating with members of organized crime, Steven Crea ("Crea") and Joseph DiNapoli ("DiNapoli"), in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution. By letter dated December 1, 1998, the IBT referred the charge against Ferrara to the IRB for adjudication. (IRB-2)¹ Ferrara was notified of the filing of the charge, the original scheduling of the hearing and the rescheduling of the hearing for February 16, 1999.² (IRB-3 through 8, Tr. 4-5)

On February 16, 1999, the IRB held a hearing on the charge against Ferrara in Washington, D.C. Ferrara did not attend the hearing, have a representative attend or

¹"Ex." refers to the Independent Review Board's Exhibits which accompanied the Investigative Report. "IRB-_", for example "IRB-2" denotes the procedural exhibits introduced at the hearing. "Tr." refers to the transcript of the hearing before the IRB on February 16, 1999.

²The hearing before the IRB was scheduled for January 26, 1999 at 2:00 p.m. at the offices of the IRB. Upon learning that Ferrara no longer had counsel, the Board on its own rescheduled that hearing for February 16, 1999.

make any prior or subsequent written submission to the IRB.³ We conclude that the evidence at the hearing established that Ferrara committed the charged offense.

II. STATEMENT OF FACTS

A. Ferrara's IBT Membership

Local Union 522 is located in Jamaica, New York and represents approximately 1,800 members consisting primarily of lumber drivers, warehousemen, handlers and roofers in the New Jersey and greater New York metropolitan area. (Ex. 2) Ferrara, age 53, has been a member of Local 522 since 1979 and Secretary-Treasurer of Local 522 since 1989. He also serves as a Trustee of the Health and Welfare Fund of New York and New Jersey, the Welfare Fund of Greater New York and the Roofer's Fund. (Ex. 1)

B. History of LCN Influence on Local 522

The Luchese Family is a La Cosa Nostra ("LCN") organized crime group headquartered in New York City. Its members and associates have had a history of involvement in organized crime activities, such as gambling, loansharking, thefts, fraud, extortion, murder, and labor racketeering. (Ex. 3-A)

There is a history of contact between officials of Local 522 and LCN families. Special Agent Louis DiGregorio of the Federal Bureau of Investigation ("FBI") testified that he, other FBI personnel and law enforcement officials are of the opinion that

³At the conclusion of the February 16 hearing, a briefing schedule, which included notification to Ferrara, was established. In accordance with the IRB's instructions (Tr. 10-11), the Chief Investigator, by letter dated February 26, 1999, mailed a copy of the transcript of the hearing and his brief to Ferrara and notified Ferrara of the two-week reply period permitted. No response of any kind was received from Ferrara within or without the two-week period.

Steven Crea ("Crea") and Joseph DiNapoli ("DiNapoli") are made members and soldiers of the Luchese LCN Family. (Tr. 8-9) Further, Joseph Capra was identified as a member of the Luchese LCN Family in the 1987 report of the Permanent Subcommittee on Investigations of the United States Senate entitled "Organized Crime: 25 Years After Valachi" (Ex. 3-A at 6) in the portion entitled "New York LCN Luchese Family Soldiers." In 1975, Capra was an organizer for Local 522. (Ex. 5)

Regarding Crea's interest in the construction industry, Alphonse D'Arco ("D'Arco"), an admitted member of the Luchese Family, stated that Crea worked with Genovese LCN Family members Vincent "Fish" Cafaro and Vinnie DiNapoli among others. (Ex. 6)

DiGregorio also established that the Luchese Family has exercised control over the affairs of Local 522. The Declaration of FBI Special Agent Stanley T. Nye, Jr. ("Nye") reported that during a July 28, 1992 interview, D'Arco stated that Crea was named Acting Consigliere of the Luchese Family in January 1991, but was later demoted from that position. D'Arco also told Nye that Crea had once controlled Local 522 for the Luchese Family. D'Arco testified that Crea had been involved in the "construction rackets" and loansharking for a number of years.

C. The Chief Investigator Has Previously Exposed Contacts of the LCN with the Local.

As discussed below, investigations in 1993 and 1996 by the Chief Investigator disclosed that a number of members of Local 522 appeared to have joined Local 522 solely to receive benefits. Several of those individuals were believed to be associates of the Luchese LCN Family. Among those individuals were John Martinelli, Robert

Martinelli and Vincent Martinelli. DiGregorio stated that their brother, Joseph Martinelli, in the opinion of the FBI, is an associate of the Luchese LCN Family. (Ex. 3-A at p. 6) The investigations further established that Anthony DiLapi ("DiLapi"), considered by the FBI to be a member of the Luchese LCN Family, had been an organizer for Local 522 from 1975 to 1979 and a Trustee of Local 522 in 1980, and that an individual, John Akalski ("Akalski"), a close relative of an individual who was a member of the Luchese LCN Family, had been hired by Ferrara to work for Local 522.

1. Removal of Martinelli Brothers as Members of Local

In 1993, following an investigation by the Chief Investigator, approximately thirteen (13) members of Local 522 who appeared to have joined and remained in the Local solely for the purpose of receiving health and welfare benefits to which they were not otherwise entitled were removed. (Ex. 7) Among the members who were removed were John Martinelli, Robert Martinelli and Vincent Martinelli. They were listed on Local 522 records as clerical workers. The Martinellis were brothers who owned a company called Northberry Construction, located in Brooklyn, New York. In his testimony, D'Arco confirmed the Martinellis' ownership of Northberry Construction and stated the Martinellis had a relationship with Crea. (Exs. 3-A and 8) In 1993, these circumstances, including the failure of the Martinellis to cooperate with the Chief Investigator and their removal from the Local, reflect the contact of organized crime with Local 522.

2. Luchese Family Members as Organizers for Local

In the opinion of the FBI, Anthony DiLapi was considered to be a member of the

Luchese Family. (Ex. 3-A) DiLapi was an Organizer for Local 522 from 1975 to 1979, and a Trustee of the Local in 1980. (Exs. 5 and 9 through 13) Ferrara stated at his sworn examination in 1993 that he knew DiLapi from Local 522, and maintained that the last time he saw DiLapi was around 1984 when DiLapi stopped by the Local for a visit. (Ex. 4) In 1991, DiLapi disappeared. The FBI considers DiLapi to be deceased. (Ex. 3-A at p. 5)

3. Appointment to Office of Crea's Son-in-law and his Removal From the Local

In 1994, Ferrara hired Akalski, Crea's son-in-law, to be an accountant for Local 522. Akalski became a member of Local 522 the month before he obtained his employment with the Local, and appeared to have had no prior experience working for a labor organization. (Exs. 14, 15) On March 6, 1995, Ferrara appointed Akalski to fill a vacancy as the only salaried trustee position at Local 522. (Exs. 14, 16) In 1996, rather than testify about his relationship with Ferrara and Crea and his membership in Local 522, Akalski resigned from Local 522 when he was served with a notice of examination by the Chief Investigator. Akalski was removed from the Local and the IBT based upon his failure to cooperate. (Ex. 30) Joseph Martinelli and his three brothers, who were inaccurately listed as clerical workers on the records of Local 522, failed to appear for their scheduled sworn examination scheduled by the Chief Investigator and were removed from the Local based upon their failure to cooperate. Akalski is now with the Laborers International.⁴

⁴ D'Arco has also described Anthony Baratta ("Baratta") as a caporegime of the Luchese Family. (Exs. 3-A and 6) DiGregorio stated that Anthony Baratta was once the head of the Luchese LCN Family and is currently in federal prison.

D. Ferrara's Repeated and Lengthy Contacts with Organized Crime Members

During 1993 and 1994, surveillance by the Organized Crime Control Bureau of the New York City Police Department, in the course of an investigation of illegal activities in the construction industry by members and associates of the Luchese and Gambino crime families, revealed that Ferrara met with members of the Luchese Crime Family on at least four separate occasions between December 1993 and February 1994.⁵ Each of these meetings, described below, took place on weekdays during normal business hours when Ferrara was Secretary-Treasurer of Local 522.

On Thursday, December 8, 1993, law enforcement officials observed and photographed Ferrara in conversation with Crea. The surveillance report reflected that Ferrara and Crea appeared to be conducting a "walk and talk" meeting. (Ex. 24) In the experience of law enforcement agents, this is a term used to describe a meeting in which members and associates of organized crime meet and discuss business under circumstances where their conversations are least likely to be overheard or intercepted by electronic surveillance.

On Friday, February 4, 1994, at approximately 1:05 p.m., a surveillance team

In 1989, Ferrara hired Ianniello, son-in-law of Baratta, as an auditor for Local 522. Ianniello, who has only worked for the Local and never for an employer of Local 522 members and was appointed to the position of Recording Secretary of the Local in 1992 (Exs. 18 and 19), was elected as a Trustee in an uncontested Local Officer election in 1991, and in 1994 and 1997 was elected as the Recording Secretary in uncontested elections. (Exs. 20 and 21)

⁵The surveillance also revealed that Ferrara was photographed as he was leaving the Guidetti funeral home, 33 Spring St., New York City, where the wake for Anthony "Tony West" DeLutro, who in the opinion of the New York Police Department was considered an associate of the Gambino LCN Family, was being conducted. Ferrara's union-owned vehicle was also observed at that location. (Ex. 23)

observed Ferrara engaged in a conversation with DiNapoli while seated at a table in Tony's Candy Store, 1825 Hobart St., Bronx, New York. This meeting lasted forty-five minutes. Photographs taken by the surveillance team also establish the presence of Ferrara and DiNapoli at this location. At approximately 1:25 p.m., Joseph Tantillo, who in the opinion of the New York City Police Department is a close associate of DiNapoli (Ex. 25), was observed meeting and talking with Ferrara and DiNapoli.

On Thursday, February 17, 1994, at approximately 4 p.m., a surveillance team observed Ferrara exit from a black vehicle and enter Tony's Candy Store. The black vehicle was registered to Local 522 and assigned to Ferrara. Ferrara joined DiNapoli and two other men at a table. Ferrara and DiNapoli remained at the table for more than an hour, until approximately 5:05 p.m. (Ex. 26)

On Friday, February, 18, 1994, at approximately 12:55 p.m., Ferrara's automobile was observed parked in front of "The Club", which was located at the corner of Olmstead Avenue and Cross Bronx Expressway, Bronx, New York and believed by law enforcement officials to be a place frequented by members of the Luchese LCN Family. (Ex. 27) At approximately 1:15 p.m., Ferrara and Crea were observed leaving The Club and departing the area in their respective vehicles. (Id.). Fifteen minutes later, Ferrara and Crea arrived at a Roy Rogers Restaurant, 2560 Bruckner Blvd., Bronx, New York. At approximately 2:05 p.m., Ferrara was observed sitting alone at a table while Crea joined a male identified as Jerome Chatsky ("Chatsky") at another table. Approximately ten minutes later, Joseph DiNapoli joined Crea and Chatsky. After a five minute conversation Chatsky left, and Ferrara joined Crea and DiNapoli in conversation. Ferrara departed twenty minutes later, at

approximately 2:40 p.m. (Ibid.)

E. Ferrara Attempted to Conceal His Acquaintances with Crea and DiNapoli

Crea's conduct has been publicized in the New York press. (Ex. 28) Ferrara's efforts to conceal these contacts evidence his knowledge of Crea and DiNapoli's organized crime connections. (Ex. 28) In 1993 and 1996, Ferrara submitted to sworn examinations before the Chief Investigator. On October 29, 1993, Ferrara testified that he knew Crea solely as a pigeon fancier. Ferrara met Crea in a bird store on Boston Post Road in the Bronx. Ferrara stated that he had not heard that Crea was associated with organized crime, and he had not spoken with Crea about union business. Ferrara denied having met or spoken with DiNapoli. (Ex. 4 at pp. 47-49) This is contradicted by the surveillance.

On December 12, 1996, Ferrara appeared for a sworn examination. (Ex. 29) Ferrara again stated that he knew Crea principally as a pigeon fancier. Ferrara initially stated that he had last seen Crea between two-and-one-half and three years ago in the bird store. Ferrara stated that he did not believe he had seen Crea since October 1993, and that he had not spoken with Crea since that time but may have run into him at the bird store. At this examination, Ferrara was shown a list of names which contained the name of Joseph DiNapoli, and was asked if he remembered meeting with or speaking to any one on the list. In response, Ferrara named several individuals, but not DiNapoli. (Ex. 29 at pp. 111-114)

Ferrara's statement disclaiming any contact or dealings with Crea after 1993 is false, in light of the surveillance reports which reflect Ferrara's meetings with Crea in December 1993 and February and March 1994. In addition, Ferrara's failure to state

that he knew DiNapoli when shown a list containing his name, is false in light of the surveillance reports which reflect his meeting with DiNapoli on March 27, 1994.

These false denials evidence that Ferrara concealed his contacts because he knew of Crea's and DiNapoli's association.

III. FERRARA HAD PROHIBITED CONTACTS WITH MEMBERS OF ORGANIZED CRIME

Prohibited knowing association with an organized crime figure is established when contact is purposeful and not incidental or fleeting. Purposeful contacts are prohibited even if no illegal purposes were demonstrated. Purposeful contacts may occur in either a business or a social setting. United States v. IBT (DiGiramo), 824 F. Supp. 410, 414 (S.D.N.Y. 1993), aff'd, 19 F.3d 816 (2d Cir. 1994), citing August 27, 1990 Opinion & Order, 745 F. Supp. 908, 918 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S. Ct. 1161 (1992). The surveilled meetings establish that Ferrara's association with Crea and DiNapoli have not been fleeting or incidental. Ferrara had four lengthy meetings with Crea and DiNapoli between December 1993 and February 18, 1994 during normal business hours. These meetings were not coincidental. In addition, in 1994, Ferrara hired Akalski, Crea's son-in-law, as the accountant for Local 522.

Ferrara's knowledge that Crea and DiNapoli were members of organized crime can be established through his ties to them, and through his other association with associates of organized crime. In addition, his false denials support an inference to be drawn that he was attempting to conceal his knowledge, and we draw that inference. In addition to the false denials mentioned above, we draw a further inference of knowing association from the following. When his contacts with organized crime

appeared to be deniable, Ferrara testified in sworn examination on two separate occasions, and denied the contacts. However, when confronted in the November 24, 1998 Report and its detailed documentation of the very relationship with Crea and DiNapoli he had previously denied, Ferrara did not appear at his hearing to either explain his prior testimony, which was obviously inconsistent with the Report and exhibits, or to deny any of the previously denied relationships or the contacts with those individuals.

Based on the foregoing meetings and contacts of Ferrara with Crea and DiNapoli, the history of contacts of organized crime with Local 522, including the failures of the Martinelli brothers and Akalski to cooperate with the Chief Investigator, described above, we find that Ferrara had knowledge that Crea and DiNapoli were associates of organized crime.

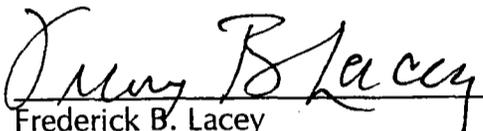
IV. CONCLUSION

Based on the foregoing, the hearing evidence established that Local 522 Secretary-Treasurer John Ferrara, from at least 1993 to the present, brought reproach upon the IBT and violated the IBT Constitution by knowingly associating with members of Organized Crime. Accordingly, Ferrara is permanently barred from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Ferrara is also prohibited hereafter from obtaining employment, consulting or other work with the IBT or any IBT-affiliated entity.

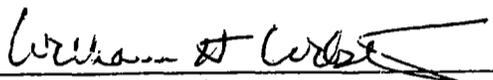
Members of the
Independent Review Board



Grant Crandall



Frederick B. Lacey



William H. Webster

DATED: April 14, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
: UNITED STATES OF AMERICA :
: :
: Plaintiffs, :
: :
: -v- :
: INTERNATIONAL BROTHERHOOD OF :
: TEAMSTERS, et al., :
: :
: Defendants. :
-----X

MEMORANDUM & ORDER
88 Civ. 4486 (DNE)

EDELSTEIN, District Judge:

WHEREAS on November 24, 1998, the Independent Review Board ("IRB") issued an Investigative Report (the "IRB Report") and forwarded it to the General Executive Board of the International Brotherhood of Teamsters ("IBT") recommending charges against Local 522 member and Secretary-Treasurer John Ferrara ("Ferrara") for bringing reproach upon the IBT by knowingly associating with members of organized crime, Steven Crea ("Crea") and Joseph DiNapoli ("DiNapoli"), in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution; and

WHEREAS by letter dated December 1, 1998, Tom Sever, former General Secretary-Treasurer of the IBT, advised the IRB that the

IBT had filed the recommended charges against Ferrara and that the charges were referred back to the IRB for adjudication; and

WHEREAS on December 17, 1998, at the direction of the IRB, John J. Cronin, Jr., the IRB administrator, notified Ferrara by UPS next day delivery of the filed charges and that a hearing was scheduled for January 26, 1999, at 2:00 p.m., at the offices of the IRB, located at 444 North Capitol Street, N.W., Suite 528, Washington, D.C., and also gave Ferrara the opportunity, in the alternative, to have the hearing in New York, New York, if he were to reply within five days stating his preference; and

WHEREAS by letter dated January 25, 1999, the IRB notified Ferrara that upon learning that Ferrara's attorney had been discharged it rescheduled the hearing and that the hearing would take place on February 16, 1999, at 10:00 a.m. at the offices of the IRB in Washington, D.C.; and

WHEREAS on February 16, 1999, the noticed hearing went forward before the IRB and Ferrara did not attend, was not represented at the hearing, and did not make any prior or subsequent written submissions to the IRB, despite being advised

of his right to do so; and

WHEREAS the hearing proceeded with testimony taken from Federal Bureau of Investigation ("FBI") Special Agent Louis DiGregorio ("DiGregorio") in which he testified that the FBI considers Crea and DiNapoli to be made members and soldiers of the Luchese La Cosa Nostra ("LCN") Family; and

WHEREAS during 1993 and 1994, surveillance by the Organized Crime Control Bureau of the New York City Police Department revealed that Ferrara met with members of the Luchese Crime Family, including Crea and DiNapoli, on at least four separate occasions between December 1993 and February 1994; and

WHEREAS on April 14, 1999, the IRB issued its decision finding that the charge against Ferrara was proved; and

WHEREAS as a penalty, the IRB permanently barred Ferrara from holding membership in or any position with the IBT, or any IBT-affiliated entity, and prohibited him from obtaining employment, consulting or other work with the IBT or any IBT-affiliated entity; and

WHEREAS on April 26, 1999 the IRB filed Application LXIV of the IRB and the Opinion of the IRB in the Matter of the Hearing of John Ferrara for this Court's review; and

WHEREAS having reviewed the IRB's April 14, 1999 Opinion and Decision and all accompanying exhibits, this Court finds that the charge against Ferrara has been proven by a preponderance of the evidence; and

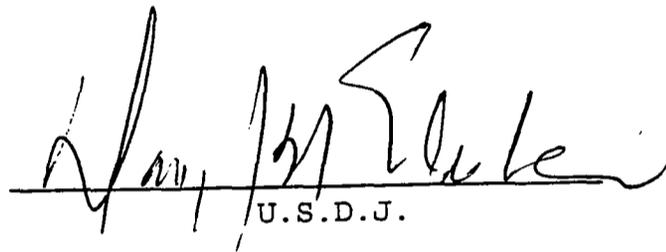
WHEREAS having reviewed the sanctions imposed by the IRB, this Court finds that the sanctions are proportionate to the severity of the misconduct of which Ferrara is guilty; and

WHEREAS accordingly, this Court finds that Application LXIV of the IRB should be granted;

IT IS HEREBY ORDERED THAT Application LXIV of the Independent Review Board regarding the charges and sanctions imposed against John Ferrara is GRANTED.

SO ORDERED.

DATED: New York, New York
June 3, 1999.


U.S.D.J.