
INVESTIGATIONS OFFICER,

Claimant,

v.

PAUL E. BUSH,

Respondent.

DECISION OF
THE INDEPENDENT
ADMINISTRATOR

This matter concerns a charge filed by the Investigations Officer, Charles M. Carberry, against Paul E. Bush ("Bush" or "Respondent"), the President of IBT Local Union 506 in Auburn, New York. A hearing was held before me on this charge, and post-hearing submissions were received. Bush was represented by counsel at the hearing. Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has failed to meet his just cause burden of proving the charge against Bush. United States v. IBT, 754 F. Supp. 333, 337-338 (S.D.N.Y. 1990) ("[T]he Investigations Officer must establish just cause at disciplinary hearings by a fair preponderance of the evidence.").

I. THE CHARGE

The Investigations Officer charged Bush with:

[V]iolating Article II, Section 2(a) and Article XIX, Section 7(b) of the International Brotherhood of Teamsters (IBT) constitution, by conducting [him]self in a manner to bring reproach upon the IBT and by violating [his] oath.

TO WIT: from at least 1980 to the present while [Bush] w[as] an officer of Local 506 in Auburn, New York [he] associated with members and associates of the Bufalino organized crime family including, but not limited to, Anthony "Guv" Guarnieri and Ellis Klepfer.

II. FINDINGS OF FACT

A. Facts Not in Dispute

There are certain facts alleged by the Investigations Officer in this case that were established at the hearing and which, in the main, Respondent does not dispute. These facts are as follows:

It is undisputed that both Anthony "Guv" Guarnieri ("Guv") and Ellis Klepfer ("Klepfer") were members of organized crime. IO-AA¹; T352-5 to T352-11²; T355-23 to T356-9; IO-Q. Guv, who was a "capo" in the Bufalino crime family, IO-AA at para. 22, died in August of 1990, while incarcerated. Id. at para. 29. Klepfer was a long-time associate of the Bufalino crime family. IO-AA at para. 31. In the late 1970's, Klepfer chose to go to prison rather than testify against Guv and other LCN members. Id. However, Klepfer did testify in the trial which led to Guv's conviction and incarceration in 1990, and a transcript of his testimony at that trial was admitted into evidence at the hearing. IO-L.

It is also undisputed that, at all times relevant to this case, Bush was aware that both Guv and Klepfer had reputations as being members of organized crime. IO-R at 2; T352-5 to T352-8; T355-23 to T356-9. Bush also admits having contact with Klepfer,

¹ All exhibits of the Investigations Officer are designated as "IO," followed by the letter or number of the exhibit, along with the page and/or paragraph number, if any.

² All transcript references are to the hearing held before me on May 17, 1993 and May 18, 1993. The cite refers to the transcript page number, followed by the line number. In this instance, "T352-5 to T352-11" refers to transcript page 352, line 5 through transcript page 352, line 11.

arising out of Klepfer's representation of various small trucking companies in meetings with the union negotiating committee. T351-13 to T352-4. Further, Bush admits that he had "fleeting social contacts" with Guv. Respondent's Post-Hearing Brief ["Resp. Brf."], at 19. However, aside from a lunch meeting in 1985 and an unsolicited phone call in 1986 (both discussed infra), Bush stated that there were less than a half dozen of these contacts, consisting only of Bush's "bumping in" to Guv at various locations in the Auburn and Syracuse area. IO-2 at 66-68; T354-22 to T355-22.

Bush admits, as indicated above, that in December of 1985 he met, and had lunch with, Guv and Klepfer. T356-18 to T357-2. At this lunch, there was a union-related discussion involving Klepfer's complaint that Canny Trucking Company was not fulfilling its pension obligations.³ T359-10 to T360-24. There was also a union-related discussion concerning Rocco DePerno, Sr. ("DePerno, Sr."), who was a Trustee with the Teamsters Pension Fund in upstate New York, and his son, Rocco DePerno, Jr. ("DePerno, Jr."), who was counsel for the same fund. IO-R at 2. DePerno, Sr.'s health was failing, and Guv and Klepfer were concerned for DePerno, Jr.'s

³ Klepfer was an employee with Canny, and complained that the company was not properly paying pension contributions. T359-15 to T360-4. Bush stated that he later learned that Canny had been audited by the IBT Pension Fund in the ordinary course of business, and such audit had not revealed anything that substantiated Klepfer's complaint. T360-11 to T360-24.

position at the Pension Fund in light of DePerno, Sr.'s imminent death. Id.; see also Resp. Brf. at 21.

In addition, sometime in early 1986, Guv placed a phone call to Bush during a Pension Fund meeting held at a restaurant in upstate New York. IO-3 at 2-3. Bush testified that he was called to a pay phone by DePerno, Jr., that the person on the other end of the phone identified himself as Guv, and that the thrust of the conversation was that Guv asked Bush to support DePerno, Sr.'s positions on various issues with the Pension Fund. T366-9 to T367-23.

B. Facts in Dispute

In addition to the largely undisputed facts which I have set forth in Section II.A. above, the Investigations Officer asserts several additional facts which Respondent disputes.

In a series of interviews with an FBI Special Agent, and in his testimony at Guv's 1989-90 trial, Klepfer alleged that he, Guv and Bush had numerous contacts in addition to those which Bush does not dispute. IO-AA, at para. 32-34; IO-Q; IO-M; IO-L at 117-21. In fact, Klepfer once stated that Bush was "Guv's boy." IO-AA, at para. 34. Klepfer's statements, the Investigations Officer alleges, establish that Bush had more significant contact with Guv and Klepfer, both quantitatively and qualitatively, than Bush admits.

In order for hearsay evidence to be afforded any weight in these proceedings, such evidence must be deemed reliable. See,

e.g., Investigations Officer v. Senese, et al., Decision of the Independent Administrator (July 12, 1990), aff'd, 745 F. Supp. 908 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S.Ct. 1116 (1992). One way in which reliability may be shown is through corroboration of the hearsay evidence by other, independent, evidence. Klepfer's assertion of additional contacts between Guv and Bush is not, however, corroborated by any other reliable evidence. In fact, the only evidence proffered (besides Klepfer's statements) which would show an additional contact between Bush and Guv was a hearsay statement of former IBT employee Josephine Russo ("Russo").

Russo stated to Special Agent Grande of the United States Department of Labor that

she was told by Nick Robilotto, deceased past trustee of the Funds[,] that he attended a meeting with Victor Olivadoti, Anthony 'Guv' Guarnieri, and Paul Bush[,] at which time Guarnieri made the decision that Victor Olivadoti would be the person to take over Joint Council 18, International Brotherhood of Teamster Funds.

IO-3 at 1.

Russo's statement is double-hearsay. As noted by Respondent, Russo "does not claim personal knowledge of this meeting but purports instead to quote the now deceased Nick Robilotto, a long-time enemy of Mr. Bush, and a convicted felon who was himself charged by the IO and who, rather than contest the charge, resigned, and was permanently barred from the Union." Resp. Brf. at 28. Further diminishing the reliability of Russo's statement,

there is the potential that Russo would be prejudiced against Bush, in that he was partially responsible for having her terminated by the Teamsters Health and Hospital Fund, after which she pled guilty to embezzling from that Fund. T371-12 to T371-20; Resp. Ex., Book 2, Ex. Q. Moreover, as discussed at greater length infra, Bush eventually assisted in the firing of DePerno, Jr. as counsel for the Pension Fund. Resp. Ex., Book 2, Exs. E & F at para. 7; Resp. Ex. W at para. 5. Russo is Deperno, Jr.'s sister-in-law. T371-6 to T371-11. In light of all this, Russo's hearsay statement cannot be deemed reliable, and I give it no probative or corroborative weight.

In addition to being unable to corroborate Klepfer's hearsay assertions that there were contacts between Bush and Guv which went beyond those to which Respondent admits, the Investigations Officer offers nothing to support Klepfer's statement that Bush was "Guv's boy." IO-AA, at para. 34. In fact, as discussed infra, the evidence adduced at the hearing showed that Bush did not act in a manner which would support such a characterization.

There are other factors which diminish the reliability of Klepfer's statements. He is, of course, a convicted felon. See IO-L at 22, 91-94, 113-14. Some of his statements were shown by Respondent to be either inaccurate or internally inconsistent.⁴

⁴ For example, Klepfer stated that the genesis of the Bush-Guv relationship arose from Guv's operation of a dress factory in the Auburn, New York area. IO-AA at para. 34. As Respondent points out, however, since Bush's arrival in Auburn in 1973 there has
(continued...)

On the other hand, and most importantly, I was able to judge the credibility of Bush, who testified before me. I found Bush's testimony that he did not have any contacts with Guv beyond those which he does not dispute (see supra, at sec. II.A) to be credible. Accordingly, I do not find that Klepfer's hearsay statements are reliable.

Aside from Klepfer's hearsay statements, the Investigations Officer has not offered any competent evidence which would support a finding that there were contacts between Bush, Guv and Klepfer beyond the undisputed contacts. Therefore, I find that the Investigations Officer has failed to prove that Bush had any contacts with Guv and Klepfer beyond those to which Bush admits.

III. The Merits

In order to prove a charge of "knowing association" with members of organized crime, the Investigations Officer must show by a preponderance of the credible evidence: (1) That the person with whom the union member is alleged to have knowingly associated was, in fact, associated with organized crime; (2) That the union member had knowledge of this person's organized crime ties; and (3) That the contacts between the union member and the organized crime figure rose to the level of a prohibited "association" between the two. See, e.g., Investigations Officer v. Senese, et al., Decision

⁴(...continued)

never been a dress factory in the Auburn, New York area. T328-1 to T329-20; T251-2 to T252-22; Resp. Ex., Book 2, Ex. Y.

of the Independent Administrator (July 12, 1990), aff'd, 745 F. Supp. 908 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S.Ct. 1116 (1992); Investigations Officer v. Trivigno, Decision of the Independent Administrator (March 12, 1992), aff'd, 791 F. Supp. 421 (S.D.N.Y. 1992); Investigations Officer v. Cozza, Decision of the Independent Administrator (Jan. 4, 1991), aff'd, 764 F. Supp. 797 (S.D.N.Y. 1991), aff'd, 956 F.2d 1161 (2d Cir 1992).

In the instant case, the Investigations Officer has clearly satisfied his burden as to the first two elements of the charge. It is clear that Guv and Klepfer were members of organized crime; and it is not disputed by Respondent. See, e.g., Resp. Brf. at 1. Furthermore, Bush admitted to knowing of Guv and Klepfer's organized crime ties, thus satisfying the knowledge element of proving the charge. All that is left, therefore, is to determine whether there was a prohibited "association" between Bush and the organized crime figures.

In order to prove a prohibited "association," the Investigations Officer "must show that the contacts in question [were] purposeful and not incidental or fleeting." Senese, at 35. The issue, then, is whether the two relevant contacts that the Investigations Officer has been able to prove in this case, Bush's 1985 lunch with Guv and Klepfer and the 1986 phone call from Guv to Bush, were more than "incidental or fleeting."

A review of two of the cases that I have decided in this area reveals some factors which I will look to in order to determine whether there has been a prohibited "association." In Senese, supra, Joseph Talerico ("Talerico") travelled from Chicago to Las Vegas on five separate occasions, and was observed in parking lots, grocery stores, and rest areas, conversing, and exchanging packages or envelopes, with an LCN figure. Senese, at 39. As I found in that case, evidence of such a repeated pattern of surreptitious meetings is sufficient to prove that the contacts at issue are not incidental or fleeting. Id., at 39-40. The Investigations Officer in Senese, however, had also presented evidence that Talerico had met once with another LCN member, and engaged in a conversation with that mob figure while walking in a restaurant parking lot. Id., at 39. I noted that, without any evidence as to the context of the conversation between the two, that single contact, standing on its own, would not have supported the Investigations Officer's charge. Id.

In Trivigno, supra, John Trivigno ("Trivigno") was permanently barred from the union on a "knowing association" charge. Trivigno had argued that the charge had not been proven because the Investigations Officer had shown only that Trivigno had been seen on numerous occasions in the company of various LCN members, but had offered no evidence as to what transpired at those meetings. Trivigno, at 23-24. In dismissing this argument, I stated:

While one or two observations of an IBT officer in the same building or room with a member of

La Cosa Nostra may not be enough to prove an association, that is not what we have here. The Investigations Officer has come forward with evidence showing that Trivigno was seen in the company of members of organized crime on countless occasions throughout the course of nearly twenty years.

Id., at 24. Thus, the element of a prohibited "association" had been proven.

A general rule as to what facts will constitute a prohibited "association" can be adduced from the foregoing cases. In some instances, a prohibited "association" may be proven by virtue of the large number of contacts between the person charged and a member or members of the mob. See Trivigno, at 24-25. In cases where there are few contacts, however, the Investigations Officer must show that the events which surrounded those contacts prove a relationship between the person charged and the LCN member(s) beyond the isolated contacts proven. See Senese, at 39. Thus, when there are only one or two contacts at issue in a case, the Investigations Officer must prove facts which show that the nature and quality of those encounters was such that they were not isolated incidents, but were part of an on-going "association."

In the instant case, there are only two relevant proven encounters between Bush and Guv (one of which was an unsolicited phone call). In order for the Investigations Officer to prove a prohibited "association" here, therefore, he must show that the nature and quality of those two relevant contacts were such that they indicate a relationship between Bush and Guv that was more

than incidental or fleeting. One way in which the Investigations Officer may do so would be to show that Bush's union activities were in some way influenced by mob interests. Thus, while in order to sustain a knowing association charge the Investigations Officer need not prove that an "association" between a union member and an LCN figure resulted in any illegal or improper conduct, it is clear that members of organized crime generally infiltrate labor unions in order to further their illicit activities, T49-14 to T53-19; as such, evidence showing that an individual acted in a way that would further LCN interests might indicate that a specific contact or contacts were part of a pattern of association as opposed to isolated events. Such evidence does not, however, exist in the instant case.

For example, both the 1985 lunch and the 1986 phone calls resulted in Bush's refusal to take actions requested by the mob. At the lunch, Guv indicated a desire to secure DePerno, Jr.'s position as counsel for the pension fund. T358-23 to T359-9; IO-AA at paras. 34-35; IO-Q at 3; IO-R at 2. Yet, Bush eventually assisted in the firing of DePerno, Jr. from that position. Resp. Ex., Book 2, Exs. E & F at para. 7; Resp. Ex. W at para. 5. During the 1986 phone call, Guv asked Bush to be more supportive of DePerno, Sr.'s stances on various union matters. There is, however, no evidence showing that the call from Guv was successful in pressuring Bush to back DePerno, Sr. In fact, the evidence indicated just the opposite. A confidential source told Department

of Labor Special Agent Grande that, several months after the phone call, Bush was still siding with the Employer Trustees. T151-18 to T157-7; IO-3 at 2-3. In addition, the Employer Trustees of the Pension Fund in 1985 and 1986 have sworn that Bush did not support DePerno, Sr.'s positions during the relevant time period. Resp. Ex., Book 2, Exs. E and F at para. 6.

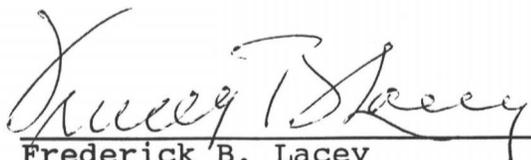
Furthermore, the evidence showed other instances in which Bush could have furthered LCN interests, but did not. For example, Klepfer suggested that Bush hire Jon Lainhart ("Lainhart") as a trustee for the Teamsters Pension Fund, but Bush refused. Resp. Ex., Book 2, Exs. E and F at para. 8; T104-16 to T105-14. Lainhart was known to have ties with the mob. T101-9 to T101-23. In addition, a confidential informant stated that Bush "stood in the way" of Guv and the LCN obtaining loans from the Fund. T156-3 to T157-8. Hiring Lainhart, and assisting the mob in obtaining loans from the Teamsters Pension Fund, were two ways in which Bush could have furthered LCN interests, but did not.

In addition, although Klepfer stated that a \$30,000 bribe was paid by Nick Rossi ("Rossi") in order to obtain a sweetheart deal between Rossi's company, P&R Macaroni, and Local 506 18 years ago, IO-AA at para. 32-33, Klepfer also stated that the bribe was split only between himself, Guv and Richard Marino, Id., and he also told Special Agent Bokal that he "didn't think the bribe was ever mentioned to Mr. Bush." T86-13 to T86-23. In fact, Rossi later stated that his company went out of business because he did not get

the relief that he expected from the bribe paid to Klepfer, T92-4 to T92-18, and Rossi also stated that "he [Rossi] never got a 'sweetheart' contract from Mr. Bush and, in retrospect, believes he was 'stung' by Ellis Klepfer." Resp. Ex., Book 2, Ex. X at para. 5. In this regard, Respondent presented evidence at the hearing which tended to show that the contracts negotiated by Bush with P&R Macaroni were strong contracts for the union membership. T414-10 to T420-18; Resp. Ex., Book 1, Exs. 1-7.

In sum, the lack of LCN influence on Bush's union activities, as well as the fact that only two relevant contacts between Bush, Guv and Klepfer were proven, bolsters Bush's argument that the contacts were isolated, incidental and fleeting. The Investigations Officer has offered no competent evidence which would show that the contacts between Bush, Guv and Klepfer were other than isolated and fleeting. Thus, no prohibited "association" has been proven in this case and, consequently, the Investigations Officer has failed to meet his burden of proof.

Given my determination that the Investigations Officer has failed to establish the charge against Bush, I need not address Bush's other defenses. Accordingly, the charge against Bush is dismissed.


Frederick B. Lacey
Independent Administrator

Dated: Nov 17, 1993