

In Re:	:	
INVESTIGATIONS OFFICER,	:	
Claimant,	:	DECISION OF THE
v.	:	INDEPENDENT ADMINISTRATOR
JOSEPH CIMINO, JR.,	:	
Respondent.	:	

This matter involves a charge filed by the Investigations Officer against Joseph Cimino, Jr. ("Cimino"). Cimino is the President and Business Agent of IBT Local Union 107 ("Local 107") in Philadelphia, Pennsylvania.

The Investigations Officer charged Cimino with:

Violating Article II, section 2(a) and Article XIX, section 6(b) of the Constitution of the International Brotherhood of Teamsters ("IBT"), by conducting [himself] in a manner to bring reproach upon the IBT and violating [his] oath.

TO WIT, during the time [he] [was] an officer and business agent of Local 107 in Philadelphia, Pennsylvania [he] knowingly associated with Nicodemo Scarfo, a member of La Cosa Nostra.

A hearing on this charge was held before me and post-hearing submissions were received. Cimino was represented by counsel at the hearing. Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has satisfied his burden of proving the charge against Cimino.

I. The IBT Constitutional Provisions

The charge implicates two provisions of the IBT Constitution - Article II, § 2(a) and Article XIX, § 6(b). As explained by United States District Judge David N. Edelstein in United States v. IBT (In Re: Application XXII), 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. May 9, 1991), at p. 2:

Article II, § 2(a) is the IBT membership oath, which provides in pertinent part that "every IBT member shall conduct himself or herself in a manner so as not to bring reproach upon the Union . . ."

Article XIX, Section 6(b), is a non-exhaustive list of the "bas[e]s for charges against members, officers, elected Business Agents, Local Unions, Joint Councils or other subordinate bodies for which he or it shall stand trial . . ." Included in that list are:

- (1) Violation of any specific provision of the Constitution, Local Union Bylaws or Rules of Order, or failure to perform any of the duties specified thereunder.
- (2) Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.

II. The Maher Declaration

The Investigations Officer relied primarily on the Declaration of Federal Bureau of Investigation ("FBI") Special Agent James T. Maher ("Maher") along with numerous attached exhibits. Investigations Officer's Ex. 1 ("IO-1") ("Maher Declaration"). At the hearing, Counsel for Cimino cross-examined Agent Maher.

Maher has been a Special Agent with the FBI for over twenty years. For thirteen of those years he has been assigned to conduct criminal investigations concerning organized crime activities, IO-1, ¶ 1. Agent Maher has been investigating organized crime activities of the Philadelphia, Pennsylvania, Organized Crime Family of La Cosa Nostra (the "Philadelphia Family") since 1977. Ibid. The Maher Declaration clearly illustrates Agent Maher's far-ranging experience in all aspects of the investigation of organized crime. Id., ¶ 2. Agent Maher's Declaration provides a comprehensive description of the structure of La Cosa Nostra (¶¶ 5-10) and details La Cosa Nostra's involvement in Labor Racketeering. (¶¶ 11-15). Maher also gives an in-depth look at the Philadelphia Family. Id., ¶¶ 16-30. Finally, Agent Maher details Cimino's association, while IBT Local Union 107 President, with the Philadelphia Family including the mutually beneficial relationship between the Family's boss, Nicodemo Scarfo ("Scarfo") and Cimino, which resulted in Scarfo obtaining influence in Local 107. Id., ¶¶ 31-36.

Given Agent Maher's many years of experience; his comprehensive knowledge of the structure of La Cosa Nostra; his intricate knowledge of its inner workings; and his ability to identify both the leadership and various members and associates of the Philadelphia Family, I accept him as an expert in this case.

III. The Organized Crime Connections Of Nicodemo Scarfo

The Investigations Officer alleges that Cimino has "associated with Nicodemo Scarfo, a member of La Cosa Nostra."

Through the Maher Declaration, the following evidence was introduced which conclusively supports that Scarfo is a member and the "Boss" of the Philadelphia Organized Crime Family of La Cosa Nostra. Id., ¶¶ 16, 24.

The Philadelphia Family of La Cosa Nostra is an organized crime group which is active in the vicinity of Philadelphia, Pennsylvania, and elsewhere. It has also been known as the Bruno Family, in honor of its past Boss, Angelo Bruno, and the Scarfo Family, in honor of its current Boss, Nicodemo Scarfo. The members and associates of the Philadelphia Family have historically been involved in a variety of organized crime activities, including gambling, loansharking, fraud, theft, extortion, murder, arson, and labor racketeering.

* * *

Nicodemo D. Scarfo, who is also known as Nicky Scarfo, "Little Nicky" and "The Little Guy", is considered by the Federal Bureau of Investigation to be the Boss of the Philadelphia Family of La Cosa Nostra. Scarfo, who had been Testa's¹ Consigliere, became the Boss of the Philadelphia Family after Testa's death. In their signed statements, Leonetti, Lawrence Merlino, and Caramandi² described Scarfo as the Boss of the Philadelphia Family. (Exhibit E, Exhibit F, and Exhibit G) Scarfo has a history of criminal convictions. I have reviewed the indictment in the case of United States versus Nicodemo Scarfo, et al. (Exhibit H) Scarfo was convicted after trial in that case, which concerned the Philadelphia Family as a criminal enterprise. (Exhibit I) Scarfo was named as a member of the Philadelphia Family in the 1980 Report of the Pennsylvania Crime

¹ Philip C. Testa was considered the "Boss" of the Philadelphia Family until his murder on March 15, 1981. Id., ¶ 23.

² Philip Leonetti, Lawrence Merlino and Nicholas Caramandi are all self-admitted members of the Philadelphia Family. Each provided a signed statement to the FBI noting Cimino's ties to Scarfo and the Philadelphia Family. See pp. 6-9, infra.

Commission. (Exhibit M, Page 48) Scarfo was named as the Boss of the Philadelphia Family in the 1983 Report of the Pennsylvania Crime Commission. (Exhibit N, Pages 8, 24, and 64) Scarfo was also named as the Boss of the Philadelphia Family in the 1987 Report of the Pennsylvania Crime Commission. (Exhibit O, Pages 17 to 18) Scarfo was identified as the Boss in the hierarchy of the Philadelphia Family in 1987 in an exhibit in hearings of the Permanent Subcommittee on Investigations. (Exhibit Q) In the Report of the Permanent Subcommittee on Investigations entitled "Hotel Employees and Restaurant Employees International Union", Scarfo was identified as the Boss of the Philadelphia Family. (Exhibit P, Page 64).

Given Maher's expert knowledge regarding the Philadelphia Family, buttressed by the extensive corroborating proofs offered as exhibits to the Maher Declaration, I conclude that Scarfo is a member of the Philadelphia Family and, in fact, was its "Boss" before being incarcerated.

IV. Cimino's Association With Scarfo

Cimino conceded meeting Scarfo twice. T75-18 to 21.³ Cimino stated that he could not recall when or where he first met Scarfo. He did remember, however, that the meeting only lasted three minutes and Local 107 was "[a]bsolutely not" a topic of discussion T74-2 to T76-19. Cimino said he met Scarfo a second time at Bookbinders Restaurant in Philadelphia. T77-2 to 6. On the way out of the restaurant, Scarfo accompanied by his attorney, Bobby Simone, came over to Cimino's table and said "hello, how are you."

³ All transcript references are to the transcript of the hearing before me. The cite refers to the transcript page number followed by the line number. In this case "T75-18 to 21" refers to transcript page 75, lines 18 through 21.

They both shook hands with Cimino and exited the restaurant. T77-25 to T78-2.

Cimino denied meeting with Scarfo on any other occasions. T78-8 to 13.

This statement is refuted by Philip Leonetti, former Underboss and member of the Philadelphia Family of La Cosa Nostra. Leonetti in his statement to the FBI (IO-1E), indicated that Cimino "acted as the primary point of contact for the Philadelphia Family with the Teamsters Union in the City of Philadelphia." IO-1E, p. 1. Leonetti goes on to describe a 1981 meeting between Cimino, Scarfo, Salvatore Merlino⁴ and himself, where the murder of Roofers Union Official John McCullough was discussed. Id., pp. 1-2.

Leonetti also informed the FBI that he had heard Scarfo mention Cimino in other conversations in connection with the give and take relationship between Scarfo and Cimino. Id., p. 2. By this, Leonetti meant that Scarfo would give Cimino support to assist Cimino in retaining the presidency of Local 107 in return for taking special favors for the Philadelphia Family. Ibid. For example, Cimino would use his union position to arrange employment for individuals referred to him by members of Philadelphia family. Ibid. Leonetti recalled that Cimino, who "always complied with such requests," one time referred a job to an individual who had

⁴ Salvatore Merlino is identified by the FBI and the 1983 and 1987 Reports of the Pennsylvania Crime Commission as the jailed "Underboss" of the Philadelphia Family. Salvatore is the brother of Lawrence Merlino. See IO-1, ¶ 25.

been in prison with Scarfo. This was done at Scarfo's request.
Ibid.

Leonetti also indicated that Cimino used his influence at Local 107 to provide logistic support, trucks and drivers, to the mayoral campaign of the Philadelphia Family's preferred candidate "as a favor to Scarfo . . ." Id., p. 3.

Leonetti also stated that he met Cimino over dinner at the "Saloon", a Philadelphia restaurant, to discuss a possible merger between IBT Locals 107 and 158.⁵ Local 158 was headed by John Healy whom Leonetti described as an associate of the Philadelphia Family. Ibid. The Philadelphia Family wanted to merge the two Teamster Locals because Healy's local was experiencing financial difficulties. Scarfo wanted Local 158 to remain solvent for the benefit of the Philadelphia Family. Ibid.

Corroboration of the fact that "Cimino used his position in the Teamsters to perform favors for the benefit of [Philadelphia] mob members..." was offered by Lawrence Merlino, admitted La Cosa Nostra member, who indicated that Cimino's arrangement with the Philadelphia Family was "generally understood" IO-1F, p. 1. Merlino stated that after Scarfo got out of prison in 1984, Cimino met with him and other members of the La Cosa Nostra "several" times at the Saloon Restaurant. Id., p. 1. Merlino described an incident during which Cimino nodded his head in agreement to Scarfo's pronouncement, "I'm the union, I run Local 107." Id., p. 2.

⁵ IBT Local Union 158 no longer exists.

The Investigations Officer also offered the statement of admitted La Cosa Nostra member, Nicholas Caramandi, to show, as Leonetti had indicated, Cimino was "a union official who could be used by the Philadelphia Family and Scarfo to influence activities of his union to the benefit of members and associates of the Philadelphia Family." IO-1G, p. 1. One specific example provided by Caramandi was that Cimino arranged to give a Local 107 drivers job in 1985 to the son of Charles Iannece, a Philadelphia La Cosa Nostra Family member. Id., p. 2. See also IO-1, ¶ 27. Cimino corroborated the fact that Charles Iannece's son did work for Local 107. T134-10 to T135-8. Caramandi also stated that Cimino's brother Paul and his long time friend John "Cupcakes" Melelli (both Philadelphia Family associates), were used as conduits between Scarfo and Cimino. Id., p. 3. Cimino admitted that he had known Melelli "since I was three years old" (T142-11 to 18), but denied that Melelli or his brother, Paul, were in any way involved with organized crime. T141-16 to T143-8.

In short, the evidence reveals a close relationship between Cimino and IBT Local 107 on the one hand, and Scarfo and the Philadelphia Family on the other. See IO-1E, F and G. Cimino met with members of La Cosa Nostra on numerous occasions, performed services for the Philadelphia Family in exchange for its support, and met with Scarfo or his underlings over a period of years in a variety of places to discuss union business. See, e.g., T72-18 to T74-10; T78-20 to T85-10; IP-iE, p. 3; T133-10 to 18; and T75-18 to T78-19.

V. Cimino's Knowledge Of His Associates' Organized Crime Ties

The issue left to be decided is whether the Investigations Officer has sustained his burden of proving that Cimino "knowingly associated" with Scarfo.

In my July 12, 1990, Decision, pp. 35-36, in the matter of Investigations Officer v. Senese, et al., I held that:

[I]n order for the Investigations Officer to sustain his burden of proving a prohibited association with organized crime members, he must show that the contacts in question are purposeful and not incidental or fleeting. Such contacts may be shown in either a business or social context In determining whether the Investigations Officer has sustained his burden of proving a prohibited association, the focus will be placed on the nature and not the number of contacts in question.

In addition, I held that "[i]n the absence of direct evidence of knowledge of the organized crime ties of an associate, I conclude that such knowledge may be inferred from the duration and quality of the association." Id., p. 37. My decision in Senese was affirmed in United States v. IBT, (Application XII), 745 F. Supp. 900 (S.D.N.Y. 1990).

Given the nature of the Cimino-Scarfo relationship, I can reach no other conclusion than that Cimino knew of Scarfo's organized crime ties during their association. The very purpose of that relationship was to allow Scarfo to use Cimino and Local 107 to further his La Cosa Nostra interests.

VI. Cimino's Defenses

At the hearing before me, and in his post-hearing submissions, Cimino argued that I had no jurisdiction to conduct this

disciplinary hearing because Local 107 was not a signatory to the Consent Order; the Consent Order is not binding on Affiliates; and the IBT Constitution is unlawfully amended by the Consent Order's provisions. Next, Cimino alleged that the charge filed by the Investigations Officer was not properly specific. Further, Cimino argued that the Investigations Officer's case rested upon hearsay evidence which should not be considered. Finally, Cimino argued that his taking the stand at the hearing and denying any involvement with Organized Crime or its members demonstrates that the Investigations Officer has not proven the charge against him.

Taking Cimino's arguments in order, his claim that non-signatories to the Consent Order are not bound by its terms is one that has been firmly rejected by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit and deserves no further discussion. See United States v. IBT, 725 F. Supp. 162 (S.D.N.Y. 1990) aff'd, 905 F.2d 610 (2d. Cir. 1990). Similarly, his argument that such "knowing association" charges lack specificity has also been rejected the District Court and the Court of Appeals. See United States v. IBT, (Application VII), 735 F.Supp 506 (S.D.N.Y.) aff'd, 905 F.2d 610 (2d. Cir. 1990).

On the specificity issue, Cimino posits that because the charge against Cimino indicated that he had "knowingly associated with Nicodemo Scarfo" that the Investigations Officer should be precluded from introducing evidence suggesting or inferring an association with other organized crime figures. This argument is

baseless. The Investigations Officer has offered evidence of additional associations of Cimino with members and associates of the Philadelphia Family to prove the underlying charge, the "knowing association" with Scarfo. The Investigations Officer is not expanding the charge to include additional knowing associations, he is merely showing that by meeting with those Philadelphia Organized Crime members directly below Scarfo in the Organization's hierarchy, that Cimino was, in effect, communicating with and being given directions by Scarfo himself. Thus, I reject his lack of specificity argument.

Finally, Cimino asks me to accord more weight to his self-serving denials of any involvement with Scarfo or the Philadelphia Family, than to the Declaration of an expert witness, FBI Agent Maher, which is corroborated by the signed statements to the FBI by three of Scarfo's closest associates. I will not do so. I do not find Cimino to be a credible witness.

Cimino argued that the Maher Declaration and the three signed statements are inadmissible hearsay. While recognized as hearsay, it is settled that hearsay, if reliable, is admissible in these proceedings. United States v. IBT, 745 F.Supp. 908, 914-915 (S.D.N.Y. 1990). I conclude that the Maher Declaration and the signed statements given to FBI by Leonetti, Merlino, and Caramandi corroborate each other, are reliable, and thus, admissible.

VII. The Penalty To Be Imposed

Eliminating the taint of Organized Crime from the IBT is the primary goal of the Consent Order. Contrary to that goal, Scarfo's underlings described, in their statements to the FBI, a very active relationship between Scarfo and Cimino. One individual, Leonetti, labeled Cimino the "primary point of contact" (see p. 6, supra) between the Philadelphia Family and Local 107. Two others, Merlino and Caramandi, also close associates of Scarfo, described a very purposeful relationship between Scarfo and Cimino. Merlino said that Cimino "used his position as a Teamster" to benefit Scarfo's family. See p. 7, supra. Caramandi added that Cimino was a "union official who could be used" by Scarfo to benefit the Philadelphia Family. See p. 8, supra.

The record reflects that Cimino discussed union business with members of Organized Crime, hired employees at the behest of Scarfo, made political contributions to a candidate preferred by the Philadelphia Family and was generally counted upon by Scarfo and the Philadelphia Family to perform favors. Such conduct flies in the face of the Consent Order's goals.

The only penalty befitting Cimino is permanent banishment from the IBT. Accordingly, Cimino is permanently barred from the IBT and is to remove himself from all of his IBT-affiliated Union positions (including, of course, membership in the IBT) and draw no money on compensation therefrom, or from any other IBT-affiliated source.

VIII. Cimino's Employee Benefits

One matter left to be considered is whether I should impose sanctions impacting upon Cimino's employee benefits, including health, welfare and pension benefits. See Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT, (Application XVI), slip op. (S.D.N.Y. December 28, 1990). Before imposing such sanctions, I invited Cimino to submit a schedule of benefits as well as a memorandum on the issues raised in imposing sanctions touching upon those benefits. I received such submissions from Cimino and the Investigations Officer.

Cimino listed his health, welfare and pension related benefits as follows:

1. He is a participant in the "Philadelphia and Vicinity Health and Welfare Fund" to which Local 107 makes contributions on his behalf.
2. He is a participant in the "Philadelphia and Vicinity Pension Fund" to which Local 107 makes contributions on his behalf;
3. He is a participant in the "Joint Council No. 53 Pension Fund" to which both he as well as Local 107 make contributions.

Cimino, also indicated that neither Local 107 nor any other IBT-affiliated entity has assumed Mr. Cimino's costs for legal representation.

The Investigations Officer did not contest Cimino's rights to pre-paid vested benefits from the (i) "Philadelphia and Vicinity Health and Welfare Fund"; (ii) "Philadelphia and Vicinity Pension Fund"; or (iii) "Joint Council No. 53 Pension Fund." Consistent

with my decision in Senese, I direct that no future contributions are to be made on Cimino's behalf by the IBT, Joint Council 53, Local 107 or any other IBT-affiliated entity to these three funds, however, Cimino may continue to receive any pre-paid vested benefits from these funds to which he is entitled. Further, as to all three funds, Cimino may continue to make personal contributions as is his wish.

Cimino, in his benefits memorandum, argues that payment is made to these three funds on a quarterly basis, and as such, he is entitled to derive the benefits until the pre-paid portion expires. For example, if any one or all of the funds has received a contribution on Cimino's behalf for the quarter beginning April 1, 1991, and ending July 31, 1991, Cimino is entitled to coverage until July 31, 1991. I agree. Thus, Cimino is entitled to derive the benefits from any of the above-mentioned funds until such periodic payment (the end of the current quarter) is exhausted.

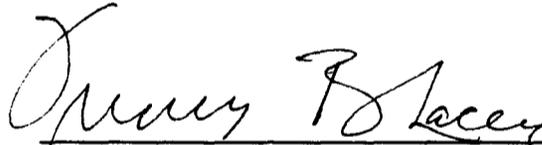
Notwithstanding Cimino's attorney's representation that neither Local 107 nor any other IBT-affiliated entity has assumed Cimino's costs for legal representation, I hereby direct that no IBT-affiliated entity may make any contributions to Cimino's legal expenses in connection with the matter. See, e.g., United States v. Local 1804-1, 732 F. Supp. 434, 437 (S.D.N.Y. 1990).

IX. The Voluntary Stay

With one exception, I will stay this decision and the penalty imposed pending Your Honor's review of my decision, which will be

submitted for consideration by way of Application. The one exception is Cimino's ability to attend the June 1991 IBT Convention in Florida. Cimino has been elected delegate to the Convention on behalf of Local 107. It would be unreasonable to expect Judge Edelstein to complete his review of this matter before then. Given my findings regarding Cimino's relationship with Scarfo and the Philadelphia Family, I must strip Cimino of his delegate status and direct that he not be present at the Convention in any capacity, even as a guest. The Convention must be free of the patina of organized crime influence, thus this prohibition concerning Cimino's ability to attend the Convention is effective immediately. All other provisions of this decision will be stayed pending Judge Edelstein's review.

Accordingly, I will immediately file this decision with Judge Edelstein by way of Application.


Frederick B. Lacey
Independent Administration

Dated: May 28, 1991