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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	:	88 Civ. 4486 (DNE)
UNITED STATES OF AMERICA	:	
	:	APPLICATION LXVII OF THE
Plaintiff,	:	INDEPENDENT REVIEW BOARD
	:	--OPINION AND DECISION OF
v.	:	THE INDEPENDENT REVIEW BOARD
	:	ON REMAND IN THE MATTER
INTERNATIONAL BROTHERHOOD	:	OF THE CHARGES AGAINST
OF TEAMSTERS, et al.,	:	GENE GIACUMBO
	:	
Defendant.	:	
_____	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the IRB for ruling by the Honorable David N. Edelstein, United States District Judge for the Southern District of New York, on the modification of the penalties imposed on Gene Giacumbo ("Giacumbo") as set forth in the IRB's original Decision of October 31, 1995.

Having reviewed the decision of the United States Court of Appeals for the Second Circuit dated March 2, 1999, and Your Honor's Opinion and Order of March 25, 1999, the IRB has reconsidered its October 31, 1995, Opinion and Decision and has determined that the suspension from both office and membership already served by Giacumbo is sufficient and that, subject only to payment of the \$1,600 fine, including interest at 6%, Giacumbo is eligible for reinstatement to membership, upon a showing that the fine has been paid to the IBT.

It is respectfully requested that an Order be entered affirming the IRB's July 19, 1999, Opinion, if Your Honor finds it appropriate.

By: Frederick B. Lacey

Frederick B. Lacey  
Member of the  
Independent Review Board

Dated: July 19, 1999

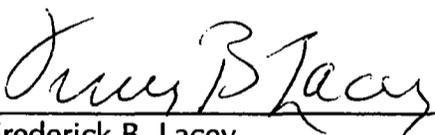
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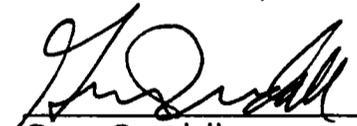
IN RE:	GENE GIACUMBO	:	OPINION AND DECISION
	International Vice-President:	:	OF THE INDEPENDENT
		:	REVIEW BOARD ON
		:	REMAND

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This case is before us for the third time. Now, pursuant to the Opinion and Order entered by Judge Edelstein of the United States District Court for the Southern District of New York in United States of America v. International Brotherhood of Teamsters, et al., 88 CIV 4486 (DNE), Opinion and Order dated March 25, 1999, the District Court has directed us to consider whether the sanction imposed in our original Decision of October 31, 1995 "should stand or be modified because of any subsequent misconduct by Giacumbo in violation of the IRB's October 31, 199[5] Order."

Having reviewed the decision of the United States Court of Appeals for the Second Circuit dated March 2, 1999, styled United States v. IBT ("Giacumbo Appeal"), 170 F.3d 136, and the March 25, 1999 Opinion and Order of Judge Edelstein, U.S. v. IBT ("Giacumbo IV"), we determine that the suspension from both office and membership already served by Giacumbo is sufficient and that, subject only to payment of the \$1,600 fine, including interest at 6%, Giacumbo is eligible for reinstatement to membership, upon a showing that the fine has been paid to the IBT.

  
\_\_\_\_\_  
Frederick B. Lacey

  
\_\_\_\_\_  
Grant Crandall

Dated: July 19, 1999

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

OPINION & ORDER  
88 Civ. 4486 (DNE)

EDELSTEIN, District Judge:

BACKGROUND

This opinion emanates from the voluntary settlement of an action commenced by the United States of America against, inter alia, the International Brotherhood of Teamsters ("IBT" or "the union") and the IBT's General Executive Board ("GEB"). The settlement is embodied in the voluntary consent order entered March 14, 1989 ("Consent Decree"). The goals of the Consent Decree are to rid the IBT of the hideous influence of organized crime and establish a culture of democracy within the union. The long history of this case has been set forth in this Court's numerous prior opinions. Accordingly, only those facts necessary for resolving the instant matter shall be set forth.

On March 25, 1999, this Court issued an opinion (1)

directing the Independent Review Board ("IRB") "to consider whether its first imposed sanction on [Gene] Giacumbo [a former Vice-President of the IBT] should stand or be modified because of any subsequent misconduct by Giacumbo in violation of the IRB's October 31, 199[5] order," and (2) finding that there was no evidence that Judge Lacey was biased against Giacumbo, and therefore, any assertion that Lacey should have recused himself from the IRB panel was baseless. United States v. IBT ("Giacumbo IV"), 88 Civ. 4486, 1999 WL 311237, at \*4 (S.D.N.Y. March 25, 1999). Pursuant to that opinion, the IRB reconsidered its October 31, 1995 decision imposing sanctions against Giacumbo. After reviewing the decision of the Court of Appeals for the Second Circuit dated March 2, 1999 and this Court's March 25, 1999 Opinion and Order, the IRB "determine[d] that the suspension from both office and membership already served by Giacumbo is sufficient and that, subject only to payment of the \$1,600 fine, including interest at 6%, Giacumbo is eligible for reinstatement to membership, upon a showing that the fine has been paid to the IBT." Opinion and Decision of the Independent Review Board on Remand, July 19, 1999.

Presently before this Court is Application LXVII of the IRB

requesting this Court to affirm the modification of the penalties that the IRB imposed on Giacumbo as set forth in the IRB's original decision of October 31, 1995. This Court has also received a letter from J. Bruce Maffeo, counsel for Giacumbo, informing this Court that Giacumbo opposes the IRB's July 19, 1999 decision and recommendation and renews the arguments he raised in earlier submissions to this Court asserting that the Court erred when it did not require Judge Lacey's recusal. See Letter from J. Bruce Maffeo, counsel for Giacumbo, to Hon. David N. Edelstein (July 23, 1999). For a complete factual and procedural history of this specific case see Giacumbo IV, 1999 WL 311237.

#### Discussion

It is well established that the findings of the IRB, as the successor to the Independent Administrator, are entitled to "great deference." See United States v. IBT ("Friedman & Hughes"), 905 F.2d 610, 616 (2d Cir. 1990). In reviewing IRB disciplinary actions, this Court has held that the "arbitrary and capricious" standard of review is applicable. United States v. IBT ("Portal"), 908 F. Supp. 139, 143 (S.D.N.Y. 1995). Paragraph

O. of the IRB Rules provides that "[i]n reviewing actions of the IRB, this Court shall apply the same standard of review applicable to review of final agency action under the Administrative Procedure Act." See Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters, ¶ O. Furthermore, the Second Circuit has held that "the [Administrative Procedure Act] generally allows the reviewing court to set aside action only when it is arbitrary and capricious, an abuse of discretion or not in accordance with law." United States v. IBT ("Wilson"), 978 F.2d 68, 72 (2d Cir. 1992).

While Giacumbo's attorney has submitted a letter on behalf of Giacumbo in opposition to the IRB Decision, that letter of July 23, 1999 merely requests this Court to consider arguments that it has already analyzed and adjudicated in full. See Giacumbo IV, 1999 WL 311237, at \*3-4. This Court, having reviewed the IRB's July 19, 1999 Opinion and Decision and having considered the procedural history of this case in which the IRB examined the charges against Giacumbo on two prior occasions, finds that there is nothing in the IRB Decision that could be construed as arbitrary and capricious, an abuse of discretion, or

unwarranted in law.

Furthermore, while Giacumbo may still believe that this Court was incorrect in its reasoning, his one paragraph submission asking this Court to effectively vacate an earlier judgment without any justifiable support is ostensibly frivolous. In view of that this Court remanded this case to the IRB twice to prescribe a harsher sanction against Giacumbo than the one he presently faces, and, thereby, Giacumbo came close to being barred from the IBT permanently, it savages reason that Giacumbo offers this Court nothing other than arguments that have already been justifiably disposed. Giacumbo did not present any new evidence; there has been no intervening change of controlling law; and there is nothing to indicate a need to correct a clear error or to prevent manifest injustice. This Court is vexed that Giacumbo requests a reconsideration of issues already examined simply because he is dissatisfied with the way his case has been resolved. It is a waste of judicial resources.

#### Conclusion

Based upon the foregoing, Application LXVII of the IRB is Granted and the IRB Decision is Affirmed in all respects.