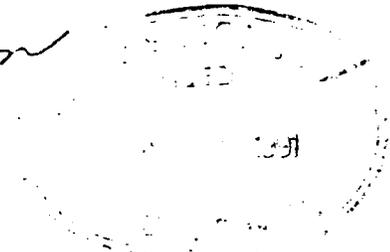


Mr. Ferguson



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

-v- :

MEMORANDUM & ORDER

INTERNATIONAL BROTHERHOOD OF :
 TEAMSTERS, CHAUFFEURS, :
 WAREHOUSEMEN AND HELPERS OF :
 AMERICA, AFL-CIO, et al., :
 :
 Defendants. :

88 CIV. 4486 (DNE)

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IN RE: APPLICATION XXXII OF THE
INDEPENDENT ADMINISTRATOR

-----X

APPEARANCES: CHARLES M. CARBERRY, Investigations Officers of the
International Brotherhood of Teamsters, (Robert W.
Gaffey, of counsel);

OTTO G. OBERMAIER, United States Attorney for the
Southern District of New York, (Edward T. Ferguson,
III, Assistant United States Attorney, of counsel)
for the United States;

CHARLES F. CARNESI, Brooklyn, New York, for George
Lombardozi.

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement in the
action commenced by the plaintiffs United States of America (the
"Government") against the defendants International Brotherhood of
Teamsters (the "IBT") and the IBT's General Executive Board (the
"GEB") embodied in the voluntary consent order entered March 14,
1989 (the "Consent Decree"). The Consent Decree provided for three
Court-appointed officials, the Independent Administrator to oversee
the remedial provisions, the Investigations Officer to bring

charges against corrupt IBT members, and the Election Officer to oversee the electoral process leading up to and including the 1991 election for International Officers (collectively, the "Court Officers"). The goal of the Consent Decree is to rid the IBT of the hideous influence of organized crime through the election and prosecution provisions.

Application XXXII presents for this Court's review the opinion of the Independent Administrator finding that the Investigations Officer had proved the two charges filed against IBT member George Lombardozzi. Lombardozzi is the Secretary-Treasurer of IBT Local 918 in Brooklyn, New York. In Charge I, the Investigations Officer charged Lombardozzi with bringing reproach upon the IBT by knowingly associating with John Gotti, Gene Gotti, Carmine Lombardozzi, Daniel Marino and Anthony Vinuciullo, all alleged members of the Gambino La Cosa Nostra organization, in violation of Article II, §2(a) of the IBT constitution. Charge II alleged that Lombardozzi had violated Article II, §2(a) of the IBT constitution by his 1976 "convic[tion] of perjury before a grand jury in the first degree in New York State. At the time of his conviction, he was employed as a business agent with Local 960. Lombardozzi served one year in jail for that conviction. During his time in jail, Lombardozzi forfeited his position as a business agent. Upon his release from jail, he returned to the Local as a business agent." (Independent Administrator's opinion at 10).

After finding that both the charges had been proved, the Independent Administrator permanently suspended Lombardozzi from

the IBT on Charge I. Further, Local 918 was directed to (i) make no severance payments to Lombardozzi, (ii) make no further contributions to its welfare fund on Lombardozzi's behalf, (iii) that no Local 918 funds be paid for Lombardozzi's legal fees.

Lombardozzi appeals to this Court the findings and penalties imposed by the Independent Administrator. With respect to Charge I, Lombardozzi argues that the proof was insufficient as well as unreliable to establish his membership in organized crime, or knowing association with members of organized crime. With respect to Charge II, Lombardozzi contends that he was not a member of the IBT on September 29, 1975, the date of his perjury, which ultimately led to his conviction. The judgment of conviction was filed on March 17, 1977. Since his perjury predated his membership in the IBT, he could not have brought reproach upon the IBT. This Court determines that the findings of the Independent Administrator are fully supported by the evidence, and Lombardozzi's arguments are without merit. Accordingly, the opinion of the Independent Administrator is affirmed in all respects.

It is well settled that the findings of the Independent Administrator "are entitled to great deference." United States v. Int'l Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir. 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y. 1990). This Court will overturn findings when it determines that they are, on the basis of all the evidence, "arbitrary or capricious." United States v. Int'l Brotherhood of Teamsters, supra, 905 F.2d at 622; July 16, 1991 Opinion & Order, slip

opinion, at 3-4 (S.D.N.Y. 1991); June 6, 1991 Opinion & Order, slip opinion, at 4-5 (S.D.N.Y. 1991); May 9, 1991 Memorandum & Order, slip opinion, at 4 (S.D.N.Y. 1991); May 6, 1991 Opinion & Order, slip opinion, at 5 (S.D.N.Y. 1991); December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, supra, 743 F. Supp. at 159-60, aff'd, 905 F.2d at 622; January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1045-57, aff'd, 907 F.2d 277 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989);

The Investigations Officer's evidence against Lombardozzi included the sworn declaration of FBI special agent Andris Kurins. (the "Kurins declaration"). Kurins was accepted as an expert knowledgeable about organized crime, specifically the Gambino organized crime family. The Kurins declaration stated that the FBI considered Lombardozzi a member of the Gambino family of La Cosa Nostra. The Kurins declaration also stated that the Permanent Subcommittee on Investigations of the United States Senate (the "Senate Investigations subcommittee") has listed Lombardozzi as a member of the Gambino family. The Independent Administrator found that the two corroborating identifications of Lombardozzi as a member of the Gambino family were credible, and combined with the evidence introduced at the hearing, sufficient for him to find that Lombardozzi was a member of the Gambino family of La Cosa Nostra.

The Kurins declaration, and Lombardozzi's own testimony

provides a basis for finding that his association with members of the Gambino La Cosa Nostra family was extensive. First, Lombardozi admitted association with John Gotti. Gotti was identified as a member of the Gambino family by the Senate Investigations subcommittee, and the head of the Gambino family by the FBI. This identification was not disputed by Lombardozi. Lombardozi's testimony and the Kurins declaration established that Lombardozi had (i) met John Gotti "years" ago, (ii) met John Gotti at a funeral, (iii) met and spoke with John Gotti at a wedding, (iv) attended the daughter of John Gotti's wedding where he personally congratulated Gotti, (v) attended John Gotti's christmas parties, (vi) attended John Gotti's October, 1989 birthday party, (vii) met and spoke with John Gotti outside the Ravenite Social Club in Manhattan, publicly reputed to be a location where La Cosa Nostra business is conducted. (Independent Administrator's opinion at 5-6).

The evidence also established that Lombardozi was an acquaintance of Gene Gotti, for a period of ten to twenty years. Gene Gotti, the brother of John Gotti, was identified as a member of the Gambino family by the FBI, and the Senate Investigations subcommittee. Lombardozi's uncle, Carmine Lombardozi, was also identified as a member of the Gambino family by the FBI, and the Senate Investigations subcommittee. Lombardozi attended John Gotti's christmas parties and daughter's wedding with his first cousin Daniel Marino, the son of Carmine Lombardozi. Marino was identified as a member of the Gambino family by the Senate

Investigations committee, and by the FBI. Finally, the Investigations Officer also submitted FBI surveillance tapes showing Lombardozi speaking with Gambino family members, particularly James Faila, at the Veterans and Friends Club in Brooklyn on three occasions. Faila was identified by Kurins as being a member of the Gambino family.

After considering all of this evidence, the Independent Administrator found that the Investigations Officer's extensive proof of Lombardozi's intimate associations with identified members of the Gambino family of La Cosa Nostra proved that Lombardozi knowingly associated with members of La Cosa Nostra.

In spite of this evidence, Lombardozi now argues that (i) that the evidence presented was unreliable as to whether he or the other persons listed were members of the Gambino family, since the criteria used to compile those reports was not available; and (ii) the evidence was insufficient to prove that he was either a member of the Gambino family, or that he knowingly associated with members of the Gambino family. Both these objections are utterly without merit.

Lombardozi now disputes the veracity of the Senate Intelligence committee and FBI identifications of him and the other listed persons as members of the Gambino family. While the reports contained hearsay, it is conceded by Lombardozi that reliable hearsay is admissible at hearings before the Independent Administrator. Lombardozi's counsel cross-examined special agent Kurins at the hearing, and thus had ample opportunity to expose any

alleged unreliability of the FBI identifications. The Independent Administrator specifically found that the reports were reliable. The FBI's identification of Lombardozi was amply supported by an extensive record. It is noteworthy that Lombardozi's socialized with the innermost circle of the Gambino family.

Lombardozi did not contest that John Gotti, Gene Gotti, Carmine Lombardozi, or Daniel Marino were members of the Gambino family. The FBI evidence was supplemented by the Senate Intelligence subcommittee report. Neither at the hearing, nor before this Court does Lombardozi offer anything more than conjecture to support his contention that the FBI or Senate Investigations subcommittee identifications were unreliable. Because of the multiplicity of the sources, and the lack of any specific challenges to the sources veracity, the Independent Administrator's finding that the reports which identified Lombardozi and the other named persons as members of the Gambino family were reliable is amply supported by the record, and is neither arbitrary nor capricious. As such, the Independent Administrator's finding that Lombardozi was a member of the Gambino family was also not arbitrary or capricious.

This record overwhelmingly supports the Independent Administrator's further finding that Lombardozi knowingly associated with organized crime members. Lombardozi now argues that his associations with uncontested members of the Gambino family does not constitute knowingly associating with organized crime members. The Investigations Officer needed to prove that

Lombardozzi's associations were knowing, intentional, repeated and sustained. The evidence introduced related Lombardozzi's many personal contacts with Gambino family members. It is hard to believe that given the length, frequency, and types of associations, that the associations were not knowing, intentional, repeated and continued.

The finding of the Independent Administrator is affirmed.

Next, Lombardozzi argues that the Independent Administrator erred in finding that Charge II had been proved because the actual perjury conduct that resulted in his later conviction occurred before Lombardozzi became an IBT member. Lombardozzi was convicted of three counts of perjury while he was a business agent of Local 918, and he served one year imprisonment for that conviction. It is indisputable that the Independent Administrator may discipline IBT members for bringing reproach upon the IBT because of a criminal conviction. United States v. International Brotherhood of Teamsters, supra, 905 F.2d at 620-21; see June 6, 1991 Opinion & Order, supra, at 9-10. As such, the Independent Administrator found that Lombardozzi's conviction itself brought reproach upon the IBT. That conclusion was neither arbitrary nor capricious, and Lombardozzi's argument is rejected.

Finally, Lombardozzi argues that his permanent suspension from the IBT is unduly harsh and thus arbitrary and capricious. Previously, under similar circumstances and for similar reasons, this Court has previously affirmed lifetime suspensions for IBT members that were found by the Independent Administrator to be

members of La Cosa Nostra. August 27, 1990 Opinion, supra, 745 F. Supp. at 919. The Independent Administrator found that "Lombardozzi's membership in organized crime is repugnant to the idea of a corruption-free Union. ... [T]he only just punishment for Lombardozzi is permanent debarment from the IBT." (Ind. Ad. Op. at 11). That finding was neither arbitrary nor capricious.

IT IS HEREBY ORDERED that the findings of the Independent Administrator are affirmed in all respects.

IT IS FURTHER ORDERED that the stay on the imposition of the penalties on Lombardozzi is hereby dissolved.

So Ordered.

Dated: July 18, 1991
New York, New York


U.S.D.J.