

TO: Daniel J. Kane, Sr., Trustee of Local 239
FROM: Members of the Independent Review Board
RE: Proposed Charges against Local 239 Members
Pasquale Bavaro, Marisa Giannattasio and
David Baroncelli
DATE: April 20, 2000

I. RECOMMENDATION

The Independent Review Board ("IRB") refers the below report to the Trustee of Local 239 for the purpose of filing charges against Local 239 members Pasquale Bavaro ("Bavaro"), Marisa Giannattasio ("Giannattasio") and David Baroncelli ("Baroncelli") as detailed below.

Bavaro, Giannattasio and Baroncelli brought reproach upon the IBT and violated their membership oath through scheming to falsify union records and falsely maintaining Local 239 memberships for Giannattasio and Baroncelli who were ineligible for union membership. Bavaro owned Linco Electric ("Linco") which had a collective bargaining agreement with Local 239. Bavaro maintained Local 239 membership for Giannattasio and Baroncelli by falsely reporting that both were employed at Linco. Bavaro then caused Linco to make monthly dues and health and welfare payments to the Local on behalf of Giannattasio and Baroncelli. Neither Giannattasio nor Baroncelli worked for Linco and they were ineligible for union membership under Linco's contract. By their actions, Bavaro, Giannattasio and Baroncelli caused union records to falsely list Giannattasio and Baroncelli as employees of Linco. By this conduct, it appears that Bavaro, Giannattasio and

Baroncelli violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution.

II. JURISDICTION

Pursuant to Article XIX, Section 14(c) of the IBT Constitution, this disciplinary matter is within the original jurisdiction of Local 239. Paragraph G(e) of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the court-approved Rules and Procedures for Operation of the IRB (the "IRB Rules") require that within 90 days of the IRB's referral of a matter to an IBT entity, that IBT entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB.

III. INVESTIGATIVE FINDINGS

A. Background

Linco Auto Electric was located at 55 Ralph Avenue, Copiague, New York. (Ex. 1) Bavaro owned Linco and signed the collective bargaining agreement on behalf of the company. (Ex. 2) Linco's contract ran from October 1, 1999 through September 30, 2002. (Ex.3) The bargaining unit was defined in the contract as: "all service department (including maintenance men) employees, parts department employees, with the exception of one manager and one assistant manager, excluding executives, supervisors, clericals and guards, as defined in the Labor Management Relations Act as

amended." (Id.) As a condition of membership in the Local, the contract stated that all members must be full-time employees working at least forty hours a week. (Id.) The contract provided that the employer make monthly contributions to the Local for health and welfare and pension benefits for each employee covered under the contract. (Id.)

Union records dated August 30, 1999, listed four members who worked for Linco. These were Bavaro, Ralph Wahl ("Wahl"), Giannattasio and Baroncelli. (Ex. 1)¹ Bavaro joined the Local in 1961, Giannattasio in 1991 and Baroncelli in 1989. (Exs. 4, 5, & 6) All received health and welfare benefits, but only Bavaro, the company owner, received pension benefits. (Ex. 1; Ex. 2 at 10 & 13) This was despite the contract calling for pension benefits for each employee. As members, all were eligible without restrictions to vote in union elections. (Ex. 7)

B. Bavaro's Testimony

Bavaro testified that he first joined the union when he started working for Linco, an automobile electrical parts repair shop, which he later purchased. (Ex. 2 at 5) According to Bavaro, he only had one employee, Wahl, who worked part time twice a week cleaning and washing parts for \$10 an hour. Wahl received health and welfare but not pension benefits as the contract required. (Id.)

¹ Union records dated April 11, 2000, indicated that the union memberships of Bavaro, Baroncelli and Giannattasio were suspended in November 1999.

The IBT Constitution, Article XIX, Section 1(g) provides that charges may be preferred against a suspended member or an inactive member.

at 7-8, 19) Bavaro further admitted that Giannattasio and Baroncelli had not worked for his company for at least eight or nine years. Giannattasio and Baroncelli each now worked elsewhere. They were not entitled to union membership under the terms of the contract. The Local's records falsely listed them as Linco employees. Bavaro admitted that he made monthly payments on behalf of Giannattasio and Baroncelli for dues and health insurance premiums to the Local. (Id.) They paid Bavaro the amount of the monthly employer premiums for the Health and Welfare Fund and their Local dues which Bavaro would then pay to the union. (Id. at 12-16)

IV. ANALYSIS

Bavaro, Giannattasio and Baroncelli schemed to have Giannattasio and Baroncelli maintain union membership through false representations to the Local. Giannattasio and Baroncelli had not worked for Linco for eight or nine years and were ineligible for membership under the contract. As a result of this scheme, union records falsely listed Giannattasio and Baroncelli as members employed at Linco. In submitting the monthly payments to the Local for Giannattasio and Baroncelli's dues and health and welfare payments, Bavaro, Giannattasio and Baroncelli caused the creation of false business records at the Local. Their actions violated New York Penal Law Section 175.05(1) (Falsifying business records in the second degree).²

² New York Penal Law Section 175.05(1) states:
A person is guilty of falsifying business records in the second degree when, with intent to defraud, he makes or causes a false entry in business records of an enterprise.

As such, by their conduct it appears that Bavaro, Giannattasio and Baroncelli violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution.

V. PROPOSED CHARGES

Based upon the foregoing, it is recommended that Pasquale Bavaro, Marisa Giannattasio and David Baroncelli be charged as follows:

While IBT members, you brought reproach upon the union and violated your oath of membership by scheming to falsify Local business records in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution, to wit:

From at least 1995 to February 2000, Bavaro engaged in a scheme with Giannattasio and Baroncelli to maintain false Local 239 records to allow Giannattasio and Baroncelli to falsely maintain union membership. By falsely reporting that Giannattasio and Baroncelli were employed at Linco and by regularly sending monthly dues from Linco for Giannattasio and Baroncelli to the Local as if they were Linco employees, you each caused Local records falsely to list Giannattasio and Baroncelli as employees of Linco.

EXHIBIT LIST

- Ex. 1 Local 239 Roster of Members Working at Linco Auto Electric dated August 30, 1999
- Ex. 2 Transcript Copy of Pasquale Bavaro's November 16, 1999 IRB Sworn Examination
- Ex. 3 Linco Auto Electric's most recent Collective Bargaining Agreement with Local 239
- Ex. 4 Dues Record for Pasquale Bavaro dated April 11, 2000
- Ex. 5 Dues Record for Marisa Giannattasio dated April 11, 2000
- Ex. 6 Dues Record for David Baroncelli dated April 11, 2000
- Ex. 7 Bylaws of Local 239

INDEPENDENT REVIEW BOARD
444 North Capitol Street, NW, Suite 528
Washington, DC 20001
(202) 434-8080
Facsimile (202) 434-8084
Corruption Hotline (800) CALL IRB

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FD-527

Chief Investigator:

Charles M. Carberry, Esq.
17 Battery Place, Suite 331
New York, NY 10004

Administrator:

John J. Cronin, Jr.

Board Members:

Grant Crandall, Esq.
Crandall, Pyles, Haviland & Turner
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Charleston, WV 25301

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One Riverfront Plaza
Newark, NJ 07102-5490

William H. Webster, Esq.
Milbank, Tweed, Hadley & McCloy
1825 Eye Street, NW, Suite 1100
Washington, DC 20006

August 31, 2000

James P. Hoffa, President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001-2198

Re: Decisions on Charges Against Local 239
Members Pasquale Bavaro, Marisa Giannattasio
David Baroncelli and Fausto Maldonado

Dear Mr. Hoffa:

The Independent Review Board has reviewed your decisions of July 24, 2000, in the above-captioned matter, and finds the decisions to be not inadequate.

Very truly yours,

Members of the
Independent Review Board

By: 

John J. Cronin, Jr.
Administrator

cc: Patrick J. Szymanski, Esq.
Daniel Kane, Sr.
Pasquale Bavaro
Marisa Giannattasio
David Baroncelli
Fausto Maldonado

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO



FD-528

OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

July 24, 2000

Mr. Pasquale Bavaro
20 Standish Place
Nesconset, NY 11867

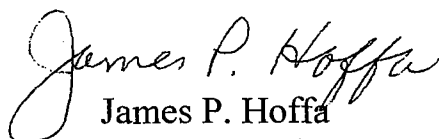
Re: Panel Report and Recommendations

Dear Sir and Brother:

You will find enclosed the report and recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions, and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,


James P. Hoffa
General President

JPH/ndb

Enclosure

cc: John J. Cronin Jr., Administrator, Independent Review Board

BEFORE A HEARING PANEL
APPOINTED BY THE INTERNATIONAL UNION

DANIEL J. KANE, SR.
Charging Member

v.

PASQUALE BAVARO
Charged Member

I. The Charge

This matter arises from the April 20, 2000, charge referred by the Independent Review Board ("IRB") to the Trustee of Local 239, IBT (Local 239), Daniel Kane, Sr. ("Trustee Kane" or the "charging party"), pursuant to Article XIX of the IBT Constitution, against Local 239 member Pasquale Bavaro. The IRB charge which was referred to Trustee Kane alleges as follows:

While a member of Local 239 and the IBT, Pasquale Bavaro brought reproach upon the IBT and violated his oath of membership by scheming to falsify Union business records in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution, to wit:

From at least 1995 to February 2000, Pasquale Bavaro engaged in a scheme with Marisa Giannattasio and David Baroncelli to maintain false Local 239 records to allow Giannattasio and Baroncelli to falsely maintain union membership. By falsely reporting that Giannattasio and Baroncelli were employed at Linco and by regularly sending monthly dues from Linco for Giannattasio and Baroncelli to the Local as if they were Linco employees, Pasquale Bavaro caused Local records falsely to list Giannattasio and Baroncelli as employees of Linco.

II. The Panel Hearing

The hearing on these charges was held on July 11, 2000, in Brooklyn, New York before an Article XIX hearing panel appointed by the IBT General President. The hearing panel consisted of Stuart Mundy, Frank Gentile and Mark Harrington. The evidence presented by the charging party did not differ in any material respect from the IRB's findings.

The Panel has reviewed and considered all of the evidence submitted by the parties. The Panel finds that the charging party has sustained his burden of establishing by a preponderance of reliable evidence, as required by Article XIX, Section 1(a), that from at least 1995 to February 2000, the charged party engaged in a scheme to allow Maria Giannattasio and David Baroncelli to falsely maintain union membership.

III. Recommended Penalty

As a result of the aforesaid violations and conduct, the panel recommends that Pasquale Bavaro be expelled from membership in the Union; permanently barred from participating in the affairs of the Union; permanently barred from holding union office; permanently barred from contracting with, seeking or holding office or employment with Local 239, the IBT or any other IBT affiliate or its sponsored employee benefit plan; permanently barred from seeking or accepting money or other compensation for any goods and services from Local 239, the IBT or any other IBT affiliate or IBT sponsored employee benefit plan other than receipt of vested benefits to which he may otherwise lawfully be entitled by reason of prior participation in an IBT sponsored benefit plan or plans. In addition, Bavaro is prohibited from having any contributions made on his behalf to any IBT-affiliated benefit funds by Local 239 or any other IBT-affiliated entities.

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

AFL-CIO



ID-529

OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

July 24, 2000

Ms. Marisa Giannattasio
105 Glenrich Drive South
St. James, NY 11780

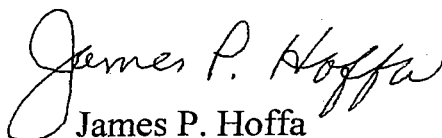
Re: Panel Report and Recommendations

Dear Ms. Giannattasio:

You will find enclosed the report and recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions, and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,



James P. Hoffa
General President

JPH/ndb

Enclosure

cc: John J. Cronin Jr., Administrator, Independent Review Board

BEFORE A HEARING PANEL
APPOINTED BY THE INTERNATIONAL UNION

DANIEL J. KANE, SR.
Charging Member

v.

MARISA GIANNATTASIO
Charged Member

I. The Charge

This matter arises from the April 20, 2000, charge referred by the Independent Review Board ("IRB") to the Trustee of Local 239, IBT (Local 239), Daniel Kane, Sr. ("Trustee Kane" or the "charging party"), pursuant to Article XIX of the IBT Constitution, against former Local 239 member Marisa Giannattasio. The IRB charge which was referred to Trustee Kane alleges, in pertinent part, as follows:

While a member of Local 239 and the IBT, Marisa Giannattasio brought reproach upon the IBT and violated her oath of membership by scheming to falsify Union business records in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution, to wit:

From at least 1995 to February 2000, Marisa Giannattasio engaged in a scheme to maintain false Local 239 records to allow her to falsely maintain union membership.

II. The Panel Hearing

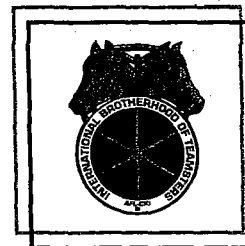
The hearing on these charges was held on July 11, 2000, in Brooklyn, New York before an Article XIX hearing panel appointed by the IBT General President. The hearing panel consisted of Stuart Mundy, Frank Gentile and Mark Harrington. Despite receiving proper notice of the hearing, the charged party failed to appear to present a defense to the charges. In addition, Giannattasio provided no explanation, by letter or otherwise, for her failure to appear before the panel.

By failing to appear before the panel, Giannattasio has obstructed, interfered and unreasonably failed to cooperate with the duties of the IRB as set forth in Paragraph G of the March 14, 1989, Consent Decree. As a result of this conduct, Giannattasio may not contest the evidence of the charges against her.

III. Recommended Penalty

As a result of the aforesaid violations and conduct, the panel recommends that Marisa Giannattasio be expelled from membership in the Union; permanently barred from participating in the affairs of the Union; permanently barred from holding union office; permanently barred from contracting with, seeking or holding office or employment with Local 239, the IBT or any other IBT affiliate or its sponsored employee benefit plan; permanently barred from seeking or accepting money or other compensation for any goods and services from Local 239, the IBT or any other IBT affiliate or IBT sponsored employee benefit plan other than receipt of vested benefits to which she may otherwise lawfully be entitled by reason of prior participation in an IBT sponsored benefit plan or plans. In addition, Giannattasio is prohibited from having any contributions made on her behalf to any IBT-affiliated benefit funds by Local 239 or any other IBT-affiliated entities.

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS
AFL-CIO



FD-530

OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

July 24, 2000

Mr. David Baroncelli
56 Alexander Street
Babylon, NY 11702

Re: Panel Report and Recommendations

Dear Sir and Brother:

You will find enclosed the report and recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions, and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,

James P. Hoffa
General President

JPH/ndb

Enclosure

cc: John J. Cronin Jr., Administrator, Independent Review Board

BEFORE A HEARING PANEL
APPOINTED BY THE INTERNATIONAL UNION

DANIEL J. KANE, SR.
Charging Member

v.

DAVID BARONCELLI
Charged Member

I. The Charge

This matter arises from the April 20, 2000, charge referred by the Independent Review Board ("IRB") to the Trustee of Local 239, IBT (Local 239), Daniel Kane, Sr. ("Trustee Kane" or the "charging party"), pursuant to Article XIX of the IBT Constitution, against Local 239 member David Baroncelli. The IRB charge which was referred to Trustee Kane alleges, in pertinent part, as follows:

While a member of Local 239 and the IBT, David Baroncelli brought reproach upon the IBT and violated his oath of membership by scheming to falsify Union business records in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution, to wit:

From at least 1995 to February 2000, David Baroncelli engaged in a scheme to maintain false Local 239 records to allow him to falsely maintain union membership.

II. The Panel Hearing

The hearing on these charges was held on July 11, 2000, in Brooklyn, New York before an Article XIX hearing panel appointed by the IBT General President. The hearing panel consisted of Stuart Mundy, Frank Gentile and Mark Harrington. The evidence presented by the charging party did not differ in any material respect from the IRB's findings.

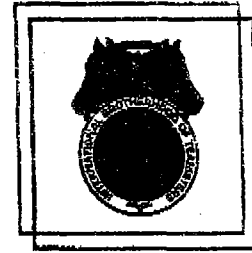
The Panel has reviewed and considered all of the evidence submitted by the parties. The Panel finds that the charging party has sustained his burden of establishing by a preponderance of reliable evidence, as required by Article XIX, Section 1(a), that from at least 1995 to February 2000, the charged party engaged in a scheme to allow him to falsely maintain union membership.

III. Recommended Penalty

As a result of the aforesaid violations and conduct, the panel recommends that David Baroncelli be expelled from membership in the Union; permanently barred from participating in the affairs of the Union; permanently barred from holding union office; permanently barred from contracting with, seeking or holding office or employment with Local 239, the IBT or any other IBT affiliate or its sponsored employee benefit plan; permanently barred from seeking or accepting money or other compensation for any goods and services from Local 239, the IBT or any other IBT affiliate or IBT sponsored employee benefit plan other than receipt of vested benefits to which he may otherwise lawfully be entitled by reason of prior participation in an IBT sponsored benefit plan or plans. In addition, Baroncelli is prohibited from having any contributions made on his behalf to any IBT-affiliated benefit funds by Local 239 or any other IBT-affiliated entities.

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

AFL-CIO



FD-527

OFFICE OF
JAMES P. HOFFA
GENERAL PRESIDENT

July 24, 2000

Mr. Fausto Maldonado
80-50 192nd Street
Jamaica Estates, NY 11423Re: Panel Report and Recommendations

Dear Sir and Brother:

You will find enclosed the report and recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions, and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,

A handwritten signature in cursive script, reading "James P. Hoffa", is written over the typed name and title.

James P. Hoffa
General President

JPH/ndb
Enclosure

cc: John J. Cronin Jr., Administrator, Independent Review Board

BEFORE A HEARING PANEL
APPOINTED BY THE INTERNATIONAL UNION

DANIEL J. KANE, SR.
Charging Member

v.

FAUSTO MALDONADO
Charged Member

I. The Charge

This matter arises from the April 20, 2000, charge referred by the Independent Review Board ("IRB") to the Trustee of Local 239, IBT (Local 239), Daniel Kane, Sr. ("Trustee Kane" or the "charging party"), pursuant to Article XIX of the IBT Constitution, against former Local 239 member Fausto Maldonado. The IRB charge which was referred to Trustee Kane alleges, in pertinent part, as follows:

While a member of Local 239 and the IBT, Fausto Maldonado brought reproach upon the IBT and violated his oath of membership by scheming to falsify Union business records in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1) and (2) of the IBT Constitution, to wit:

From at least 1996 through the present, Fausto Maldonado engaged in a scheme to cause the creation of and maintain false Local 239 records to allow him to falsely obtain union membership.

II. The Panel Hearing

The hearing on these charges was held on July 11, 2000, in Brooklyn, New York before an Article XIX hearing panel appointed by the IBT General President. The hearing panel consisted of Stuart Mundy, Frank Gentile and Mark Harrington. Despite receiving proper notice of the hearing, the charged party failed to appear to present a defense to the charges. In addition, Maldonado provided no explanation, by letter or otherwise, for his failure to appear before the panel.

By failing to appear before the panel, Maldonado has obstructed, interfered and unreasonably failed to cooperate with the duties of the IRB as set forth in Paragraph G of the March 14, 1989, Consent Decree. As a result of this conduct, Maldonado may not contest the evidence of the charges against him.

III. Recommended Penalty

As a result of the aforesaid violations and conduct, the panel recommends that Fausto Maldonado be expelled from membership in the Union; permanently barred from participating in the affairs of the Union; permanently barred from holding union office; permanently barred from contracting with, seeking or holding office or employment with Local 239, the IBT or any other IBT affiliate or its sponsored employee benefit plan; permanently barred from seeking or accepting money or other compensation for any goods and services from Local 239, the IBT or any other IBT affiliate or IBT sponsored employee benefit plan other than receipt of vested benefits to which he may otherwise lawfully be entitled by reason of prior participation in an IBT sponsored benefit plan or plans. In addition, Maldonado is prohibited from having any contributions made on his behalf to any IBT-affiliated benefit funds by Local 239 or any other IBT-affiliated entities.