

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,      :
                                :
                                : 88 Civ. 4486 (DNE)
                                :
                                : APPLICATION LXXVIII OF THE
                                : INDEPENDENT REVIEW BOARD
                                : --OPINION OF THE
INTERNATIONAL BROTHERHOOD      : INDEPENDENT REVIEW BOARD
OF TEAMSTERS, et al.,        : IN THE MATTER OF THE HEARING
                                : OF TERRENCE FREEMAN
                                :
                                :
Defendant.                    :
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Pursuant to Paragraph O. of the Rules of 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 issues heard by the IRB during a hearing on July 8, 1999, and thereafter determined, on the charges filed against Local 507 member and Secretary-Treasurer Terrence Freeman ("Freeman").

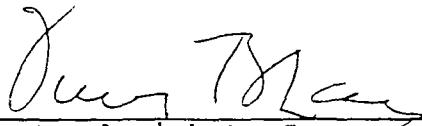
Freeman was charged with bringing reproach upon the IBT and violating the IBT Constitution by testifying falsely before a federal grand jury and in his sworn examination before the IRB. Having considered the evidence and post-hearing submissions by the Chief Investigator, the IRB found that the charge against Freeman was proved. As a penalty, Freeman is to serve a three-year suspension, less the twenty-month suspension already served.

During the remaining sixteen months of his suspension, Freeman may not obtain employment, consulting or other work, from the IBT or IBT-affiliated entity.

Enclosed with the January 31, 2000, Opinion are the following exhibits:

- 1) October 13, 1998, IRB Investigative Report with exhibits 1-12;
- 2) July 8, 1999, Freeman Hearing Transcript with IRB's exhibits IRB 1 - IRB 12.

It is respectfully requested that an Order be entered affirming the IRB's January 31, 2000, Opinion if Your Honor finds it appropriate.

By: 
Frederick B. Lacey
Member of the
Independent Review Board

Dated: February 9, 2000

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IN RE:	TERRENCE FREEMAN	:
	Local Union 507	:
	Joint Council No. 1	:
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DECISION

On October 13, 1998, we referred our Report, pertaining to Local 507 member and Secretary-Treasurer Terrence Freeman ("Freeman"), and accompanying exhibits to Gary M. Tiboni, President of Joint Council No. 1. First, the Report alleged that while an IBT Member, Freeman violated Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution by testifying falsely before a federal grand jury. Second, the Report alleged that while an IBT officer and member, Freeman brought reproach upon the IBT and failed to cooperate with the IRB in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and Section 14(i) of the IBT Constitution when he testified falsely during his sworn examination of June 18, 1998 by the IRB. On November 25, 1998, Joint Council No. 1 President Gary M. Tiboni filed the above-recommended charges against Freeman. The charges will hereinafter be referred to as the "first" and "second" charges.

At his hearing before us Freeman did not contest his culpability. Accordingly the only question before us is the penalty to be imposed. Because we base part of our disposition on the resolution of criminal charges against Freeman, we describe those charges in Part II below before deciding the charges filed by the Joint Council in Part IV below.

I. Background

Local 507 represents warehouse, manufacturing, processing, assembling and

installing employees in the vicinity of Cuyahoga County, Ohio. Its office is located in Cleveland. Freeman joined the IBT in the 1970's when the non-IBT affiliated local he was represented by merged into Local 507. With the exception of the voluntary leave described below, Freeman has been a business agent of Local 507 from that time to the present and Secretary-Treasurer of Local 507 from 1994 to present.

II. Underlying Federal Criminal Conviction

On September 17, 1997, the federal grand jury of the U.S. District Court for the Northern District of Ohio returned a three-count indictment against Freeman. Generally summarized, Count 1 charged that at a time when Riser employed members of Local 507 under a collective bargaining agreement, Freeman sought the agreement of the executive of a company, Riser Foods, Inc., ("Riser") and from a Riser executive, Anthony Rego ("Rego"), to prohibit Freeman's opponent for local office from campaigning on Riser's property. In effect Count 1 charged that in return Freeman would agree to a temporary reduction in contributions payable to the pension and welfare funds the employer was obligated to pay into under the collective bargaining agreement. Count 2 charged Freeman with lying to the grand jury concerning the above-described alleged bribe. Count 3 charged Freeman with lying to the grand jury concerning whether he had even met with the company officials in question and whether Freeman had requested that Riser take actions to curtail his opponent's campaign among Riser's employees.

On the day he was indicted, Freeman submitted a written request for voluntary leave from his position as Secretary-Treasurer of Local 507. This voluntary leave request was accepted by the local union. It began immediately on September 17 and

lasted until June 3, 1999. During that time Freeman received no pay or benefits and did not participate in union meetings. Following the indictment, the Local Union filed its own charges against Freeman on December 23, 1997 but suspended the processing of those charges allegedly pursuant to Article XIX, Section 7(a) of the IBT Constitution "so that Brother Freeman [could] be afforded a full and fair hearing [on the federal indictment] without jeopardizing his right against self-[i]ncrimination."

The trial on the federal indictment was held on August 10-15, 1998 before U.S. District Judge Solomon Oliver. At his federal criminal trial, Freeman acknowledged that a campaign for election of Local Union 507 officers was ongoing in August of 1993 when he visited the office of Riser and met with Rego, Chairman and Chief Executive Officer of Riser. This acknowledgment is consistent with Freeman's travel records, referred to as "route sheets". Freeman furnished those documents, which were used at the trial to convict him as described below. Freeman testified that Rego raised the topic of a local union political campaign, campaign literature, and the firing of people who failed to keep up production standards because they were standing around talking politics. Freeman also acknowledged that he met with Riser's attorney, Robert Duvin ("Duvin") in December of 1993 and that Duvin "began to talk about Riser Foods not having the ability to pay the contributions to the Health & Welfare & Pension." The testimony as to what else was said at these two meetings was otherwise disputed by Freeman, on the one hand, and Rego and Duvin on the other.

The jury acquitted Freeman on the first and second counts of the indictment. The jury found Freeman guilty under Count III of the indictment. In effect, as was later

noted by Judge Oliver, the jury simply found that Freeman had lied about meeting with Rego and Duvin but that he had not lied about any participation in the alleged bribery.

Freeman was sentenced by Judge Oliver on November 17, 1998 to five months of imprisonment followed by five months at a work release center.

III. Response of Joint Council to Our Report

Following the November 15, 1998 filing of the charges, with Joint Council No. 1, the Joint Council forwarded to us by cover letter of January 4, 1999 its Panel Report and Recommendations. The Panel concluded that the charges against Freeman should be dismissed. By letter of March 8, 1999, we notified Joint Council No. 1 that its decision was unlawful, not responsibly decided and inadequate under the circumstances. We allowed the Joint Council ten days to set forth in writing any and all additional actions it had taken, or would take, to correct defects that were pointed out in that letter. We also indicated that it appeared that the Joint Council Executive Board may have deliberately ignored their obligations under the Consent Decree to adjudicate this disciplinary charge fairly. We had instructed the Chief Investigator to investigate whether any of the Joint Council members had intentionally or unreasonably failed to cooperate with the IRB in violation of their obligations under the Consent Order and the IBT Constitution.

On March 18, 1999, the Executive Board of Joint Council No. 1 issued a modified decision vacating the January 4 decision but finding that the January 4 decision was "responsible and sufficient". In its revised March 18 decision, Joint Council No. 1 found against Freeman as to the first charge and suspended him from office for twenty-four months with credit for the time for which he had voluntarily taken

unpaid leave. The Joint Council also found against Freeman on our second charge and suspended Freeman for life from office and membership. The Joint Council found, as to its revised decision:

As with other matters in this proceeding, there was not one right answer and one wrong answer. The Joint Council exercised its discretion in a lawful and responsible way and its decision was sufficient.

By letter dated April 15, 1999, we notified Joint Council No. 1 President Tiboni that the foregoing decision was inadequate. We then set the matter for a de novo hearing before the IRB. That hearing was held on July 8, 1999 in Cleveland.

IV. Resolution of Two Charges Pending Before IRB

At his hearing Freeman did not contest the charges. He admitted the conviction for perjury¹ and admitted that he provided false testimony in his sworn IRB examination when he stated that he did not attend a meeting with Rego prior to 1993 and that he did not remember attending such a meeting. Accordingly, Charge 1 and Charge 2 have been established.

V. Sanction

In considering the sanction to be imposed, we take into account the following mitigating factors: Freeman's self-imposed suspension, which included a total loss of salary and benefits and other indicia of acceptance of responsibility; including his expressions of remorsefulness; the fact that he was not effectively represented by

¹Under the Consent Decree, Freeman cannot contest in this union disciplinary proceeding facts found against him in the federal criminal proceeding. United States v. International Brotherhood of Teamsters (Friedman and Hughes), 725 F.Supp. 162, 166-67 (SDNY 1989), aff'd 905 F.2d 610, 620-21 (2nd Cir. 1990).

counsel at the time the perjury was committed; and, the nature of the offense.²

Freeman accepted responsibility for his actions by not contesting the facts underlying the allegations in this proceeding. Further, although not entirely voluntary, Freeman's withdrawal from the business of Local 507 upon his federal indictment is an indicator of acceptance of responsibility. At his federal criminal trial, Freeman testified voluntarily and produced evidence, the route sheets, that was used to convict him. Furthermore, he testified truthfully about his meeting with Rego, contradicting his earlier grand jury and sworn examination testimony. He expressed remorse for that prior testimony.

In all, Freeman was represented by six lawyers. The first of the six lawyers represented him at his IRB sworn examination in 1995. The next two lawyers represented him before the grand jury. Despite the obvious relevancy of documents, such as the route sheets which ultimately served to remind Freeman of the meeting he had attended with Rego, none of these lawyers made any effort to locate documents which would have assisted Freeman in answering the questions posed to him in the above-noted proceedings. The above three lawyers also represented the local union.

²We also note the role Freeman has played in the affairs of Local 507. For many years Harold Friedman dominated Local 507. He was suspended by the Independent Administrator in 1990. U.S. v. IBT ("Friedman"), 905 F.2d 610 (2nd Cir. 1990). Up to that point throughout his career in the Local, Freeman had been supervised by Friedman. Freeman was never charged with misconduct by the independent investigator. After substantial effort under the Consent Decree to cleanse the Local of the Friedman regime, Freeman ran for office in 1993 and was elected as the Secretary-Treasurer of the local. Following Freeman's election and under his leadership, the local has delivered on many of the promises of union democracy and participation by members in affairs of the Local as guaranteed by the IBT Constitution. These benefits include rank and file involvement in contract negotiations, dramatically increased participation in general membership meetings, as well as organizing and steward training seminars and membership education.

Only after his September 1997 indictment was Freeman referred to a criminal lawyer. The first criminal lawyer he retained became unable to represent him, but in the meantime did not develop any defense. The second criminal lawyer he retained was, initially at least, unable to assist in the development of Freeman's case because of a serious illness. After Freeman showed up for his May 1998 sworn examination by the IRB without a lawyer, he was represented at the continued examination held in June of 1998 by the same lawyer who had failed to prepare Freeman for the examination. Only following that procedure was any attempt made to locate relevant documents, especially the route sheets described above. That lawyer and a sixth lawyer were involved in locating the route sheets, preparing for and trying the criminal case.


Notwithstanding the fact that perjury is never acceptable, however and whenever committed, there are different degrees of perjury. Judge Oliver rejected the request of the government to impose the disqualification from union office under § 504(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 504(b). Judge Oliver carefully analyzed the verdict of the jury in light of the counts of the indictment and concluded that the jury had simply found that Freeman had lied about attending the meeting with Rego, and nothing more. In particular Judge Oliver found that the local union had not been harmed, and that Freeman had not used his position "in any capacity to obtain illegal gain at the expense of the members of the organization or the beneficiaries of the benefit plan."

VI. Conclusion

Based on the foregoing, Local 507 member and Secretary-Treasurer Terrence

Freeman brought reproach upon the IBT and violated the IBT Constitution by testifying falsely as to his meeting with Rego before both the federal grand jury and in his sworn examination before the IRB. In light of the foregoing mitigating factors we find that a three-year suspension, less the twenty-month suspension already served, is a sufficient sanction for Freeman's misconduct. During the remaining sixteen months of his suspension, Freeman may not obtain employment, consulting or other work, from any IBT or IBT-affiliated entity. If he desires, he may maintain his membership in the IBT; but, Freeman may not participate in any affairs of the local union.

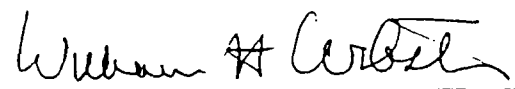
Members of the
Independent Review Board



Grant Crandall



Frederick B. Lacey



William H. Webster

Dated: January 31, 2000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

MEMORANDUM & ORDER
88 Civ. 4486 (DNE)

EDELSTEIN, District Judge:

WHEREAS on October 13, 1998, the Independent Review Board ("IRB") issued an Investigative Report and forwarded it to Gary M. Tiboni ("Tiboni"), President of Joint Council No. 1, recommending two charges against Local 507 member and Secretary-Treasurer Terrence Freeman ("Freeman"): (a) bringing reproach upon the International Brotherhood of Teamsters ("IBT") by testifying falsely before a federal grand jury, in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution; ("first charge"), and (b) testifying falsely during his sworn examination of June 18, 1998 by the IRB, in violation of Article II, Section 2(a), Article XIX, Section 7(b)(1), and Section 14(i) of the IBT Constitution ("second charge"); and

WHEREAS by letter dated November 25, 1998, Tiboni advised the IRB that he had filed charges against Freeman, and by letter dated January 4, 1999, the Executive Board of Joint Council No. 1 ("Executive Board") forwarded to the IRB its Panel Report and Recommendations ("January 4 Report") concluding that the charges against Freeman should be dismissed; and

WHEREAS by letter dated March 8, 1999, the IRB informed the Executive Board that its decision was unlawful, not responsibly decided, and inadequate under the circumstances, and directed it to set forth in writing, within ten days, any actions it had taken or would take to correct the defect; and

WHEREAS on March 18, 1999, the Executive Board issued a modified report, (1) vacating the January 4 decision, (2) finding against Freeman as to both charges, (3) suspending Freeman from office for twenty-four months, with credit for roughly twenty months he had voluntarily taken unpaid leave from September 17, 1997 until June 3, 1999, for the first charge, and (4) suspending Freeman for life from office and membership, for the second charge; and

WHEREAS by letter dated April 15, 1999, the IRB notified Tiboni that the amended decision was inadequate; and

WHEREAS on April 15, 1999, at the direction of the IRB,

John J. Cronin, Jr. ("Cronin"), the IRB administrator, notified Freeman, by UPS overnight letter, that a de novo hearing was scheduled for May 14, 1999, at 10:00 a.m., at the offices of the IRB, located at 444 North Capitol Street, N.W., Suite 528, Washington, D.C., and also gave Freeman the opportunity, in the alternative, to have the hearing in Cleveland, Ohio, if he were to reply within five days stating his preference; and

WHEREAS on May 19, 1999, by UPS overnight letter, Cronin confirmed Freeman's request of April 19, 1999 and rescheduled the hearing for July 8, 1999, at 10:00 a.m., at the law offices of Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio; and

WHEREAS on July 8, 1999, the noticed hearing went forward before the IRB and Freeman did not contest the charges; and

WHEREAS at the hearing, the IRB reviewed evidence establishing that Freeman testified falsely before a federal grand jury and in his sworn examination before the IRB, as well as evidence of a number of mitigating factors, including Freeman's self-imposed suspension, his expressions of remorsefulness, that he was not effectively represented by counsel at the time he committed the perjury, and the nature of the offense; and

WHEREAS by Opinion and Decision dated January 31, 2000, having considered the evidence and post-hearing submissions, the IRB found the charges against Freeman were proved and imposed a three-year suspension, less the twenty-month suspension he had already served; and

WHEREAS by letter dated February 18, 2000, this Court offered Freeman the opportunity to submit written objections to Application LXXVIII by March 8, 1999 at 5:00 p.m.; and

WHEREAS Freeman never submitted any objections to Application LXXVIII to this Court; and

WHEREAS by letter dated March 3, 2000, the Government requested that the matter be remanded to the IRB, based on the allegations that (1) Freeman did not adhere to his self-imposed suspension when he ran for reelection to the position of Secretary-Treasurer in November 1999 and subsequently accepted appointment by Local 507 as a business agent, and (2) the IRB did not consider fully the extent of the harm to the Union that resulted from Freeman's perjury; and

WHEREAS, through counsel, by letter dated March 6, 2000, Freeman informed this Court that the Government had erred in its description of the length of his self-imposed suspension, and that Freeman had informed the IRB of his intention to return to

union office, subject to any objection of the IRB, see Letter from Joyce Goldstein, Attorney for Freeman, to Honorable David N. Edelstein of March 6, 2000, at Exhibits. A and B; and

WHEREAS the IRB did not raise any objections to Freeman's stated intention to return to union office; and

WHEREAS in its January 31, 2000 Opinion and Decision the IRB fully considered the perjury charges against Freeman, the harm he caused, and his subsequent behavior; and

WHEREAS having reviewed the IRB's January 31, 2000 Opinion and Decision and all accompanying exhibits, this Court finds that the charge against Freeman has been proven by a preponderance of the evidence; and

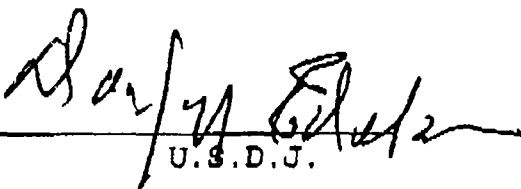
WHEREAS having reviewed the sanctions imposed by the IRB, this Court finds that the sanctions are proportionate to the severity of the misconduct of which Freeman is guilty; and

WHEREAS accordingly, this Court finds that Application LXXVIII of the IRB should be granted;

IT IS HEREBY ORDERED THAT Application LXXVIII of the
Independent Review Board regarding the charges and sanctions
imposed against Terrence Freeman is GRANTED.

SO ORDERED.

Dated: June 13, 2000
New York, New York


U.S.D.J.