

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|---------------------------|---|---|------------------------------|
| <hr/> | | : | 88 Civ. 4486 |
| UNITED STATES OF AMERICA | : | : | APPLICATION XVII OF THE |
| | : | : | INDEPENDENT REVIEW BOARD |
| Plaintiff, | : | : | -- DECISION OF THE |
| | : | : | INDEPENDENT REVIEW BOARD |
| v. | : | : | IN THE MATTER OF THE HEARING |
| | : | : | OF EDWARD GARAFOLA |
| INTERNATIONAL BROTHERHOOD | : | : | |
| OF TEAMSTERS, et al., | : | : | |
| | : | : | |
| Defendant. | : | : | |
| <hr/> | | : | |

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 issues heard and determined by the IRB on November 3, 1994, on the charges filed against Edward Garafola ("Garafola").

First, Garafola was charged with bringing reproach upon the IBT by being a member of organized crime while he was a member of IBT Local 813. Second, he was further charged with failing to cooperate with the duties of the IRB by refusing to appear for his sworn in-person examination.

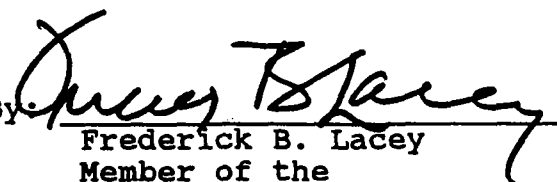
Following the hearing, having reviewed the evidence, the IRB found that Garafola at all pertinent times has been a member of La Cosa Nostra, and that the first charge had been proved. Given this determination, there was no need to address the second charge. As a penalty, Garafola was permanently barred from membership in the IBT.

The IRB elected not to stay the Decision or the penalty imposed pending review by Your Honor as we found it in the best interest of the IBT that Garafola immediately be barred from IBT membership.

Enclosed with the December 22, 1994, Decision of the IRB are the following exhibits:

- A) July 12, 1994, IRB Investigative Report with exhibits;
- B) November 3, 1994, hearing transcript with exhibits;
- C) November 17, 1994, letter transmitting the hearing transcript to Garafola.

It is respectfully requested that an order be entered affirming the IRB's January 3, 1995, Decision, if Your Honor finds it appropriate.

By 
Frederick B. Lacey
Member of the
Independent Review Board

Dated: January 5, 1995

IN RE: EDWARD GARAFOLA

DECISION OF THE
INDEPENDENT REVIEW BOARD

On July 12, 1994, the Independent Review Board ("IRB") issued an Investigative Report (attached hereto as Exhibit A) and forwarded it to General President Ron Carey of the International Brotherhood of Teamsters ("IBT"), recommending charges against Edward Garafola ("Garafola") as follows:

Charge One: While a member of Local 813 you brought reproach upon the IBT and violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) to wit: while a member of Local 813 you were a member of organized crime.

Charge Two: While a member of Local 813 you violated Article XIX, Section 14(i) of the IBT Constitution and obstructed, interfered and unreasonably failed to cooperate with the duties of the Independent Review Board as set forth in Paragraph G of the March 14, 1989, Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.), to wit: On June 17, 1994, you wilfully and without justification refused to appear for your sworn in-person examination pursuant to Paragraph H.3(c) of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters.

On July 15, 1994, Ms. Mary Joyce Carlson, counsel for the IBT Ethical Practices Committee, wrote to the IRB and referred this matter back to the IRB for a hearing and decision. This referral was made because of the unavailability of Federal Bureau of Investigation ("FBI") agents to testify in internal IBT proceedings.

Thereafter, on October 6, 1994, the IRB sent a Notice of Hearing, to be held on November 3, 1994, to Garafola at his residence. Along with the Notice, Garafola was provided with a copy of the IRB Investigative Report (with exhibits) and the IRB Operating and Hearing Rules.

On November 3, 1994, the noticed hearing went forward before the IRB. A copy of the hearing transcript, with the hearing exhibits, is attached hereto as Exhibit B. Those present at the hearing included the members of the IRB, IRB Chief Investigator Charles M. Carberry and John J. Cronin, Jr., IRB Administrator. Federal Bureau of Investigations Coordinating Supervisor/Special Agent Brian F. Taylor testified at the hearing via tele-conference, represented by Assistant United States Attorney Christine Chung as his counsel.

At the hearing the following exhibits were placed into record:

Exhibit 1: IRB Investigative Report with exhibits dated July 12, 1994;

Exhibit 2: Ms. Mary Joyce Carlson's letter to the IRB dated July 14, 1994;

Exhibit 3: Notice of Hearing sent to Garafola dated October 6, 1994;

Exhibit 4: FBI Special Agent Brian F. Taylor's September 30, 1994, Declaration.

The IRB then addressed the Declaration of Special Agent Taylor executed on September 30, 1994. Testimony was then taken from Mr. Taylor. Mr. Taylor has been employed by the FBI as a Special Agent from approximately 1975 to the present and, we find, has had extensive experience investigating matters involving La Cosa Nostra.

Mr. Taylor testified that, based upon FBI files and the briefing of cooperating witnesses and informants, it is his opinion that Garafola is a member of the Gambino Family of La Cosa Nostra.

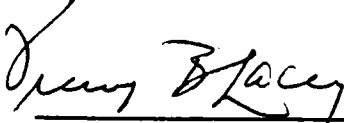
At the conclusion of Mr. Taylor's testimony, and after further review of the various exhibits, the IRB determined it would keep the record open for ten days after Garafola received a copy of the hearing transcript to permit him to review it and communicate with the IRB in the event he wished to submit any materials for consideration. The IRB thereafter transmitted by letter dated November 17, 1994, a copy of the transcript to Garafola, so advising him. A copy of that letter is attached hereto as Exhibit C. As of this date, no response has been received from Garafola.

On the basis of the foregoing, we find Mr. Taylor's testimony and the averments in his Declaration to be credible and hold that there is just cause for determining that it has been established by a preponderance of the evidence that Garafola at all pertinent times has been a member of the Gambino Family of La Cosa Nostra and has associated with members of organized crime. Accordingly, we determine that Charge One has been proved. Having determined that Charge One against Garafola has been proved, there is no need to address the merits of Charge Two.

PENALTY TO BE IMPOSED

Garafola's membership in organized crime is repugnant to the idea of a corruption-free Union. The IBT has committed itself to cleansing its ranks of organized crime's influence. Consistent with that commitment, the only just punishment for Garafola is permanent debarment from the IBT.

Members of the
Independent Review Board

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

Dated: January 3, 1995

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,
 Plaintiff,
 -against-
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, et al.,
 Defendant.
-----X

MEMORANDUM & ORDER
88 Civ. 4486 (DNE)

-----X
IN RE: APPLICATION XVII OF THE
 INDEPENDENT REVIEW BOARD
-----X

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement of an action commenced by plaintiff, the United States of America, against defendants, International Brotherhood of Teamsters ("IBT"), et al. This settlement was embodied in a voluntary consent order entered March 14, 1989 ("the Consent Decree"). Pursuant to paragraph 0 of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("the IRB Rules"), the Independent Review Board ("the IRB") has made an application to this Court, seeking approval of the IRB's decision in this matter.

Application XVII presents for this Court's review the IRB's decision regarding disciplinary charges brought against Edward Garafola ("Garafola"), a member of IBT Local 813, which is located in New York City, New York. "In reviewing actions of the IRB, this Court [applies] the same standard of review applicable to review of final federal agency action under the Administrative Procedure

Act." See IRB Rules, ¶ 0. Thus, this Court must determine whether the IRB's decision was arbitrary and capricious.

The charges that the IRB brought against Garafola are contained in an investigative report issued by the IRB on July 12, 1994.¹ Garafola was charged as follows:

Charge One:

While a member of Local 813, you brought reproach upon the IBT and violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1)[,] (2) and (9)[,] to wit:

While a member of IBT Local 813, you were a member of organized crime.

Charge Two:

While a member of Local 813 you violated Article XIX Section 14 (i) of the Constitution and obstructed, interfered and unreasonably failed to cooperate with the duties of the Independent Review Board as set forth in paragraph G of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.), to wit:

On June 17, 1994, you wilfully and without justification refused to appear for your sworn in-person examination pursuant to Paragraph H.3 (c) of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters.

(Decision of the Independent Review Board In Re: Edward Garafola (January 3, 1995), Ex. A. at 6-7).

¹ The IRB is vested with broad investigatory and disciplinary powers. The IRB's investigatory authority is coextensive with that of the General President and the General Secretary-Treasurer under the IBT Constitution and applicable law. See February 2, 1994 Memorandum & Order, 842 F. Supp. 1550, 1551-52 (S.D.N.Y. 1994); see also August 19, 1991 Opinion & Order, 803 F. Supp. 761, 768 (S.D.N.Y. 1992), aff'd in relevant part, 998 F.2d 1101 (2d Cir. 1993). Under the Consent Decree, the IRB must use this authority, among other things, to investigate allegations of corruption within the IBT, allegations of influence by La Cosa Nostra or other organized crime groups upon IBT members or activities, and any failure of IBT members or leadership to cooperate fully with the IRB. See id.; Consent Decree ¶ G(a).

On October 6, 1994, the IRB sent a Notice of Hearing to Garafola at his residence. This notice stated that a hearing on the above-quoted charges was scheduled for November 3, 1994 ("the hearing"). Along with this notice, the IRB sent a copy of the IRB Investigative Report, with exhibits, and a copy of the IRB Operating and Hearing Rules. Mr. Garafola failed to attend the hearing on November 3, 1994.

At the hearing, the IRB heard testimony from Special Agent Brian F. Taylor ("Taylor") of the Federal Bureau of Investigation ("FBI"). The IRB also reviewed Taylor's sworn declaration, which was executed on September 30, 1994, and which was submitted as an exhibit at the hearing. Based on Taylor's testimony regarding his experience with the FBI, the IRB found that Taylor had extensive experience investigating matters involving La Cosa Nostra. Taylor testified that Garafola was a member of the Gambino Family of La Cosa Nostra. Taylor stated that his testimony was based on FBI files and the briefing of cooperating witnesses and informants. The IRB found Taylor's testimony and sworn declaration to be credible.

At the conclusion of the hearing, the IRB kept the hearing record open until ten days after Garafola received a copy of the hearing transcript. The IRB sent Garafola a letter, dated November 17, 1994, which informed him that the record was being kept open for ten days to give him an opportunity to present evidence. A transcript of the hearing was enclosed with the letter. Garafola failed to submit any evidence or otherwise respond to the IRB.

Based on the evidence produced at the hearing, the IRB held that it had been established by a preponderance of the evidence, see IRB Rules, ¶ J.6, that Garafola was a member of the Gambino Family of La Cosa Nostra and had associated with members of organized crime. Accordingly, the IRB concluded that "Charge One" against Garafola had been proven. Having determined that the first charge against Garafola had been proven, the IRB decided that there was no need to address the merits of the second charge. After considering the gravity of the charge that had been proven against Garafola, the IRB permanently debarred Garafola from the IBT.

The IRB's findings and rulings are contained in a four-page opinion. These findings and rulings are based on evidence presented at a hearing at which Garafola was given the opportunity to present evidence on his behalf. Indeed, the IRB provided Garafola with ample opportunity, both during and after the hearing, to present evidence on his own behalf and to be represented by counsel if he so desired. Despite these opportunities, Garafola failed to communicate with the IRB.

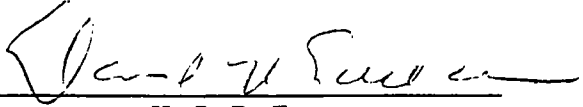
By letter dated February 2, 1995, this Court informed Garafola that if he wished to object to the IRB's findings and rulings, any objections to IRB Application XVII could be submitted to this Court on or before February 16, 1995. Garafola failed to submit any objections to IRB Application XVII and, to date, has not communicated with this Court.

Having carefully reviewed the IRB's opinion, as well as the exhibits attached thereto, I find that the IRB's decision is not

arbitrary or capricious. See IRB Rules, ¶ 0 ("In reviewing actions of the IRB, this Court shall apply the same standard of review applicable to review of final federal agency action under the Administrative Procedure Act."); see also December 7, 1994 Memorandum & Order, 871 F. Supp. 178, 1994 U.S. Dist. LEXIS 17476, at *6 (S.D.N.Y. 1994); October 19, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 14900, at *4-*5 (S.D.N.Y. 1994); September 22, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 13407, at *4-*5 (S.D.N.Y. 1994); June 2, 1994 Memorandum & Order, 853 F. Supp. 757, 1994 U.S. Dist. LEXIS 7425, at *6 (S.D.N.Y. 1994); May 6, 1994 Memorandum & Order, 1994 U.S. Dist. LEXIS 6513, at *5 (S.D.N.Y. 1994). Accordingly, the decision of the IRB is affirmed in all respects.

SO ORDERED.

Dated: New York, New York
March 1, 1995


U.S.D.J.