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INVESTIGATIONS OFFICER,

Claimant,

v.

WILLIAM CHERILLA,

Respondent.

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DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter concerns a charge filed by the Investigations Officer against William Cherilla ("Cherilla"), the Secretary-Treasurer of IBT Local Union 249 in Pittsburgh, Pennsylvania. A hearing was held before me on July 2, 1991, and post-hearing briefs were submitted. Having reviewed the evidence and the post-hearing submissions, I find that the Investigations Officer has met his burden in proving the charge.

**I. THE CHARGE**

The Investigations Officer charged Cherilla with:

Violating Article II, Section 2(a) and Article XIX, Section 6(b)(2), of the International Brotherhood of Teamsters Constitution (IBT), by conducting [himself] in a manner to bring reproach upon the IBT; and

Violating Article XIX, Section 6(b)(6) of the IBT Constitution; to WIT:

On September 10, 1990, in the office of Local 249 [Cherilla] assaulted an officer of the Local.

The charge implicates two provisions of the IBT Constitution.

First, Article XIX, Section 6(b) is implicated. This provision sets forth a non-exhaustive list of grounds for bringing disciplinary charges. That list includes:

- (2) Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.

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- (6) Disruption of Union meetings, or assaulting or provoking assault on fellow members or officers, or failure to follow the rules of order or rulings of the presiding officer at meetings of the Local Union, or any similar conduct in, or about Union premises or places used to contact Union business.

Second, Article II, Section 2(a) is also implicated. This section, which contains the oath of office mentioned in Article XIX, Section 6(b)(2), mandates that all members shall conduct themselves "at all times in such a manner as not to bring reproach upon the Union . . . [and] to never knowingly harm a fellow member . . . ."

## II. MERITS OF THE CHARGE

The resolution of this case requires a choice between two conflicting factual accounts of a confrontation that occurred between Cherilla and his then fellow Local Union officer, George Ogg ("Ogg"), on September 10, 1990, at the offices of IBT Local Union 249.

As a preliminary matter, all parties agree that at the time of the confrontation Cherilla and Ogg were running on opposing slates in a Local Union officer election. Ogg was seeking re-election as Vice President, and Cherilla was seeking re-election as Secretary-Treasurer. According to Cherilla, the two knew each other for

years and their families socialized together until a political split on the board developed. T94-1 to 5.<sup>1</sup>

On September 9, 1990, the day before their confrontation, Ogg had held a meeting at the Local 249 offices with IBT members employed by Yellow Freight. Cherilla acknowledges that he was outside the offices on the sidewalk before that meeting soliciting votes from the Yellow Freight employees. IO Ex. C at p. 16<sup>2</sup>; T35-15 to 19. Evidently, Cherilla became concerned that Ogg would forget to turn the air conditioner off after his meeting. At the hearing before me, Cherilla testified that he reminded Ogg about the air conditioner on the day of his meeting with the Yellow Freight employees. T35-20 to T36-1. At a prior deposition, Cherilla had stated that he asked one of the other members to ensure that Ogg turned off the air conditioner. IO Ex. C at p. 16. In any event, all parties agree that on the afternoon of September 10, Cherilla called Ogg into his office to berate him about leaving the air conditioner on after the September 9th meeting. Both men agree that their discussion escalated into a heated verbal exchange, but the accounts diverge as to what happened thereafter.

According to Cherilla: Ogg denied leaving the air conditioner on; Cherilla told Ogg he was stupid; and the two men "started

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<sup>1</sup> All transcript references are to the July 2, 1991, hearing. The citation refers to the transcript page number followed by the line number. In this case, "T94 - 1 to 5" refers to transcript page 94, lines 1 through 5.

<sup>2</sup> Investigations Officer's exhibits are referred to as "IO Ex." followed by the alpha character identifying the exhibit and then the page number of the exhibit, if appropriate.

cussing at each other." T39-7 to 18. After Ogg left Cherilla's office and while he was walking away, Ogg made a remark that Cherilla viewed as an insult to his wife. Cherilla asserts that he then started out of his office after Ogg and Ogg thereupon started in his direction. By Cherilla's account, Ogg shoved him as they stood face-to-face and he shoved Ogg back by pushing him in the chest with open hands. This face-to-face two-handed push to Ogg's chest had the effect, Cherilla asserts, of spinning Ogg around so that he fell sideways, face first into a louvered partition wall that was behind him and then to the floor. Cherilla states that he then walked away and had no further interaction with Ogg. T40-3 to T48-5.

Ogg asserts, contrary to Cherilla's account, that he never pushed Cherilla, and in fact had a briefcase in one hand and a folder in the other as Cherilla pursued and caught up with him. These details are corroborated by the testimony of two other Local 249 office employees. Testimony of Helen Barry, IO Ex. J pp. 31-39; and David Winklman, IO Ex. D at p. 7. Ogg further states that Cherilla threatened to "beat the shit out of [him]" (IO Ex. M at p. 14), and when Ogg turned around, Cherilla kicked him in the groin. In addition, Ogg indicated that as he bent over, Cherilla struck him in the face and head with karate blows and continued to beat him until he fell to the floor and lost consciousness.

When Ogg regained consciousness he found he was bleeding profusely. He made his way to the men's room where he attempted to stop the bleeding. At this time, another Union member, William

Sepdy ("Sepdy"), entered the Local 249 office and found that Ogg's office door was closed and his briefcase and suit coat were lying on the floor outside. As Sepdy picked up the suit coat, he noticed that the back of his hand was "full of blood." As he picked up the briefcase, "blood poured out of the briefcase." IO Ex. J at p. 49.

Eventually, Sepdy found Ogg in the men's room dazed and bleeding. Sepdy testified that "[i]t was coming out something terrific," and he offered to take Ogg to the hospital but Ogg refused. IO Ex. J at p. 50. Ogg informed Sepdy that Cherilla had "suckered" him. IO Ex. B at p. 15. Sepdy obtained ice and the two attempted unsuccessfully to stop the bleeding. According to Ogg, after "a good 30, 45 minutes" the bleeding slowed down and he was able to drive home. IO Ex. B at p. 16.

At home, Ogg cleaned up and his wife drove him to the hospital. There, 28 sutures were required to close the wounds inflicted by the beating. IO Ex. M at p. 19. In addition, Ogg suffered a fractured orbital bone around the left eye, a fractured nasal bone, a deviated septum and torn cartilage in the nasal area. There also were four multiple fractures under his left eye (IO Ex. M at p. 24), and to avoid a detached retina, Ogg had to "lay two days straight" so that the unsupported eye did not drop. IO Ex. M at p. 30. Moreover, Ogg had to undergo surgery to repair the damaged bones and cartilage in his nose.

The photographs of Ogg's extensive injuries submitted by the Investigations Officer at the hearing before me corroborate Ogg's version of the confrontation, and Ogg has testified that the

photographs accurately depict the injuries he suffered. IO Ex. M at p. 19. Cherilla's version, by his own admission, does not account for such injuries. T131-17 to 21.

In deciding which of the above recited accounts to credit, I have carefully compared the testimony of Ogg and Cherilla and I have noted the uncontroverted evidence regarding Ogg's injuries and the state in which he was found by Sepdy on the afternoon of September 10, 1990. Without more, I would conclude that Cherilla's version is implausible and that the weight of the evidence supports the Investigation Officer's claim that Cherilla brutally assaulted Ogg at the Local 249 offices.

However, in addition to Ogg's and Cherilla's testimony, and the undisputed facts, the testimony of two office employees who partially witnessed the incident confirms Ogg's version of events. Both Helen Barry and David Winklman had obstructed views of the beating. Neither of their accounts supports Cherilla's assertion that Ogg pushed him. While neither actually observed Cherilla striking Ogg, Barry noted that she would "never forget the fury in Bill's [Cherilla's] face when it happened" (IO Ex. D at p. 6), while Winklman observed Cherilla launching a kick in the direction of Ogg. As stated by Winklman, "I seen George buckle over and fall back. I seen Bill fall backwards (indicating), and then I seen Bill adjust himself and go towards him again." IO Ex. J at p. 32.

On the issue of credibility, I also note that Cherilla originally filed a criminal harassment complaint against Ogg shortly after the incident. This charge was dismissed with a

finding of not guilty at a Magistrate's hearing in Pittsburgh Municipal Court on January 18, 1991. The transcript of that hearing contains the testimony of a Timothy Counahan who purports to have witnessed the confrontation. His account is virtually a word for word corroboration of the account offered by Cherilla. IO Ex. J at pp. 17-25. The difficulty with Counahan's testimony, however, is that the other two witnesses, Barry and Winklman, did not see Counahan at the office during the time in question. IO Ex. J at p. 28; Ex. J at pp. 36-37. Moreover, Barry controlled ingress and egress from the office with a buzzer at her desk that locked and unlocked the outer door. IO Ex. J at p. 38. Thus, she would inevitably be aware of whoever was present.

Accordingly, the fact that Barry did not see Counahan compels a conclusion that he was not present and that his testimony is most likely fabricated. In addition, at the Magistrate's hearing on the harassment charge, Cherilla testified that Counahan was present in the office along with the rest of Local 249's office personnel at the time of the incident. IO Ex. J at p. 15. However, at the hearing before me he identified the employees who were near the scene but made no mention of Counahan. T41-9 to T42-1. All of this leads me to conclude that Counahan's testimony at the Magistrate's hearing is not credible.

Finally, it must be noted that Cherilla holds a third-degree black belt in Tae Kwon Do, a form of karate. Cherilla's office walls are replete with certificates and photographs evidencing his expertise in the martial arts. His prowess in this area is well

known throughout the Union and especially to Ogg. By Cherilla's own admission, he has been arrested twice on assault charges, although there are no convictions. It is unlikely that Ogg, who is 64 years old, would initiate a physical confrontation with a slightly younger man known to be an advanced practitioner of a deadly fighting art.

Given this background and the additional arguments submitted by both parties in their post-hearing briefs, I conclude that the Investigations Officer has established by a preponderance of the evidence that Cherilla physically assaulted Ogg on the afternoon of September 10, 1990.<sup>3</sup>

The assault, taken by itself, violates Article XIX, Section 6(b)(6) of the IBT Constitution (assaulting fellow members or officers in, or about, Union premises), and Article II, Section 2(a) (knowingly harming fellow members). Thus, I find that the Investigations Officer has established just cause to prove the charge against Cherilla.

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<sup>3</sup> I note here that the character evidence submitted by Cherilla in the form of witness testimony at the hearing before me does not address the character trait at issue in these proceedings. The witnesses testified to Cherilla's good work as an organizer and negotiator whereas the trait at issue here is Cherilla's disposition for peaceful versus violent behavior. Accordingly, the testimony of these witnesses is simply not relevant.

I also note that my use of the preponderance of evidence standard in evaluating the findings of the Investigations Officer is now a settled issue. See U.S. v. IBT 745 F. Supp 333, 338 (S.D.N.Y. 1990) ("Thus I am surprised to find the standard of proof issue raised since this Court and the Court of Appeals have never expressed any doubt as to the standard applied by the Independent Administrator to determine whether just cause has been proved.") For this reason, Cherilla's assertion that a clear and convincing or reasonable doubt standard should be applied here is meritless.



An ancillary issue to be resolved here is whether Cherilla "brought reproach" upon the IBT by attacking Ogg as charged. Cherilla argues that his conduct here was not "reproachful." In support of his position, Cherilla has offered a petition with numerous signatures of IBT members attesting to their support of him and indicating they were aware of the confrontation between Ogg and him before the Local Union officer election. Other character witnesses provided similar testimony.

As a preliminary matter, Cherilla's arguments here suggest the application of an "Article XIX, Section 3(d)" defense. Specifically Article XIX, Section 3(d) of the IBT Constitution is implicated by offering evidence that the membership knew of the incident at issue but voted Cherilla into office nonetheless.

Article XIX, Section 3(d) provides that disciplinary charges against elected officers are limited to events occurring within their current term of office or to events from prior terms that were not generally known to the membership. Cherilla suggests that his confrontation with Ogg was generally known prior to his reelection to his current term.

Section 3(d) has no application here. It is settled law that a Section 3(d) defense requires a respondent to prove that the members conclusively know the defendant to be "actually guilty of the conduct charged" when elected to his current term of office. United States v. IBT, 735 F. Supp. 506, 517 (S.D.N.Y.), aff'd, 905 F.2d 610 (2d Cir. 1990). Here, Cherilla's testimony is that, while campaigning, he represented the incident to the IBT members as a

matter of two men shoving each other. Thus, Cherilla cannot show that these members had conclusive knowledge of the brutality inflicted. Moreover, it is well settled that Section 3(d) cannot shield an officer from a charge which the officer denies. United States v. IBT, 725 F. Supp 162 (S.D.N.Y.) aff'd, 905 F.2d 610 (2d Cir. 1990). Here, Cherilla has consistently denied that he brutally attacked Ogg. He also denies that his actions have brought reproach upon the Union. Given the foregoing, Cherilla cannot meet his Section 3(d) burden.

On a more general level, Cherilla argues that the continuing support of the membership, as well as the support of other Union officers and management officials, prove that his conduct has not brought reproach upon the Union. This argument must also be rejected.

The fact remains that Cherilla brutally attacked and beat a man who was not capable of defending himself. The issue of the air conditioner and the alleged slur of Cherilla's wife, even if made, simply do not excuse Cherilla's violent attack on Ogg. The fair inference here is that the verbal argument over air conditioning and the straining to find a slur about his wife were nothing more than a bully's pretext for initiating an attack on an opponent who was clearly outclassed. Consideration of the larger context, the election campaign and the political split between two previously friendly men, puts the incident in its true light. As the Investigations Officer stated: "This assault was not a spontaneous event but rather it was a set-up by Cherilla to attack a fellow

Union officer who represented a different political slate." Investigations Officer's Post-Hearing Reply Memorandum at p. 3.

This attack is precisely the kind of strong-arm tactic that has made the IBT a breeding ground for some of the conditions that the Court-appointed officers are charged with eradicating. Cherilla's attack on Ogg sends a message to IBT members that political expression or challenge is dangerous. As such, it has a chilling effect on the free exercise of political rights guaranteed to all IBT members under federal labor law, see 29 U.S.C.S. § 411 ("Bill of Rights of Members of Labor Organizations"), as well as the Consent Decree entered into between the IBT leadership and the Government in 1989.

Accordingly, I can reach no other conclusion than to find that Cherilla's conduct here has brought reproach upon the Union. For the foregoing reasons, I find that the Investigations Officer has established just cause to find that the charge against Cherilla was proved.

### III. THE PENALTY TO BE IMPOSED

Cherilla's violent attack on a fellow Union officer cannot be condoned and his actions are deserving of punishment. An appropriate penalty is required to demonstrate that violent, strong-arm tactics will no longer be tolerated and have no place in this Union, especially in the context of a political race. IBT members must be free to engage in Local Union politics without fear of violence and intimidation. On a more basic level, IBT members

who blatantly ignore their IBT Constitutional obligation not to "assault" or "harm" their fellow members must be sanctioned. Therefore, I impose upon Cherilla a suspension of five years from the IBT.

Cherilla is to remove himself from the IBT and all of his IBT-affiliated Union positions (including membership in the IBT and his position with Local 249) and draw no money or compensation therefrom or from any other IBT-affiliated source for the period of his suspension.

With an eye toward preventing potential problems between Cherilla and Ogg, or any person involved on behalf of Ogg, as a witness or otherwise in this matter, I direct that Cherilla shall not in any way, directly or indirectly, harass, interfere with, assault, threaten or take any other action in any way detrimental to the rights, employment, IBT membership, benefits or other interests of Ogg or any other person involved on behalf of Ogg in this matter. Moreover, I direct Cherilla to immediately instruct all officers, business agents and members of Local 249, by written notice, to refrain from taking any retaliatory action against Ogg or any other persons involved, on behalf of Ogg, in this matter. A copy of that notice and an affidavit that it has been properly distributed shall be supplied to the Investigations Officer by Cherilla within ten days from the date of this decision. In addition, Cherilla shall not participate in any way, in any grievance, disciplinary matter, arbitration or any other Union matter or employment matter pertaining to Ogg, or any other person

involved, on behalf of Ogg, in this matter at any time in the future. The prohibitions set forth in this paragraph are effective immediately and are not subject to my voluntary stay discussed below.

#### IV. CHERILLA'S BENEFITS

At my request, Cherilla's attorney wrote to me on September 23, 1991, indicating that Cherilla is a participant in the following plans, funds and benefit programs:

1. The Western Pennsylvania Teamsters and Motor Carrier Health and Welfare Fund.
2. The Western Pennsylvania Teamsters and Motor Carrier Pension Plan.
3. The Joint Council 40 Pension Plan.
4. The Teamster Affiliates Defined Benefit Pension Plan.
5. An automobile allowance of \$300.00 per month.
6. Auto insurance.

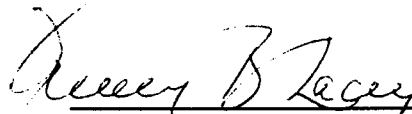
My authority to impose sanctions on a respondent's employee benefits is now well settled. See Investigations Officer v. Senese et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT, 753 F. Supp. 1181 (S.D.N.Y. 1990)

Consistent with my ruling in Senese, I will not alienate any of Cherilla's vested benefits. See also, Guidry v. Sheet Metal Workers National Pension Fund, 1210 S. Ct. 680 (1990). However, I direct that Local 249, Joint Council 40 and any other IBT-affiliated entity that may contemplate doing so, not contribute to

any of the above listed plans, funds or benefit programs during Cherilla's period of suspension. Cherilla is also not entitled to any car allowance or Union-paid insurance coverage on any car he may use during his suspension. Cherilla may, if he wishes, use his personal funds to pay the premiums for his Health and Welfare Fund, or to make contributions to his Pension Plans during his suspension.

**V. MY VOLUNTARY STAY**

With the exception of my prohibitions on future retaliatory actions against Ogg and any other person involved in this matter on behalf of Ogg (see pp. 12-13, supra), I will stay this decision pending Judge Edelstein's review. To that end, I will submit this decision to Judge Edelstein by way of Application.



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Frederick B. Lacey  
Independent Administrator

Dated: November 12, 1991