

INDEPENDENT REVIEW BOARD
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September 10, 1998

Mr. Tom Sever
Acting General President, IBT
25 Louisiana Avenue, NW
Washington, DC 20001

Re: Decision on Charges against Local 938
Executive Board Members Charles Thibault,
Alfred Morrison, Val Neal, Wayne Maslen,
Richard Godin, Vince Johnson and Cecil McEwan

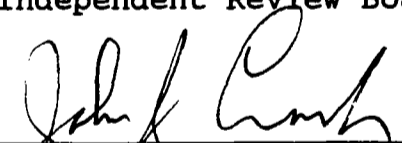
Dear Mr. Sever:

The Independent Review Board has reviewed your decision of September 4, 1998, in the above captioned matter, and finds the decision to be not inadequate.

Very truly yours,

Members of the
Independent Review Board

By:


John J. Cronin, Jr.
Administrator

cc: David L. Neigus, Esq.
Charles Carberry, Esq.
Election Officer
Teamsters Local Union 938

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV 4486 (DNE)

INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

AFL-CIO



OFFICE OF
TOM SEVER
GENERAL SECRETARY-TREASURER

September 4, 1998

Mr. Charles Thibault
21 Strathdee Drive
Weston, Ontario M9R 1A6
CANADA

Mr. Alfred Morrison
2 Mullen Place
Georgetown, Ontario L7G 2R9
CANADA

Mr. Val Neal
18 Secretariat Drive
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Wayne Maslen
3565 Ellengale Dr.
Mississauga, Ontario L5C 1Z8
CANADA

Mr. Richard Godin
789 Inverhouse Dr.
Mississauga, Ontario L5J 2X9
CANADA

Mr. Vince Johnson
11 Cashel Street
Brampton, Ontario L6Z 2X6
CANADA

Mr. Cecil McEwan
22 Crittenden Square
Scarborough, Ontario M1B 1V1
CANADA

Re: Independent Review Board Charges Against Local 938
Executive Board Members Charles Thibault, Alfred
Morrison, Val Neal, Wayne Maslen, Richard Godin,
Vince Johnson and Cecil McEwan Referred to the IBT

Dear Sirs and Brothers:

Having reviewed and duly considered the hearing record and the findings and recommendations of the Article XIX Hearing Panel, I hereby issue the following decision on the charges against you referred to the International Brotherhood of Teamsters by the Independent Review Board ("IRB") pursuant to my authority under Article XIX, Section 11 of the IBT Constitution. Copies of the reports filed by the hearing panel are enclosed with this letter.

As set forth in my decision, I hereby impose a three months suspension from membership or holding office or employment with the IBT and any of its affiliates on each of the respondents as an appropriate sanction for failing to cooperate with the duties of

Mr. Charles Thibault, et al.
September 4, 1998
Page 2

the IRB by refusing to permit the Chief Investigator to conduct a books and records examination.

Fraternally yours,



Tom Sever
Acting General President

TS/dnb

Enclosure

cc: John J. Cronin, Administrator, IRB ✓
Robert Bouvier, Panel Chairman
Tom McGrath, Panel Member
Tom Dziedzic, Panel Member
Teamsters Local Union 938

7/4/97

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

In the Matter of:)	
)	
Article XIX Charges Referred)	
By The Independent Review Board)	
To The International Brotherhood)	
Of Teamsters)	
)	
Against)	DECISION
)	
)	
Charles Thibault, Wayne Maslen,)	
Val Neal, Al Morrison,)	
Richard Godin, Vince Johnson,)	
and Cecil McEwan)	
members of Local 938)	
)	
)	

Having fully reviewed and duly considered the hearing record and the findings and recommendations of the Article XIX Hearing Panel in the above referenced matter, I hereby issue the following decision on the proposed charges against Local 938 members Charles Thibault, Wayne Maslen, Val Neal, Al Morrison, Richard Godin, Vince Johnson and Cecil McEwan referred to the General President by the Independent Review Board ("IRB").

The charges alleged that former Local 938 Executive Board members, Charles Thibault, Wayne Maslen, Val Neal, Al Morrison, Richard Godin, Vince Johnson and Cecil McEwan (hereinafter sometimes collectively referred to as "charged parties" or respondents") failed to cooperate with the IRB by refusing to allow an examination of books and records of Local 938 on September 29, 1997. The IRB alleged that by refusing to allow an examination of the books and records, the charged parties violated Article II, Section 2(a), and Article XIX, Sections 7(b)(1) and (2) and 14(I)

of the IBT Constitution by obstructing, interfering with and unreasonably failing to cooperate with the duties of the IRB as set forth in ¶G of the March 14, 1989 Consent Decree in U.S. v. IBT, 88 Civ. 4486 (DNE) (S.D.N.Y.).

The proposed charges against the respondents were heard before a Hearing Panel comprised of Robert Bouvier, who served as chairman, Tom McGrath and Tom Dziedzic. The Hearing Panel held a hearing on the charges on June 23, 1998, in Mississauga, Ontario, Canada at Teamsters Canada offices at which all respondents, who were properly and timely notified of the hearing, were afforded an opportunity to present evidence and to cross examine witnesses. The respondents refused to appear, instead sending their counsel to argue that the respondents should be allowed to have counsel represent them at the hearing. I will address the respondents' right to counsel claim below.

The Hearing Panel's Findings And Recommendation

After review and consideration of the evidence and briefs submitted by the parties, the Hearing Panel issued separate reports of its findings and recommendations in this case. A copy of the Hearing Panel's reports are appended to this decision. A majority of the Hearing Panel concluded that the IRB did not have jurisdiction in Canada to conduct the books and records examination. The majority found that since the federal District Court, which entered the Consent Decree, did not have jurisdiction over the respondents, the IRB did not have jurisdiction to conduct a books and records examination. (See, Majority Decision at pp. 9-

12). Specifically, the majority found that the Consent Decree did not give the Court jurisdiction over entities, like Local 938 in foreign countries and that the so-called "effects doctrine" relied on by the Court in enforcing an Election Officer's ruling in U.S. v. IBT (Labatt's), 945 F.Supp. 609 (S.D.N.Y. 1996) was not applicable since the activities alleged to be the cause of the requested examination did not have an effect in the United States and that there was no evidence to warrant a finding that there was an "effect" on a party in the United States. The majority of the Hearing Panel recommended that on this basis that the charges be dismissed.

Brother Dziedzic dissented from these findings of the majority on this point and found that there is IRB jurisdiction over the respondents and finding that the respondents were equally bound as are all IBT affiliates and members by the IBT Constitution and the Consent Decree. Brother Dziedzic also found that the activities of the respondents' Local Union as well as all Teamster Canada affiliates had an effect on the IBT in the United States and that by availing themselves of the benefits of IBT affiliation and membership, they were also obligated to its responsibilities. Brother Dziedzic recommended, that had he not agreed to dismissal of the charges on grounds that the respondents were entitled to counsel, he would have found jurisdiction and sustained the charges on the undisputed facts found by the Hearing Panel.

The Hearing Panel also unanimously agreed to dismiss the charges after reviewing applicable Canadian precedent and argument

by the parties, that the respondents were entitled to counsel at the hearing. The Hearing Panel had rejected the respondents request at the hearing to have counsel represent them based on a directive in a letter from me to the charging parties prior to the hearing that they could be represented by an IBT member in good standing but not by an attorney at the hearing. The Hearing Panel found that Canadian law provided that in internal union discipline hearings the charged parties had a right to counsel that could override the IBT Constitution.

They pointed out that the IBT Constitution's saving clause, Article XXVI, Section 2, contemplated that certain provisions of the IBT Constitution might be held "invalid by operation of law" and that this was one of those circumstances. They also found that it would be unfair to not accord the respondents the right to counsel when in charges prosecuted by the IRB, the respondent is permitted to have counsel. Thus, they found that by denying the respondents the right to have counsel represent them at the hearing, the hearing was fundamentally flawed and the respondents were denied due process. Accordingly, they recommended that the charges be dismissed on these grounds as well.

For the reasons set forth below, I reject the majority panel decision on the jurisdiction issue and adopt the dissent on this issue recommended by Brother Dziejic. I also reject the recommendations of the unanimous Hearing Panel on the right to counsel issue and find that the charges must be sustained.

Findings Of Fact

The Hearing Panel found that the facts giving rise to the IRB's charges were undisputed. (Majority Decision, pp. 3-5). I concur with and adopt the majority's findings of fact and they serve as the basis for my decision in this case.

It is clear from these facts that the respondents, who were at the time of the charges, members of the Executive Board of Local 938, refused to permit the Chief Investigator of the IRB to conduct a books and records examination of the Local. I find that this refusal amounts to an unreasonable failure by the respondents to cooperate with the IRB pursuant to ¶G of the Consent Decree.

The respondents had the opportunity to present facts to dispute or mitigate these findings but failed to do so. The Hearing Panel permitted respondents' counsel after the close of the hearing to make a presentation of what he would have presented had he been permitted to attend the hearing. He presented a brief and exhibits that addressed the legal arguments of jurisdiction, right to counsel and notice and service of the proposed charges.

He presented no facts by way of affidavit or otherwise to dispute or mitigate the facts presented by the charging party. Indeed, the facts relied on by the IRB in proposing the charges are based on a documentary record of correspondence between the Chief Investigator's office and counsel for Local 938. The charging party did not present any live witnesses nor in my view were any witnesses needed since the refusal to allow the books and record examination by the respondents is contained in written form to

which there can be no dispute. Therefore, the facts as found by the Hearing Panel are adopted and incorporated into my decision by reference.

The Filing And Service Of The Charges

The Hearing Panel unanimously rejected the respondents' claim that the charges were not properly filed and served upon them. I adopt the Hearing Panel's recommendation on this point and find the respondents' claim without merit. The IRB referred the charges to the General President, who adopted them as proposed, and served them on each of the respondents. There is simply no basis for the respondents to claim that there was a defect in the way the charges were proposed and filed. The General President followed precisely the procedure set forth in the IBT Constitution for filing charges against members. (See, Article XIX, Section 11(a) and Article XIX, Section 14(c)(1)). Accordingly, the respondents' contention here is devoid of merit and the charges were properly filed and served.

The Jurisdiction Of The IRB

I reject the findings and recommendations of the majority decision on the jurisdictional issue, and adopt in its entirety the dissent of Brother Dziejczak finding that there was IRB jurisdiction over the respondents to enforce the Chief Investigator's request for a books and record examination.

I agree with the dissent's opinion that the IBT Constitution applies to all IBT members and affiliates, whether in the United States or Canada. The respondents cannot dispute that the IBT Constitution requires that all affiliates and members comply with

the IBT Constitution. The dissent correctly points out that the IRB rules and regulations and the specific authority granted to them under the Consent Decree are part and parcel of the IBT Constitution. (See, IBT Constitution, Article XIX, Section 14(a) through (i)). Therefore, as the dissent found, if any IBT member is bound by these rules and the IRB's specific grant of authority, then all members, including the respondents must also be bound.

The dissent also correctly finds that the powers of the IRB arise under the power reserved for the IBT under the Constitution. It is without dispute that the IBT could (and does) conduct books and records examinations of Local Unions under the IBT Constitution. (See, Article X, Section 10(a) through (d)). I find that if the IBT has this broad power, and the IRB's grant of authority stems in part from the IBT's power under the Constitution, then the IRB could pursuant to Article X, Section 10(a) through (d), as the dissent found, "step into the shoes" of the IBT and request to perform a books and records examination. I reject any claim that the IBT could not perform a comprehensive books and records examination pursuant to Article X, Section 10. The IBT no doubt does so on a consistent and regular basis.

I also agree with the dissent that the actions by the respondents had an effect on the IBT in the United States. The Canadian Teamsters are full and willing participants in the internal union affairs of the IBT. The respondents cannot ignore the fact that acting through Local 938 they engaged in many acts that had an effect on the IBT in the United States. The simple

fact that they have interfered with the Chief Investigator and his investigation has a clear and unmistakable effect on the IBT and the IRB in the United States. It caused the IBT's General President to have invoke his constitutional authority in order to file charges against the respondents and comply with his obligations under the Constitution and the Consent Decree.

I agree with the dissent that the effect in this case is essentially equivalent to the effect found by Judge Edelstein in the Labatt's case where he found that Labatt's Canada interfered with the Election Officer by refusing to allow campaigning on its premises in Quebec. While the Labatt's case involved election procedures and the current case involves IRB processes, the holding in that case is similarly applicable here. The refusal of the respondents to allow the Chief Investigator to examine its books and records had an impact on the disciplinary and corruption fighting and reporting process binding all Local Unions and the IBT under the Constitution. It also had an impact on the IBT investigatory process as it thwarted the ability of the Chief Investigator to perform his duties as required by the Consent Decree and authorized by the IBT Constitution.

More importantly, the Consent Decree and the Court's rulings interpreting it, specifically bind all IBT affiliates, including Canadian affiliates regardless of whether they are based in the United States.¹ The Consent Decree permanently enjoins the IBT

¹Senator Edward M. Lawson, the International Vice-President and member of the GEB from Canada and a defendant in the Consent
(continued...)

"future IBT General Executive Board members, officers, representatives, members and employees of the IBT . . . from obstructing or otherwise interfering with the work of the court-appointed officers or the Independent Review Board." (Consent Decree, ¶E.10.).² Furthermore, ¶G(c) of the Consent Decree requires that

"[a]ll officers, members, employees and representatives of the IBT and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Independent Review Board shall be deemed to be conduct which brings reproach upon the IBT and which is thereby within the Independent Review Board's investigatory and decisional authority." (Emphasis supplied).

Accordingly, the respondents cannot claim that the Consent Decree and its operation does not apply to them simply because they are based in Ontario, Canada. Moreover, Judge Edelstein has already

¹(...continued)

Decree case, did not sign the Consent Decree. A modification of the Consent Decree Order on March 21, 1989 specifically excluded Lawson from its terms and the permanent injunction entered against all of the defendants at ¶ E.10 of the Consent Decree. Instead, Lawson signed a separate consent judgment endorsing certain terms set out in the consent judgment including the consent to the Court's personal jurisdiction over him. Despite the fact that Lawson as Canadian Vice-President did not sign the Consent Decree, there is ample basis to hold the Canadian affiliates bound by the Consent Decree as I set forth below.

²At the time of the filing of the charges in this case, Brother Thibault was a member of the IBT's General Executive Board from Canada. Thus, even if the others could somehow claim that they were not subject to IRB jurisdiction, which they cannot, Brother Thibault was separately and independently bound by the Consent Decree's terms by operation of ¶E.10.

held that "[t]he IBT, all subordinate entities of the IBT, and all members of the IBT are bound by the [IRB] Rules". U.S. v. IBT, 829 F. Supp. 602, 603 (S.D.N.Y. 1993) (IRB Rules Decision). Therefore, the wording of the Consent Decree and the cases interpreting it clearly require a finding that the Canadian affiliates and members are bound by it and that the IRB has jurisdiction over Local 938 and the respondents to conduct a books and records examination pursuant to the Consent Decree and the IRB's rules.³

For these reasons, as well as those set forth in Brother Dziejic's dissent, I find that the IRB had jurisdiction to conduct a books and records examination of Local 938.

Right To Counsel

I reject the Hearing Panel's findings and recommendations concerning the respondent's right to counsel.⁴ The IBT

³In Judge Edelstein's "All Writs Decision", he enjoined "all local unions, . . . members, officers, representatives, agents and employees of the IBT or any such IBT affiliated entity" from taking any legal action to challenge or impede or seek review of any action by the Court appointed officers or the IRB other than in his court. This decision was upheld by the Court of Appeals. U.S. v. IBT, 728 F. Supp. 1032 (S.D.N.Y. 1990), modification denied, 735 F. Supp. 502 (S.D.N.Y. 1990), affirmed, 907 F.2d 277 (2d. Cir. 1990). This case provides further support for the finding that the Court has jurisdiction over the respondents in this case as they would be prevented from challenging an action by the IRB in any other jurisdiction other than before Judge Edelstein.

⁴The Hearing Panel relies in great part on the cases submitted by the respondents to find that the right to counsel in internal union disciplinary proceedings is required. I have reviewed the record and the briefs submitted by the respondents as well as the charging party. It appears that in some cases where the Union's Constitution only allows members in good standing to represent other members before disciplinary tribunals, Canadian Courts will
(continued...)

Constitution to which the respondents and Local 938 agreed to be bound, provides that a member charged under Article XIX may be represented only by a member in good standing. (See, Article XIX, Section 1(c)). This provision has been interpreted to prohibit members from being represented by counsel at internal union disciplinary hearings. This provision of the Constitution is binding on all members and affiliates. We simply do not have one Constitution for members in the United States and one for members in Canada. The Constitution is the Union's governing document and cannot be applied in some cases and not in others. If its authority is going to be upheld as the supreme body of law in the Union, it must be applied equally in Canada as in the United States.

Critically, I find that even if it was error for the Hearing Panel to deny the respondents the right to have counsel participate in the hearing, that it was harmless error and the respondents suffered no prejudice by the ruling. The respondents' counsel was permitted at the end of the hearing to make a presentation that encompassed the respondents' defenses. Each of those defenses, which were legal in nature, have been reviewed and rejected. Likewise, no facts were presented by the respondents or their counsel to rebut the essential underlying facts as presented by the

⁴(...continued)
not interfere and do not find a right to legal counsel for union members charged with offenses under the union's constitution. Therefore, I find that the law in Canada on this subject is not as crystal clear as the Hearing Panel contends and reject their finding that Canadian law clearly requires the right to counsel in this setting.

charging party concerning the respondents' refusal to permit the Chief Investigator to conduct a books and records examination. Therefore, even if they had been allowed counsel at the hearing, there would be no difference in the outcome of this case since their procedural and legal defenses have all been rejected and there are no facts in dispute concerning their underlying conduct.

For these reasons, I reject the Hearing Panel's recommendation that the respondents were entitled to have counsel represent them at the hearing in this case. In any event, the Hearing Panel's denial of that request was not prejudicial and constituted, at most, harmless error.

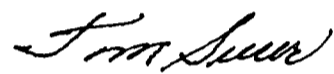
The Sanctions

I find that the respondents have violated Article II, Section 2(a), and Article XIX, Sections 7(b)(1) and (2) and 14(i) of the IBT Constitution by obstructing, interfering with and unreasonably failing to cooperate with the duties of the IRB as set forth in ¶G of the March 14, 1989 Consent Decree in U.S. v. IBT, 88 Civ. 4486 (DNE) (S.D.N.Y.) by refusing to permit the Chief Investigator to conduct a books and records examination. While I find that the respondents have violated the IBT Constitution by their conduct, their basis for doing so raised serious legal questions to which there was not entirely clear cut answers. There is no evidence in this record that the respondents acted out of bad faith but rather that their actions were based on a legal position that was ultimately found to be faulty.

Moreover, Local 938 eventually permitted the Chief

Investigator access to conduct his examination so the underlying facts have been rendered moot by the passage of time. Clearly this is an important case and will provide a guidance for other Canadian affiliates.

Because I find that the respondents did not act in bad faith but were relying on a legal position ultimately found to be unpersuasive, I impose a three months suspension from membership or holding office or employment with the IBT and any of its affiliates on each of the respondents as an appropriate sanction.



Tom Sever
Acting General President

Date: September 4, 1998