

---

INVESTIGATIONS OFFICER

Plaintiff,

v.

WILLIAM BERNARD AND DENNIS HANDS

Defendants.

---

OPINION OF THE INDEPENDENT  
ADMINISTRATOR

This matter is before me to hear and adjudicate charges filed by Charles M. Carberry, Investigations Officer, against William Bernard and Dennis Hands (sometimes referred to as the "Respondents"). Hearings were conducted, evidence received and arguments heard on March 5, 1990. Post-hearing memoranda were also accepted. Based upon my review of the foregoing, I conclude that the Investigations Officer has not established that there is just cause to find the Respondents culpable as charged. The following Opinion constitutes my Findings of Fact and Conclusions of Law.

**I. BACKGROUND**

**A. The Charges Against Messrs. Bernard and Hands**

On December 27, 1989, charges were brought against Messrs. Bernard and Hands<sup>1</sup> pursuant to the power vested in the

---

<sup>1</sup> A third charge against Edward Kantzler was originally scheduled to be heard along with the Bernard and Hands charges. That charge, founded upon the same factual basis as Bernard's and Hands', was resolved by agreement between Mr. Kantzler and the Investigations Officer. The agreement, which was placed upon the record at the March 5, 1990 hearing, provided that Mr. Kantzler, presently retired from all positions in both the International Brotherhood of Teamsters and his Local Union, would not seek at any time to be reinstated as an active member of his Local Union  
(continued...)

Investigations Officer by the March 14, 1989, Consent Order, para. F. 12. (A), which had resolved a lawsuit brought by the United States against the International Brotherhood of Teamsters, etc. (hereinafter "IBT"), and its leadership, including General President William McCarthy and other members of the IBT General Executive Board (hereinafter sometimes "GEB").

Messrs. Bernard and Hands are charged with the following:

1. Violating Article II, §2(a) of the International Brotherhood of Teamsters Constitution, by conducting [themselves] in a manner to bring reproach upon the International Brotherhood of Teamsters; and

2. Violating Article XIX, §6(b) of the International Brotherhood of Teamsters Constitution, by disruption of a union meeting, assaulting and provoking others to assault fellow members, and failure to follow the rules of order and similar conduct in a place used to conduct union business;

TO WIT, on or about October 15, 1983, [Messrs. Bernad and Hands], and others, disrupted a meeting of the Teamsters for a Democratic Union, an organization of members of the International Brotherhood of Teamsters, at the Airport Hilton Hotel, in Romulus, Michigan. [Messrs. Bernard and Hands] attempted to and did enter the meeting by force and disrupted the proceedings there. In the course of disrupting the meeting, [they] assaulted a police officer attempting to stop the disruption by [them] and others of that meeting.

These charges implicate the following two provisions of the IBT Constitution:

---

<sup>1</sup>(...continued)  
or any other Local Union affiliated with the International Brotherhood of Teamsters. It was further agreed that the resolution is not to be taken as an admission by Mr. Kantzler of any wrongdoing.

1. Article II, Section 2 (a), which provides:

Any person shall be eligible to membership in this organization upon compliance with the requirements of this Constitution and the rulings of the General Executive Board. Each person upon becoming a member thereby pledges his honor: to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and the Bylaws and laws of his Local Union; to comply with all rules and regulations for the government of the International Union and his Local Union; to faithfully perform all the duties assigned to him to the best of his ability and skill; to conduct himself or herself at all times in such a manner as not to bring reproach upon the Union . . . . [emphasis supplied]

2. Article XIX, Section 6 (b)<sup>2</sup>, which provides:

(b) The basis for charges against members, officers, elected Business Agents, Local Unions, Joint Councils or other subordinate bodies for which he or it shall stand trial shall consist of, but not be limited to, the following:

- (1). Violation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder.

---

<sup>2</sup> At a November 1, 1989, special meeting of the GEB a resolution was adopted purporting to review and interpret certain provisions of the IBT Constitution, including Article XIX, Section 6 (b). In an opinion dated January 11, 1990, in the matter of Investigations Officer v Friedman and Hughes, I rejected the GEB's interpretation as unreasonable. Judge Edelstein affirmed my ruling in his Opinion and Order dated March 13, 1990. Judge Edelstein's decision has been appealed to the United States Court of Appeals for the Second Circuit and that appeal is now pending. It is worth noting, however, that even under the GEB's November 1, 1989, interpretation, the charges against Messrs. Bernard and Hands would be valid as the GEB's interpretation provides that the "expression 'to bring reproach upon the Union' . . . must be construed within the context of the more specific provisions of Article XIX, Section 6 (b), Subsections 3-7, and should be so limited in its application." Clearly the charges in question implicate subsection (6) of Article XIX, Section 6 (b).

- (2). Violation of oath of office or of the oath of loyalty to the Local Union and the International Union.
- (3). Embezzlement or conversion of union's funds or property.
- (4). Secession, or fostering the same.
- (5). Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations. Causing or participating in an unauthorized strike or work stoppage.
- (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 conduct union business.
- (7). Crossing an authorized primary picket line established by the member's Local Union or any other subordinate body affiliated with the International Union.

## II. THE INVESTIGATIONS OFFICER'S CASE

In bringing these charges, the Investigations Officer faced the extremely difficult task of trying to recapture events which occurred nearly seven years ago and in a most turbulent setting. The charges focus upon a meeting of the Teamsters For A Democratic Union ("TDU"), which took place on October 15, 1983, at the Airport Hilton Hotel in Romulus, Michigan. The TDU billed this meeting as its "annual convention." On the morning of October 15, 1983, a group of protesters gathered outside the Hilton. The Investigations Officer alleges that these protesters belonged to a group calling themselves the Brotherhood of Loyal Americans and

Strong Teamsters ("BLAST"). It is alleged that BLAST was formed to hinder the activity of TDU. It is further alleged that Messrs. Bernard and Hands were members of BLAST and joined the BLAST protesters to disrupt the TDU convention.

The Investigations Officer's key evidence took the form of two photographs and a videotape which depicted Messrs. Bernard and Hands in a crowd involved in a scuffle outside the front doors of the Airport Hilton on the morning of October 15, 1983. The photographs appeared in The Detroit News on October 16, 1983 (the day after the incident), along with an article headlined "Teamster Unit Invades Meeting of Dissidents." The videotape was aired during the April 23, 1985, television program, the "Today Show." The videotape depicts the disruption at the entry way to the Hilton on the date in question. Messrs. Bernard and Hands appear in the crowd. The videotape also depicts Mr. Hands inside the lobby of the hotel. It is clear that the video tape and the news photographs depict the same scene.

Any question that the photographs depict Messrs. Bernard and Hands at the Hilton on the morning of the TDU convention is resolved by the admissions of the Respondents that they were there.

At the hearing, the Investigations Officer produced one witness, Brian Hitt, a Special Agent with the Office of Labor

Racketeering. Mr. Hitt testified that he investigated BLAST's presence at the TDU convention. Mr. Hitt's investigation was performed in conjunction with the President's Commission on Organized Crime. Mr. Hitt corroborated BLAST's presence at the Hilton during the TDU convention.

Mr. Hitt's investigation did not reveal that Messrs. Bernard and Hands were officers of BLAST, did any picketing or marching at the Hilton, or planned the incident.

The Investigations Officer also offered the transcript of the testimony of Sergeant Ray Van Poelvoorde given before the President's Commission on Organized Crime in April 1985.<sup>3</sup> Sergeant Van Poelvoorde was the policeman at the front doors to the Hilton at the time in question. The transcript of Sergeant Van Poelvoorde's testimony and his affidavit in the matter of Thompson v. Reese was also offered by the Investigations Officer.<sup>4</sup> Thompson v. Reese was a civil action filed in Wayne County, Circuit Court in Michigan by certain individual members of the TDU and the TDU

---

<sup>3</sup> In addition, the Investigations Officer also offered the March, 1985, deposition of William Evans, then Secretary-Treasurer of Joint Council 41, before the President's Commission on Organized Crime. Mr. Evans was present at the Airport Hilton at the time of the incident. Mr. Evans' deposition also addresses a meeting of Joint Council 41, where Jackie Presser, then President of Joint Council 41, praised BLAST for its action at the Hilton.

<sup>4</sup> Transcripts of testimony and affidavits of other witnesses in the Thompson matter were also produced by the Investigations Officer.

itself against certain individual members of BLAST as well as BLAST the organization. The suit, which was "brought under '[inter alia] the law of assault, battery and trespass," Complaint, para. 1, arose out of the incident in question. Neither Mr. Bernard nor Mr. Hands was named as a defendant in the Thompson matter.

In his Thompson testimony Sergeant Van Poelvoorde identified the "bottom man in the [Detroit News] picture" as "[t]he man [who] attempted to knock my feet from under me." The Investigations Officer maintains that the "bottom man in the picture" is William Bernard. Investigations Officer's Post-Hearing Memorandum, at p.20. During that same testimony, however, when Sergeant Van Poelvoorde was shown another Detroit News photograph in which the Respondents were pictured, he did not identify Respondents as part of the BLAST "leadership group." Id. at pp. 11-12, fn.6.

The Investigations Officer also introduced the Thompson transcript which included testimony of Ronald Monte, the food and beverage manager at the Airport Hilton Hotel. Mr. Monte testified that he told "four members from an organization identified as BLAST," that they could not enter the Hotel. After being shown a Detroit News photograph, Mr. Monte stated that the "bottommost person in the photograph," was one of the four persons with whom he had spoken. The Investigations Officer contends that the individual referenced in the photograph is William Bernard. Id. at pp. 20-21. A reading of Mr. Monte's testimony reveals,

however, that he was informed by another individual that the crowd outside the hotel were members of "BLAST." Mr. Monte did not appear to have any independent or personal knowledge of that fact.

Given the hearsay nature of the Thompson v. Reese evidence, and the apparent conflict in Sergeant Van Poelvoorde's testimony, I assign little weight to the transcript testimony of both Sergeant Van Poelvoorde and Mr. Ronald Monte.

The Investigations Officer also offered two copies of BLAST literature concerning the incident. No testimony or evidence was offered, however, which connected Messrs. Bernard and Hands with this literature.

### **III. RESPONDENTS' DEFENSE**

The substance of Respondents' defense centered upon affidavits submitted by Messrs. Bernard and Hands and the testimony of Mr. Bernard at the March 5, 1990, hearing. Mr. Hands did not appear at the hearing.

In the affidavits, and in the testimony of Mr. Bernard, it is contended that Messrs. Bernard and Hands intended to eat breakfast in the Hilton on the morning in question and then attend the TDU convention as independent observers. It is further contended that when Respondents were about to enter the Hilton, a crowd formed behind them and began pushing them forward. Mr. Bernard claims he



never went through the front doors of the hotel. Mr. Hands claims that he "did not use force to enter the outer doors of the main entrance of the Airport Hilton." Hands affidavit at p. 2.

Respondents claim that they have never been officers, agents or members of BLAST. It is further claimed that neither Respondent received any instructions from any IBT Officer or IBT affiliate official to attend the TDU convention. Mr. Bernard claims that the only Teamster official with whom he discussed attending the TDU convention was Mr. Hands, and Mr. Hands makes the same claim, naming Mr. Bernard as the only official with whom he had any discussions regarding the trip to Romulus, Michigan.

Most significantly, both Respondents deny that they entered any meeting at the Hilton or personally disrupted or knowingly provoked others to disrupt such meeting.

#### **IV. RESPONDENTS' ARTICLE XIX §3 (d) DEFENSE**

Respondents argue that Article XIX, §3 (d) of the IBT Constitution bars the charges against them. Article XIX, §3 (d) provides in pertinent part:

Charges against elective officers of the International Union or any subordinate body shall be limited only to those activities or actions occurring during their current term of office, and only those activities and actions occurring prior to their current term which were not then known generally by the membership of the International Union or the subordinate body in the case of an officer of a subordinate body.

Respondents argue that since "the charges are premised on activity which occurred approximately six and one-half years ago, the foregoing language restricts the Investigations Officer to bringing charges against Bernard and Hands based on 'activities and actions occurring prior to their current terms which were not then known generally by the membership . . . of [Local 164].'" Post-Hearing Brief In Support Of Bernard And Hands at p. 22. Focusing on the media publicity surrounding the incident and the fact that Messrs. Bernard and Hands have "never denied and do not deny now that they were present at and entered the outer doors of the Airport Hilton on October 15, 1983," Respondents argue that their "involvement in the activities at the Airport Hilton were 'known generally' by the membership of Local 164," at the time of their re-elections.<sup>5</sup>

Respondents' reliance on Article XIX, Section 3(d) must be rejected for the very reasons explained in my January 11, 1990, Opinion in the matter of Investigations Officer v. Friedman and Hughes and in Judge Edelstein's March 13, 1990, Opinion and Order affirming my decision. Common sense tells us that Local 164 could not have "known generally" that Respondents violated the IBT Constitution by entering by force and disrupting the TDU Convention, when Respondents have steadfastly denied such charges.

---

<sup>5</sup> After the incident at the Hilton, Bernard and Hands were re-elected to the offices of Secretary-Treasurer and President of Local 168, respectively, in the fall of 1986 and again in the fall of 1989.

Respondents are mistaken when they suggest that "the only activity alleged by the Investigations Officer is that Bernard and Hands were at the front of the group which forced its way through the lobby doors. [emphasis in the original]" Post-Hearing Brief In Support of Bernard and Hands at p. 18. A reading of the charges against the Respondents reveals that the Investigations Officer is charging much more -- and an equally fair reading of evidence before me reveals that Respondents deny the activity charged. Thus, it cannot be said that the Local 164 membership "knew generally" that Messrs. Bernard and Hands committed acts which they themselves deny committing.

**V. RESPONDENTS' STATUTE OF LIMITATIONS DEFENSE**

Respondents also argue that by virtue of 29 U.S.C. §411, the Investigations Officer is "subject to the limitations imposed on actions commenced under that statute. Actions for deprivation of rights protected by Title I of the LMRDA are subject to state general or residual personal injury statutes. . . . In this case, the statute of limitations in Michigan for personal injury actions is three years." *Id.* at p. 26. Thus, Respondents conclude that the charges against them are barred because they were not brought within three years after the incident.

As stated by the Investigations Officer, Respondents are charged with violating the IBT Constitution, not 29 U.S.C. §411. The charges in this disciplinary proceeding are based upon IBT

Constitutional provisions, and no statute of limitations applies to the actions taken with respect thereto by the Investigations Officer and the Independent Administrator. See, Consent Order, para. D. 5, which provides that no period of limitation shall apply to any actions taken by the Investigations Officer or the Independent Administrator. See also, Investigations Officer v. Friedman and Hughes, Independent Administrator's Opinion, September 29, 1989; and United States v. International Brotherhood of Teamsters, 725 F. Supp. 162, 166-167 (S.D.N.Y. 1989).

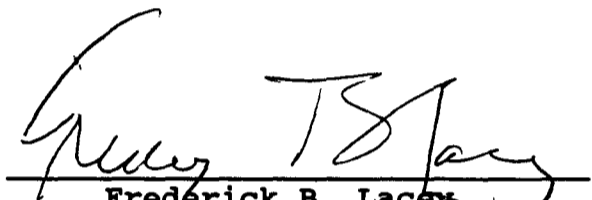
#### VI. THE MERIT OF THE CHARGES

I find that Messrs. Bernard and Hands were present outside the front doors to the Hilton on the morning of October 15, 1985, while the TDU convention was getting underway, and that Mr. Hands, in fact entered the hotel lobby. The photographic and videotape evidence is incontrovertible on this point and Respondents have not disputed their presence.

I also find that Messrs. Bernard and Hands were present at the Hilton to participate in the BLAST demonstration. I cannot accept as credible Respondents' claims that they were merely present to eat breakfast and to attend the TDU convention as independent observers. The evidence refutes this. Moreover, Mr. Bernard did not present himself as a credible witness at the hearing. Furthermore, Mr. Hands brief affidavit, uncorroborated by credible live testimony, leads me to accord it no weight.

Despite my findings that Respondents participated in the BLAST demonstration and were present at the front doors of the Hilton, and in the case of Mr. Hands entered the hotel lobby, I find that the Investigations Officer failed to produce any evidence which would tend to prove that either Mr. Bernard or Mr. Hands actually entered the TDU meeting and disrupted the proceedings therein. Thus, I conclude that there is no just cause to find Respondents culpable as charged.

Dated: May 22, 1990

  
Frederick B. Lacey  
Independent Administrator

LEBOEUF, LAMB, LEIBY & MACRAE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

FREDERICK B. LACEY  
WILLIAM R. HOLZAPFEL  
LAWRENCE E. MILLER  
THEODORE D. ADEN  
THOMAS W. GREELISH  
JOSEPH A. TATO  
WESLEY S. CALDWELL III  
ASSOCIATE NEW JERSEY PARTNERS  
JOHN F. MACLEOD  
OF COUNSEL:

ONE GATEWAY CENTER  
NEWARK, NJ 07102-5311  
(201) 643-8000  
FACSIMILE: (201) 622-6693

NEW YORK, NY  
WASHINGTON, DC  
ALBANY, NY  
BOSTON, MA  
HARRISBURG, PA  
HARTFORD, CT  
LOS ANGELES, CA  
SALT LAKE CITY, UT  
SAN FRANCISCO, CA  
JACKSONVILLE, FL  
RALEIGH, NC  
LONDON, ENGLAND  
BRUSSELS, BELGIUM

May 22, 1990

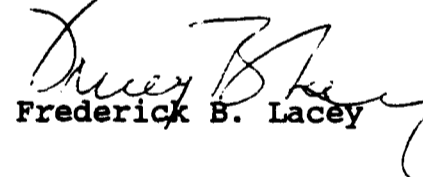
Charles M. Carberry, Esq.  
Jones, Day, Reavis & Pogue  
599 Lexington Avenue  
New York, New York 10022

Re: Investigations Officer v. Bernard & Hands

Dear Mr. Carberry:

Enclosed is a copy of my Opinion in the above-referenced matter. An additional copy is being forwarded to Mr. Miller, attorney for the Respondents. I anticipate filing the original Opinion with the Court along with my next quarterly report to Judge Edelstein.

Sincerely yours,

  
Frederick B. Lacey

FBL:abw  
Enclosure

cc: Gerry M. Miller (w/encl.)

*File*