

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	88 Civ. 4486 (DNE)
	:	
Plaintiff,	:	APPLICATION LVI OF THE
	:	INDEPENDENT REVIEW BOARD
v.	:	--IN THE MATTER OF
	:	GLENN BOGGIA AND LOCAL 282
	:	
INTERNATIONAL BROTHERHOOD	:	
OF TEAMSTERS, <u>et al.</u>	:	
	:	
Defendant.	:	

The Independent Review Board ("IRB") hereby makes Application for an Order that will "so order" a decision of the IRB that found "not inadequate" a decision by the International Brotherhood of Teamsters ("IBT") disciplining former Local 282 member Glenn Boggia ("Boggia").

The IRB had forwarded an Investigative Report dated August 5, 1996, to Mr. Gary LaBarbera, Trustee of Local 282, recommending that former Local 282 member Boggia be charged with bringing reproach upon the IBT and violating the IBT Constitution by accepting a \$1,250.00 bribe paid to him by an individual known to him as Frank Falco, purportedly to secure labor peace at a Queens, New York construction project in 1992. (Exhibit A)¹ On August 16, 1996, Trustee LaBarbera filed the IRB-recommended charge against Boggia. On October 16, 1996, then General President Carey ("Carey") appointed an IBT panel to hear this charge. On November 20, 1996, the panel held a hearing. After the hearing, the panel concluded that the charge against Boggia had been proved and

¹ This report has sixteen exhibits which are being filed herewith as "Appendix to Exhibit A."

recommended to Carey that Boggia be permanently expelled from IBT membership and barred from employment, including consulting, with any IBT affiliate, and barred from receiving any compensation or benefits from any IBT affiliate, except for fully vested pension rights. On February 12, 1997, Carey issued a decision which summarized the evidence and adopted the hearing panel's recommended sanction. (Exhibit B)

On February 19, 1997, the IRB initially found Carey's decision to be "not inadequate" pursuant to Rule I, Paragraph (7) of the Rules of Procedures for Operation of the IRB for the International Brotherhood of Teamsters ("IRB Rules"). (Exhibit C) However, on February 24, 1997, Boggia's counsel, Robert A. Culp, notified the IRB that Boggia was appealing the decision. (Exhibit D) Thereafter, on April 15, 1997, the IRB, having found that Boggia had not been provided by the hearing panel with the exhibits to the IRB report at least ten days before the panel hearing, directed a new hearing be held. (Exhibit E) On June 6, 1997, Carey appointed a new hearing panel. On June 25, 1997, another hearing was held, with the same result, the panel concluding that the charge against Boggia had once again been proved, and recommending the same sanction; and on September 23, 1997, Carey issued the same decision as before. (Exhibit F) Thus, once again, Boggia was permanently expelled from IBT membership and barred from employment, including consulting, with any IBT affiliate, and barred from receiving any compensation or benefits from any IBT affiliate, except for vested pension benefits.

On October 24, 1997, Boggia filed an appeal to the IRB from Carey's decision and submitted a Memorandum of Law to the IRB for review which challenged the evidence and the process. (Exhibit G) (without accompanying exhibits) In a letter dated December 17, 1997, the IRB informed Boggia that its review of the materials did not change its prior decision that the IBT's decision was not inadequate. (Exhibit H)

In a December 5, 1997, letter to the IRB, Susan Davis of Cohen, Weiss and Simon, counsel for Local 282, informed the IRB that Boggia had filed an unfair labor practice charge against Local 282 with the National Labor Relations Board ("NLRB") for attempting to cause Boggia's employer, Nastasi-White, Inc., to terminate his employment. Additionally, Ms. Davis sought the IRB's view concerning the proper jurisdiction for hearing Boggia's claim. (Exhibit I) On December 19, 1997, the IRB informed Ms. Davis that any action taken by Local 282 with regard to Boggia's employment could be properly heard only by Your Honor pursuant to the Consent Decree entered into in U.S. v. IBT, 88 Civ. 4486 (DNE), unless, of course, Your Honor believed it should be heard by Judge Thomas C. Platt of the Eastern District of New York pursuant to the Consent Decree entered into in U.S. v. Local 282, IBT, No. CV-94-2919. (Exhibit J) On February 12, 1998, Mr. Larry Singer of the NLRB contacted the IRB office by telephone and indicated that he would like to present the NLRB position on this Application to Your Honor. (Exhibit K) A copy of this Application will be transmitted to Mr. Singer.

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By letter of January 8, 1998, Boggia's counsel wrote to Your Honor to "seek guidance concerning the appropriate procedures for seeking review of disciplinary determinations against Mr. Boggia by the ... IBT and the ... IRB." (Exhibit L) Counsel poses the question whether a union member disciplined by the union on IRB-recommended charges, where the IRB found that decision "not inadequate," who seeks to appeal that decision, should make a request for review to Your Honor directly or seek review only after an application by the IRB to Your Honor to have the IRB determination embodied in an order of the Court.

Under the Consent Decree, the decisions of the IRB are final and binding upon the disciplined party. ("The decision of the Independent Review Board shall be final and binding," Section G, Paragraph (I)). The IRB has taken the position that once it has issued a "not inadequate" decision, no further action on its part is necessary in order for its decision as a matter of procedure to be ripe for appellate review. On one occasion, the IRB, to keep Your Honor informed in a matter in which you had made a prior ruling, deviated from this procedure.²

2

In one matter, the IRB did submit its "not inadequate" decision to Your Honor for review. As seen below, that matter is distinguishable because it involved factual developments not relevant to this case and the IRB "not inadequate" letter specifically stated that the decision was being submitted to Your Honor for review.

In January 1995, the Chief Investigator's Office commenced an examination of the books and records of Local 677. In February 1995, the sworn examinations of the officers of Local 677 were taken. In June 1995, in order to resolve the IRB's proposed charges, the officers of Local 677 entered into an Affidavit and
(continued...)

Boggia's counsel argues that the IRB Rules contain additional procedural language which appears to establish a requirement that the IRB submit its decision not to disturb the underlying union action (i.e. a "not inadequate" finding) on a recommended charge to the Court to be entered as an order of the Court. With regard to the IRB's review of IBT Decisions, Rule M, Paragraph (1) of the IRB Rules contains the following provision:

The IRB shall be apprised of and have the authority to review any disciplinary or trusteeship decision of the General President, the GEB or the IBT Ethical Practices Committee, and shall have the right to affirm, modify, or reverse any such decision. The IRB's affirmance, modification, or reversal of any such decision shall be in writing and shall be final and binding. The IRB shall submit such a decision to this Court to be entered as an order of the Court.

²(...continued)

Agreement. On or about June 29, 1995, the IRB submitted Application XX to Your Honor for a ruling approving the Affidavit and Agreement. Your Honor declined to approve the Affidavit and Agreement.

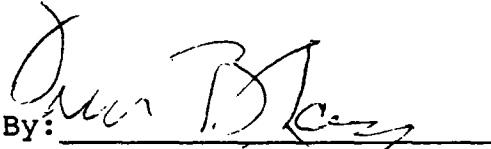
On November 3, 1995, the IRB issued its Report to Joint Council 64. The Report recommended that charges be brought against seven officers of Local 677 in Waterbury, Connecticut based upon their conduct in giving away an automobile to the Local's Secretary Treasurer upon his retirement. On January 29, 1996, a panel appointed by then General President Ron Carey conducted a hearing. In its decision dated May 25, 1996, the hearing panel found that the charges had been proved and recommended as a sanction that the officers be suspended from office, without pay, for a period of thirty (30) days. On June 10, 1996, the IRB issued a letter to the Joint Council Executive Board in which it advised the Joint Council of its determination that the decision of the hearing panel appointed by Joint Council 64 was inadequate as to penalty. On June 20, 1996, the hearing panel modified the penalty to provide for an additional period of suspension from office, without pay, as it increased the length of the suspension from thirty to ninety (90) days. On July 10, 1996, the IRB issued its letter determination that the modified decision of the Board was "not inadequate." However, the letter specifically stated that "the decision is being submitted to Judge Edelstein for review."

The IRB has interpreted this section not to conflict with the Consent Decree, Section G, Paragraph (I), on IRB-recommended charges but to cover IRB review of non-IRB discipline decisions when that occurs.

In his letter to Your Honor, counsel for Boggia submits that under the IRB Rules the IRB must first present its decision to the district court before Boggia may commence his appeal, and requests the Court's guidance on the matter. Your Honor has asked for the IRB's position as to this letter.

Under the circumstances here, while not agreeing with Boggia's counsel's interpretation of the IRB Rules, since Boggia has requested judicial review, the IRB, to move the matter along, makes this Application. If Your Honor determines to grant this Application, a form of Order is transmitted herewith.

Dated: March 9, 1998

By: 

Frederick B. Lacey
Member of the
Independent Review Board

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JUDGE EDELSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

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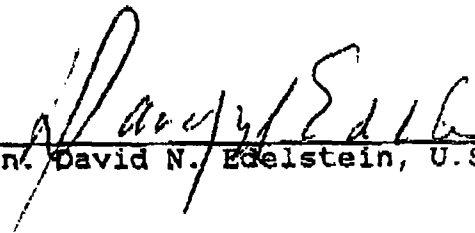
ORDER

IN RE: APPLICATION LVI OF THE
INDEPENDENT REVIEW BOARD

IT IS HEREBY ORDERED that the IRB's determination of December 17, 1997, finding that the IBT decision of September 23, 1997, was not inadequate, is hereby made an Order of this Court.

SO ORDERED.

Dated: New York, New York
~~March 1998~~

Will signed 15-11-98

Hon. David N. Edelstein, U.S.D.J.