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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	88 CIV. 4486 (LAP)
Plaintiff,	:	
	:	APPLICATION 102 OF THE
v.	:	INDEPENDENT REVIEW BOARD
	:	-- OPINION AND DECISION OF
INTERNATIONAL BROTHERHOOD OF	:	THE INDEPENDENT REVIEW
TEAMSTERS, <u>et al.</u>	:	BOARD IN THE MATTER OF
	:	THE HEARING OF
Defendants.	:	WILLIAM T. HOGAN, JR.
_____	:	AND DANE PASSO

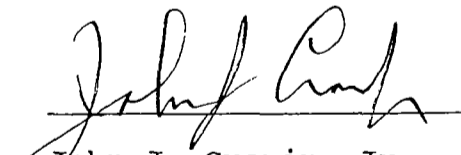
Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the Independent Review Board ("IRB") for ruling by the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on October 17 and 18, 2001, and thereafter determined, on the charges filed against International Representative and Joint Council 25 President William T. Hogan, Jr. ("Hogan") and International Representative Dane Passo ("Passo").

Hogan and Passo were charged with bringing reproach upon the IBT by colluding with Richard Simon ("Simon"), the Chief Executive Officer of United Service Companies, to cause Local 631 to enter into a substandard contract with a Simon company and to have those employees perform Teamster work in the Las Vegas trade show and convention industries for which Simon's company would pay lower wages, make less benefit fund contributions and receive other concessions from what the existing collective bargaining

agreement required. As a part of this scheme, which was to the detriment of IBT Local 631 and its members, Hogan and Passo attempted to cause Local 631 officials to enter into a substandard agreement with Simon's company, of which Hogan's brother, Michael, was an officer. Having considered the evidence and post-hearing submissions, the IRB found that the charges against Hogan and Passo were proved. As a penalty, Hogan and Passo have been permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity and may not hereafter obtain employment, consulting or other work, directly or indirectly, with the IBT or any IBT-affiliated entity.

Enclosed with our May 29, 2002, Opinion and Decision are the May 23, 2001, IRB Investigative Report with Exhibits 1-300, the October 17 and 18, 2001, IRB Hearing Transcript with Exhibits IRB-1 - IRB-11, and the Chief Investigator's exhibits 301-309 and eleven revised exhibits to the IRB Investigative Report introduced at the hearing. It is respectfully requested that an Order be entered affirming the IRB's May 29, 2002, Opinion and Decision if Your Honor finds it appropriate.

BY:

  
John J. Cronin, Jr.  
Administrator

Dated: May 29, 2002

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In re: :
  
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Dane Passo and : OPINION AND DECISION
  
William T. Hogan, Jr. : OF THE INDEPENDENT
  
: REVIEW BOARD
  
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**I. INTRODUCTION**

The Independent Review Board (“IRB”) forwarded an investigative report to the International Brotherhood of Teamsters (“IBT”) General President James P. Hoffa (“Hoffa”) on May 23, 2001. The report recommended that International Representatives Dane Passo (“Passo”) and William T. Hogan, Jr. (“Hogan”) be charged with bringing reproach upon the IBT. (IRB Ex. 1)<sup>1</sup> The charge was that Passo and Hogan colluded with a labor broker to allow him to avoid the financial obligations under the governing contract to the detriment of the members of Local 631 in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution. (IRB Ex. 1)<sup>2</sup> On

<sup>1</sup> “IRB Ex.” refers to exhibits introduced by the IRB during the hearing; “Ex.” refers to the Chief Investigator’s exhibits introduced during the hearing; “Tr.” refers to the transcript of the hearing before the IRB; “P. Ex.” refers to exhibits Passo introduced at the hearing and “H. Ex.” refers to exhibits Hogan introduced at the hearing.

<sup>2</sup> Article II, Section 2(a) of the IBT Constitution provides:

Each person upon becoming a member thereby pledges his honor: . . .  
to conduct himself or herself at all times in such a manner as not to  
bring reproach upon the Union . . . .

Article XIX, Section 7(b)(1) and (2) of the IBT Constitution provides:

The basis for charges against members, officers . . . for which he . . .  
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.

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

May 25, 2001, IBT General Secretary-Treasurer C. Thomas Keegel ("Keegel") filed charges against Passo and Hogan. (IRB Ex. 2)<sup>3</sup>

By letter dated July 26, 2001, Keegel, on behalf of the IBT's Executive Board, referred the charges against Passo and Hogan to the IRB for adjudication. (IRB Ex. 4) On October 17 and 18, 2001, the IRB conducted an evidentiary hearing in Las Vegas, Nevada.

#### **Dane Passo**

Dane Passo was a member of Local 705 in Chicago. (Ex. 20 at 4) General President Hoffa appointed Passo his Special Assistant and an International Representative in March of 1999. (Ex. 11; Ex. 20 at 23-24) President Hoffa's Executive Assistant Carlos Scalf ("Scalf") supervised Passo. (Ex. 12 at 47-48) Passo was Special Assistant until October 1, 2000, when Hoffa removed his title. (Ex. 20 at 24-25; Ex. 11)<sup>4</sup> After the IBT filed the IRB-recommended charge against him, Passo took an unpaid leave of absence as an International Representative. (IRB Ex. 3)

The only previous union position Passo held was for thirteen months as a Local 705 business representative in Chicago. (Ex. 20 at 18-19) Passo had never negotiated any collective bargaining agreements while employed at 705 or at the IBT. (Ex. 21 at 290-91; Tr. 504-505)<sup>5</sup>

<sup>3</sup> IBT General President Hoffa recused himself from this matter. (IRB Ex. 2)

<sup>4</sup> Hoffa testified that Passo was removed as Special Assistant because some IBT Vice Presidents told him that Passo "was very aggressive in putting forth his position. And they felt it would be better if he didn't have that title." (Ex. 78 at 13-14) When asked why Passo was removed as Special Assistant, Scalf testified, "[b]ecause of him pushing his weight around and telling people that he could get them fired and being a little more outspoken than he should be and on the advice of counsel." (Ex. 12 at 197)

<sup>5</sup> According to Passo, his only experience was when he observed negotiations Scalf conducted with the New York, New York Casino in Las Vegas. (Ex. 21 at 290-91)

Passo had no experience in the convention industry. (Ex. 20 at 23; Tr. 455) The Local 631 collective bargaining agreement with the trade show contractors was the first convention contract to which Passo had any exposure. (Tr. 471)

**William Hogan**

Mr. Hogan is President of Joint Council 25, Vice President of Local 179 and Organizing and Political Director for Local 714, all in Chicago. (Ex. 15 at 4)<sup>6</sup> On May 1, 2000, Hoffa appointed Hogan an International Representative. (Ex. 143) As International Representative, Hogan was not assigned to a specific IBT department. He reported to Mr. Scalf. (Ex. 12 at 47)

Mr. Hogan had substantial experience in the convention services industry and is especially recognized as knowledgeable of Chicago trade shows and convention center business. (Tr. 282-294)

Hogan had no International assignment in Las Vegas and no official responsibilities with Local 631. (Ex. 12 at 60) Hogan took an unpaid leave of absence from his position as an International Representative after the IBT filed the IRB-recommended charge against him. (IRB Ex. 3)

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<sup>6</sup> In August 1996, based upon an IRB recommendation, the IBT placed Local 714 in Trusteeship. The Local was placed in Trusteeship because of nepotism and conflicts of interest among Hogan and his relatives who had ownership interests in companies that employed Teamster members. At that time, Hogan was Secretary-Treasurer of Local 714 and President of Joint Council 25 in Chicago. (Ex. 162 at 4, 11) After being removed as the Local 714 principal officer, Hogan continued as a Local 714 member until approximately early 1997 when he retired. (Ex. 15 at 5) In early 1999, Hogan was appointed Vice President of Local 714. (Ex. 15 at 10-11) On or about March 9, 2000, Hogan was appointed President of Joint Council 25. (Ex. 15 at 4)

### United Service Companies

Ben Stein ("Stein") founded United Service Companies in Chicago approximately forty years ago. (Ex. 27)<sup>7</sup> Richard Simon ("Simon") is the current Chairman of United. (Ex. 27; Ex. 171) Currently, there are at least three companies under the United name: United Maintenance Company, Inc. ("United Maintenance"), United National Maintenance, Inc. and United Temps of Nevada ("United Temps"). Exs. 19, 24 and 27)

United Maintenance was incorporated in Illinois on March 2, 1982 (Ex. 19), and United National Maintenance in Nevada in October 1984. (Ex. 19) Simon is the President of United National Maintenance. (Ex. 19)<sup>8</sup> Simon is a business friend of Hogan's, of long standing. (Tr. 294-298)

United Temps of Nevada Inc. was incorporated in Nevada on *March 1, 1999*. (Ex. 24) The President is Simon and the Secretary is Carol D. Stein. (Ex. 24)<sup>9</sup> According to its website, United Temps provides temporary labor for major events and

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<sup>7</sup> Stein, who was convicted of bribing a union official in the 1960s, was reported to have ties to organized crime figures including La Costra Nostra member Dominic Senese ("Senese"), who was also a local Teamster official. (Ex. 28) Simon also knew Senese well. (Ex. 30) The arrangement Passo, Hogan and Simon proposed to Local 631 was similar to those Stein had reportedly been involved with in the past where his employees were paid wages below a prevailing contract. (Ex. 28-31) In 1966, Stein was convicted in federal court in Chicago for labor racketeering and bribery. (Ex. 28) Stein was sentenced to eighteen months in federal prison and fined \$2,000. (Ex. 28) In 1969, Stein's conviction was overturned on the bribery counts. (Ex. 28) Stein subsequently pleaded guilty to bribing a film carriers union official and was sentenced to one year in prison. (Ex. 28)

In the mid 1970s, Stein and Senese, an organized crime member and then the principal officer of the IBT Local 703, obtained a loan of \$5.25 million from the IBT Local 710 Pension Fund. (Ex. 28) According to a news report, Stein and Senese used this money to invest in a building to provide a tax shelter. (Ex. 28) Senese was subsequently barred from the IBT for being a member of organized crime. (Ex. 29) Stein died in September 1996 (Ex. 28)

<sup>8</sup> The Secretary-Treasurer of this company is Stein's daughter, Carol. (Ex. 19) According to the United website, United National Maintenance "provides services to the trade show industry and major stadiums on a national level. Currently in more than 25 major cities in 14 states." (Ex. 27)

<sup>9</sup> On May 12, 2000, United Temps of Nevada was registered as a foreign corporation in Illinois. (Ex. 24) Simon is the registered agent. (Ex. 24) In Illinois, United Temps of Nevada has the assumed name United Temps. (Ex. 24)

institutions on local and national levels. (Ex. 27) It was incorporated shortly before Simon and Michael Hogan approached Local 631 officers to permit United to supply workers to the trade show contractor at rates below the existing Teamster' contract.<sup>10</sup>

United Temps is a labor broker. (Tr. 369, 463; Ex. 15 at 148; Ex. 32 at 26; Ex. 26 at 49; Ex. 82 at 77) Passo knew that the United employees, who were not members of any union, did not receive any health and welfare or pension benefits or vacation time. (Tr. 508)

**Michael P. Hogan, Sr.**

Michael P. Hogan, Sr. ("Michael Hogan"), a brother of William Hogan, was Vice President of United. (Ex. 15 at 18-20; Ex. 18; Ex. 173 at 7, 19)<sup>11</sup> In 1999, Michael Hogan asked his brother William Hogan to introduce him and Simon to the Local 631 officers. In 1996, Michael Hogan's son testified that his father worked for United. (Ex. 173 at 19)

Michael Hogan was also the CEO of Show Biz USA ("Show Biz"), a trade show contractor active at the Las Vegas Convention Center. (Exs. 11-23; Ex. 15 at 18)<sup>12</sup> Show Biz was the general contractor for the Super Show that was held in Las Vegas in January 2001. (Ex. 155 at 6-8, 19; Ex. 154; Ex. 147 at 20) During that show, Show Biz attempted to use United employees to perform Teamster work. (Ex. 155 at 21, 25-26; Ex.

<sup>10</sup> The United employees who performed Teamster bargaining unit work usually performed cleaning work in the convention industry. (Ex. 6 at 68-75; Tr. 175)

<sup>11</sup> Michael Hogan, Jr., a Local 714 member and son of Michael Hogan, explained that United Maintenance handled empty crates at McCormick Place in Chicago. (Ex. 173 at 19) A "labor service," Readymen, Inc., provided workers to United Maintenance. (Ex. 173 at 22-23) William Hogan, head of Joint Council 25, claimed that he did not know if the Chicago United employees who worked at McCormick Place were members of any union and he acknowledged that he never tried to organize them. (Ex. 15 at 30, 147)

<sup>12</sup> Michael Hogan had been the Local 714 chief steward in the Chicago Local's trade show division from the mid 1970s to 1978. (Ex. 174 at 10-11; Ex. 175 at 128; Ex. 176)

156 at 41-42; Ex. 154) Obviously, as a general contractor, any change in the governing contract that allowed the use of cheaper labor, as Passo and William Hogan advocated, would result in substantial financial benefit to Michael Hogan and Richard Simon.

## II. FINDING OF FACTS

### 1. Local 631's Collective Bargaining Agreement (The Red Book Contract)

Local 631 is in Las Vegas, Nevada. During the relevant time period, it had a collective bargaining agreement with trade show contractors there. This contract was referred to as the "red book contract." (Ex. 4; Ex. 6 at 106) The major show contractors were Greyhound Exposition Services ("GES") and Freeman Decorating ("Freeman"). (Ex. 6 at 108, 227-228) In Las Vegas the Teamsters had jurisdiction over the majority of work in the trade show industry. (Tr. 182-83)

The agreement required the trade show contractors to contact the Local 631 dispatch office for workers. (Ex. 4 at 3)<sup>13</sup> The contract provided for an "A" dispatch list and a Supplemental dispatch list, sometimes referred to as the "C" list. (Ex. 4 at 3-4) Individuals who had not worked 1,000 hours in the convention industry comprised the Supplemental "C" list. (Ex. 4 at 4) Every Thursday, individuals, including under the contract non-union workers, would register at the dispatch office. (Ex. 2 at 102; Ex. 7 at 70-71) To be on the list, an individual had to complete registration forms, watch an orientation video and pay either Local 631 dues or a monthly dispatch fee. (Ex. 7 at 70,

<sup>13</sup> Pursuant to Article I, Section 3 of the red book contract,

It shall be the responsibility of Employer to first call the dispatching office of the Union for such employees as they may from time to time need, and the office shall immediately furnish to the Employer the required number of qualified and competent workers of the classifications needed and requested by the Employer, strictly in accordance with the provisions of this Article.

(Ex. 4 at 3)

87; Ex. 2 at 102) Thus, any dues paying Local 631 member could register for the occasional convention work without paying any additional fee. (Ex. 6 at 77-78; Ex. 7 at 69, 87) Non-union workers paid a \$40 per month dispatch fee. (Ex. 7 at 69-70, 80, 87; Ex. 8 at 18)

The minimum hourly wage under the agreement was \$12.49 for Supplemental Workers with less than 150 hours work in the industry. (Ex. 4 at 11) After more than 150 hours, the hourly rate, effective June 1, 2000, was \$13.69. (Ex. 4 at 11) A Supplemental Worker with more than 150 hours in the industry was sometimes referred to as a "C Plus" worker. (Ex. 25 at 11; Ex. 4 at 11)

According to Article III, Section E of the contract, for work performed between the hours of 10:00 p.m. and 6:00 a.m., all employees were paid one and one half times the base rate of pay, except for Supplemental Workers who had not worked 150 hours. (Ex. 4 at 13) Effective June 1, 2000, for every hour worked between 10:00 p.m. and 6:00 a.m., a C Plus worker would have been paid \$20.53 per hour. In addition, the contractor also would have had benefit fund contributions on the worker's behalf.<sup>14</sup>

Pursuant to the contract, the employer was required for each hour an employee worked to make contributions of \$3.75 to the Teamsters Local 631 Security Fund for Southern Nevada ("Local 631 Security Fund") for health and welfare and dental and vision coverage. (Ex. 4 at 26) Effective June 1, 2000, in addition, the employer was required to make contributions for each employee totaling \$4.15 per hour to the Western

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<sup>14</sup> The base rate for a C Plus worker effective June 1, 2000 was \$13.69. (Ex. 4 at 11)

Conference of Teamsters Pension Fund. (Ex. 4 at 26-27) Therefore, effective June 1, 2000, the minimum hourly cost to the employer for wages and benefits for a worker dispatched through Local 631 was \$20.39. The minimum hourly cost for workers with over 150 hours experience employed during the period from 10:00 p.m. and 6:00 a.m. was \$28.43 per hour. (Ex. 4 at 11, 13, 26-27)<sup>15</sup>

During large shows when one show was moving out and another show as moving in, the dispatch office, from time to time, ran out of registered workers to send. (Tr. 63, 189-190, 379, 386, 387; Ex. 6 at 89-90; Ex. 5 at 11-12; Ex. 7 at 84) These “show” changes sometimes happened late at night or on weekends when the dispatch office was closed. (Ex. 5 at 10-12; Ex. 82 at 44; Ex. 25 at 33-34) Once workers finished working on the existing show, they were then available to work on the incoming show. In those circumstances, individuals would have been “rolled over” from one show to another. (Tr. 189-90; Ex. 25 at 32; Ex. 6 at 71-72, 236-237; Ex. 5 at 11-12; Ex. 2 at 192-193)

Prior to the Trusteeship being imposed on Local 631 in April 2000, if the dispatch office’s list of registrants was exhausted, the dispatcher contacted IBT Locals 14 and 995 in Las Vegas and then the Carpenters and Electricians unions to see if they had out-of-work members who wanted to work. (Tr. 132, 381; Ex. 5 at 14-15)<sup>16</sup> All workers, including members of other unions, who were dispatched from Local 631 received a

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<sup>15</sup> The hourly wage for a C Plus worker was \$16.39. (Ex. 4 at 11) Time and one half for the night hours was \$20.53. The benefit fund contributions were \$7.90 per hour. (Ex. 4 at 16-27)

<sup>16</sup> In an effort to increase the number of registrants in the dispatch office, the Local before the Trusteeship also placed ads in the newspaper seeking people to sign up in the dispatch office. The Local also would allow people to register in the hiring hall every day, instead of only the usual sign up on Thursday. (Tr. 132).

written dispatch form from the Local. (Tr. 62; Ex. 170)<sup>17</sup> Local 631 complied with the contract, controlled the employees sent to work and ensured that workers sent to the tradeshow contractors were paid wages and benefits pursuant to the contract. The Local officers had an agreement with the Carpenters that any Carpenter members dispatched through Local 631 “. . . would be the last ones on the show floor and the first ones to be laid off. So it didn't affect any of my hiring hall people, were they . . . members or nonmembers.” (Tr. 133, 405)

Local 631 may have contacted the other unions between six and eight times a year for the large shows prior to the Trusteeship. (Tr. 132)<sup>18</sup> After the Trusteeship was imposed, Passo insisted that the dispatchers no longer contact other unions to fill the call when the dispatch office exhausted its list (Ex. 26 at 78; Ex. 20 at 146; Ex. 9 at 15)

Under the governing contract if the Local 631 dispatch office could not supply the requested number of workers, the trade show contractors could hire from any source. (Ex. 26 at 23; Ex. 2 at 186-187; Ex. 7 at 98; Ex. 82 at 42-43) As Passo knew, under the red book contract, any employee, even if not dispatched through Local 631, who performed bargaining unit work should have been paid contract rates. (Tr. 64-65, 401, 501-503; Ex. 82 at 41-43; Ex. 2 at 186-87; Ex. 1 at 162-163)

This contract provision eliminated the economic incentive for contractors to attempt to use lower paid employees such as those of a labor broker, like United, not dispatched through Local 631. Despite these terms, Passo and Hogan argued for an agreement with United to permit it to pay its employees to perform Teamster bargaining unit work at significantly below the contract rates and to be dispatched directly through

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<sup>17</sup> The Local provided dispatch records showing that in late 1999 and early 2000, the Local 631 dispatch office referred members of the Carpenters Union to work in the convention industry. (Ex. 170)

<sup>18</sup> Breyman estimated that the Local 631 dispatch list was exhausted on the major shows between six and eight times a year. (Tr. 380)

United. Passo and Hogan's proposed arrangement with United would have provided contractors an incentive to circumvent the red book contract requirements and hire the cheaper United workers, as GES repeatedly attempted and Michael Hogan attempted to do on the Super Show in Las Vegas in 2001.

The red book contract contained a "most favored nations" clause that provided:

In the event the Union enters into any agreement with any General Contractor, Independent Contractor or Contractors Association engaged in convention services work, which has terms more favorable to that Employer than the terms of this Agreement, the Union shall immediately submit to the Employer signatory herein, a copy of such Agreement, and if the Employer signatory herein deems said Contract or Agreement more favorable to the Employer signatory herein, the Employer may replace this Agreement with the more favorable Article or Section and said Article or Section shall immediately be in full force and effect.

(Ex. 4 at 32)

**2. First Steps in the Effort by Hogan and Passo for United's Interests**

Timothy Murphy ("Murphy") was elected Secretary-Treasurer in Local 631's 1998 election (Ex. 25 at 5) and he rehired David Breyman ("Breyman") as dispatcher. (Ex. 5 at 6)

Hogan's brother, Michael told Hogan that, ". . . Rich [Simon] has been negotiating with the prior administration to do some things here for the labor problems here in Las Vegas." (Ex. 15 at 24) The Local administration prior to Murphy's had refused to enter into an agreement with United. (Ex. 15 at 24; Tr. 306, 307, 371)

Hogan agreed to introduce Michael to the newly elected Local 631 officials in order to again propose an arrangement between Local 631 and United. (Ex. 15 at 22-25) During a Western Delegates meeting in Las Vegas in June 1999, Hogan introduced his brother to Breyman at Bally's hotel. (Tr. 384; Ex. 15 at 25-26; Ex. 5 at 22,

25)<sup>19</sup> Murphy attended the Western Region Delegates meeting during which he introduced himself to Hoffa and Hogan. (Tr. 124; Ex. 25 at 15-17, 26, 41-43) Hogan asked Murphy if he would be willing to meet with some people who were not identified. (Tr. 135; Ex. 25 at 17-19; 25, 27-28) Murphy agreed. (Tr. 133-135; 308; Ex. 25 at 17)

In the summer or early fall of 1999, Murphy and Breyman met with Michael Hogan and Simon at the Rio Hotel in Las Vegas. (Tr. 135, 304, 305, 383) At the time of this meeting, both Murphy and Breyman knew that Michael Hogan was related to William Hogan. (Tr. 136, 392) Simon and Michael Hogan proposed that Local 631 enter into an agreement with United pursuant to which United would supply workers to trade show companies after the Local 631 dispatch list was exhausted. (Tr. 387, 401-402; Ex. 25 at 33-35) Breyman was concerned that United would take over the dispatch function from Local 631. (Tr. 401-402; Ex. 5 at 30-39) Breyman would not surrender Local 631's control of the dispatching. He believed control was necessary to ensure that the workers were paid pursuant to the governing contract and to allow the union to monitor workers' hours so that their pay would be increased at intervals pursuant to the red book contract. (Tr. 402)

Under Michael Hogan and Simon's proposal, United would not have entered into a collective bargaining agreement with the Local. (Tr. 387) Breyman recalled:

I don't believe that at that particular time they were looking to come to a contract agreement other than just supplying people to the general contractors. That was one of the issues that we discussed at length as far as what both Mr. Murphy and myself wanted to make sure that everybody understood what the terms and conditions that the people would work if we felt we could work something out.

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<sup>19</sup> The Western Regional Delegates meeting was held on June 28 and 29, 1999. (Exs. 185 and 186)

(Tr. 387) Michael Hogan and Simon also proposed paying the United employees directly rather than the employees paid by the trade show contractor for which the work was performed as would have been done under the existing contract. (Tr. 388)<sup>20</sup> Breyman testified, “. . . [b]oth Tim and myself had suggested that would be inappropriate without them being under a contract, that we felt the people that were working for the general contractors should be paid by the general contractors.” (Tr. 388)

Michael Hogan and Simon proposed that United would pay a fee of \$7 or \$8 for each person dispatched rather than the \$40 dispatch fee non-members paid to Local 631. (Tr. 137, Ex. 5 at 29-30; Ex. 25 at 28) There was no intention for United employees to become Teamsters. Union members would have paid dues instead of any dispatch fee.

Murphy refused to agree to United’s proposal (Tr. 137-38, 306-307, 371; Ex. 25 at 35; Ex. 5 at 29-32) and Breyman also would not support any changes to the economic obligations due employees under the current contract. (Tr. 388-389; Ex. 5 at 30) Breyman told Michael Hogan and Simon that United would have to pay the wage rates under the contract then in effect. (Tr. 401) Michael Hogan or Simon informed William Hogan that no agreement was reached with Local 631. (Tr. 309)

On September 15, 1999, Local 631 President Christian chaired a general membership meeting in Murphy’s absence at which a no confidence vote against

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<sup>20</sup> Workers dispatched from Local 631 were paid by the trade show contractors at the red book contract rate. (Ex. 5 at 32, 39)

Secretary-Treasurer Murphy was passed. (Ex. 196) On the date of this meeting, Passo made three calls to Hogan; one for sixteen minutes. (Ex. 38) In a letter dated October 4, 1999, Christian informed General President Hoffa of this no confidence vote, noting that Dudash made the motion and Locascio had seconded it. (Ex. 197)

Vito Locascio<sup>21</sup> also became active in soliciting complaints from members about Murphy. (Ex. 25 at 60) Passo brought the local 631 complaints to Hoffa's attention. (Ex. 20 at 113-114; Ex. 21 at 256-60) Passo urged Hoffa to appoint him Hoffa's Personal Representative to Local 631. (Ex. 20 at 113-114) On Friday, November 5, 1999, Hoffa granted Passo's request. (Ex. 10)

Hoffa also appointed Santangelo and International Representatives Robert Turner ("Turner") and John Kikes ("Kikes") to be Personal Representatives to the Local. (Exs. 13-14; Ex. 32 at 16-17) Santangelo, Turner and Kikes conducted an investigation into the complaints regarding Local 631. (Ex. 3)

In January 2000, IBT Vice President and Joint Council 42 President Santangelo forwarded a report to General President Hoffa recommending the Local 631 be placed in Trusteeship based on the investigation that he and Personal Representatives Kikes and Turner had conducted. (Ex. 3)

Passo and Hogan continued to keep in close contact throughout early 2000. From cellular telephone records, there were eleven calls between Passo and Hogan

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<sup>21</sup> Vito Locascio was a former member of Hogan's local in Chicago and was a close confidant of Passo. (Exs. 144 and 146) After Local 631 was placed in Trusteeship, Passo and Locascio talked every day. (Ex. 147 at 33)

in January 2000, the month of Santangelo's report, twelve calls in February 2000 and 32 calls in March 2000. (Exs. 42-45, 54, 65-68 and 76)<sup>22</sup>

On February 28, 2000, Hogan arrived in Las Vegas for a labor panel for the Exhibitor Assisted Contractors Association that was then having a meeting in Las Vegas. (Tr. 311; Ex. 15 at 83-84; Exs. 265-66) Passo arrived in Las Vegas the next day. (Exs. 118-119) That day, there were five calls from Hogan's cellular telephone to Passo's cellular telephone. (Exs. 68 and 76) The following day, on March 1, 2000, Passo, Hogan, Santangelo and Turner went to Local 631 to confront Secretary-Treasurer Murphy. (Tr. 141-142; Ex. 25 at 65-66; Ex. 20 at 116; Ex. 15 at 100; Ex. 32 at 13) At the time Hogan went with Passo and Santangelo to Local 631, Hogan had no International position. Nor did he have any assigned role with respect to Local 631. (Ex. 12 at 60)<sup>23</sup>

On March 1, 2000, Passo dined with Hogan, Santangelo, Turner and Christian, the Local 631 President whom Murphy had terminated as a business agent. (Exs. 118-119) In addition, also on March 1, 2000, Passo and Hogan had a private meeting to discuss Local 631. (Exs. 118-119)<sup>24</sup>

Passo's March 1, 2000 appearance at the Local was the first time Murphy had seen Passo at Local 631. (Tr. 141; Ex. 25 at 22-24) During this meeting, Passo, Hogan, Santangelo and Turner told Murphy that General President Hoffa recommended

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<sup>22</sup> On February 17, 2000, Passo and Hogan dined together in New Orleans during the AFL-CIO Convention. (Ex. 15 at 81-82; Ex. 20 at 120; Exs. 116 and 117)

<sup>23</sup> Scalf, Hoffa's Executive Assistant who supervised Hogan as an International Representative, confirmed he had given Hogan no assignment in Las Vegas. (Ex. 12 at 60)

<sup>24</sup> This meal was at Piero's Italian Cuisine. (Exs. 118-119) When asked why he discussed Local 631 business with Hogan at this dinner, Passo claimed, "[t]o tell you the truth, I don't know how he got involved in that." (Ex. 20 at 128)

that he do three things: rehire business agent Christian and office employee Pam Peabody and terminate Leslie Johnson. (Tr. 143-144; Ex. 20 at 116; Ex. 15 at 100; Ex. 32 at 13; Ex. 25 at 65-66; Ex. 193) Murphy was given until March 3 to respond. (Tr. 145) The next day, March 2, 2000, Passo, Hogan and others met to discuss Local 631. (Exs. 118-19; Ex. 147 at 34, 133-134; Ex. 20 at 129-131) Santangelo and Turner, Hoffa's personal representatives to the Local, were absent from this meeting.

On the morning of March 3, *Passo* called Murphy demanding his response. (Tr. 145) Murphy said he would respond to Hoffa in writing. (Tr. 145) Later on March 3, Murphy telefaxed Hoffa a letter explaining his reasons for not complying with Hoffa's requests. (Ex. 193; Ex. 25 at 66; Tr. 145) On March 3, 2000, Hogan called Passo and spoke for ten minutes. (Ex. 67)

### 3. Local 631 Trusteeship

Between the March 1, 2000 meeting at Local 631 and April 5, 2000, when Local 631 was placed in Trusteeship, there were at least 32 calls between Hogan's and Passo's cellular telephones. (Exs. 44, 45, 54, 67, 68, 76)

On April 5, 2000, President Hoffa placed Local 631 in Trusteeship.<sup>25</sup> (Ex.

14) Hoffa appointed *James Wilkerson* ("Wilkerson"), the former principal officer of

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<sup>25</sup> According to Hoffa's Trusteeship notice, Local 631 was placed in Trusteeship for the following reasons:

1. Membership discontent is at a dangerous level. Members complain that the Local Union has failed to file grievances or failed to file them in a timely manner; the Local has failed to keep members abreast of the status of grievances, and has negotiated substandard agreements with employers. . . .
2. Members have complained that the Local Union has failed to enforce the collective bargaining agreements. Work previously performed by Local 631 members is being subcontracted to non-Teamster employers. If this is permitted to continue, a substantial number of jobs will be lost as a result of employers diverting traditional Local 631 work elsewhere. . . .
3. Local members and staff have complained that officers and representatives of the Local are inexperienced and unable to provide adequate representation to the members. . . .

Local 14 in Las Vegas, as Trustee.<sup>26</sup> (Ex. 198) In addition, Hoffa appointed Marty Frates (“Frates”), a business agent from Local 70 in Oakland, California and a Hoffa appointee to a United Parcel Service (“UPS”) National Grievance Panel, as *Assistant Trustee*. (Ex. 198, Ex. 82 at 508, 20, 64)<sup>27</sup>

The Trusteeship notice described the appointment of Santangelo, Turner and Kikes as the General President’s Personal Representatives to Local 631 and their activities in that capacity. (Ex. 14) Passo also had been appointed a Personal Representative to Local 631 but his involvement was not described and his activities not listed in the notice to members. (Ex. 14)

On April 5, 2000, Passo was one of the group that went to Local 631 to effect the Trusteeship. (Ex. 21 at 264-65) Secretary-Treasurer Murphy and the Local’s other officers were terminated. (Tr. 147, 400; Ex. 26 at 14)

Several other Local employees, including dispatcher Breyman, were fired. (Tr. 391; Ex. 5 at 55-56)

On the day the Local was placed in Trusteeship, Passo called Hogan five times. (Exs. 45, 55, 76; Tr. 319-320) In addition, there were two calls from Hogan to

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4. As a result of the Local’s failure to provide the representational services to which members are entitled, general membership meetings have become hostile, chaotic and counter-productive. . . .

5. In addition, employment decisions by the Principal Officer have reportedly been motivated by political animus . . . .

(Ex. 14)

<sup>26</sup> Between March 1965 and April 1995, Wilkerson had been employed at Local 14 in Las Vegas. (Ex. 16 at 5-Local 631) He was the principal officer of Local 14 for 28 years. (Ex. 26 at 5-Local 631) Wilkerson had also been a Trustee and the Recording Secretary for Joint Council 42. (Ex. 26 at 6)

<sup>27</sup> Frates was a business agent with Local 70 for twenty-three years. (Ex. 82 at 6) Frates had been a Local 70 Trustee for approximately seven years in the 1970s. (Ex. 82 at 6)

Passo. (Exs. 69, 76) Passo continued the practice of informing Hogan of all events regarding Local 631.

Passo chose Local 631 member Roberta Whitfield (“Whitfield”) to be one of the business agents for the convention industry. (Tr. 480; Ex. 26 at 40-41; Ex. 6 at 5) She had worked in the convention industry for twenty-three years and had been a steward in the convention industry since the 1980s. (Ex. 6 at 11) Wilkerson had not previously known Whitfield. (Tr. 70)

After the Local was placed in Trusteeship, *Chuck Benboe* (“Benboe”) was also hired as a business agent for the convention industry. (Ex. 26 at 40) Benboe had been a business agent with Local 222 in Salt Lake City and Local 190 in Billings, Montana. (Ex. 149 at 6) Whitfield worked in the field. Benboe was responsible for handling grievances. (Ex. 26 at 41-42)

After Local 631 was placed in Trusteeship, Passo was in Las Vegas regularly over a period of several months. Of the 229 days between April 4 and November 19, 2000, Passo was in Las Vegas for *156 days*. (Ex. 201)<sup>28</sup>

Hogan was frequently in Las Vegas during the same period. For at least 27 days between April 16 and October 27, 2000 Hogan was in Las Vegas. At the IRB hearing Hogan claimed to be concerned with the Local’s jurisdiction being infringed, but he *never once* met with the *IBT Trustee* to let his concern be known. (Tr. 375-376) In the eleven months from the Trusteeship to his request to Hoffa in March 2001 to be permitted to negotiate the *Local 631 contract*, Hogan never called Wilkerson or his

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<sup>28</sup> The IBT paid approximately \$18,501 in hotel bills; \$11,522 in car rental bills, \$8,653 in airfare and \$21,256 in meals and other expenses, including gasoline, for Passo’s stays in Las Vegas. (Exs. 120-135, 201)

successor to express his views on the proposed agreement with United or problems at the Convention Center. (Tr. 366-367, 375-376; Ex. 26 at 58; Ex. 15 at 92-93)

Hogan and Passo were both in Las Vegas at the same time on at least six occasions in 2000. (Exs. 116-35, 166, 265-281)<sup>29</sup> (Exs. 118-119, 122, 123, 128, 129, 132, 133, 165)

**4. Passo and Hogan's Efforts to Get a Substandard Agreement for United CEO Simon**

After Local 631 was in Trusteeship, Hogan introduced Passo to Simon so Passo would help Simon renew his effort to make a labor arrangement with Local 631. (Tr. 306-307; Ex. 15 at 24-25) Hogan never introduced Simon to Trustee Wilkerson. (Tr. 60) As a result of Hogan's introduction, Passo and Simon discussed an arrangement for United with Local 631. (Tr. 444-447; Ex. 20 at 73-74)

During this time, Passo knew that trade show contractor GES was "scabbing" by using United employees at rates substantially less than the Teamster contract. (Tr. 464, 487-88) Passo discussed GES's "scabbing" with Hogan. (Tr. 487-88) According to Passo, the United employees were paid \$5.00 per hour. (Tr. 508) The minimum hourly rate under the red book agreement was \$12.40. In addition, under the red book contract, United would have to pay an additional \$7.90 per hour per employee in benefit contributions. (Ex. 4 at 11, 26-27) Throughout this period, Passo knew that the United employees had no health and welfare or pension benefits. (Tr. 508) Passo took no action about the scabbing.

<sup>29</sup> Passo and Hogan were both in Las Vegas on the following dates: February 29-March 2, 2000; May 7, May 19-21; August 13-17; September 19-24; October 23-27. (Exs. 118-120, 122-125, 128-133, 176, 265-267, 269, 271-273, 275-280)

Passo gave Simon a copy of the Local's contract with GES. (Ex. 20 at 70)<sup>30</sup> Simon told Passo that he, Simon, should have concessions from that agreement. (Ex. 20 at 75-77) Passo then pressed concessions for Simon on Local 631. (Ex. 20 at 84-85; Tr. 59; Ex. 20 at 75-77; Ex. 26 at 45)

Local 631 officials did not participate in any of the discussions over terms between Passo and Simon. (Ex. 20 at 52, 162-64) Rather, Passo made an agreement with Simon that he then pushed the Local's officials to approve. (Tr. 65-66, 96, 120, 180-189; Ex. 6 at 93-111; Ex. 26 at 44-49; Ex. 82 at 53-56, 72-73; Ex. 20 at 162-163)<sup>31</sup>

After Local 631 officials refused to endorse the Passo-Simon agreement, Passo falsely represented that high-ranking IBT officials supported it and would look favorably on the Local 631 officials approving it. (Ex. 26 at 88; Tr. 65) When the Local 631 officials continued to refuse to enter into his agreement with Simon (Ex. 82 at 49-56; Ex. 6 at 94-111; Ex. 26 at 44-46), Passo caused Assistant Trustee Frates to be terminated. (Ex. 26 at 111-112; Ex. 78 at 62; Ex. 12 at 214) Passo later caused Trustee Wilkerson to be fired. (Ex. 20 at 242-243; Ex. 12 at 84-85, 127, 130, 151-152; Ex. 78 at 57-59)

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<sup>30</sup> In August 2000 Passo submitted to the IBT Legal Department an agreement he had negotiated with Simon with the following description, "The language in the enclosed paperwork is the amended language to the contract. Everything else will remain the same as in the GES Exposition contract." (Ex. 84) In contrast, during the IRB hearing Passo testified "... They [United] did not have anything to do with the GES contract. They were totally away from it . . ." (Tr. 508)

<sup>31</sup> Passo did not have authority to sign an agreement with United. (Tr. 95) Trustee Wilkerson had that authority. (Tr. 95)

**5. Passo's Pressures on Local 631 Officials on United's Behalf to Agree to a Substandard Contract**

In April or early May 2000, shortly after the Trusteeship, Passo told business agent Whitfield that he and Simon were working on an agreement under which Simon's company would provide employees in the convention industry. (Tr. 177, Ex. 6 at 89-93) Subsequently, Passo told Whitfield that Simon would be in Las Vegas and asked her to dinner with Simon. (Tr. 179)

Whitfield requested Assistant Trustee Frates to attend this dinner with Passo and Simon. (Ex. 6 at 93-95; Ex. 82 at 40) (Tr. 185) In attempting to justify why he wanted the inexperienced Whitfield alone at a meeting on Local business with him and Simon, Passo bluffed, telling Whitfield that ". . . he knew more about doing a contract than Marty did . . ." (Tr. 185) In fact, Passo had no experience negotiating collective bargaining agreements. (Ex. 21 at 190-291; Tr. 504-505) Nor did he have any experience in the convention industry. (Tr. 455; Ex. 20 at 23, 79) Passo's false statements about his own experience were consistent with his attempts to convince others to approve his agreement with Simon by falsely claiming other IBT officials favored it.

Whitfield and Frates met Passo and Simon for dinner. (Ex. 6 at 96; Ex. 82 at 49; Ex. 20 at 89-90) Passo and Simon presented an agreement under which the Local would make substantial concessions from the red book contract to Simon. (Ex. 82 at 53-54, 72-73; Ex. 6 at 94-104; Tr. 180) Passo and Simon's wage scale was \$8.00 per hour, the same figure Passo quoted to Wilkerson in his discussion with him. (Tr. 58, 60, 180-181) At that time, the lowest wage scale under the governing contract was \$12.40 per hour. (Tr. 180)

In addition, Passo had agreed that Simon would not make benefit fund contributions from the first hour an employee worked as the red book agreement required. (Tr. 181; Ex. 6 at 101-102; Ex. 4 at 24, 27)

Passo urged Frates and Whitfield to approve Simon's terms. (Tr. 275-76; Ex. 82 at 72) Whitfield testified,

... when we were going through where they wanted to pay the people and the amount they wanted to pay them and the scale and the benefits package that they wanted to offer that wasn't up with the Red contract, several times we [Passo and Whitfield] went out on the patio, and he told me I should – I had to listen to the employer and I should think about what I was doing, and this would be right for the people.

And I said, 'No, it won't be right for the people because they are not getting the benefits as the Red Book contract. They should just sign the Red Book contract, and that would make him a legal employer like the rest of us – rest of the people.'

(Tr. 184)

Both Whitfield and Frates refused to agree to Passo's concessions for Simon. (Tr. 183-185; Ex. 82 at 54)<sup>32</sup> Assistant Trustee Frates stated:

My position was that if Mr. Simon wanted to sign a contract, he could sign the same contract that GES and all the other employers signed, dollar for dollar, penny for penny. I reported this back to Mr. Wilkerson, and Mr. Wilkerson was in total agreement.

(Ex. 82 at 54)

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<sup>32</sup> During his sworn examination, Passo testified that he did not recall Frates' or Whitfield's opinion regarding the agreement. (Ex. 20 at 92) The claimed lack of memory is not credible.

Part of the reason for Frates' strong opposition to Passo's proposal to give significant economic concessions to Simon was because he believed they would trigger the most favored nations clause in the red book contract to the disadvantage of Local 631's members in the convention industry. (Ex. 82 at 54) Frates also opposed the proposed agreement with United because contract negotiations with the trade show contractors were coming up in 2001, ". . . it would have been asinine to go in and negotiate something less right before negotiations." (Ex. 82 at 55)

Whitfield asked Passo why Simon did not sign a "me too" agreement to the red book contract. (Ex. 6 at 124) Passo responded that Simon "doesn't like that contract." (Ex. 6 at 124)

After Frates and Whitfield unequivocally rejected their proposal, Passo and Simon stated that they would continue to work on the agreement. (Tr. 185; Ex. 82 at 56) Passo did not involve anyone else from the Local in his alleged continuing negotiations with Simon.

Again, after the Trusteeship was imposed, Passo solicited Trustee Wilkerson to approve an arrangement pursuant to which Local 631 would contact Simon's company for workers after the Local 631 dispatch lists were exhausted. (Tr. 58, 62; Ex. 26 at 44-45)<sup>33</sup> Wilkerson recognized that the agreement Passo advocated for Simon was substandard. He would not approve it. (Tr. 58, Ex. 26 at 44-50) The Passo-

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<sup>33</sup> Wilkerson testified that Passo's proposal provided that if the Local could not fill the call with people from the dispatch office,

. . . [rather than go to [Local] 14 or [Local] 955 or the Stagehands or the Carpenters or Laborers, the deal was that we would call these guys, this company. And he would furnish those people at a much lesser scale.

(Ex. 26 at 45)

Simon proposal presented to Wilkerson was much the same as the proposal presented to Whitfield and Frates. (Tr. 59, Ex. 26 at 45)

Wilkerson also recalled under Passo's proposal that Simon's employees would not immediately become members of Local 631, but in an elongated process. As Wilkerson recounted, ". . . in reading his notes and listening to him [Passo], I said, 'You're wasting your time with me. You are not going to get anywhere with that piece of crap with me.'" (Ex. 26 at 46)<sup>34</sup>

Passo requested that the Local's attorney, Joseph Kaplon ("Kaplon"), persuade Wilkerson to approve the agreement. (Tr. 59, Ex. 26 at 46) Wilkerson testified, ". . . So I got a hold of Joe Kaplon, had him come in and explained to Joe what I thought the contract existed [sic] of, and he was absolutely in agreement with me that it should not be a signed document by the local union." (Tr. 59; Ex. 26 at 46) Wilkerson told Passo, "I can't be a party to that. Period. You're breaking down conditions here. . . ." (Ex. 26 at 52)

Passo claimed that he was unaware of the "most favored nations" clause in the agreement until Wilkerson and the Local's attorney told him about it. (Tr. 47-71; Ex. 20 at 158-59) Hogan, who was Passo's regular advisor concerning United, testified that

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<sup>34</sup> Wilkerson testified,

It was the same thing. He'd come back again with -- I'm sure after he talked to me that one time, he'd go back to whomever, and they would agree to extend -- to stretch something a little bit more and -- well, like, 'We'll do the health and welfare after the sixth months.' or 'We'll do the pension after' --

And each time, I'd say to him, 'Dane, you cannot do that. That is illegal. You cannot do that.'

And he would go back and then come back about a month later or weeks later or whatever, it was another version, but eventually it just -- he quit. Just stopped.

(Ex. 26 at 53-54)

he had never even read the then current Las Vegas agreement with trade show contractors and was also unaware of the “most favored nations” clause in it. (Tr. 338)

After Wilkerson refused to enter into the substandard agreement because of its terms, Passo falsely claimed to Wilkerson that high-ranking International officials in addition to Hogan favored the contract. (Tr. 65, 91; Ex. 26 at 88, 92) Passo lied to Wilkerson that both Santangelo and Scalf wanted Wilkerson to enter into Passo’s arrangement with Simon’s company. (Tr. 65, Ex. 26 at 88, 92)<sup>35</sup> According to Wilkerson,

Passo said to me about the third or fourth meeting that some other people would consider it a favor if I would sign the contract – agree to the contract. He named Carlo Scalf and Jim Santangelo as the ones that would appreciate it if I had signed that.

(Tr. 65)

Both Santangelo and Scalf denied approving Passo’s proposed agreement with Simon’s company. (Ex. 32 at 41-43); Ex. 12 at 98-101) Wilkerson told Passo that if

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<sup>35</sup> During his sworn examination, Passo testified as follows:

Q: Did you ever tell anyone that Mr. Santangelo wanted 631 to enter into an agreement with Mr. Simon’s company?

A: I don’t remember if I did.

Q: Did you ever tell anyone that Mr. Scalf wanted Local 631 to enter into the agreement with Mr. Simon’s company?

A: I don’t remember if I did. If I did, it was probably to pump up the members or something, this way it looks like we are getting new members.

Q: Did Mr. Scalf want an agreement entered into with Mr. Simon’s company?

A: I don’t know if he wanted an agreement, he wanted teamsters.

(Ex. 20 at 187) Passo claimed not to recall whether he told Wilkerson that Santangelo approved the agreement with Simon’s company. He denied telling Wilkerson that Scalf approved the agreement. (Ex. 20 at 181-83) That Passo named Scalf as a supporter of the contract is supported by the transcript of the September 10, 2000 conversation in which Passo told Whitfield that “Scalf’s got it and they all went through it and everything. . . .” (Ex. 128 at 33) Moreover, Simon told Frates that Scalf and Santangelo had approved the contract. (Ex. 82 at 63)

Scalf wanted the agreement with Simon's company entered into, Scalf should sign the agreement himself. (Ex. 26 at 92)

Frates and Whitfield informed Wilkerson that Passo tried to convince them to support the agreement with Simon's company too. (Tr. 66, 96; Tr. 186) The Trustee, Assistant Trustee and trade show business agent, all of whom did not know each other prior to the Trusteeship (Tr. 70), saw Passo's proposal as substandard. (Tr. 92-93) Only Simon, GES, and Hogan's brother, who was both a trade show contractor and United Vice President, would have benefited from allowing Simon to profit through supplying labor to GES and other contractors at below then current Teamster contract rates.

**6. Passo and Hogan Frequently Discussed the Agreement with United**

Throughout the Trusteeship, Passo *frequently reported* to Hogan on the progress of the arrangement with United. (Ex. 20 at 79) Passo, although not disclosing to Scalf, his superior, the details of his arrangements with Simon, admitted he needed to keep Hogan informed. (Ex. 12 at 65, 97-98; 100, 107; Ex. 20 at 67068; 80-81) Scalf was not aware that Hogan, who reported to him as an International Representative, was aligned with Passo to benefit United at the expense of Local 631 (Ex. 12 at 107)

Although Hogan was without any responsibility for Local 631, Passo said he informed Hogan "[t]o let him [Hogan] know about the contract, how it was going, to get some advice from him. I wasn't you know – never in the convention industry." (Ex. 20 at 79) When asked what he discussed with Hogan about the contract, Passo responded, "[t]he language, what I need, probably some information with him, what does he think." (Ex. 20 at 81)

The dinner among Passo, Simon, Whitfield and Frates occurred in May or June 2000. (Tr. 179) During that period, Passo and Hogan had regular and frequent contact. (Exs. 46-48, 57, 69-71) In May 2000, there were at least twenty-eight cellular telephone calls between Passo and Hogan. (Exs. 47-48, 57, 71) Hogan admitted that Passo kept him updated on his conversations with Simon. (Ex. 15 at 93) In addition to Passo, Hogan also discussed the agreement with Simon. (Tr. 323, 370. Ex. 15 at 46, 95-96) Based upon his discussions with Passo and Simon, Hogan described the agreement with United as a “contract for services.” (Ex. 311 at 4) Hogan claimed he did not know what the wages were in the contract. (Tr. 363)

After the steakhouse meeting, Passo repeatedly urged business agent Whitfield to endorse his arrangement with Simon’s company. (Ex. 6 at 125) Passo brought in Hogan to meet Whitfield during one of Hogan’s trips to Las Vegas. (Ex. 6 at 232) At that time, Hogan instructed Whitfield that she “should listen to Dane Passo.” (Ex. 6 at 234)

In May 2000, Hogan introduced Simon to Joint Council 42 President Santangelo in Las Vegas. (Ex. 32 at 24-25) Passo, Hogan, Santangelo and Simon met for dinner at the Rio Hotel. (Ex. 32 at 24-25)

In May 2000, Hogan met with Barry Rappaport (“Rappaport”), the head of Freeman’s operations in Las Vegas. (Tr. 327-333, 502-503, Ex. 15 at 52; Ex. 20 at 199-201) Hogan asserted the meeting was at the request of the Freeman representatives who had concerns about the Local 631 Trusteeship. (Ex. 15 at 52-53, 120; Tr. 327-328) Hogan asked Passo to attend the breakfast meeting in Las Vegas with Rappaport. (Tr. 327-28; Ex. 15 at 52, 55-56) Hogan did not invite the Trustee or inform the Trustee of

the meeting. (Ex. 15 at 122-123) Nor did Passo. (Tr. 57-58) Neither Hogan nor Passo told Scalf about the meeting. (Ex. 12 at 146-147)

Passo, Hogan and Rappaport discussed the proposed arrangement with Local 631 for Simon's company. (Tr. 332-333; Ex. 20 at 199-204) According to Passo, Rappaport, an employer, explained to Passo that the concessions on wages<sup>36</sup> and other benefits were a bad idea because the contract negotiations for a new agreement were coming up in 2001 and Passo's proposed arrangement would undermine the Local's bargaining position. (Tr. 502-503; Ex. 20 at 203-04; Ex. 21 at 273) Neither Passo nor Hogan suggested that United employees would be paid the prevailing contract rate.

Hogan was unconcerned with any impact the arrangements for Simon would have on IBT members or United employees. (Tr. 332-333; Ex. 15 at 51-55) He did not contradict Freeman's analysis that Passo and Hogan were damaging the Local's bargaining position.

Neither Hogan nor Passo ever told Scalf, to whom they both reported, about their meeting with a representative of Local 631 employer Freeman in Las Vegas. (Ex. 12 at 145-146; Tr. 427-428) Scalf had never heard of Freeman. (Ex. 12 at 145-46) Nor did Passo or Hogan ever tell the Trustee of their meeting with a Local 631 employer. (Ex. 15 at 122-123; Tr. 376)

In addition to this meeting with Rappaport, Passo also met with other Freeman representatives concerning United. (Tr. 195-96) Business agent Whitfield testified that in approximately May or June 2000, Freeman management representative

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<sup>36</sup> Passo testified that he may have told the Freeman representative, "...that there was going to be a wage difference." (Ex. 20 at 204)

Dick Jamison informed her that Passo had spoken to him about using employees of Simon's company. (Tr. 195-96; Ex. 6 at 195-97) Whitfield recalled that Jamison told her:

[h]e was very adamantly opposed that Dane would come on his property unannounced and speak to higher management about people that they had never used in the past [United], were not interested in using, and did not want to mess with the Teamsters jurisdiction.

(Tr. 196) Passo never told the Trustee, Assistant Trustee or convention industry business agents about these discussions. (Ex. 6 at 196-198; Tr. 57-58)

#### **7. The Simon Agreement**

In late July 2000, Frates had a telephone conversation with Simon during which Simon described an agreement he had reached with Passo. (Ex. 82 at 56-57; 68-69) Simon informed Frates,

. . . That he [Simon] and Passo had reached some type of understanding, and that he was. . . he would be ready to start up operations August 1, and that he wanted the shows and a list of whatever was coming, and I basically told him, "We're not into that yet."

(Ex. 82 at 68) Frates refused to provide Simon with such a list. (Ex. 82 at 68-69) A major show, the MAGIC show, was booked for Las Vegas in August and thus, there was a substantial opportunity in view for United to place its cheaper workers with GES. The agreement with Simon that Passo submitted to the IBT Legal Department specifically referred to employees hired after August 1, 2000. (Ex. 84)

Shortly, after his call to Frates, while Hoffa was in Chicago for AFL-CIO meetings in late July or early August 2000, Hogan arranged for himself, Hoffa, Passo and Simon to have lunch at Harry Cary's restaurant. (Ex. 20 at 165-66; Ex. 15 at 66-71; Ex. 78 at 25-29) According to Passo, Hogan picked up Hoffa and Passo at the Drake Hotel

where Hoffa was staying. (Ex. 20 at 165-67) At the hearing, Hogan suggested that meeting Simon at the restaurant was a coincidence. (Tr. 335-36)

According to Hogan, he, Passo and Simon gave Hoffa “a general overview . . . that we were trying to do something with Rick . . . .” (Tr. 336, Ex. 15 at 69) Passo claimed that the agreement between Simon’s company and Local 631 was not discussed at this lunch with the General President. (Ex. 20 at 168) Hoffa acknowledged that the agreement was discussed. (Ex. 78 at 28) Hoffa did not understand that Passo had any role in it.

**8. Hogan and Passo’s Constant Communication in August 2000 and the Use of United Employees**

Shortly after this lunch meeting with Simon and Hoffa, on August 3, 2000, Passo returned to Las Vegas. (Exs. 128-29) Hogan arrived in Las Vegas on August 13 and left on August 17, 2000. (Ex. 278) During that time Passo and Hogan had at least two meals together, one on August 13 and the other on August 15. (Ex. 129) While Hogan was in Las Vegas, there were seven calls from his cellular telephone to Passo and eight calls from Passo’s cellular telephone to Hogan. (Exs. 49 and 73)

During the month of August 2000, there were eighteen calls from Hogan’s cellular telephone to Passo and thirteen calls from Passo’s cellular telephone to Hogan. (Exs. 49, 72-73)<sup>37</sup>

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<sup>37</sup> At 9:00 a.m. on August 15, 2000, Hogan called Passo. (Ex. 73) Hogan then called Simon at 9:08 a.m. and spoke for five minutes. (Ex. 73) The next call from Hogan’s cellular telephone was at 9:25 a.m. to the offices of GES’s parent company, VIAD, in Phoenix, Arizona. (Ex. 73) Hogan knew GES had a relationship with Simon’s companies. (Ex. 15 at 51-55) Hogan then called Passo and spoke for eight minutes. (Ex. 73) Hogan acknowledged that he “probably” spoke to Passo and Simon about the agreement with United during these calls on August 15, 2000. (Ex. 15 at 107-111)

Approximately two weeks after the Hoffa lunch with Simon in Chicago, and the same day as Hogan and Passo had dinner together in Las Vegas, on August 15, 2000, Hogan made a series of telephone calls to Simon, Passo and GES, the contractor wanting to use Simon's company in Las Vegas, concerning the arrangement between Local 631 and United. (Exs. 73, 129) Both Hogan and Passo were in Las Vegas on August 15, 2000. (Exs. 128-29; 275-77) The MAGIC show, a major GES show, was to begin on August 24, 2000. (Ex. 151)

On the same day as the series of telephone calls with Simon, Simon purchased a ticket to the James R. Hoffa Memorial Scholarship Fund ("Hoffa Scholarship Fund") golf outing in Las Vegas. (Ex. 85) Hogan was on the committee for this golf outing. (Ex. 15 at 191) By check dated September 8, 2000, Simon's company, United Maintenance Company, Inc., made a donation of \$5,100 to the Hoffa Scholarship Fund. (Ex. 85) This donation represented \$300 for Simon's ticket to attend as a non-golfer and golf fees of \$1,200 each for Hogan's son, James Hogan; Hogan's friend, Bill Marovitz, the Joint Council 25 lobbyist, and two other individuals. (Ex. 85, Ex. 86 at 32-33; Ex. 15 at 98) That night, Hogan and Passo had dinner together. (Ex. 129)

The activity among Passo and Hogan with Simon and GES increased as the MAGIC show, one of the large trade shows in Las Vegas, drew near its dates, August 24 through September 3, 2000. (Ex. 215) During the MAGIC show, GES, the show's general contractor, used United employees to perform Teamster work. (Tr. 66, 128-129, 191-194; Ex. 82 at 74-80; Ex. 26 at 60-63; Ex. 6 at 88-89, Ex. 156 at 27, 47, 93-94; Ex. 149 at 59-62; Ex. 25 at 93-94; Ex. 203 at 19-20; Ex. 300 at 25-26) As a result, Local 631 filed grievances against GES. (Exs. 151 and 251)

On August 23, 2000, one day before the MAGIC show began, Hogan called Passo from Chicago and spoke to him for sixteen minutes at 7:03 p.m. (EST) (Ex. 73) That same day, a few minutes later, at 5:23 p.m. (PST), there was a call from Passo's cellular telephone to Simon's cellular telephone. (Ex. 49 at 57)

The next day, Passo left Las Vegas and returned to Chicago. (Ex. 128-129) While there in Chicago, Passo contacted Simon. (Ex. 49 at 62) On Sunday, August 27, 2000 at 8:32 p.m. there was a call from Passo's cellular telephone to Simon. (Ex. 49 at 62) Two days later, Passo sent the agreement Simon drafted to Nicole Pollard ("Pollard"), an attorney in the IBT's General Counsel's office.

On August 29, 2000, Passo sent IBT attorney Pollard the agreement he had reached with Simon. (Ex. 84) In his cover letter, Passo wrote:

[t]he language on the enclosed paperwork is the amended language to the contract. Everything else will remain the same as in the GES Exposition contract. Look at the "Most Favored Nations" clause in the contract on page 32.

(Ex. 84 at 2) On the same day Passo sent his agreement with Simon to Pollard, there was a fifteen-minute call from Hogan's cellular telephone to Passo.<sup>38</sup> (Ex. 73)

When the proposal was described to International Vice President Santangelo, and Wilkerson told Santangelo that he refused to approve the agreement, Santangelo acknowledged he said, "I don't blame you. I mean, we would be all dead. This would be crazy, you'd kill this whole industry." Passo did not disclose to Pollard that Local 631 officials and the Local's attorney had rejected his arrangement with

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<sup>38</sup> Simon would tell Frates the next day, August 30, that he and Passo had agreed to the contract. (Ex. 82 at 57)

United. (Ex. 297 at 36-39) In addition, Passo never told Pollard that United was a labor broker or a labor leasing company. (Ex. 297 at 23)

The memorialization of his arrangement with United that Passo submitted to the IBT provided that all workers hired after August 1, 2000 would become "D" list workers, a new class of employees. (Ex. 84)<sup>39</sup> Passo's and Simon's contract also provided that, "[t]he 'D' list workers shall supersede the placement of Supplemental Workers." (Ex. 84)

The contract also provided the following:

"D" list workers for this agreement shall *be administered thru a United Temp Company.*" The company shall *recruit, hire, and dispatch* and deliver the "D" list workers to the required site. In addition, the Company shall provide a two hour training period to all new hires which shall consist of basic instruction on crate moving, decorating, safety rules, Teamster handbook.

(Ex. 84) In addition, Passo agreed that the protection for the Local against general contractors hiring labor at less than contract rates from subcontractors such as United set forth in the subcontracting provision in the red book agreement be eliminated. (Ex. 84)<sup>40</sup>

According to the August 29, 2000 Passo-Simon arrangement, "D1" workers were those that had less than 250 hours in the industry. (Ex. 84) The "D2" workers were those that worked between 250 and 1,000 hours in the industry. (Ex. 84)

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<sup>39</sup> As noted, the red book contract had A list workers and Supplemental workers, who were sometimes referred to as C Plus and C workers. (Ex. 4). The terms now provided:

"D" list workers shall perform all of the duties of any 631 member except they are not permitted to operate forklifts, drive any vehicle over 10K lbs at any time, drive any vehicle under 10K lbs without the written authorization of the Employer or union or be the lead man on any I + D work.

"D" list workers shall be put to work only when all A + C list is exhausted. Workers who start a shift shall be permitted to finish that shift.

(Ex. 84)

<sup>40</sup> The agreement provided that Section B on page 12 of the red book agreement "does not apply." (Ex. 84) Article II, Section B(5) of the red book agreement is the subcontracting provision described. (Ex. 4 at 12)

Simon's D1 workers would be paid \$10.00 per hour "for the first 250 hrs in the industry. During this training/trial period there shall be no payments to H + W or Pension Fund." (Ex. 84) In contrast to Passo's concessions to Simon, under the red book agreement Supplemental Workers who worked less than 150 hours in the industry were paid \$12.49 per hour with benefit fund contributions of \$7.90 per hour paid from the first hour worked. (Ex. 4 at 11, 26, 27) Under Local 631's contract, effective June 1, 2000, Supplemental Workers who worked more than 150 hours were paid \$13.69 per hour with benefit fund contributions of \$7.90 per hour. (Ex. 4 at 11; 26-27)

Under the submitted contract, Simon, and not the Local 631 dispatch office, would control which of his employees worked. The agreement contained no provisions for their selection and, due to the temporary nature of "United Temps" workforce, Simon could ensure that none of his employees worked more than 250 hours in the industry, thereby avoiding making any benefit fund contributions for his employees. By not paying benefit contributions for the first 250 hours, Simon would have saved more than \$1,900 per employee. (Ex. 207)

In addition, pursuant to the Passo-Simon agreement, the "D2" workers would be paid \$11.00 per hour with benefit fund contributions. (Ex. 84) This was an hourly wage \$2.69 less than the red book agreement required Supplemental Workers with only more than 150 hours in the industry to be paid. (Ex. 4)

Under the GES red book agreement then in effect, Local 631 had dispatch records of all individuals referred to work and the Local 631 Security Fund had records of benefit fund contributions for every hour worked. (Ex. 4 at 3, 26-27, Ex. 92 at 47) In contrast, under the United agreement, Simon would control the dispatch and the benefit

fund contributions would not be required. (Ex. 84) Accordingly, Passo's agreement undercut the Local's ability to ensure that the United employees received the pay increases and that United made the benefit fund contributions required.

For all the "D1" and "D2" workers, the contract eliminated time and one-half pay for work performed between the hours of 10:00 p.m. and 6:00 a.m. (Ex. 84) This was especially significant since the United employees performed Teamster work at night. (Ex. 6 at 236-37; Ex. 90 at 36) Under the red book agreement, for work performed during the hours of 10:00 p.m. and 6:00 a.m., a Supplemental Worker with less than 150 hours in the industry would be paid \$12.49 per hour unless he had worked more than eight hours in a day or 40 hours in a week at which point he could be paid time and one half. (Ex. 4 at 11-13) It also provided that a Supplemental Worker with more than 150 hours would have to have been paid time and one half, or \$20.53 per hour, for work performed between 10:00 p.m. and 6:00 a.m. (Ex. 4 at 11-13) Accordingly, Passo's concession allowed United to pay its employees who worked more than 150 hours in the industry at least \$9.53 per hour less than the red book agreement provided for work performed between the hours of 10:00 p.m. and 6:00 a.m. (Ex. 207)

In his arrangement with United, Passo also eliminated protections for employees injured on the job. (Ex. 84) Passo, Hogan, and Simon ensured that this section would "not apply to 'D' list workers," *i.e.*, United's employees. (Ex. 84)

#### **9. Pressure on Local 631 Assistant Trustee Frates**

On August 23, Passo called Simon. Passo called him again on August 27. (Ex. 49 at 57, 62) On August 29, the day the contract was submitted to Pollard, Passo spoke to Hogan for 15 minutes. (Ex. 73) He also spoke to Hogan on August 30, the day

Simon informed Frates again that he and Passo had reached an agreement. (Ex. 49) At 9:30 a.m. Frates returned a call to Simon. The call lasted fourteen minutes. (Ex. 214) During this call, Simon again informed Frates that he and Passo had reached an agreement that Simon and Passo wanted Frates to recognize. (Ex. 82 at 56-57)

Frates described the circumstances under which he made this call and the call to Simon as follows:

. . . What had happened is Roberta had got a call – Roberta Whitfield got a call from Mr. Simon. Roberta called me, indicated that she did not want to have a discussion with Mr. Simon, and I said I'm more than willing. I returned Mr. Simon's phone call. We went back and forth. He advised me that, you know, it's a good deal; that, you know, certain people like Mr. Passo endorsed the concept; and that he thought it was a good deal.

I suggested to him that we're not interested. If we couldn't get the full agreement, there was nothing to talk about, and that, if he was going to drop names of people that supposedly endorse the concept, then I basically told him to go and get them to sign it, get them to tell us to sign it, and that we're not going to do it, and that we basically had nothing to talk about, end of conversation.

(Ex. 82 at 56-57) Having met Santangelo and Scalf through Passo and Hogan, Simon falsely told Frates that Santangelo and Scalf also had approved the agreement with United. (Ex. 82 at 57, 63)<sup>41</sup> Santangelo and Scalf both denied approving the agreement with Simon's company. (Ex. 32 at 41-43; Ex. 12 at 97-98)

Frates also testified that during this conversation he raised the most favored nations clause in the governing contract with Simon. (Ex. 82 at 70) Simon, ". . . indicated he talked to the GES and it was not a problem, which I strongly disagreed with. And, if I remember correctly, he indicated GES would sign a waiver on the favored nations clause."<sup>42</sup> (Ex. 82 at 70) In response to Simon's claim of an agreement, Frates

<sup>41</sup> This was the same misrepresentation that Passo told Wilkerson. (Tr. 65, Ex. 26 at 88)

<sup>42</sup> Simon did not claim United was outside the language of the clause.

told Simon, "to go pound salt." (Ex. 82 at 57) After Frates's telephone conversation with Simon on August 30, 2000, there was a call from Passo's cellular telephone to Hogan. (Exs. 49, 73) Nine days later, Frates was terminated as Assistant Trustee after he contested the improper use of United employees by GES.

During the MAGIC show, GES, the general contractor, used United employees to perform Teamster work. (Ex. 82 at 74-80, Ex. 26 at 60-63; Ex. 6 at 88-89; Ex. 156 at 27, 47, 93; Ex. 149 at 59-62; Ex. 25 at 93; Ex. 203 at 19, Ex. 300 at 25-26) This was done despite workers available to be dispatched through Local 631 to perform this work. (Tr. 193-194; Ex. 26 at 63; Ex. 82 at 76; Ex. 6 at 72-73; Ex. 149 at 59-60)

Because she anticipated problems with GES, business agent Whitfield requested Wilkerson and Frates to come to the Las Vegas Convention Center during the MAGIC show. (Tr. 192-93; Ex. 6 at 72-73) Whitfield had "turned around" members who worked on the show immediately prior to the MAGIC show so that they would be available to work on the MAGIC show. (Ex. 6 at 73; Tr. 192) Whitfield had also arranged to have members of the Stagehands union dispatched from Local 631 if the Local 631 dispatch list was exhausted. (Ex. 6 at 89; Tr. 191-195)

In violation of the red book contract, GES brought in United employees to do Teamsters work and refused to use the people Local 631 dispatched. (Ex. 6 at 73-74; Tr. 192-194) Local member Alina Hernandez ("Hernandez"), a Spanish speaker, approached some United employees who were doing Teamster work on the MAGIC show. (Ex. 83 at 20) Hernandez explained:

. . . I approached a lot of them [the United employees]. I let them know, your know, "look, our union is coming down here. We're getting to the bottom of this. Our representatives will be here if you guys want to approach them, talk to them. I'll go with you. We'll get your names. We'll get you signed on." and what have you. "We'll take the necessary

steps to make sure that you guys are out here legally, you know, and you have a right to work and your rights are being met.”

At that point, I'd probably say about three vans full of United workers left the show site. They just carted them off.

I don't know why. I don't know if they are illegal. I don't know, you know, if they didn't want to be members or – I didn't know the exact circumstances. They didn't really stop to tell me, so to speak.

But three cars full left show site at that point.

(Ex. 83 at 20)

United employees were also brought to the convention site in a United van. (Ex. 6 at 82) The United supervisors would not allow Whitfield or the Local 631 steward to speak to the United employees (Ex. 6 at 87).

Wilkerson and Frates also observed United employees performing Teamster work. (Tr. 66-67; Ex. 82 at 74-75, 79; Ex. 26 at 60-63). According to Wilkerson, “. . . we speculated that Dane Passo and Simon or whoever they talked with at GES, they worked a deal.” (Ex. 26 at 63) Wilkerson knew workers were available to be dispatched through Local 631 to do the work the United employees were performing. (Ex. 26 at 63) Wilkerson explained, “[t]hat's why we ended up filing all those grievances. Two reasons, anybody who was left on the list; two, we wanted the insurance paid and the pension paid and the wages paid properly.” (Ex. 26 at 63)

Whitfield testified that she and Frates argued with GES management representatives about the use of the United employees on the MAGIC show. (Ex. 6 at 79-80) The GES representatives informed them “we don't care” and stated that the Local should file a grievance. (Ex. 6 at 79-80) Frates testified as follows:

. . . we made it very clear that we did not want Simon's group, the cleaning one, whatever it is. They had vanned them down to the convention center. It was interesting because none of them spoke English,

and there would be one – basically one interpreter to a van, and they were flooded into the joint to do some work.

Mr. Wilkerson and myself were absolutely adamant that a grievance be filed; that those people would be fully compensated, every penny under the contract. We do not know what they were being paid. We do not know if health and welfare and pension were paid. And there is a pending grievance – there was a grievance when I was there. It is my understanding that the grievance is still pending, and I was very adamant about that. They went to work for GES. I don't remember the specific date – but I'm sure GES does – that I sat in on a meeting and told them that I didn't buy this kind of crap. That if they were going to bring people in like that they were paying them full bore. They weren't getting a free ride. And that quite frankly, I didn't appreciate their conduct and how they were doing business, and if they wanted a war, they were getting one.

(Ex. 82 at 74-75)

At around the time of the MAGIC show, there were two calls, one on August 23 and the other on August 27, from Passo's cellular telephone to Simon. (Ex. 49 at 57, 62) In addition, there were two calls, one on August 29, for fifteen minutes and the second on September 1, for eleven minutes, from Hogan's cellular telephone to Passo. (Ex. 73) During the MAGIC show, there was a call, on August 30, from Passo's cellular telephone to Hogan. (Ex. 49 at 67)

Passo, who was in Chicago, kept in close contact with people at Local 631 during the MAGIC show. (Exs. 128-29) For example, on August 30, 2000, between 8:19 p.m. and 11:57 p.m., there were eight calls from Passo's cellular telephone to Local 631. (Ex. 49 at 67-68) These were after Passo's August 30 call to Hogan. (Ex. 4 at 67) Vito Locascio had an office at the Local. (Ex. 147 at 101-103; Ex. 220 at 38-39)

Trustee Wilkerson and Assistant Trustee Frates directed the trade show business agents to file grievances against GES for using employees of Simon's company to perform bargaining unit work on the MAGIC show. (Tr. 66-67; Ex. 26 at 63-69; Ex. 82 at 80) The Local members were in an uproar over the contract violations. Business

agent Benboe received approximately thirty telephone calls from members complaining about the United employees performing Teamster work on the MAGIC show. (Ex. 149 at 61-62)<sup>43</sup> In connection with the MAGIC show, Benboe testified as follows:

. . . The phone rang off the hook, and I had no idea how many of those people were going to be coming in.

So I seen the ramifications of this thing, so I told everybody that was calling that had concern with this issue, that we were just filing a blanket grievance. And that would – because a lot of these people were saying, you know ‘I need to come down’ or ‘I have to fill out a grievance.’

I said don’t worry about it. I’ve already gotten it taken care of. I just filed a blanket grievance covering everybody.

(Ex. 149 at 61)

On September 5, 2000, Local 631 sent a grievance to GES regarding the United Employees performing bargaining unit work. (Ex. 152)<sup>44</sup> Frates stated: “I did talk to Mr. Benboe about the grievance and told him, in my opinion, it was very, very important that grievance be processed and very vigorously, and he was in total agreement.” (Ex. 82 at 83)<sup>45</sup> After the charges in this matter were filed, in September

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<sup>43</sup> Benboe testified:

. . . on MAGIC, for instance, they were sending our people home. They were telling our people, “Okay. We’ll need you back tomorrow at such and such a time,” and keeping these people who were going around and performing work that is found under our jurisdiction. It generated a ton of paperwork.

(Ex. 2 at 215)

<sup>44</sup> It also appears that at least two additional grievances were filed against GES for the use of the United employees on the MAGIC show. (Ex. 151)

<sup>45</sup> When asked about the issues involved in the grievances filed against GES concerning the use of the United employees, business agent Benboe testified as follows:

There are issues – like you say, there are jurisdictional issues, there’s issues of them performing work while we had people available, there’s issues of our people being laid off and those people being retained, and there’s issues of these people are being – are not being paid contractual wages nor are they receiving the benefits, which is all inclusive in each individual grievance.

(Ex.2 at 217)

2000, the Local settled the MAGIC show grievances against GES concerning the use of the United employees. (Tr. 194-195, 270-273)

After observing the United employees working on the MAGIC show, Wilkerson told Passo that the Local was going to go after United. (Ex. 26 at 65) Wilkerson also told Passo a grievance had been filed against GES. (Ex. 26 at 68) Three days after Passo returned to Las Vegas, on September 8, 2000, based on Passo's urging, Hoffa terminated Frates as Assistant Trustee. (Ex. 82 at 8)

#### **10. Assistant Trustee Frates's Termination**

When Hoffa terminated Frates as Assistant Trustee on September 8, 2000, Trustee Wilkerson was out of town. (Ex. 26 at 111-112; 82 at 8) Hoffa made the decision to remove Frates on information Passo provided. (Ex. 78 at 61; Ex. 12 at 214) No one investigated Passo's claims regarding Frates before the termination. (Ex. 12 at 148-151; Ex. 78 at 61) Passo's claims were:

he wasn't representing the members. He was showing favoritism. He was in some kind of coercion with Roberta to -- I don't know, the rumors were that they were politicking instead of taking care of the members, talking about running a slate for the local instead of worrying about the members that they were supposed to be doing, he was denying grievances.

(Ex. 20 at 234-235)

Hoffa testified that Frates was removed because Frates and Passo conflicted on the approach to handling problems at the Las Vegas Convention Center. (Ex. 78 at 61) Frates opposed Simon and Hogan's brother's company being able to pay workers below the governing Teamster contract rate for wages and benefits. With Hogan's concurrence and support, Passo advocated a contract with United with its host of concessions to Simon.

As Passo admitted to Whitfield, he was actively assembling a slate to run at the Local. He solicited her to run on it. (Ex. 218 at 41) Indeed in this respect, Passo was assisting former Local 714 member Locascio to run for office at Local 631 and using IBT resources to do so. Passo, who had a close relationship with Locascio, took repeated steps to further Locascio's ambition.<sup>46</sup> Passo forced Wilkerson to hire Locascio, a felon ineligible to vote in Nevada, for Get-Out-The-Vote ("GOTV") work and tried to force Wilkerson to hire Locascio as a business agent. (Ex. 26 at 98-99, Exs. 145, 226) In addition, after the Trusteeship was imposed on Local 631, Locascio became the head of the Local 631 "strike force" which had an office and a telephone at the Local. (Ex. 147 at 101-103; Ex. 220 at 38-39)

Two days after Passo arranged for Frates to be fired, he continued lobbying Whitfield to support his arrangement with Simon. On September 10, 2000, at his request they met at the Country Inn. (Tr. 200, 469; Ex. 131; Ex. 6 at 157-158) Whitfield taped his conversation. (Tr. 199, 205, 236)<sup>47</sup>

During this conversation, Passo explained that he caused Frates to be terminated. (Ex. 218 at 8) In addition, he repeatedly told Whitfield that if she listened to him, he would ensure her an International position. (Ex. 218 at 10, 37; Tr. 201-202)<sup>48</sup> He also told Whitfield that he wanted her to run for office on the ticket he was putting

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<sup>46</sup> During the 159 days that Passo was in Las Vegas between February 29, 2000 and November 19, 2000, Passo caused the IBT to pay for at least 87 meals where Locascio was present. (Exs. 118-135, 144) At twenty-eight of these meals only Passo and Locascio were present. (Exs. 96-111, 144) In addition, between May 2000 and February 2001, there were 97 calls from Passo's IBT cellular telephone to Locascio's telephone. (Exs. 45-52, 55-60, 225, 282-84)

<sup>47</sup> Whitfield testified that she taped this conversation with Passo because, "I got tired of fighting with him." (Tr. 200)

<sup>48</sup> In contrast to what Passo told Whitfield, Scalf testified that Passo frequently complained to him about Whitfield. (Ex. 12 at 79-81) This was consistent with Scalf asking Wilkerson to terminate Whitfield and other Local employees. (Tr. 100-102)

together for when an election was to be held for the Local to come out of Trusteeship. (Ex. 218 at 41) During this conversation, among his promises of future benefits he would arrange for her, Passo pressed Whitfield to support his agreement with Simon. (Ex. 218 at 34)

Passo misrepresented that the contract with Simon would be the same as with GES, except for a brief delay in making benefits payments. (Ex. 218 at 33) There was no basis for that claim. (Ex. 84 at 4) Passo further claimed Scalf went through the contract. (Ex. 84 at 33) Scalf claimed he never saw any agreement with Simon and did not know the terms of such agreement. (Ex. 12 at 98) The wages in that agreement were substantially less than the wages required for C listers under the red book agreement (Ex. 84; Ex. 4 at 11)

At the end of August, Wilkerson contacted Scalf about Passo and told Scalf:

I cannot operate this way. If you want me to run the local union, then I have to be able to run this union without the interference from him. I can't have him interfering with the business agents. Either he runs the local or I run the local. It can't be both of us here.

(Ex. 26 at 86-87) Scalf told Wilkerson that Passo would leave Las Vegas. (Ex. 26 at 85-87) Passo left Las Vegas on August 24 and returned on September 5, 2000 when the Local was actively contesting GES's use of United on the MAGIC show. (Ex. 128-31; Ex. 26 at 87-88)

Wilkerson had called Scalf to complain about Passo on other occasions, including particularly objecting to Passo's proffered arrangement for Simon. (Tr. 65, 68-69, 77-78; Ex. 26 at 86-88, 101-102; Ex. 12 at 134-135) Scalf acknowledged, "it seemed like every time that Jim called, it was about Dane interfering." (Ex. 12 at 134) The end

result -- Trustee Wilkerson was removed and Passo was continued in place as monitor. The given reasons for his removal (which was engineered by Passo) were specious.

**11. Santangelo Investigates the Simon United Arrangement.**

In addition to informing Scalf about Passo's troubling agreement with Simon (Ex. 12 at 101-103; Tr. 65, 78), Wilkerson, prior to the IBT's Unity Conference in September, also complained to IBT Vice President and Joint Council 42 President Santangelo about the agreement Passo was pressuring him to grant United. (Ex. 26 at 87-92; Tr. 65)<sup>49</sup> Both Wilkerson and Santangelo thought it was inappropriate for the IBT to enter Passo's proposed arrangement with a labor broker. (Ex. 26 at 88-91; Ex. 32 at 27-28, 30-31) Of all the IBT personnel only Passo and Hogan professed to see the illusory benefits to the Local agreeing to allow Simon to undercut the Teamsters red book contract with the trade show contractors with a special United contract.

After Wilkerson contacted him about Passo's arrangement with United, Santangelo, recognizing the agreement Passo was advocating for Simon's company was troublesome, contacted Ed Stier from the IBT's RISE program and requested that he look into Simon. (Ex. 32 at 30-31, 44-46) Subsequently, as Santangelo noted, "Ed [Stier] told me to stay away from him and to tell the Teamsters to stay away from him." (Ex. 32 at 46)<sup>50</sup>

<sup>49</sup> The Unity Conference was held in Las Vegas from September 17 to 24, 2000. (Ex. 246)

<sup>50</sup> Santangelo further testified that Stier stated, "... the guy is not a nice guy. He's a funny guy. He's got all kinds of baggage." (Ex. 32 at 45)

After this warning, based upon conversations that Scalf had with IBT General Counsel Syzmanski and General President Hoffa, on September 12, 2000, Scalf directed Passo to stop all dealings with Simon. (Ex. 12 at 114; Ex. 20 at 218-219)

## **12. Wilkerson's Demise**

At a meeting in Las Vegas on or about September 17, 2000, Wilkerson informed Hoffa and Scalf that Passo continued to interfere with his ability to run the Local. (Ex. 26 at 117) Trustee Wilkerson also met with Hoffa and Scalf at Bally's Hotel in September 2000. (Ex. 26 at 101-104) Wilkerson told them, "We need to talk about running this local union." (Ex. 26 at 104) During this discussion, Scalf told Wilkerson to terminate the following Local employees: business agents Whitfield, Ike Moses, D.C. Cardwell, John Phillipenas and in-house attorney Dennis Quish. (Ex. 26 at 102)<sup>51</sup> Scalf acknowledged he asked Wilkerson to terminate Moses, Quish and Phillipenas; however, he claimed that he did not ask Wilkerson to terminate Whitfield or Cardwell. (Ex. 12 at 137-140) Scalf's recommendations were based upon Passo's requests. (Ex. 12 at 138-410) Wilkerson agreed that Moses and Quish should be terminated and he let them go. (Ex. 26 at 101-105)

Also during the Unity Conference in Las Vegas, IBT Vice President Santangelo met with Hoffa regarding the problems Passo was causing at Local 631. (Ex.

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<sup>51</sup> Wilkerson was asked the following question and responded as follows:

Q: And did Mr. Scalf tell you why he wanted these five people terminated?

A. No. I am sure it had something to do with what Dane had told him because most all of those guys were stand-up guys. I am sure they had told Dane no – they – they just told him to go to hell, that they worked for me.

(Ex. 26 at 103)

32 at 33-34) Santangelo invited other members of the IBT's General Executive Board from the Western Region to attend this meeting. (Ex. 32 at 33-34)

The International Officers told Hoffa and Scalf that Trustee Wilkerson and Frates had frequent arguments with Passo about running the Local. (Ex. 32 at 33) Santangelo also told Scalf that the IBT should not enter into the agreement Passo was advocating for Simon. (Ex. 12 at 99-100)

The five IBT officers from the Western Region explained to Hoffa and Scalf that, "the best way to handle this is if Dane would just leave for a while." (Ex. 32 at 34) Scalf testified that the IBT officials asked him to "keep [Passo] under control." (Ex. 12 at 171-76)

In a change without apparent substance, effective October 1, 2000, Passo's title as Special Assistant to the General President was removed. (Ex. 12 at 197-199; Ex. 11) His duties remained the same as before. (Ex. 12 at 217-218) Passo continued to monitor Local 631. (Ex. 12 at 66)

Since Passo was instructed to no longer deal with Simon (Ex. 20 at 218), Hogan and Passo altered course. In October 2000, there were nine calls from Hogan's cellular telephone to Passo's cellular telephone and twelve calls from Passo's cellular telephone to Hogan. (Exs. 50, 51, 75) An arrangement beneficial to Simon could not be reached as long as Wilkerson was Trustee. Moreover, it could no longer be a direct arrangement with Simon. Changes would have to be made in the Local management and in the Local 631 contract with the trade show contractors to indirectly assist Simon. Hogan needed to thrust himself into the negotiations for the new Local 631 contract to be negotiated.

Passo, who had been in Washington and Chicago between October 9 and October 19, returned to Las Vegas on October 23, 2000. (Exs. 132-133) The next day, there was a fifteen-minute call between Passo and Hogan. (Ex. 50) Hogan soon arrived in Las Vegas. (Ex. 280) On the day Hogan arrived in Las Vegas, October 23, he reported to Simon in an eight minute call.<sup>52</sup> Later that day, there was a call from Passo to Hogan. (Ex. 50)

The next day, October 24, 2000, Passo, Hogan, former Local 714 member and Passo's protégé Locascio, Local 631 business agent Rick Knight ("Knight") and IBT General Secretary-Treasurer Keegel all had breakfast at Bally's Hotel. (Ex. 133) Two days later, on October 26, 2000, Passo, Hogan and Hogan's son Robert, the principal officer of Local 714, had breakfast there. (Ex. 133)

Some time between October 27 and October 31, 2000, Passo persuaded Hoffa and Scalf to remove Wilkerson as Trustee. Passo was the source of the information and the reasons for removal. One of these reasons was Knight's report to Passo that Wilkerson was involved in Local politics. (Tr. 411, 412, 479) Knight, who had absolutely nothing to do with the convention center had met with Hogan and Passo on October 24, 2000. (Ex. 133, Tr. 420) Shortly after this meeting, Knight asked Wilkerson to dinner with some other business agents. (Tr. 123) Immediately after the dinner, on October 31, Knight reported to Passo that Wilkerson planned to run for office at Local 631, which was one of the reasons Passo gave for terminating Wilkerson. (Tr. 420)

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<sup>52</sup> On that day, there was an eight minute call from Hogan's cellular telephone to the United offices in Chicago. (Ex. 75 at 25) During his sworn examination, Hogan claimed that during this call he made

On October 31, 2000, Scalf contacted Ed Jacobson, the Secretary-Treasurer of Local 252 in Centralia, WA, an International Representative in the Building Trades Division and the Director of Building Trades for the Western Region, and asked him to report to Las Vegas to replace Wilkerson as Local 631 Trustee. (Ex. 92 at 12) The day before Scalf made this call to Jacobson, there were two calls, one lasting twenty-one minutes, between Hogan and Passo. (Ex. 75) In addition, there were three calls from Passo's cellular telephone to Hogan's cellular telephone. (Ex. 51)

Jacobson replaced Wilkerson on November 6 shortly after Wilkerson had met with Michael Hogan and his labor coordinator Tex Kimberlin, a former Local 631 Business agent about Hogan's Super Show scheduled in January. (Ex. 26 at 55-57)

On or about November 3, 2000, three days after Scalf told Jacobson he would replace Wilkerson as Trustee, GES again used United employees to perform Teamster work. This was on the SEMA show while there were Teamsters available to do that work. (Ex. 203 at 20-22; Ex. 25 at 92-93; Ex. 90 at 25-28) Local 631 steward Charles Justice described what happened:

. . . These trucks come up long side of the convention, and they was unloading the trucks. We was doing it as Teamsters. It was getting late, 12 hours and leaving. Then I seen these United Exposition people coming up, and they started doing our work.

I got hold of Mike Robertson. Mike was the No. 1 on the other section. . . The No. 1 steward is over all stewards, which I was one of them. I think he had several other ones.

He said he was going to handle this, and I would not have to file another grievance on it because he's going to make what they call a mass grievance. . . .

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from Las Vegas he spoke to Simon about matters other than the agreement between United and Local 631. (Ex. 15 at 113)

(Ex. 90 at 25-26) On November 4, 2000, steward Michael Robertson (“Robertson”) filed a grievance against GES for the use of fifty-eight United employees. (Ex. 152)

Passo caused Trustee Wilkerson’s firing. (Ex. 12 at 151-52; Ex. 20 at 242-43; Ex. 78 at 57) Indeed, Passo was the only person to recommend that Wilkerson be terminated. (Ex. 12 at 152; Ex. 78 at 57-59) There was no investigation of Passo’s allegations about Wilkerson. (Ex. 12 at 131-132; Ex. 78 at 57-61) Santangelo, the International Vice President, head of Joint Council 42 to which Local 631 belonged and who also was Hoffa’s personal representative to Local 631, was not informed until after the decision was made. (Ex. 32 at 40-41)

Passo urged Scalf to have Wilkerson terminated for the following stated reasons: Wilkerson purchased vehicles for the Local without prior IBT approval; Wilkerson ended the practice of providing free soda at membership meetings and installed a soda machine at the Local; Wilkerson planned to run for Local 631 office; Wilkerson planned to dedicate the Local union hall to a former Local 631 officer without the IBT’s permission; Wilkerson planned to build a training center on an empty lot the Local owned and Wilkerson generally did not stay in contact with the IBT and Hoffa. (Ex. 12 at 84-85, 127-130; Ex. 20 at 242-243; Ex. 78 at 58)

According to Passo, he recommended that Wilkerson be terminated because he “was getting political.” (Ex. 20 at 242) This was the same charge he had used against Frates. Hoffa, whose only information came from Passo, testified, “I had a feeling that Mr. Wilkerson was trying to take over the Local for himself.” (Ex. 78 at 57)

Wilkerson testified that although Local employees had asked him to run for office, he told them he would not agree to do so unless Hoffa approved. (Tr. 123-

124) Indeed, under the IBT Constitution, absent a waiver from Hoffa, Wilkerson would not have been eligible to run for office at Local 631 until he had been a member of the Local for twenty-four consecutive months.

Hoffa also testified that Wilkerson “was an older man” and he thought someone from the Local’s rank and file should run the office. (Ex. 78 at 57)

Passo also claimed that Wilkerson’s purchase of new cars for the Local was a reason for his recommendation Wilkerson be fired. (Ex. 20 at 242-243) With respect to Wilkerson’s purchase of the cars, Scalf testified that Passo told him that Local 631’s existing cars were in “fine shape.” (Ex. 12 at 131-32) At the IRB hearing Passo admitted what was clear from the cars’ age and mileage: that the Local’s cars “probably” needed to be replaced. (Tr. 478) This was consistent with business agent Benboe, who testified that the Local “absolutely” needed new cars. (Ex. 2 at 106-07)<sup>53</sup> In fact, the cars all had considerable mileage on them.

At no point over the five-month process of purchasing cars did Passo or Scalf instruct Wilkerson to discontinue it. Passo did not claim he told Wilkerson that there was anything wrong with the purchases. The IBT was involved in the decision to purchase the cars and the cars were purchased months before the decision was made to terminate him. (Tr. 103; Ex. 150)

With respect to the claim that Wilkerson did not communicate with the IBT, Scalf himself acknowledged that Wilkerson often contacted the IBT when he testified, “it seemed like every time that Jim called, it was about Dane interfering.” (Ex.

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<sup>53</sup> For example, Benboe testified that the car business agent Whitfield drove broke down frequently. (Ex. 2 at 106-07) One time her brakes did not work and another time the power steering on the car she drove broke. (Ex. 2 at 106-07)

12 at 134) Scalf also acknowledged that Wilkerson alerted him about Passo's troubling agreement with Simon's company. (Ex. 12 at 101-102) Moreover, Passo informed Wilkerson that he did not need to contact the IBT because Passo regularly spoke to Hoffa about the Local. (Tr. 52)

**13. Trustee Jacobson and the Use of United Employees for Teamsters Work**

On November 6, 2000, Jacobson became Trustee of Local 631. (Ex. 92 at 9, 12; Ex. 148) Local 631 was now being supervised by a part-time Trustee who continued both to be the principal officer of his own Local and an International Representative with other responsibilities. Jacobson was not given an Assistant Trustee. He had no convention industry experience. Under these altered circumstances Hogan could readily solicit, in due course, a role in negotiating Local 631's contract with the convention industry.

On or about December 18, 2000, Jacobson met with Michael Hogan, the CEO of Show Biz, the general contractor for the Super Show in Las Vegas. (Ex. 6 at 213-216; Ex. 92 at 61; Ex. 149 at 37-38) Jacobson excluded the trade show business agents from this meeting. (Ex. 92 at 60-61)

In January 2001, Michael Hogan faxed Jacobson a letter that stated:

Per our conversation when we met in Las Vegas, so that I have a clear understanding of what I can and cannot do. I would like to confirm with you that on the break of the show, if Teamsters Local 631 cannot supply me with the total amount of manpower needed for the empties, I will be able to supplement the workforce with a labor service, namely United Temporaries . . . .

I would need to do this so that I could fulfill my contractual agreement with The Super Show. Kindly respond to this letter as soon as possible so that I know that I am covered. I will probably be needing somewhere between two hundred (200) to three hundred (300) men and women to complete the task.

(Ex. 154)<sup>54</sup> During the Super Show Michael Hogan tried to use United employees to perform Teamster bargaining unit work but Whitfield and the stewards prevented him from doing so.

Almost contemporaneously with Hogan's letter regarding United received in early January 2001, GES again used United employees to perform Teamster work. (Ex. 205 a 23; Ex. 204 at 7-9; Ex. 247 at 14-16; Ex. 203 at 24-25; Ex. 155 at 9-11) William Christian ("W. Christian"), a Local 631 member and former trade show industry business agent, observed United employees performing Teamster work on the CES show. (Ex. 203 at 25-26) One of the United employees on this show told W. Christian that he was being paid \$8.00 per hour. (Ex. 203 at 26)<sup>55</sup> W. Christian explained that on that show, GES "sent our A listers home. They keep the people with a lesser monetary value as far as having to pay them, and our people get screwed out of their money." (Ex. 203 at 25-26)

On January 9, 2001, steward Robinson filed a grievance against GES for using 150 United employees to perform Teamster work on the CES show. (Ex. 153) This grievance stated that there were members of other unions available to be dispatched from Local 631. (Ex. 153)

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<sup>54</sup> Jacobson testified,

I remember receiving a fax from Show Biz USA addressed to me indicating that they had – if they could not fill the call, that they could hire whomever they wanted. I took that fax to Roberta (Whitfield) and to Chuck (Benboe), and I said, 'This is what we agreed to,' and I handed the fax to them.

(Ex. 92 at 72)

<sup>55</sup> W. Christian testified,

... the cleaning company people, that they made a comment to me that they were getting paid a seven or eight dollar wage, and I thought that was substandard. Concerning our contract, we should pay them at least \$12.49 plus health and welfare and pension.

(Ex. 203 at 27)

After his meeting with Michael Hogan, Jacobson became involved in selecting the stewards on the Super Show, for which Michael Hogan's company, Show Biz, was the general contractor. (Ex. 92 at 45-47, 49-50) Locascio,<sup>56</sup> whom Michael Hogan had selected to work the show and who reported to Passo daily, was active in attempting to have Jacobson remove Robertson, the steward who had filed three previous grievances against GES for using United workers. Robertson had filed at least three grievances against GES for the use of United employees on the MAGIC show in August 2000, the SEMA show in November 2000 and the CES show in January 2001. (Exs. 152-53) After talking with Locascio, Jacobson told business agent Whitfield that she was showing favoritism toward Robertson and other members should be used as stewards. (Ex. 92 at 47-48)

Jacobson then requested Locascio recommend stewards on the Super Show. (Ex. 92 at 45-48) Locascio worked on the Super Show, having contacted William Hogan to arrange this. (Ex. 147 at 20, 40-41)<sup>57</sup>

<sup>56</sup> In January 2001, he testified, "I talk to Dane almost every day. We're friends." (Ex. 247 at 29) Locascio testified that he usually called Passo. (Ex. 147 at 147) Between November 19, 2000, when Passo left Las Vegas, and February 25, 2001, the last date for which Passo's IBT telephone records were obtained, there were 22 calls from Passo's cellular telephone to Locascio's telephone. (Exs. 51-52, 225, 282-84) In addition, when Locascio traveled to Chicago over Thanksgiving, he met with Passo two or three times. (Ex. 147 at 29) Passo also called Locascio on Christmas day and spoke for thirty-four minutes. (Exs. 52, 225) Hogan's son, Robert, the principal officer of Local 714, saw Locascio over the Christmas holidays when Locascio visited his cousin who lived across the street from William Hogan. (Ex. 86 at 30-31) Locascio had six meetings with Hogan and Passo in Las Vegas.

<sup>57</sup> In order to obtain work for himself on the Super Show, former Local 714 member Locascio called Hogan in Chicago. (Ex. 147 at 39-40) According to Hogan, Passo may have given him a message about Locascio seeking work on the Super Show. (Ex. 15 at 129) Hogan testified that he told Locascio to speak to his brother, Michael Hogan. (Ex. 15 at 129) Locascio called Michael Hogan and told him that he had been a member of Local 714. (Ex. 147 at 38-41) Locascio claimed he told Michael Hogan,

... that I was an A list conventioner with call by name rights. And if he needs any truck drivers or he needs me to run a door or he needs me to do anything for the company, I would be more than happy to come to work for him.

(Ex. 147 at 40)

The stewards were Stephen "Skip" Geiger ("Geiger"), who was appointed the number one steward, Robertson, Navara and Doug Manning ("Manning") (Ex. 92 at 46-47; Ex. 155 at 6)<sup>58</sup>

In addition, Jacobson instructed the stewards for the Super Show that they should not try to file grievances concerning the show. (Ex. 205 at 32-33; Ex. 156 at 52-53; Ex. 247 at 7-8)<sup>59</sup>

Locascio informed Passo that Geiger was going to be one of the stewards on the Super Show. (Ex. 20 at 247-250) Locascio arranged for Passo to speak to Geiger, the number one steward on the Super Show, on the telephone. (Ex. 20 at 247-50; Ex. 155 at 15-17; Ex. 147 at 88-90)

On the Super Show, Michael Hogan's company, Show Biz, tried to use United employees to perform Teamster work when workers were available to be dispatched through Local 631. (Ex. 155 at 21; Ex. 90 at 35-37; Ex. 156 at 41-42) The Local 631 field employees and stewards would not ignore Michael Hogan's attempt to use United employees in violation of the red book agreement. According to stewards Geiger and Robertson, vans with United employees appeared at the show site during the Super Show. (Ex. 155 at 21; Ex. 156 at 41-42) According to Geiger,

It was late in the afternoon. It was tear-down, and a long van, we thought at first it was a GES van, pulled up, and a number of people got out. Some were changing shirts.

We stopped them. Asked them who they were. One of them gave themselves up as United Temp Services. And we – I don't know who

<sup>58</sup> Although he was "not happy" about the selection, Jacobson allowed business agent Whitfield to appoint Robertson as steward. (Ex. 92 at 46-47)

<sup>59</sup> Robertson testified that Jacobson repeatedly told the stewards that "good stewards don't write paper. Good stewards handle things. . . ." (Ex. 156 at 52-53) Among stewards in the trade show industry in Las Vegas to "write paper" refers to writing grievances. (Ex. 6 at 46)

made contact with the company, but while I was out there, I told them to get back on that van. They are not working this show.

I recognized one of them. I had talked to him before to try to get him to join the Teamsters union.

They got back in the van. They left.

(Ex. 155 at 26)

During the week of January 29, 2001, Hogan met in Chicago with GES representatives from Las Vegas. (Ex. 15 at 125-27) According to Hogan, the GES representatives requested this meeting. (Ex. 15 at 125) This was despite Hogan remaining without any role with respect to Local 631, ten months after the Trusteeship was imposed. (Ex. 12 at 59-60) Thomas Acker, then the GES Labor Coordinator from Las Vegas, and Pete Carroll, the regional representative from GES in Chicago, conferred with Hogan and his son, Robert Hogan, the principal officer of Local 714, at a restaurant in Chicago. (Ex. 15 at 125-27; Ex. 86 at 11-24) No one from Local 631 was present.

The GES representative complained to Hogan about the grievances Local 631 had filed concerning the use of United employees. (Ex. 15 at 126; Ex. 86 at 11-18) According to Hogan, the GES representatives had traveled from Las Vegas to ask him what GES should do about the grievances and the Local's purported inability to supply workers. Hogan alleged that he told them, "I don't have a clue. You figure that out on your own." (Ex. 15 at 126) The upcoming new Las Vegas convention contract negotiations were also discussed during this lunch meeting in Chicago. (Ex. 86 at 11-18; Ex. 15 at 127-28; Tr. 365) Hogan had not been involved in those prior negotiations. (Ex. 12 at 195-96; Ex. 78 at 35, 98-99)

As with his earlier meeting in Las Vegas with the Freeman representative, Hogan never told the Local 631 Trustee or any Local 631 employee or Scalf, his

supervisor at the IBT, about his discussions with GES representatives from Las Vegas who traveled to Chicago to seek Hogan's guidance over grievances and a contract with a Local he had no role in and which had been under the International Trusteeship for 10 months. (Tr. 366; Ex. 15 at 125-127; Ex. 12 at 47; 143-44; Ex. 1 at 186-87) Hogan did, however, solicit Hoffa and Scalf to place him on the negotiating team for Local 631's new contract with the trade show contractors. (Ex. 78 at 98-99; Ex. 12 at 195-96)

**14. Hogan Sought to Negotiate Local 631's New Contract**

Because a direct binding agreement for United with Local 631 was no longer possible through Passo since he was barred from dealing with Simon, the changes to benefit United would have to be made to the governing contract which was up for negotiation in 2001. In March 2001, while General President Hoffa and Scalf were in Chicago, Hogan requested that he be allowed to negotiate the collective bargaining agreement with the trade show contractors in Las Vegas. (Ex. 78 at 98-99) The then current contract expired on May 31, 2001. (Ex. 4) According to Hoffa, Hogan "said that there could be a strike there and that I know all of those people and that I should negotiate the contract." (Ex. 78 at 98-99) Hoffa concluded that, "[b]ecause of the background of all the things that have happened with the IRB, I didn't think it was a good idea for him to be negotiating that contract." (Ex. 78 at 98-99)

Hogan had also asked Scalf to let him negotiate Local 631's new contract with the trade show contractors. (Ex. 12 at 144) Scalf refused Hogan's request. (Ex. 12 at 144) Hogan told Scalf that "[h]e just thought they needed help and that he knew everybody in that industry and he would be able to help them." (Ex. 12 at 144-145) Hogan did not disclose to either Hoffa or Scalf his brother's role as both a general

contractor and Vice President of United. (Ex. 78 at 30-31; Ex. 12 at 61-62, 97) Nor did he disclose to them the urgent concerns he had claimed at the hearing that he had over other unions poaching on Local 631's jurisdiction. (Ex. 15 at 122; Tr. 339; Ex. 26 at 58-59) Moreover, in the almost year since the imposition of the Trusteeship Hogan had never presented his alleged views to either of the Trustees.<sup>60</sup> He used his ally, Passo, but he was in frequent discussion with Simon and Local 631 employers.

## DISCUSSION

### The Evidence Established that Passo and Hogan Colluded with Simon

#### 1. Standard of Proof

The standard of proof for establishing the charges against Passo and Hogan is a preponderance of evidence.

The evidence supporting a charge may be direct or circumstantial. *In re: Brennan, et al.*, IRB Supp. Dec at 2 (August 3, 2001) ("The Chief Investigator may rely, whether in whole or in part, on circumstantial evidence, and such evidence is of no less value than direct evidence.") *aff'd*, *United States v. IBT*, 2001 U.S. Dist. LEXIS 11322 (S.D.N.Y. August 7, 2001) *See, United States v. IBT [Salvatore]*, 754 F. Supp. 333, 339 (S.D.N.Y. 1991)

Reliable hearsay is admissible in Consent Decree disciplinary hearings. *E.g., United States v. IBT [Adelstein]*, 998 F.3d 120 (2d Cir. 1993); *United States v. IBT [Wilson, Dickens and Weber]* 978 F.2d 68, 72 (2d Cir. 1992). Indicia of reliability may

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<sup>60</sup> Bumping into Wilkerson at one meeting, Hogan told Wilkerson that if he ever needed any assistance, to call him. (Ex. 26 at 58) Hogan never discussed United with Wilkerson. (Ex. 26 at 58)

include other hearsay corroborating a hearsay statement. *United States v. IBT [Cimino]*, 964 F.2d 1308, 1312 (2d Cir. 1992).

The preponderance of the evidence proved that Passo and Hogan brought reproach upon the IBT by colluding with Simon in an attempt to allow him to avoid a Teamster governing contract to the detriment of the Local 631 members in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT Constitution.

**2. Passo and Hogan Colluded with Simon Contrary to the Interests of Local 631**

The evidence established that Passo and Hogan colluded with Simon to enable Simon to profit from paying his workers below the rates the governing Teamster contract required. Passo's and Hogan's actions, which Local 631 officials fought, were designed to benefit United and the trade show contractors, including Hogan's brother's company. There was no benefit to Local 631, its members or the United employees. In fact, they were repeatedly harmed. Passo's and Hogan's claimed reasons for advocating the agreement with United are not believable.

After the prior Trusteeship, Hogan, previously having had arranged for his brother and Simon to meet Murphy, introduced Simon to Passo to facilitate Simon's next attempt to secure an arrangement with Local 631 and Murphy under which he could pay his employees less than the governing contract. Once the introductions were made, Passo and Simon both continued to have discussions with Hogan on progress. (Ex. 15 at 93, 103-103) Hogan met with the two major show contractors for Las Vegas convention shows to discuss Local 631, even though he had no union role in Local 631 and claimed he had never read the governing contract. (Tr. 324, 369; Ex. 15 at 119; 123-127) In addition, as is clear from the timing of calls, Passo kept Hogan up to date on

developments within Local 631. When Passo was barred from dealing with Simon, Hogan attempted to be appointed himself to negotiate Local 631's entire new contract with the trade show contractors.

**3. Hogan and Passo Claim Their Efforts Were to Protect Local 631 and Organize United Workers As Teamsters**

There was no evidence of any organizing effort by either Hogan or Passo. United employees did not sign any showing of interest cards for the Teamsters or any Teamster membership applications. (Ex. 20 at 207, Ex. 26 at 53; Ex. 15 at 61) The United employees never designated the IBT or Local 631 as their bargaining representative. Given the absence of any discussion with United employees, Passo stated the obvious, “. . . I wasn't representing anybody . . . .” (Tr. 508) Moreover, in his affidavit submitted in support of his requested TRO, Hogan described the arrangement with Simon's company as a “contract for services,” not a collective bargaining agreement. Regardless of its label, the arrangement was injurious to Local 631 and its members. (Ex. 311 at 4) Passo's claims that this was the first stage of organizing United employees are not credible.

Neither Passo nor Hogan nor anyone under their direction ever spoke to any United employee. In Passo's oversight of Local 631 conducted with Hogan's guidance, the Local never tried to organize the United employees. (Tr. 490-91; Ex. 20 at 109-110, 207; Ex. 6 at 103-104, Ex. 82 at 52-53)<sup>61</sup> The Local's organizer, Ray Isner

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<sup>61</sup> William Hogan testified as follows:

Q: Have you ever been to the United Maintenance offices in Las Vegas?

A: No.

Q: Have any employees of Mr. Simon's company ever signed any “showing of interest” cards with the Teamsters?

("Isner"), who was involved in all organizing efforts since the Trusteeship, and the two other organizers assigned to Local 631 never tried to organize United. (Ex. 79 at 14-16, 19-22; Ex. 80 at 23; Ex. 81 at 29; Tr. 492-93) Passo, who was the International's point man at Local 631, never requested any organizing help from the International. Indeed, he did not even request help from Norman Bouley, the IBT organizer assigned to assist Local 631. (Ex. 81 at 29-30; Ex. 20 at 51; Tr. 493; Tr. 360, 484-485; Ex. 20 at 109-110; Ex. 15 at 60)

Passo and Hogan at Simon's request conspired to permit the employer to choose his employees' bargaining representative in violation of Sections 7 and 8(a)(1) of the National Labor Relations Act ("NLRA"). (Tr. 491) *See, in re Larry Stein*, IRB Dec. at 12-13 (October 18, 2000) *aff'd United States v. IBT*, slip op. (S.D.N.Y. December 7, 2000)<sup>62</sup> The employer's choosing his employees' bargaining representative is an indicia of a prohibited sweetheart deal between an employer and a union.

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A: Not that I'm aware of.

Q: How many employees are there of Mr. Simon's company?

A: I have no idea.

Q: Do you know what they are paid?

A: I have no idea.

Q: Do they receive benefits?

A: I have no idea.

(Ex. 15 at 61)

<sup>62</sup> Section 7 of the NLRA provides in pertinent part:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing.

29 U.S.C. §157. Section 8(a)(1) of the NLRA provides in pertinent part:

It shall be an unfair labor practice for an employer –

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

29 U.S.C. §158(a)(1)

Passo's and Hogan's actions also failed to comply with the Local's Bylaws and IBT's procedures for negotiating first contracts. Section 27 of the Local 631 Bylaws required a meeting of the affected members to be held to formulate bargaining demands whenever a contract was to be negotiated. (Ex. 296) Passo and Hogan did not inquire of any United employee of their concerns, let alone hold any such meeting prior to discussing a contract with Simon and advocating that Local 631 officials permit Simon dramatic concessions from the governing contract. (Ex. 20 at 109-110); Ex. 15 at 60) Before discussing any agreement with United CEO Simon, Passo acknowledged that he did not even know what terms the United employees might want. (Tr. 490-491)

Passo's and Hogan's actions to get an agreement for United conflicted with the provisions of the IBT's Organizing Guide. (Ex. 293) The IBT's Organizing Guide emphasized communication with employees and provided for five steps when negotiating a first contract. (Ex. 293 at 49) Passo, who had been an organizer at Local 705 and was Special Assistant to the General President, and Hogan, an experienced labor official who was the head of the Joint Council in Chicago, took none of these steps.

Passo's excuse for having no contact with the United employees was that they spoke Spanish and only worked sporadically. (Tr. 484)<sup>63</sup> However, Passo never sought out the IBT employed bilingual organizers. He never asked for their assistance in speaking to the United employees. (Tr. 491-92)<sup>64</sup>

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<sup>63</sup> Most of Simon's employees appeared to speak only Spanish. (Tr. 484, 491-492; Ex. 90 at 9-11; Ex. 6 at 90, 97; Ex. 156 at 27-28; Ex. 82 at 74; Ex. 84 at 6-7; Ex. 203 at 25; Ex. 26 at 67; Ex. 204 at 8; Ex. 155 at 13)

<sup>64</sup> Instead, in July 2000, Passo arranged for Billy Cooper, who did not speak Spanish, to be hired as an organizer at Local 631. (Tr. 53, Ex. 80 at 9-11) At a Local 631 membership meeting, Local 631 member Alina Hernandez proposed that the red book contract be translated into Spanish. (Ex. 83 at 12-13) According to Hernandez, Passo had her escorted out of this meeting. (Ex. 83 at 12-13)

Passo also claimed that he did not speak to the United employees because,

. . . [t]hey work for a labor service that one day they would be there, one day they wouldn't be there. It'd probably be different people all the time. There is no way you could talk to same person or have a group meeting. . . .

(Tr. 484) Passo claimed he was relying on Simon to bring them together for him when Simon believed the time was ripe. (Tr. 484)<sup>65</sup> The claim is not credible. Neither Simon nor Michael Hogan even expressed the slightest interest in paying Teamster wages and benefits.

If the United workers had been organized as Teamsters in their normal jobs, they would have been able to have been dispatched through the Local 631 dispatch office without the payment of any dispatch fees. There would have been no need to make any concessions in the wage and benefit provisions of the governing contract. Passo and Hogan never pursued that course because it would have been of no benefit to either Simon or Michael Hogan.

Passo and Hogan's main claim is that their proposed agreement with United would bring more members into Local 631. (Tr. 310, 324-25, 444-448) They suggested "top down" organizing as permitted in the construction industry exception. There was no credible evidence to support these contentions. Hogan described the agreement with United as a "contract for services." (Ex. 311 at 4)<sup>66</sup> But a "contract for services" would hardly result in union members. For example, in their meeting with Murphy and Breyman, Simon and Michael Hogan stated that United would pay a service

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<sup>65</sup> According to Passo, he told Simon that ". . . if we get this done, that we're going to have – You're going to get these people together, and we're going to have to have a meeting eventually somewhere down the line. . . ." (Tr. 484-85)

<sup>66</sup> Breyman also testified that United did not want to enter into a collective bargaining agreement with Local 631. (Tr. 387, 401)

fee to Local 631 for each employee referred to work. (Tr. 137, Ex. 25 at 28; Ex. 5 at 29-30) Union members did not pay dispatch or service fees, they paid union dues. (Exs. 77, 296; Ex. 7 at 70) Only non-members paid dispatch fees. There is no credible evidence that Simon or Michael Hogan ever intended to unionize United or Show Biz workers as Teamsters at any time.

Hogan's description of the United arrangement during his sworn examination made no sense. Hogan testified,

. . . Rick Simon would establish a legitimate work force. Okay.

So now we got, say, 300 good solid people committed; that when the Union opened their doors to add people, they would take them from Rick's company and they would be – go over to the Union. So they would be on the Union.

Now Rick would then lose control of that ability to supply these people. *They would then become Union people, strictly as their lists open up.*

Because I guess they have some rules, or something, about how many people are on their lists. There is something about hours, or something. That whole thing is a little vague to me. I'm not really sure. . . .

(Ex. 15 at 79-80 (emphasis added))

In the then governing contract there were no limits on the number of individuals who could register with the Local's dispatch office for work in the convention industry. (Ex. 7 at 68-70; Ex. 2 at 190-191) They need not join the union.<sup>67</sup> There is no

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<sup>67</sup> Whitfield explained Passo's proposal as being:

Q: Now, would the people who worked for Mr. Simon's company, would they become members of the Teamsters?

A: Eventually, not, right off the bat. But what he assured me was by the time that they had worked enough hours in the industry to become either a C or A or whatever, then he would give them option, and he would take it out of their check, Mr. Simon.

Q: So the employer would give them the option of joining the union?

A: Right, which that didn't make sense to me, but that's what he said.

(Ex. 6 at 99-100)

Wilkerson testified as follows:

credible evidence that Passo and Hogan took any steps to organize the United workers in any way for their regular cleaning work or for Teamsters work.

Passo and Hogan excluded Local 631 officials from their meetings with Simon and trade show contractors about Local 631. Passo did not involve any Local officials in his alleged negotiations with Simon.

After the Local 631 Trustee, Assistant Trustee, trade show business agent and Local attorney pointed out the serious problems in the agreement he proposed, Passo involved no Local 631 official in "renegotiating" with Simon (Tr. 88-89; Ex. 26 at 44-54) Instead, Passo conferred solely with Hogan, who claimed not to even have read the governing contract. (Tr. 324, 326, 333, 363, 367, 369) Whether he was familiar with it or not, his real interest was in obtaining an agreement to benefit his brother, an officer in Simon's company and a trade show contractor, and Simon, his Chicago business friend.

Hogan claimed at the hearing that he had serious concerns over the IBT losing ground in Las Vegas. (Tr. 310) But Hogan never voiced those concerns and never advocated his remedies or the alleged merits of the United proposal to attempt to persuade its opponents. Instead, he continuously worked surreptitiously with Passo and with the Local's employers to get a substandard and detrimental contract with United.

Passo and Hogan also failed to disclose to their superiors at the IBT their activities concerning Local 631 employers. Scalf, to whom Hogan reported, did not know Hogan was involved in trying to obtain the agreement for United. (Ex. 12 at 107)

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Q: And were the employees of United going to become members of Local 631?

A: No. They would pay the \$40 hiring hall fee, but in an elongated process, eventually they would probably become members.

(Ex. 26 at 46)

Hogan failed to disclose to Hoffa and Scalf that his brother was an officer of United who had tried to persuade Local 631 officials to give economic concessions to United. (Ex. 78 at 30-31; Ex. 12 at 61-62; 196) In his efforts to convince others to approve a contract, that was without merit, Passo resorted to misrepresenting that important International executives favored the contract. He lied to Trustee Wilkerson, falsely claiming that high-ranking IBT officials including Santangelo and Scalf had approved the substandard agreement when they had not. (Tr. 65, Ex. 26 at 88, 92; Ex. 32 at 41-43; Ex. 12 at 98-101) Similarly Passo falsely told Whitfield that Scalf was reviewing the agreement carefully (Ex. 218 at 33), when he was not. (Ex. 12 at 98)<sup>68</sup> Simon also lied to Frates claiming that Santangelo and Scalf approved the agreement he made with Passo. (Ex. 82 at 60-62) To lend credence to his false allegations, Passo and Hogan had arranged for Simon to be seen with Santangelo, Scalf and Hoffa in public places.

When his charades didn't work, Passo used false reasons to cause Frates, and then Wilkerson, to be terminated. Passo concealed the extent of his substantial concessions to United during his conversations with Scalf. (Ex. 12 at 100-112)

**4. Passo's Claim of Only Preliminary Stages of Negotiating an Agreement with United**

During the hearing before the IRB, Passo claimed for the first time that he "... was nowhere near signing a contract . . . ." (Tr. 466, 507) Passo also claimed that when he was told to stop dealing with Simon on September 12, 2000, he "... was at the

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<sup>68</sup> Scalf testified as follows:

Q: Have you ever reviewed a draft of any agreement between Mr. Simon's Company and the Teamsters?

A: No, I have not.

(Ex. 12 at 98)

beginning of the negotiations.” (Tr. 475, Ex. 12 at 114) These late claims were contrary to the great preponderance of the evidence.

Even on August 29, 2000, when Passo submitted to IBT attorney Pollard a handwritten agreement with United, in his cover letter Passo explained: “[t]he language on the enclosed paperwork is the amended language to the contract. Everything else will remain the same as in the GES Exposition contract.” (Ex. 84 at 2) The agreement submitted specifically tied into the existing GES contract. One day after Passo submitted the agreement to the IBT, Simon informed Frates on August 30 that he had reached an agreement with Passo. (Ex. 82 at 71) Moreover, in his recorded conversation with Whitfield on September 10, Passo told her that Scalf and the IBT were reviewing the agreement made with Simon. (Ex. 218 at 33) The only version submitted to the International was the contract of August 29.

The evidence showed that Passo’s arrangement could not be put into place because Wilkerson, the only one with authority to approve the agreement, advised by Frates, would not adopt it. The same or very similar terms of the agreement were repeatedly presented by Passo but rejected by Local 631 representatives. For months, Passo pressured Wilkerson, Frates and Whitfield to agree to the terms with United. (Ex. 6 at 89-93, 125-126; Tr. 179)<sup>69</sup> Over this time there were only minor changes in detail. The basic agreement remained the same. Simon would receive substantial and numerous concessions from the governing contract.

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<sup>69</sup> Frates testified as follows:

Q: And was Mr. Passo advocating the Local entering into the agreement with Mr. Simon’s company?

A: Oh yeah, there’s no question about it.

(Ex. 82 at 72)

Wilkerson also reasonably believed that Passo was advocating a final agreement. Wilkerson explained, "I really don't know anything other than that Dane Passo had come to me with a contract and asked me to agree to a contract with this guy, and I refused to do that." (Ex. 26 at 44) Moreover, that Wilkerson believed Passo had reached an agreement was shown in September 2000, when Wilkerson told Santangelo about Passo's agreement with United. (Ex. 26 at 90-91; Ex. 32 at 29-30)<sup>70</sup>

Simon's core proposal that Passo accepted remained constant from the beginning. He would not be bound by the economic terms of the red book contract and United, not Local 631, would dispatch his workers.

Passo relied on some changes he made to the agreement as evidence that he was in the beginning process of negotiating a better agreement. (Tr. 451-454) But the evidence showed that the reason Passo toyed with the agreement was to attempt to make it more attractive to the Local officials who had rejected the agreement he had reached with Simon, not to renegotiate its substance. (Ex. 26 at 43-59; Ex. 82 at 34; Tr. 58, 185)

During the IRB hearing, Passo claimed that he had not agreed to the provisions of the agreement he submitted to Pollard. (Tr. 496) This was inconsistent with all other relevant evidence.

To support his claim of only the beginning of negotiations, at the hearing, Passo also suggested that in the 15 days between August 29, when he sent the letter, and September 12, when the IBT prohibited him from having further dealings with Simon, he had additional conversations with Simon about the proposed agreement. (Tr. 497-500)

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<sup>70</sup> Wilkerson testified that he told Santangelo, "... 'Let me tell you what else he [Passo] is trying to get me to do.' And then I brought up about that. I said, 'I want you to know I'm not signing the damn

There was no evidence to support this claim. Passo seemed to suggest that he and Simon met in that period. (Tr. 500) However, his previous sworn examination testimony, as well as his hearing testimony, asserted that he had four face-to-face meetings with Simon. (Ex. 21 at 268; Tr. 467),<sup>71</sup> none of which was in this time frame. On September 10, two days before he was told to stop dealing with Simon, Passo told Whitfield that he had submitted an agreement he had reached with Simon to the IBT for review. (Ex. 218 at 33)<sup>72</sup> The only document he ever submitted was the August 29 agreement. Even if the proof of an agreement had not been as weighty and convincing as it is, there is absolutely clear and convincing evidence that Passo and Hogan attempted to get Local 631 to agree to a contract with United that was substandard and injurious to Local 631 and the charges are proven.

##### **5. Passo's and Hogan's Alleged Concerns About Jurisdiction**

In an effort to justify their conduct, Passo and Hogan claimed their motivation for dealing with United was concern over other unions infringing upon the IBT's jurisdiction. (Tr. 309-310, 314-315, 324, 438-442, 445-446, 465) But their course of action with United did little, if anything, to resolve that alleged concern. In fact, the evidence showed their proposal created strong economic incentives for the trade show contractors to use the cheaper United employees for Teamster work rather than workers

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thing even though he used your name as supporting this." And boy, he got infuriated real quick . . . ." (Ex. 26 at 91)

<sup>71</sup> These four meetings were the steakhouse meal with Frates and Whitfield, the Rio Hotel meeting with Santangelo and Hogan, the Indigo Lounge meeting with Scalf and the Harry Cary's meeting with Hogan and Hoffa. (Ex. 21 at 268) Each of these meetings was described above and took place before August 29, 2000 when he sent the handwritten agreement to Pollard.

<sup>72</sup> Passo never showed Whitfield his submission to Pollard. (Tr. 237-239) This allowed him to lie to Whitfield about its contents. For example, Passo told Whitfield that "we're going to bring the wages back up to what C listers make. They're not going to get no cut in pay." (Ex. 218 at 34) This was not reflected in the handwritten agreement, nor was there any evidence that Simon had agreed to pay that rate.

dispatched through Local 631 and the jurisdiction of Local 631 and the IBT was eroded by those efforts.

Passo and Hogan alleged that there was a problem with members of other unions performing Teamster work in the trade show industry. (Tr. 371, 433, 438-440) As in any multi-union industry, it did happen that members of other unions attempted to perform Teamster work without a dispatch from Local 631.

Trustee Wilkerson testified that prior to the Trusteeship, members of the Carpenters performed Teamster bargaining unit work without being dispatched from Local 631 and the Local 631 business agents were not challenging it. (Tr. 112-113) This poaching was a different issue from the occasional use of Carpenters through Local 631 dispatch to meet Local 631's call obligations. After the Trusteeship under Wilkerson's direction, the Local's business agents began to firmly police the Local's jurisdiction. (Tr. 80-82; Ex. 20 at 145-146, 150; Ex. 6 at 6-9) Indeed, at the outset of the Trusteeship, Whitfield came to Passo's attention when she strongly objected after members of another union tried to perform Teamster work. (Tr. 203-204, 480-481) As Passo testified, Whitfield notified the Local and was aggressive in preventing the members of the other unions from performing IBT work. (Tr. 480-481)

It was not a jurisdictional issue when members of other unions performed Teamster work as a result of being dispatched through the Local 631 dispatch office when it ran out of registrants to refer to work.<sup>73</sup> Local 631 controlled who worked and ensured that all workers were paid, at least, the contract rates. This prevented the

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<sup>73</sup> Registrants in the Local 631 dispatch office could be Teamster members, non-members who paid a dispatch fee or members of other unions. (Ex. 77)

employers under the contract from going to other sources such as United. When members of the non-IBT unions were dispatched from Local 631, they had clearance from the Teamsters to work and they were, in effect, acting as Teamsters. (Tr. 60-61, 113-115, 125, 197, 212-213) As Wilkerson explained:

. . . I really believed and I still would believe that, as long as we made the call and we dispatched them, we are protecting our work with the Teamsters jurisdiction.

If when we fail – when Local 631 fails to fill the call and you allow the employer then to go out to whatever source he or she wishes to fill those then you are jeopardizing.

(Tr. 115)

Passo's and Hogan's alleged objection to the practice was to the effect that a "psychological" bond would be developed between the members of the other unions such as the Carpenters and the trade show contractors. (Tr. 314-315, 324-325, 440) Passo and Hogan testified that this would lead the other unions to infringe upon the IBT's jurisdiction. The more compelling and significant bond was the economic incentive Passo and Hogan's agreement with Simon would have created for the contractors to use United employees, not Teamsters. It also ignored the fact that through surrendering the dispatch function to United the Local would lose its ability to police the contractors and provide any mechanism for curing contract violations. Breyman well understood this and it was one of the reasons he opposed Simon's proposal. (Tr. 401-402) When the contractors used the Carpenters dispatched from Local 631, they had to pay, at least, the Teamster contract wage, which at the time was \$12.49 per hour. (Tr. 401, Ex. 4)<sup>74</sup> Under Passo and Hogan's solution, instead of having members of other unions dispatched

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<sup>74</sup> Members of some unions were paid even more than the Teamster rate. (Tr. 275)

from Local 631, Simon would send United employees directly to the contractors. These workers would be paid significantly less than the Local 631 contract. (Ex. 84 at 5) According to Passo's August 29, 2000 submission to Pollard, the United employees would have been paid \$10 per hour for the first 250 hours in the industry. (Ex. 84 at 5) As a result, Passo and Hogan created a strong economic incentive to use United's lower paid workers and also eliminated the mechanism to ensure no United workers would be dispatched before the Local 631 list was exhausted. When Passo and Simon reached their agreement, it was vans of cheaper United Workers that GES and Michael Hogan tried to use to perform Teamster work and not Stagehands and Carpenters just when the call was not filled.

Passo knew that GES used United employees at "scab rates" and told Hogan about this. (Tr. 487-488) They took no steps to stop it. Rather, they joined with Simon, against the Local, to legitimize under pay. Hogan discussed the Local's grievances against GES with the contractor without telling the Local Trustee. (Ex. 15 at 125-127; Ex. 1 at 186-187) Hogan and Passo lobbied the other significant trade show contractor to accept the reduced terms and special consideration for United. (Tr. 195-196, 327-333, 502-503; *See*, Ex. 82 at 71)

Passo and Hogan's alleged solution to the "problem" of Local 631 running out of people registered in the union hall was to cede control of the dispatch function to Simon. (Ex. 6 at 102, 108; Tr. 181-82; Exs. 20, 70, 81; Ex. 6 at 108) Passo and Hogan did not and could not explain how it would be beneficial to allow the trade show contractors to use United's non-union low paid workers totally under United's control.

Passo was aware that the roll over sometimes happened in the middle of the night. Yet, Passo still opposed the business agents dispatching anyone to work. (Ex. 82 at 45-46) Only Simon and GES, who could use United's cheaper labor, benefited from Passo's position. Local 631 was harmed.

**6. Hogan and Passo Were Not Exercising Free Speech Rights**

It is undisputed that the LMRDA provides and protects every Union member's right to free speech and advocacy. *Sheet Metal Workers, Int'l Ass'n v. Lynn*, 488 U.S. 347 (1988). But neither the statute nor the case law shields conduct and advocacy which violates fiduciary duties, brings reproach on the IBT and undercuts its existing contracts, all of which greatly injure the IBT. The post conduct argument for the protection of free speech here is a thin guise for illegal actions in breach of the IBT Constitution and, as such, avails Hogan and Passo nothing.

**7. Hogan's Credibility**

Hogan claimed that his conduct was designed to assist Local 631 and the Teamsters (Tr. 310, 315). The evidence does not support his claim. For more than a year, Hogan did not inform anyone at the International about his alleged grave concerns regarding Local 631. He never advocated his alleged solution to a significant problem at the Local to International's appointed Trustees or other Local 631 officials or to anyone else.<sup>75</sup> Knowing that two prior Local 631 administrations had rejected the arrangement

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<sup>75</sup> Hogan's alleged concerns about non-IBT unions infringing upon Local 631's jurisdiction ignored the far greater economic incentive he and Passo would have created for the contractors to use Simon's cheaper labor.

with United, Hogan arranged for his friend Passo to be the sole contact with Simon. In addition, Hogan, who had no official role concerning Local 631 (Tr. 369), met with Local 631 employers to discuss Local 631 issues and kept his meetings secret from the Local and from his superior at the International. (Ex. 15 at 122-123; Ex. 12 at 146-147)

Hogan, who spent at least 27 days in Las Vegas during the relevant time period (Ex. 166, 265-280), never met or even spoke with any Local 631 official about the alleged critical jurisdiction problem and how the United arrangement could provide a solution. (Ex. 15 at 92-93) Even after meeting Trustee Wilkerson in May 2000 at the IBT's Women's Conference (Ex. 15 at 53), Hogan never discussed with him the alleged infringement upon the IBT's jurisdiction by other unions and his alleged solution. (Ex. 15 at 92-93)

In terms of union personnel, as opposed to the employers Simon, Freeman and GES, Hogan elected to remain largely clandestine, acting primarily through Passo. Hogan also remained in frequent contact with Simon about the arrangement for United. (Ex. 15 at 102-103) Hogan then proceeded to give Passo contracting advice despite swearing never to have read the governing collective bargaining agreement in Las Vegas. (Tr. 324, 330, 344, 362-3, 371, 374-75)<sup>76</sup> Hogan knew that the convention industry in Las Vegas differed substantially from Chicago. (Tr. 281-82) Either his testimony is false or he didn't care about the red book contract but only the best arrangement for Simon.

Even after Local officials refused to approve the arrangement with United, Hogan, who claimed at the hearing that the United arrangement would be beneficial to

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<sup>76</sup> Hogan testified that he spoke to Passo approximately a dozen times about the arrangement with United. (Ex. 15 at 102-103)

the Local and that Simon was an outstanding citizen of Chicago, never contacted anyone at the Local to persuade them on his alleged views. (Ex. 15 at 117-118; Ex. 1 at 186-187; Tr. 298) Hogan spoke to the Local's attorney only after the IRB's report was issued about the United contract. He never spoke to the attorney to try to persuade him of the merits of the arrangement.

At the hearing, Hogan claimed that the most favored nations clause in the convention industry contract was not applicable because United was not a general contractor. (Tr. 342) However, even though Passo had told Hogan that Trustee Wilkerson was concerned about the United arrangement in light of the most favored nations clause (Ex. 15 at 50, 117-118), Hogan never informed Wilkerson of his view of that clause. (Ex. 15 at 118)<sup>77</sup> Even Simon did not claim Hogan's interpretation of non-applicability. Instead, he told Frates in a phone call that he and Passo had reached an agreement that GES would waive its rights under the clause. (Ex. 82 at 70-71)

Contrary to Hogan's claim to have been a concerned union official trying to be of assistance, Hogan's pattern of conduct showed that his interest was to help United, Simon and his general contractor brother and not Local 631, its members or the employees of United.<sup>78</sup>

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<sup>77</sup> It also appears that Hogan's claim during the hearing to have been unaware of the most favored nations clause in the Las Vegas convention contract was false given Passo's discussion with him regarding Wilkerson's concerns about that clause. (Tr. 338)

<sup>78</sup> During his February 2001 sworn examination, Hogan claimed, ". . . I don't know what's wrong with helping my family, but apparently somebody has got a problem with that." (Ex. 15 at 58-59) In addition, even though his brother, through Show Biz USA which did trade show work in Las Vegas, had a direct interest in the convention industry contract negotiations, Hogan tried to participate in those negotiations. (Ex. 78 at 97-99; Ex. 12 at 144)

## 8. Passo's Credibility

Passo's testimony concerning his arrangement with United changed over time. In significant respects, his hearing testimony differed from his prior sworn testimony. In addition, documents, his prior statements and the corroborated testimony of others contradicted his hearing explanations of his arrangement with United. Passo lied to and concealed information from other Teamsters officials in his effort to obtain approval of his arrangement for Simon.<sup>79</sup>

During the hearing, Passo asserted that he planned to have Simon agree to the wages in the red book contract. (Tr. 467, 502) In his prior testimony, Passo, in fact, admitted he was prepared to grant Simon wage concessions from the governing contract. (Ex. 20 at 81-82)

Passo also admitted that he also told Frates and Whitfield that he was willing to agree to a wage for the United employees less than the prevailing agreement. (Ex. 20 at 91-92, 163) There was no indication Passo was in the preliminary stages of negotiations and planned to have Simon really pay the governing contract wages. Passo presented both to Wilkerson and Whitfield for approval an arrangement under which the United employees would be paid \$8.00 per hour, \$4.49 less than the prevailing contract hourly salary. (Tr. 58, 60, 180-181)

At the hearing, Passo claimed that there would be a seniority list for the United employees. (Tr. 498; 509-510) There was no evidence of such a list. In his prior testimony, Passo never mentioned a seniority list. Moreover, in the arrangement he

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<sup>79</sup> The evidence did not support Passo's contention at the hearing that the agreement was in a preliminary stage.

submitted to Pollard, there was no reference to any seniority list. (Ex. 84) The submitted arrangement provided that Simon would select which employees would work. (Ex. 84)

Passo also claimed at the hearing that he did not tell the Freeman representative that his arrangement with United provided for lower wages than those required in the governing contract. (Tr. 502-503)<sup>80</sup> This is a direct conflict with his prior testimony. During his sworn examination on February 2, 2001, Passo testified as follows:

Q: Why was it that the representatives of the company [Freeman] thought it was a bad idea?

A: I might have told him that there was going to be a wage difference.

(Ex. 20 at 203-204)

Passo's testimony that he told Freeman he was going to allow United to pay less than contract wages is corroborated by the statement Freeman made to Whitfield about Passo. According to Whitfield, Freeman official Jamison, ". . . was very adamantly opposed that Dane would come on his property unannounced and speak to higher management about people that they had never used in the past, were not interested in using, and did not want to mess with the Teamster jurisdiction." (Tr. 196)

Passo repeatedly misrepresented in his attempts to persuade Local 631 officials to bless the arrangement with Simon. He falsely represented to Wilkerson that

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<sup>80</sup> Passo testified as follows at the hearing:

Q: Did you tell them [the Freeman representatives] that you were going to allow United to be paid less than the contract rate?

A: I didn't tell them that I was going to allow them to be paid less than the contract rate.

I told them that I was negotiating, and, that if I do a contract with him, he wanted, Rick Simon wanted, a lesser rate on the contract.

(Tr. 502-503)

Santangelo and Scalf approved his arrangement with United. (Tr. 65, 91; Ex. 26 at 88, 92; Ex. 32 at 41-43; Ex. 12 at 98-101) He falsely told Whitfield that Scalf reviewed the arrangement with Simon. (Ex. 218 at 33, Ex. 12 at 98-101)

Passo claimed that he could not recall Frates's and Whitfield's opinions of his proposed arrangement with United. (Ex. 20 at 92-94, 162-63)<sup>81</sup> Passo had repeated conversations with both Frates and Whitfield during which he tried to persuade them to approve his arrangement with United. (Ex. 6 at 97-105; 111-112, 124; Ex. 82 at 54-57, 70-73; Ex. 20 at 92, 177) During these conversations, Frates and Whitfield objected strongly to allowing United concessions from the governing contract and pointed out to Passo the deficiencies in the arrangement he was promoting. (Ex. 6 at 99-105, 111-112, 124-125; Ex. 82 54-57, 70, 234) They both told Passo that Simon should sign the governing contract. (Ex. 6 at 124-25; Ex. 82 at 54) In addition, their opposition to Passo's arrangement was known to others. Business agent Benboe recalled Whitfield

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<sup>81</sup> At his February 2, 2001 sworn examination, Passo testified:

Q: Did you tell [Frates] you thought it was a good idea for Local 631 to enter into this agreement with Mr. Simon's company?

A: Yes, I'm sure I did, yes.

Q: And what was Mr. Frates' response?

A: He wasn't really – I don't think he had too much to say either way.

\* \* \*

Q And did you tell [Whitfield] you thought it was a good idea for 631 to enter into the agreement with Mr. Simon's company that had some concessions off the GES contract?

A: I'm sure I did, yes.

Q: What was her view of that?

A: I don't remember her view. I don't remember which way she was going with it.

Q: Did she ever tell you that she didn't think it was a good idea?

A: I can't remember.

(Ex. 20 at 162-163)

telling him that what Simon and Passo “. . . tentatively agreed to was substandard, and we’d just be opening a Pandora’s box.” (Ex. 149 at 49-50)

A simple but obvious example of Passo’s lack of credibility was his denial that he knew Michael Hogan was involved with United. (Ex. 20 at 68-69) Passo had known Michael Hogan since 1996 or 1997. He knew that he owned a company in the trade show industry. (Ex. 20 at 66-67)<sup>82</sup> In contrast, William Hogan, with whom Passo had “a very close relationship” and who stated Passo was “almost like another son to him,” acknowledged that he “probably” told Passo that his brother was involved with United. (Ex. 15 at 39, 76; Tr. 313, 443) During the seven months between April and November 2000, when Passo was in Las Vegas trying to work out an arrangement to benefit United, there were, at least, 152 calls between Passo’s and Hogan’s cellular telephones. (Ex. 44-51, 54-60, 68-76) They spoke frequently about United. (Ex. 20 at 79; Ex. 15 at 93)

Moreover, after the Trusteeship, Passo had discussions about United with Breyman, who had met with Simon and Michael Hogan. (Tr. 396-397; Ex. 25 at 41; Ex.

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<sup>82</sup> Passo testified as follows:

Q: Does Michael Hogan have any position with Rick Simon’s company?

A: I don’t know.

Q: Did you ever hear Michael Hogan was the Vice President of Rick Simon’s company?

A: No.

Q: Did you ever hear that Mike Hogan had any contact with Rick Simon’s company?

A: No.

Q: Bill Hogan never mentioned that to you when he talked to you about Rick Simon’s company?

A: No, he didn’t.

(Ex. 20 at 68-69)

5 at 21, 27, 33) Indeed, Michael Hogan's involvement with United was known even to Local members on the convention floor. (Ex. 205 at 15-16; Ex. 156 at 36) Given the ongoing talks and meetings between Passo, Simon and William Hogan concerning United, Passo's claim that he was unaware that his close friend's brother was involved in the company was not credible.

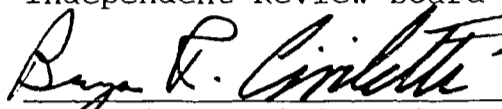
Generally, Passo's testimony was conveniently self-serving and contrary to his own prior statements.


In summary, both Passo and Hogan's relevant testimony is internally contradictory and against the weight of the documentary and testimonial evidence and is, therefore, not credible.

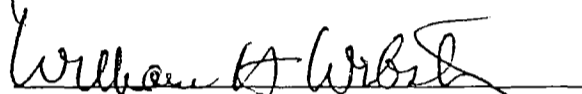
#### **CONCLUSION**

The evidence has established that Dane Passo and William T. Hogan, Jr. brought reproach upon the IBT, violated the IBT Constitution and the Consent Decree as charged. Therefore, they are both permanently barred from holding membership in or any position with the IBT or any IBT-affiliated entity. Furthermore, Dane Passo and William T. Hogan, Jr. may not hereafter obtain employment, consulting or other work, directly or indirectly, with the IBT or any IBT-affiliated entity.

Members of the  
Independent Review Board

  
Benjamin R. Civiletti

  
Joseph E. diGenova

  
William H. Webster

Dated: May 29, 2002

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
 : 88 Civ. 4486 (LAP)  
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 : Plaintiff, :  
 : MEMORANDUM AND ORDER  
 :  
 : -against- :  
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 : INTERNATIONAL BROTHERHOOD OF :  
 : TEAMSTERS :  
 :  
 :-----X  
APPLICATION 102: William T. Hogan :  
and Dane M. Passo, :  
 :  
 : Defendant. :  
 :  
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LORETTA A. PRESKA, United States District Judge:

I. Background

Before the Court is Application 102 of the Independent Review Board ("IRB") of the International Brotherhood of Teamsters ("IBT") to affirm the disciplinary action taken against IBT members William T. Hogan, Jr. ("Hogan") and Dane M. Passo ("Passo").

Hogan and Passo were charged with bringing reproach upon the IBT and violating the IBT Constitution by colluding with a non-union employer to enter into a sub-standard contract with IBT Local 631, to the detriment of IBT members. The IRB conducted a hearing on the charges on October 18 and 19, 2001. By decision dated May 29, 2002 (the "IRB Decision"), the IRB

concluded that the charges were established and permanently expelled Hogan and Passo from the IBT.

Hogan and Passo filed lengthy objections to the IRB Decision, the Chief Investigator filed a Memorandum of Law in Support of Application 102, and Hogan filed a reply.

A. Hogan and Passo

Hogan and Passo held high-level positions with the IBT during the time period covered by the instant charges. Prior to his expulsion, Hogan had been a member of the IBT for some 40 years, Objection of William T. Hogan, Jr. to Application 102 of the IRB ("Hogan Br.") at 33, and had served as an IBT International Representative, President of IBT Joint Council 25, and Director of Organizing and Political Director of IBT Local 714, Vice President of IBT Local 179; he was a member of IBT Local 714 in Chicago, IRB Decision at 3; IRB Investigative Report ("IRB Rep.") Ex. 14, at 3-5; IRB Hearing Transcript ("Tr.") at 279-80. Hogan was appointed an IBT International Representative by IBT General President James P. Hoffa ("Hoffa"). Id. at 14. Hogan was appointed to his position with Local 714 by his son, Robert Hogan, the current Secretary-Treasurer and principal officer of Local 714. Id. at 5.<sup>1</sup>

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<sup>1</sup> From 1990 until 1996, Hogan had served as Secretary-Treasurer and principal officer of Local 714. IRB Rep. Ex 16 at 8. Hogan was appointed to that position by his father, William Hogan, Sr. Id. When William Hogan, Sr. retired, William Hogan, Jr. (continued...)

Hogan has extensive experience in the convention and trade show industries, both in Chicago and around the country. IRB Decision at 3. Hogan dealt for decades with conventions and trade shows at McCormack Place, the major convention center in Chicago, and was involved with the Chicago Convention and Tourism Bureau. Tr. 280-84. Nevertheless, General President Hoffa never appointed Hogan to any International position concerning that industry and never appointed him to any position that would give him any authority or assignment with respect to Local 631 in Las Vegas. IRB Rep. Ex. 78 at 35.<sup>2</sup>

Prior to his expulsion, Passo had been a member of the IBT since 1971. IRB Rep. Ex. 20 at 4. In January, 1999, following General President Hoffa's election to office, Passo was

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(...continued)

appointed his brother, James M. Hogan, as President of Local 714. Id. In 1996, the IRB recommended that the IBT place Local 714 in trusteeship because it found that the Local was not being run for the benefit of its members but "for the benefit of its principal officer, William Hogan, Jr., President James M. Hogan, Recording Secretary Robert Hogan and their family and friends." Id. at 1.

<sup>2</sup> Hogan had served as Director of the IBT's Trade Show and Convention Centers Division under former IBT General President Jackie Presser. IRB Rep. Ex. 15 at 14-15; Tr. at 288. Although Hogan asked General President Hoffa to appoint him to that same position following Hoffa's election as General President (IRB Rep. Ex. 15 at 15; Ex. 78 at 19), Hoffa declined and has not appointed anyone to serve in that position. IRB Rep. Ex. 78 at 18. In a conversation recorded by Local 631 Business Agent Roberta Whitfield, Passo explained that the position remains vacant at the IBT "[b]ecause all the heat with the FBI, the Justice Department and the Second Circuit Courts in New York, [and] with the IRB, is [in] the conventions and the movie division." IRB Rep. Ex. 218 at 10.

hired to serve on the General President's staff as a member of the transition team. IRB Rep. Ex. 11 at 3. On March 23, 1999, General President Hoffa appointed Passo to serve as an International Representative. IRB Rep. Ex. 11 at 8. On April 13, 1999, General President Hoffa appointed Passo to serve as the Special Assistant to the General President. IRB Rep. Ex. 11 at 10. No other person held that same title at the IBT. IRB Rep. Ex. 78 at 13.<sup>3</sup> On November 5, 1999, General President Hoffa appointed Passo as his Personal Representative to Teamsters Local 631. IRB Rep. Ex. 10. Before his involvement with Local 631, Passo had never negotiated a contract on behalf of the IBT and he had no experience in the convention industry. IRB Decision at 2; Tr. at 455, 505.

**B. Rick Simon and United**

United Services Companies ("United") was founded in Chicago forty years ago by Ben Stein ("Stein"). IRB Decision at 4; IRB Rep. Ex. 28. For decades, United has supplied convention services, including janitorial and maintenance services, to the McCormack Place convention center in Chicago and to convention centers in other major cities. IRB Rep. Ex. 27. Stein was convicted in 1966 of labor racketeering and bribery in connection

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<sup>3</sup> Passo's title of Special Assistant to the General President was removed in October, 2000, following complaints from IBT Vice Presidents about his job performance in connection with Local 631. IRB Decision at 2; IRB Rep. Ex. 20 at 24-25; Ex. 78 at 13.

with United's services at McCormack Place. IRB Decision at 4; IRB Rep. Ex. 28. Specifically, Stein made payoffs to IBT officials in Chicago to allow his non-union employees to work at McCormack Place. Id. Although his conviction was overturned on appeal, Stein subsequently pled guilty to bribing Teamster officials and was sentenced to a year in prison. Id. Stein also associated with organized crime figures in Chicago, including La Cosa Nostra ("LCN") member Dominic Senese ("Senese"), the former President of IBT Local 703 in Chicago. IRB Exs. 28-31. Senese was expelled from the IBT in 1990 for being a member of organized crime and for knowingly associating with other LCN members in Chicago. IRB Rep. Ex. 29. See United States v. IBT ("Senese"), 941 F.2d 1292 (2d Cir. 1991).

Stein's companies are managed today by United chairman Rick Simon ("Simon"), who had worked closely with Stein and has been with Stein's companies for thirty years. IRB Decision at 4; IRB Ex. 28. In 1988, the FBI interviewed Simon about the mob-related shooting that year of Senese. IRB Rep. Ex. 30. In that interview, Simon acknowledged that "he had known Dominic Senese and his family for so long he could not remember how long." IRB Rep. Ex. 30 at 1. Currently, United has ties to both the Stein and Hogan families. Stein's daughter, Carol Stein, now owns United. IRB Decision at 4. Hogan's brother, Michael Hogan, is

an officer of United.<sup>4</sup> IRB Decision at 5. Michael Hogan was also the CEO of Show Biz USA, a trade show contractor in Las Vegas. IRB Decision at 5. Michael Hogan had been chief steward at IBT Local 714 in the trade show division in the 1970s. IRB Decision at 5; IRB Rep. Ex. 175 at 128.

Hogan has known Simon for ten to fifteen years. IRB Rep. Ex. 15 at 30. Hogan also knew Stein and his daughter Carol from their involvement with the Chicago convention and tourism industries. Id. at 59.<sup>5</sup>

C. Local 631

Local 631 is an IBT local union in Las Vegas Nevada, with approximately 4,500 members. IRB Decision at 6; Tr. at 403.

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<sup>4</sup> Michael Hogan's son, Michael Hogan Jr., has also worked for United in Chicago. IRB Rep. Ex. 173 at 19-22.

<sup>5</sup> Hogan challenges the IRB's reliance on hearsay evidence in the record establishing Stein and United's long history of involvement with organized crime in Chicago. Hogan Br. at 20 n.12. It is well established, however, that reliable hearsay is admissible in IRB disciplinary proceedings. See, e.g., United States v. IBT ("Senese & Talerico"), 941 F.2d 1292, 1297-98 (2d Cir. 1991). Here, the newspaper articles concerning Stein are detailed and corroborate one another. Moreover, Simon's relationship with Senese is corroborated by an FBI report, which is also in the record. IRB Rep. Ex. 30. Hogan has not disputed Stein's criminal conviction for labor racketeering, which is a matter of public record. Nor did Hogan offer any evidence, such as the testimony of his friend Simon, to contradict the Chief Investigator's evidence on these issues. Finally, while Hogan states that there is "no evidence" in the IRB's Decision that "that Hogan knew or ever even met Stein", Hogan Br. at 20, Hogan in fact admitted at his deposition that he knew and had met Stein; indeed, he admitted he knew that Stein had owned United, and that he had contact with Stein in connection with the Convention Bureau in Chicago. IRB Rep. Ex. 15 at 59.

Local 631 had a collective bargaining agreement with trade show contractors in Las Vegas, including Greyhound Exposition Services ("GES") and Freeman Decorating ("Freeman"). IRB Decision at 6. Pursuant to this contract (referred to as the "Red Book contract"), these trade show contractors were required to call upon Local 631 when they needed workers. Id. Local 631 responded to such calls by dispatching workers to the contractors through its dispatch office in accordance with dispatch lists. Id. The list was open to both IBT members, who paid dues to Local 631, and to non-IBT members, who paid Local 631 a dispatch fee. Id. When Local 631's dispatch office ran out of registered workers to send to a contractor, Local 631 would contact other IBT local unions in Las Vegas for additional available workers to send; and when those other IBT locals were exhausted as a source of workers to respond to a call, Local 631 would contact other Las Vegas unions, such as the Carpenters and Electricians, for any members of those unions who needed work. IRB Decision at 8.<sup>6</sup> All workers, including those from other IBT

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<sup>6</sup> Passo, who had no experience in the convention and trade show industries and no prior experience with Local 631, actively opposed Local 631's long-standing practice of contacting other labor unions for additional workers to dispatch to the contractors when the local ran out of IBT members to send. See, e.g., Tr. at 63-64. Of course, without those additional union workers to dispatch, Local 631 would exhaust its dispatch list earlier, making it more likely that Local 631 could not meet the call. When Local 631 could not meet the call, the contractors were permitted to use United's non-union workers, id., a result obviously to the  
(continued...)

locals and other unions, who were dispatched through Local 631 were entitled to the wages and benefits of the Red Book contract. IRB Decision at 9. Under the Red Book contract, wages and benefits depended upon the number of hours worked in the industry and the time of day worked. During the relevant time period, IBT members (and other workers dispatched through Local 631) were paid hourly wages ranging from \$12.40 per hour to \$20.53 per hour. Id. at 7.

United served as a labor broker in Las Vegas and could supply non-union workers to trade show contractors at cheaper rates than the wages required by the IBT under the Red Book contract. Unfortunately for the contractors, the Red Book contract allowed them to avoid paying the relatively higher IBT wages and benefits only when Local 631's dispatch lists were exhausted. If the dispatch lists were not exhausted and the contractor nevertheless used United workers (or other workers who were not dispatched by Local 631), the contractor would be in violation of the contract and the IBT would have the right to file a grievance and seek compensation from the contractor. IRB Decision at 30, 36.<sup>7</sup> While trade show contractors like GES and

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(...continued)  
detriment of IBT members.

<sup>7</sup> In fact, GES violated the Red Book contract during a major Las Vegas trade show in 2000 by using United workers to perform Teamster work. IBT members complained loudly and in great  
(continued...)

Freeman had an economic interest in avoiding payment of the Red Book wages and using United's cheaper, non-union labor instead, the Red Book contract provided that any worker who performed Teamster bargaining unit work must be paid the contract wages, even if not dispatched through Local 631. IRB Decision at 9; Tr. at 64-65. Accordingly, for United (including Simon and Michael Hogan) to profit by providing its non-union labor to contractors (at rates substantially lower than those paid to IBT members under the Red Book contract), United needed a separate agreement with the IBT that would allow United workers to perform Teamster bargaining unit work at wages other than those provided under the Red Book agreement.

**II. Hogan and Passo Collude to Have Local 631  
Enter into a Contract with United**

Simon had attempted to enter into an agreement with Local 631 that would allow United to supply its non-union labor to trade show contractors whenever Local 631's dispatch list was exhausted. IRB Decision at 10. Simon approached the leadership of Local 631 about his proposal prior to the 1998 local union election, but that administration had rejected the proposal. Id. In 1998, IBT member Tim Murphy ("Murphy") was elected Secretary-

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numbers to the local. In response, Local 631 filed grievances against GES. IRB Decision at 30, 36, 39.

Treasurer and principal officer of Local 631. Id. Murphy hired David Breyman ("Breyman") as a dispatcher. Id.

**A. Murphy Rejects Simon's Proposal**

The following year, Michael Hogan of United approached his brother, William Hogan, and requested an introduction to the new leaders of Local 631. IRB Decision at 5, 10; Tr. at 306-08. Hogan agreed and made the introductions. IRB Decision at 5, 10; Tr. at 136. In June or July 1999, Murphy and Breyman met with Simon and Michael Hogan at a restaurant in Las Vegas. Id. At that meeting, Simon and Michael Hogan proposed that Local 631 enter into an agreement with United under which United would supply its non-union workers to trade show contractors after Local 631 had exhausted its dispatch list. IRB Decision at 11. Simon proposed that the workers would be dispatched directly by United, not through Local 631. IBT Decision at 11-12. According to Murphy, Simon also said that he would pay the local and Murphy himself a "service fee" amounting to seven or eight dollars for each worker dispatched by United. Tr. at 137. In contrast, other non-union workers who were dispatched through Local 631 paid the Local 631 a dispatch fee of \$40. IRB Decision at 12. Both Murphy and Breyman rejected Simon's proposal. Tr. 137, 388. In fact, Murphy considered the proposal "possibly illegal." Tr.

at 137.<sup>8</sup> Either Michael Hogan or Simon told William Hogan that Murphy and Breyman had rejected United's proposal. IRB Decision at 12; Tr. 309.

**B. Murphy is Fired and Replaced with Wilkerson and Frates**

In 1999, Passo informed General President Hoffa about complaints that he had begun receiving from members of Local 631. IRB Rep. Ex. 113. Some of those complaints had been solicited from Local 631 members by IBT member Vito Locasio ("Locasio"). Locasio was a convicted felon, a former member of Hogan's local in Chicago, and a close confident of Passo. IRB Decision at 13.<sup>9</sup> At Passo's urging, General President Hoffa appointed Passo as his Personal Representative to Local 631 in November, 1999. IRB

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<sup>8</sup> Breyman denied hearing Simon offer Murphy a kickback. Tr. at 390. The IRB made no finding of whether Simon offered to pay Murphy for agreeing to his proposal. The IRB did observe, however, that "[t]he arrangement Passo, Hogan and Simon proposed to Local 631 was similar to those Stein had reportedly been involved with in the past where his employees were paid wages below a prevailing contract." IRB Decision at 4 n.7. The IRB also noted that in September 2000, United donated \$5,100 to the James R. Hoffa Memorial Scholarship Fund golf outing in Las Vegas, which paid for the tickets of Simon, Hogan's son, James Hogan, and others. IRB Decision at 30. Stein, of course, was ultimately convicted and sent to prison for making illegal payments to IBT officials in connection with United. Id.

<sup>9</sup> Locasio's criminal history includes convictions for stealing a truckload of television sets, burglary, and uttering a forged instrument. IRB Rep. Ex. 147 at 13-15. Passo nevertheless actively assisted Locasio in his efforts to run for union office at Local 631 and secured employment for him with the local. See IRB Decision at 41. Passo also caused the IBT to pay for at least 87 meals at which Locasio was present, including 28 meals at which only Passo and Locasio were present. Id. at n.46.

Decision at 13; IRB Rep. Ex. 20 at 13-14; Ex. 21 at 259-60. On March 1, 2000, Hogan, Passo, and other IBT officials confronted Murphy and demanded certain personnel changes at the local. IRB Decision at 15. At the time, Hogan had no IBT responsibilities in Las Vegas and no official role with respect to Local 631. At the IRB hearing, Hogan acknowledged that he had "no official position there" but explained that he was "there just joining in with the guys. . . . I just went along with friends of mine." Tr. at 317. That same day, Hogan and Passo met for lunch in Las Vegas and discussed Local 631. IRB Rep. Ex. 20 at 127.

Thereafter, Passo expressed to the International Union his view that Local 631 should be placed into trusteeship. Id. at 137.<sup>10</sup>

On April 5, 2000, General President Hoffa placed Local 631 in trusteeship. IRB Decision at 15. Between the March 1 meeting with Murphy (at which Hogan had no official role) and the April 5 trusteeship, records show at least 32 telephone calls between Passo and Hogan. IRB Decision at 15. On the day Passo and others effected the trusteeship at the local, Passo and Hogan spoke to each other at least seven times. IRB Decision at 16. When the IBT put Local 631 into trusteeship, Murphy and Breyman

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<sup>10</sup> A trusteeship at Local 631 had previously been recommended to General President Hoffa by IBT Vice President James Santangelo, who had also been appointed as a Personal Representative to Local 631. IRB Rep. Ex. 3.

(who had opposed the proposed arrangement with Simon) were fired.  
IRB Decision at 16.

General President Hoffa thereafter appointed James Wilkerson ("Wilkerson") to serve as trustee of Local 631, IRB Decision at 15, and Marty Frates ("Frates") as Assistant Trustee, id. During the trusteeship, Wilkerson acted in the capacity of principal officer of the local, with authority to enter into agreements on behalf of the local. See IRB Decision at 19 n.31.

**C. Wilkerson and Frates Reject Simon's Proposal**

After the local was placed in trusteeship by the International Union, Hogan renewed his efforts to assist Simon in securing an agreement with Local 631, by, inter alia, introducing Simon to Passo in the summer of 2000. IRB Decision at 18; IRB Rep. Ex. 20 at 64; Tr. at 322, 444-45. Thereafter, Simon and Passo engaged in extensive discussions towards a contract between United and Local 631. IRB Decision at 18-19. However, Hogan never introduced Simon to Trustee Wilkerson, the official at Local 631 with authority to reach an agreement with United. IRB Decision at 18, 19 n.31. In fact, no Local 631 officials participated in any of the direct discussions between Passo and Simon. IRB Decision at 19. Rather, Simon requested concessions from the Red Book contract from Passo, and Passo, in turn,

pressed Local 631 to agree to the terms proposed by Simon. IRB Decision at 19.<sup>11</sup>

Trustee Wilkerson and Assistant Trustee Frates both opposed Passo's proposal to contract with Simon. IRB Decision at 19; Tr. at 66; Ex. 82 at 54. Even a representative of Freeman, an employer, told Passo and Hogan that an agreement between Local 631 and United that allowed United workers to be paid less than IBT members were being paid under the governing Red Book contract would undermine the local's bargaining position with Freeman given that the existing contract with Freeman was up for renegotiation in 2001. IRB Decision at 27. As Assistant Trustee Frates put it, "it would have been asinine to go in and negotiate something less [with United] right before negotiations" with the trade show contractors. IRB Decision at 22; IRB Rep. Ex. 82 at 55.

**D. Wilkerson and Frates are Fired**

In an attempt to persuade Wilkerson to support the contract proposal, Passo falsely told Wilkerson that James Santangelo, an IBT Vice President, and Carlow Scalf, Executive Assistant to General President Hoffa, both wanted him to sign the contract. IRB Decision at 19, 24; Tr. at 65. In an attempt to

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<sup>11</sup> In fact, when Passo ultimately submitted to the International Union the changes to the Red Book contract he was proposing for the contract with United, the proposed terms Passo submitted were written in Simon's handwriting. Tr. at 495-96.

persuade Frates to support the proposal, Simon similarly told Frates that Santangelo and Scalf supported the proposal. IRB Decision at 35; IRB Rep. Ex. 82 at 56-57, 63. Passo also attempted to persuade Local 631 Business Agent Roberta Whitfield to agree to Simon's proposal, suggesting that he could get Whitfield an appointed position with the International Union. IRB Decision at 41; IRB Rep. Ex. 218 at 10. But Whitfield too opposed the proposal. IRB Decision at 21; Tr. at 184. Passo also requested that Local 631 attorney Joe Kaplon persuade Wilkerson that the proposed contract with United was acceptable. IRB Decision at 23. But Kaplon too sided with Wilkerson. Id.

Thereafter, Passo caused the IBT to fire both Wilkerson and Frates. IRB Decision at 19; IRB Ex. 78 at 57, 61; Ex. 12 at 84-87. Throughout this period, Passo and Hogan continued to consult extensively. IRB Decision at 25-34.<sup>12</sup>

**E. Wilkerson is Replaced with Jacobson;  
Hogan Seeks to Negotiate the New Trade Show Contract**

On November 6, 2000, the IBT replaced Wilkerson with a new trustee for Local 631, Ed Jacobson ("Jacobson"). IRB

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<sup>12</sup> Before Wilkerson was terminated as trustee, Wilkerson had complained to IBT Vice President Santangelo about Passo's proposed arrangement with Simon, and Santangelo requested that the IBT investigate Simon's background. On September 12, 2000, based on the information about Simon discovered as a result of that investigation, the IBT instructed Passo to stop all dealings with Simon. IRB Decision at 43-44.

Decision at 47, 50. During the next few months, United employees repeatedly performed Teamster work on GES trade shows, causing Local 631 business agents and stewards to file repeated grievances with GES for violating the existing contract. IRB Decision at 50-52. In January, 2001, GES representatives from Las Vegas met with Hogan in Chicago and complained about the number of grievances being filed by Local 631. IRB Decision at 54. The GES representatives also discussed with Hogan the upcoming negotiations for a new Las Vegas convention contract, since the existing contract was scheduled to expire May 31, 2001. IRB Decision at 54-55. During these discussions with GES, Hogan still had no officially sanctioned role in Las Vegas or in connection with Local 631. Id. at 54.

Since the IBT had barred Passo from further dealings with Simon, see note 12, supra, the only way for United to supply (and for contractors to permissibly hire) United's non-union workers at United's lower wages was for Local 631 to enter into a new contract with the trade show contractors that would expressly permit the contractors to hire non-Teamsters to perform Teamster work at less than Teamster wages. IRB Decision at 55. To that end, in March 2001, following his meeting with GES representatives, Hogan requested that General President Hoffa appoint him to negotiate the new agreements with GES and the other Las Vegas contractors. Id. Hogan also asked Scalf to let

him negotiate Local 631's new contract with the trade show contractors. Id. During these discussions with Hoffa and Scalf, Hogan never disclosed to either Hoffa or Scalf that he had met with GES representatives in Chicago nor did he ever disclose that his brother Michael held positions with United and with Show Biz USA, the Las Vegas trade show contractor. Id. at 55-56. Both Hoffa and Scalf refused to let Hogan negotiate with the contractors. Id.

#### Procedural History

##### I. The IRB Charges

On May 23, 2001, the IRB recommended that the IBT file charges against Hogan and Passo for colluding with Simon to enter into a substandard contract and to have United employees perform Teamster work in the Las Vegas trade show and convention industries for less pay and benefit fund contributions than the existing collective bargaining agreement required. On May 25, 2001, IBT General Secretary-Treasurer C. Thomas Keegel adopted and filed the IRB's proposed charges and advised the IRB that the IBT would appoint a union panel to hear the charges.<sup>13</sup> On July 26, 2001, Mr. Keegel advised the IRB that the IBT's General

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<sup>13</sup> General President Hoffa (who appointed Passo and Hogan as International Representatives; appointed Passo as his Special Assistant and as his Personal Representative to Local 631; put Local 631 into trusteeship; fired Trustee Wilkerson; and personally met for lunch with Simon, Hogan, and Passo) recused himself from consideration of these charges.

Executive Board ("GEB") had voted to refer the charges back to the IRB for adjudication.<sup>14</sup> In accordance with its Rules, the IRB scheduled a hearing on the charges.

## II. Passo and Hogan's 2001 Action

On October 9, 2001, shortly before the IRB's hearing was scheduled to commence, Hogan and Passo sued the IRB members in this Court and sought an emergency order restraining the IRB from proceeding with its hearing. Hogan and Passo claimed, among other things, that the charges exceeded the IRB's jurisdiction and violated their rights to free speech. On October 11, 2001, this Court denied Hogan and Passo's application for a TRO.

First, Hogan and Passo's challenge to the IRB's jurisdiction, was rejected:

It has long been determined that the jurisdiction of the IRB is not confined to the very limited phrases of the Consent Decree which plaintiff's counsel have relied on. Rather, the IRB has been held time and again to have the general president's authority to construe the IBT constitution to determine what does and does not bring reproach upon the IBT.

Transcript of Proceedings, United States v. IBT, 88 Civ. 4486

(S.D.N.Y. Oct. 11, 2001), at 2. Hogan and Passo's argument that the charges interfered with their free speech rights under the First Amendment and the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") was also rejected. With respect to the

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<sup>14</sup> General President Hoffa also recused himself from the GEB vote on whether to refer the charges back to the IRB for adjudication.

constitutional claims, the Court observed that "it has been held many times that the IRB is not a state actor." Id. The Court also held that "[p]laintiffs' First Amendment rights do not extend to advocating collusive contracts with entities with a history of organized crime contacts and racketeering." Id. at 3.

Following denial of emergency relief, Hogan and Passo voluntarily dismissed their 2001 action.

### **III. The IRB Hearing**

On October 17 and 18, 2002, the IRB held its hearing in Las Vegas, Nevada, on the charges against Hogan and Passo. The transcript reflects that Hogan and Passo were represented by counsel at the hearing and were provided an opportunity to respond to the charges and cross-examine the witnesses who testified against them. In all, seven witnesses (including Hogan and Passo) testified at the hearing. Hogan did not call as a witness either his brother, Michael, or his long-standing business friend, Simon. The IRB also admitted into evidence over 300 exhibits, including the sworn depositions of Hoffa, Scalf, Hogan, Passo, Murphy, Breyman, Wilkerson, Frates, Whitfield, and Jacobson. The documentary evidence also included a transcript of a recorded conversation between Simon and Whitfield and the telephone records showing the timing and length of the extensive telephone conversations between Passo, Hogan, and Simon.

#### IV. The IRB's Decision

On May 29, 2002, the IRB issued a 79-page decision, finding that the charges had been established. The IRB unanimously concluded that Hogan and Passo brought reproach upon the union and violated the IBT Constitution "by colluding with Simon in an attempt to allow him to avoid a Teamster governing contract to the detriment of Local 631 members." IRB Decision at 57. The IRB, which had the opportunity to observe the demeanor of Passo and Hogan when they testified, specifically found their testimony, including their explanations for wanting Local 631 to contract with Simon, to be incredible. IRB Decision at 71-74. With respect to Hogan's intent to benefit his brother, the IRB specifically cited Hogan's own deposition testimony, in which he testified: "I don't know what's wrong with helping my family, but apparently somebody has got a problem with that." IRB Decision at 73 n.78. With respect to Passo's relationship with Hogan, the IRB specifically found Passo's testimony incredible when he denied even knowing that his close friend's brother was involved with United. Id. at 77-78.

As a sanction for their collusive scheme to benefit Simon and Michael Hogan to the detriment of IBT members, the IRB permanently expelled Hogan and Passo from the IBT.

## Discussion

### I. Standard of Review

The standards governing review of IRB disciplinary decisions are well established. This Court reviews determinations made by the IRB under an "extremely deferential standard of review." United States v. IBT ("Carey & Hamilton"), 247 F.3d 370, 379 (2d Cir. 2001); United States v. IBT ("Simpson"), 120 F.3d 341, 346 (2d Cir. 1997); United States v. IBT ("DiGiriamo"), 19 F.3d 816, 819-20 (2d Cir. 1994). The IRB Rules, which were approved by this Court and the Court of Appeals, provide for review of decisions of the IRB under "the standard of review applicable to review of final federal agency action under the Administrative Procedure Act." IRB Rules ¶ 0. See United States v. IBT ("IRB Rules"), 803 F. Supp. 761 (S.D.N.Y. 1992), aff'd as modified, 998 F.2d 1101 (2d Cir. 1993).

In accordance with that standard, this Court reviews "the IRB's findings of fact for 'substantial evidence' on the whole record." United States v. IBT ("Giacumbo"), 170 F.3d 136, 143 (2d Cir. 1999). "The substantial evidence test is deferential." Id. "Substantial evidence is 'something less than the weight of the evidence,' DiGiriamo, 19 F.3d at 820, but something 'more than a mere scintilla.'" Simpson, 120 F.3d at 346 (quoting United States v. IBT ("Cimino"), 964 F.2d 1308, 1311-12 (2d Cir. 1992)). "Substantial evidence includes such

relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Simpson, 120 F.3d at 346 (internal quotations omitted). Moreover, the mere possibility of drawing two inconsistent conclusions from the evidence does not prevent the IRB's finding from being supported by substantial evidence. Carey & Hamilton, 247 F.3d at 380 (citations omitted). Because the IRB conducts the disciplinary hearings, it is best equipped to evaluate the demeanor, credibility and, ultimately, the culpability of those who appear before it. Carey & Hamilton, 247 F.3d at 380; accord United States v. IBT ("Carey Disqualification"), 156 F.3d 354, 365 (2d Cir. 1998); Cimino, 964 F.2d at 1313 (refusing to re-weigh evidence or question credibility determination made by Independent Administrator). Accordingly, the inferences drawn by the IRB from the facts are "discretionary and can only be disturbed if they are 'arbitrary and capricious.'" Giacumbo, 170 F.3d at 143.

**II. Hogan and Passo's Challenge to the IRB's Interpretation of the Red Book Contract and the Proposed United Contract**

Hogan and Passo argue first that this Court should review the Red Book contract and the proposed United contract de novo and reverse the IRB's decision because the Board allegedly misinterpreted those contracts. Hogan Br. at 1-14; Passó Br. at 1-4. The issue before the IRB was not one of contract interpretation, however, but one of Hogan's and Passo's conduct.

That conduct included: engineering the termination of Wilkerson and Frates; lying to local union officials about the terms of the proposed deal with Simon; lying to local officials about International support for the proposed arrangement with Simon; lying to the International about why Wilkerson and Frates should be terminated; failing to disclose material facts to their supervisors at the International; and using extensive union resources (including expenses for travel, hotels, phone calls, and countless lunch and dinner meetings) to secure a collusive deal with United. Because their conduct was largely undisputed, the central question remaining for the IRB to decide was not how to interpret the various contracts but whether Hogan and Passo engaged in this improper conduct and acted in concert with a non-union employer with the intent to benefit Hogan's friend Simon and his brother -- all to the detriment of Local 631 -- Michael Hogan, (as the IRB charged) or with the intent to benefit Local 631 (as Hogan and Passo claimed).

As Hogan's counsel acknowledged at the IRB hearing, "[t]he contested issues in this case are not so much about the facts, but rather the conclusions that are to be drawn from those facts. And those facts, as I say, are not in substantial dispute." Tr. at 29. Passo's counsel agreed, observing correctly that the central issue was one of intent: "It's not a who did it. It's not even a what happened. It's a why it happened." Tr.

at 40. Since the question of intent does not turn upon the interpretation of any contract but depends upon the reasonable inferences to be drawn from Hogan and Passo's undisputed conduct, the standard of review is clear: inferences drawn by the IRB from the facts are "discretionary and can only be disturbed if they are 'arbitrary and capricious.'" Giacumbo, 170 F.3d at 143. The IRB's conclusion that Hogan and Passo colluded with Simon for the purpose of benefitting Simon, Hogan's long-time business friend from Chicago, and Michael Hogan, his own brother -- all to the detriment of Local 631 -- is neither arbitrary nor capricious. To the contrary, that conclusion is compelling and inescapable.

Passo and Hogan were afforded the opportunity at the IRB hearing to explain to the IRB all of the reasons why they pursued an arrangement with Simon. The IRB's extremely detailed and thorough opinion scrutinizes their explanations and finds them to be incredible. See Carey & Hamilton, 247 F.3d at 380 ("In accordance with the great deference owed to the IRB's determinations, law in this circuit establishes that a court 'will not substitute its assessment of a witness's credibility with that of the IRB.") (citation omitted). For example, while Hogan and Passo claimed that they ultimately intended to organize United's employees as Teamsters, the IRB rejected that explanation as incredible, finding "no evidence of any organizing effort by either Hogan or Passo." IRB Decision at 58. The IRB's

conclusion that Hogan and Passo had no intent to organize United is amply supported by the facts. As the IRB found, "[n]either Passo nor Hogan nor anyone under their direction ever spoke to any United employee." IRB Decision at 58. Having never spoken to the United employees, Passo and Hogan had no idea what terms these employees would even want from their employer. Id. at 60. Passo never spoke to the Local 631 staff organizers about organizing United and never requested organizing assistance from the International. Id. at 59. In fact, Hogan and Passo's own words betray their claims. Passo admitted that he "wasn't representing anybody." Id. at 58. For his part, Hogan testified that he considered the proposed contract with United to be a "contract for services," not a collective bargaining agreement. Id. Indeed, as the IRB suggested, for Hogan and Passo to attempt to organize United's employees by dealing exclusively with Simon, the employer, would violate the National Labor Relations Act, which grants employees the right to choose their own collective bargaining representative. Id. at 59. As the IRB observed, "[t]he employer['s] choosing his employees' bargaining representative is an indicati[um] of a prohibited sweetheart deal between an employer and a union." Id. at 59. Based on these facts, it was reasonable for the IRB to infer that Hogan and Passo had no intent of ever organizing United employees as Teamsters, as they incredibly claimed at the hearing.

Hogan and Passo also argue that the IRB may not discipline them because the contract with Hogan was never finalized. However, that Hogan and Passo ultimately failed to achieve their corrupt objective is beside the point. In any event, ample evidence supports the IRB's conclusion that Passo and Simon had reached an agreement that they considered final. See, e.g., IRB Rep. Ex. 82 at 68. Passo told Whitfield (in a recorded conversation) that he had submitted his agreement with Simon to the IBT for review. IRB Decision at 41-42. In fact, Passo submitted to the IBT Legal Department "the amended language of the contract" with United. IRB Rep. Ex. 84. In that letter, Passo acknowledged that "[e]verything else [in the contract with United] will remain the same as in the GES Exposition contract." Id. Accordingly, the IRB concluded that, as far as Passo and Simon were concerned, the "negotiations" were over and the terms of the proposed contract with United were agreed upon.

Finally, to the extent the inferences of intent drawn by the IRB required an understanding of how the contracts at issue operated, the Board's understandings were not only reasonable but fully consistent with the understandings of the experienced Local 631 officers who actually enforced the contract. See Tr. at 64-65, 111-12, 401; IRB Rep. Ex. 5 at 19; Ex. 82 at 41-43; Ex. 26 at 63; Ex. 2 at 186-87; Ex. 203 at 27; Ex. 1 at 162. While Hogan and Passo now offer competing

interpretations of these contracts, their subjective understandings of the contracts would be relevant only to the extent that, if honestly held at the time, they might provide evidence that Hogan and Passo acted in a good faith belief that their actions benefitted the local. The evidence, however, does not support such a claim. For example, it is undisputed that Hogan never even read any of the contracts at the time. Thus, the post-hoc interpretations by his counsel in this Court are simply irrelevant to his intent at the time. For his part, Passo's own testimony actually supports the IRB's understanding of the how the Red Book contract operated. See Tr. at 501 ("Q. You knew that under the Red Book contract that was then in effect that anybody who performed Teamster work was supposed to be paid at the contract rate; is that correct? A. Correct. Q. And it didn't matter from what source they came; correct? A. Correct."). Accordingly, the competing interpretations offered by Hogan and Passo after the fact do nothing to call into question the IRB's conclusions about their intent.

### **III. Hogan and Passo's Challenge to the IRB's Jurisdiction**

Hogan and Passo again raise the claim included in the 2001 action that the IRB's disciplinary action exceeded its jurisdiction because the Consent Decree limits the IRB's jurisdiction to specific crimes and corrupt acts only. As the

October 11, 2001 ruling in that action found, this argument is without merit.

The IRB's authority to interpret the IBT Constitution and discipline IBT members is now beyond serious dispute. See United States v. IBT ("IRB Rules"), 998 F.2d 1101 (2d Cir. 1993); United States v. IBT ("Friedman & Hughes"), 905 F.2d 610, 613 (2d Cir. 1990). The Consent Decree expressly confers upon the IRB the same disciplinary authority that the IBT Constitution confers upon the General President and the General Secretary-Treasurer. See Consent Decree ¶ G.12(b). Since the IBT Constitution authorizes the IBT General President "to interpret and apply" the IBT Constitution and "to decide all questions of law thereunder," see IBT Const. Art. VI, Sec. 2(a), the IRB's disciplinary authority "necessarily includes the final authority to decide what constitutes an offense subject to discipline under the IBT Constitution." Friedman & Hughes, 905 F.2d at 619 (describing Independent Administrator's authority). Recognizing this, the IRB Rules expressly authorize the IRB to investigate "conduct that in the IRB's view brings reproach upon the Union." IRB Rules, 803 F. Supp. at 802 (emphasis added), aff'd as modified, 998 F.2d 1102 (2d Cir. 1993). The IRB's conclusion that Hogan and Passo's misconduct brought reproach upon the union is a reasonable interpretation of the constitutional standard and, therefore, well within its designated authority.

Contrary to Hogan and Passo's argument, the scope of the Consent Decree is not limited to matters involving organized crime or to violations of specific federal criminal laws. See United States v. IBT ("Bastian & Weisenburger"), 175 F.3d 1009, 1999 WL 97236, at \*2 (2d Cir. 1999) (IBT Consent Decree not limited "to matters involving organized crime or to matters arising under federal labor laws"). Rather, it is clear that "conduct that is not itself criminal can constitute a violation of the IBT Constitution." United States v. IBT ("Ross"), 826 F. Supp. 749, 758 n.3 (S.D.N.Y. 1993) (quoting United States v. IBT ("Ligurotis"), 814 F. Supp. 1165, 1182-83 (S.D.N.Y. 1993)), aff'd mem., 22 F.3d 1091 (2d Cir. 1994). "In fact, a great number of grounds for discipline in the IBT Constitution are not criminal violations, including the failure to cooperate with internal IBT investigations, knowingly associating with members of organized crime, violating a Local Bylaw and disrupting Union meetings." Ligurotis, 814 F. Supp. at 1183. Thus, an IBT member may be disciplined for conduct that brings reproach upon the union regardless of whether the misconduct charged would also violate a criminal statute. See United States v. IBT ("Reardon"), 803 F. Supp. 734, 738 (S.D.N.Y. 1992) ("The flaw with these arguments is that Reardon is not objecting here to a conviction under [the LMRDA] in a criminal action. Rather, he is objecting to the Independent Administrator's findings that he violated [the IBT

Constitution] in an internal disciplinary proceeding."); United States v. IBT ("Parise"), 777 F. Supp. 1133, 1138 (S.D.N.Y. 1991) (rejecting disciplined member's argument that "his actions were not 'corrupt,' and that his suspension is therefore inappropriate because the misdemeanor to which he pleaded guilty is not an offense for which he can be barred from union office under [the LMRDA]."), aff'd, 970 F.2d 1132 (2d Cir. 1992). Accordingly, the IRB had jurisdiction to discipline Hogan and Passo regardless of whether their conduct violates the specific federal criminal statutes identified in the Consent Decree.

#### IV. Hogan and Passo's Free Speech Claims

Hogan and Passo argue again, as they did in the 2001 action, that the IRB's disciplinary action violates their rights to free speech because the IRB sanctioned them for mere advocacy of a proposed contract. As the October 11 ruling found, this argument is also without merit. As an initial matter, Hogan and Passo were not disciplined for mere advocacy of their views; they were disciplined for engaging in a pattern of concerted activity designed to benefit Simon and Michael Hogan to the detriment of Local 631. Passo did not simply advocate an idea; he repeatedly lied to local and International officials and engineered the elimination of the IBT officials who opposed him. For his part, Hogan actively used his considerable influence and connections to accomplish his corrupt goals. He introduced Simon to Passo, to

Local 631 officials, and to International officers, including General President Hoffa. Indeed, Hogan himself initiated the scheme with the intention of benefitting his friend and his brother. Thus, the IRB did not discipline Hogan and Passo for their "thoughts" and "ideas" but for their active conduct in pursuit of an improper arrangement detrimental to Local 631.

That Hogan and Passo used speech to accomplish their corrupt ends does not mean that they are immune from disciplinary action. As noted in the October 11 findings, Hogan and Passo's free speech rights "do not extend to advocating collusive contacts with entities with a history of organized crime contacts and racketeering." Transcript of Proceedings, Hogan and Passo v. IRB, 01 Civ. 8620 (S.D.N.Y. Oct. 11, 2001) at 3. Indeed, "it has never been deemed an abridgment of freedom of speech . . . to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949). Here, the advocacy that Hogan and Passo claim is protected was the vehicle by which they committed the offense charged. As such, it is not protected. See United States v. Rowlee, 899 F.2d 1275, 1278 (2d Cir. 1990) ("[S]peech is not protected by the First Amendment when it is the very vehicle of the crime itself. E.g., . . . (conspiracy).") (citation omitted); see, e.g., Jews for Jesus,

Inc. v. Jewish Community Relations Council of N.Y., Inc., 968 F.2d 286 (2d Cir. 1992) ("[T]he First Amendment is no bar to liability under the general common law prohibition of tortious interference with contract, which . . . is directed against conduct, not speech."). The First Amendment does not give IBT members the right to engage in collusive conduct detrimental to the IBT simply because the successful implementation of their corrupt scheme required both conduct and advocacy.

To the extent Hogan and Passo suggest that their discipline violates the free speech guarantees of the United States Constitution, that argument is contrary to well settled and controlling authority. It has long been firmly established that actions taken by the officers appointed pursuant to the Consent Decree, including disciplinary actions taken by the IRB, do not implicate the Constitution because they do not constitute state action. See, e.g., United States v. IBT ("Carey Disqualification"), 156 F.3d 354 (2d Cir. 1998); United States v. IBT ("Senese & Talerico"), 941 F.2d 1292, 1296 (2d Cir. 1991); United States v. IBT ("Sansone"), 981 F.2d 1362, 1371 (2d Cir. 1992); United States v. IBT ("Star Market"), 954 F.2d 801, 806 (2d Cir. 1992); United States v. IBT ("Hickey"), 945 F. Supp. 96, 99 (S.D.N.Y. 1996); Erbaci, Cerone, & Moriarty, Ltd. v. United States, 939 F. Supp. 1045, 1054 (S.D.N.Y. 1996); United States v. IBT ("Simpson"), 931 F. Supp. 1074, 1108 (S.D.N.Y. 1996),

aff'd, 120 F.3d 341 (2d Cir. 1997); United States v. IBT  
("Simpson Subpoenas"), 870 F. Supp. 557, 560 (S.D.N.Y. 1996).<sup>15</sup>

Nor does section 101(a)(2) of the LMRDA immunize Hogan and Passo from disciplinary action. Although the LMRDA protects the free speech rights of union members, as demonstrated above, those rights do not extend to the type of collusive conduct engaged in by Hogan and Passo. Furthermore, the free speech rights guaranteed by section 101(a)(2) are not absolute. The statute expressly permits a labor union to "enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations." 29 U.S.C. 411(a)(2). Thus, even if Hogan and Passo's advocacy of their arrangement with Simon qualified as protected speech, the statute permits a union to defend itself by disciplining members for conduct that "threaten[s] the union as an institution and interfere[s] with the union's duties as collective bargaining agent." Ferguson v. International Ass'n of Bridge, Structural & Ornamental Iron Workers, 854 F.2d 1169, 1174 (9th Cir. 1988). Here, Hogan and Passo engaged in conduct that betrayed the IBT as an institution

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<sup>15</sup> Hogan and Passo make no argument that has not been made and rejected before. The two recent Supreme Court cases they cite do not in any way change the governing analysis or otherwise call these controlling decisions into doubt.

and interfered with the collective bargaining obligations of Local 631. The IRB was entitled to enforce the IBT Constitution's standards of conduct and to discipline them for engaging in that conduct.

V. The IRB's Choice of Sanction

Finally, Hogan and Passo challenge the IRB's choice of sanction as excessive and disproportionate to the offense. Hogan Br. at 33; Passo Br. at 18-21. These arguments ignore both the governing standards and the seriousness of the egregious and harmful misconduct that Hogan and Passo engaged in.

The IRB, which heard all the testimony and considered all the evidence, is "best situated" to judge the culpability of those who appear before it and to fix an appropriate sanction. Cimino, 964 F.2d at 1311-13. Accordingly, "[t]he IRB has 'wide discretion' in imposing sanctions." United States v. IBT ("O'Donnell"), 29 Fed. Appx. 685, 688, 2002 WL 243247, at 2 (2d Cir. 2002) (quoting Giacumbo, 170 F.3d at 144). In reviewing IRB sanctions, this Court asks only whether the sanction imposed represents an "allowable judgment" in the choice of the remedy. United States v. IBT ("Wilson, Dickens, Weber"), 978 F.2d 68, 73 (2d Cir. 1992) (citation omitted). "[T]he reviewing court should not overturn the . . . choice of sanctions unless it finds the penalty unwarranted in law or without justification in fact."

Simpson, 120 F.3d at 348 (citing Wilson, Dickens, Weber, 978 F.2d at 73).

Permanent expulsion from the IBT represents an "allowable judgment" in the IRB's choice of sanction because it is expressly authorized by the IBT Constitution. See United States v. IBT ("Boggia"), 167 F.3d 113, 120 (2d Cir. 1999) ("There is no dispute that the IBT Constitution provides that a member may be stripped of membership rights if found guilty of misconduct."); United States v. IBT ("Bane"), 2002 WL 654128, at \*16 (S.D.N.Y. 2002) ("A lifetime ban on membership and employment with the union is a permissible sanction because it is authorized by the IBT Constitution and rules."), appeal docketed, Dkt. No. 02-6153 (2d Cir.); accord Carey & Hamilton, 247 F.3d at 390 ("Carey has sympathetic arguments that the penalty imposed on him is harsh given his many years of service to the union; nonetheless, the penalty has a basis in the IBT rules and the Consent Decree."). Accordingly, the IRB's choice of sanction here was not "unwarranted in law."

Furthermore, the IRB acted well within its broad discretion when it concluded that permanent expulsion was warranted by the facts of this case. By engaging in their collusive scheme with United, a non-union labor broker, Hogan and Passo betrayed the IBT membership at Local 631 in an effort to benefit Hogan's brother and his business friend. Their misuse of

their union authority resulted in the termination of innocent local officers, threatened to undermine Local 631's bargaining position with trade show contractors and amounted to an unfair labor practice. Furthermore, Hogan and Passo committed these actions while they were both high-ranking IBT officials: Hogan was an International Representative, President of Joint Council 25, and an officer of a local union; Passo was an International Representative, Special Assistant to the General President, and a Personal Representative of the General President.<sup>16</sup> It is well within the IRB's broad discretion to conclude that Hogan and Passo's misconduct deserved a particularly severe sanction precisely because they held such high-level positions with the IBT. See Carey & Hamilton, 247 F.3d at 389 ("Caselaw in this circuit supports the IRB's holding that because of Carey's position as the highest union official his misconduct was more serious."); Simpson, 120 F.3d at 349 ("It was well within the IRB's discretion to conclude that, precisely because Simpson was a trusted, high-level official in the IBT, his conduct . . . was more culpable."); Bane, 2002 WL 654128, at \*16 ("Bane's relatively high-level position in the union -- President of a large local union and International Representative -- justifies

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<sup>16</sup> Passo notes that he was not an elected official and, incredibly, denies that he was a nationally recognized leader of the IBT. Dane Passo's Objection to Application 102 at 21. The above recitation of his positions put the lie to his denial.

the sanction."); cf. United States v. IBT ("O'Donnell"), 164 F. Supp. 2d 328, 338 (S.D.N.Y.2001) ("It seems appropriate that each of the consequences delineated by O'Donnell relates to the high positions of authority, responsibility and trust that he previously held in the IBT and Local 817 and that he now must forfeit as a direct result of his own wrongdoing."), aff'd, 2002 WL 243247 (2d Cir. 2002). A permanent bar sends precisely the right message to the IBT membership: that corruption by high-ranking IBT officials will not be tolerated -- no matter how longstanding their memberships and no matter how many of their relatives are also members.

Hogan argues that, even accepting the IRB's factual findings, the evidence established only that he advocated a contract that he "honestly" believed had merit. Hogan Br. at 33. Not only did the IRB make no finding that Hogan had an "honest" belief about the merits of the proposal with Simon but, to the contrary, it specifically found that Hogan's explanations for why he promoted the agreement with Simon were not credible. IRB Decision at 71-73. For example, with respect to Hogan's claim that he never even read the Red Book contract, the IRB found: "Either his testimony is false or he didn't care about the red book contract but only the best arrangement for Simon." Id. at 72. Similarly, the IRB observed that Hogan apparently gave "false" testimony at the IRB hearing when he denied knowledge of

the "most favored nations" clause of that contract. Id. at 73 n.77. Thus, the IRB's actual findings, including the findings that he misled his superiors and clandestinely aided Passo in an effort to benefit his own brother and his friend, belie any suggestion by Hogan that his beliefs at the time were "honest."

Passo argues that his sanction is excessive because, at most, he merely "attempted" to engage in the deal with Simon and that "the event never happened because Passo dropped it." Passo Br. at 19-20. Passo also argues that his conduct resulted in "no actual harm to any union member." Id. at 21. These arguments are not only contrary to the IRB's findings, they are disingenuous. Passo "dropped" his efforts to contract with Simon only because Scalf, his immediate superior, ordered him to stop dealing with Simon. IRB Decision at 44. Furthermore, the IRB expressly found that Passo and Hogan's misconduct caused harm to IBT members; in fact, the IRB found that IBT members were "repeatedly harmed." Id. at 57. The IRB also found that Passo used his authority as an International appointee to engineer the terminations of Wilkerson and Frates. Id. at 64. Finally, while there is substantial evidence of actual harm here, the obligation upon all IBT members to refrain from conduct that "brings reproach" upon the Union can be violated without any actual injury to the IBT. See, e.g., Friedman & Hughes, 905 F.2d at 623 (conviction of IBT officer for embezzlement of non-IBT funds

brought reproach upon IBT). Even without considering the actual injury he caused, it would certainly be reasonable for the IRB to conclude that Passo's misconduct, which included misusing his union authority, lying to local officials, and lying to his superiors -- all to benefit a non-union company -- brought reproach upon the IBT.

Passo also challenges his sanction on the ground that it is disproportionate to the misconduct and inconsistent with penalties imposed in other Consent Decree disciplinary proceedings. Passo Br. at 20-21. As an initial matter, Passo has not identified any IBT member who received a lesser sanction for engaging in misconduct remotely similar to his own. Even if he could identify an IBT member who engaged in comparable misconduct but received a lesser sanction, however, "it is well established that sanctions given in other cases are not relevant to the Court's inquiry as to whether a particular sanction is unwarranted or without justification." Bane, 2002 WL at 654128, at \* 16; accord Giacumbo, 170 F.3d at 144 ("Uneven application of sanctions does not normally render the sanction imposed in a particular case arbitrary or capricious."); accord Sansone, 981 F.2d at 1371-72. In Sansone, the Court of Appeals rejected the officer's argument that his penalty should be overturned because it was more severe than penalties imposed in similar cases. Id. Despite noting that Sansone's penalty was "admittedly drastic"

and that the Court "might not have reached the same conclusion," the Court nevertheless declined Sansone's invitation to substitute its judgment for the Independent Administrator's: "The apparent discrepancy between the penalty imposed here and those imposed in other cases does not inexorably compel the conclusion that the Independent Administrator acted arbitrarily or capriciously." Id. at 1372; see also Ross, 826 F. Supp. at 762 (Independent Administrator has authority to impose sentence more severe than that imposed on other IBT members who committed similar conduct). Accordingly, any alleged disparity between Passo's sanction and the sanctions imposed on others does not render the sanction arbitrary and capricious.

**CONCLUSION**

Application 102 is granted, and the IRB's decision is affirmed in all respects.

SO ORDERED

August 22, 2003

  
LORETTA A. PRESKA, U.S.D.J.