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September 11, 2007

James P. Hoffa, General President  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

Re: Decision on Charges Against Local 299  
Member James D. Jackson

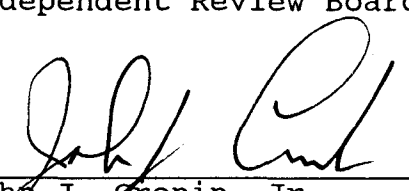
Dear Mr. Hoffa:

After review of all submissions and your decision of May 23, 2007, in the above-referenced matter, the IRB finds the decision to be not inadequate.

Very truly yours,

Members of the  
Independent Review Board

By:

  
\_\_\_\_\_  
John J. Cronin, Jr.  
Administrator

cc: Hugh M. Davis, Esq.  
James D. Jackson  
Charles M. Carberry, Esq.  
Bradley T. Raymond, Esq.

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

# INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA  
General President

25 Louisiana Avenue, NW  
Washington, DC 20001



C. THOMAS KEEGEL  
General Secretary-Treasurer

202.624.6800  
www.teamster.org

May 23, 2007

**BY UPS NEXT DAY AIR**

Mr. James D. Jackson  
1833 Hawthorne  
Grosse Pointe Woods, MI 48236

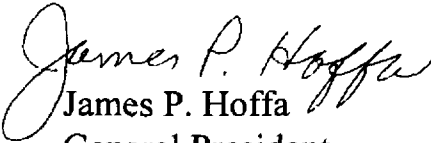
Re: Panel Report and Recommendations

Dear Sir and Brother:

You will find enclosed the Report and Recommendations of the Panel that conducted the hearings on the charges filed against you. I have had the opportunity to review the Panel's findings and conclusions, and hereby adopt them as my own.

The Panel's recommendation is reissued as the decision of the General President.

Fraternally yours,

  
James P. Hoffa  
General President

JPH/jlb  
Enclosure

cc: Hearing Panel  
Roland Acevedo, Esq.  
Independent Review Board  
Local Union 299

REPORT AND RECOMMENDATIONS OF HEARING PANEL  
APPOINTED BY THE GENERAL PRESIDENT TO HEAR CHARGES  
AGAINST LOCAL 299 MEMBER JAMES D. JACKSON

**Introduction**

On February 27, 2007, the Independent Review Board (“IRB”) issued a report and recommendation to International Brotherhood of Teamsters (“IBT”) General President James P. Hoffa that James D. Jackson (“Jackson”), a member of Local 299 in Detroit, Michigan be charged with bringing reproach upon the IBT by knowingly associating with a permanently barred individual, Michael C. Bane (“Bane”). The General President filed the charge as recommended by the IRB and appointed a Hearing Panel (“Panel”) consisting of William Moore, President of Local 696, W.C. Willie Smith, President of Local 891, and Doug Norris, an International Representative.

By letter dated March 7, 2007, the General President notified Jackson that a hearing on the charges had been scheduled for April 5, 2007. A hearing was convened on that date at the Michigan Conference of Teamsters Health and Welfare Fund Building in Detroit, at which both parties were present and had the opportunity to submit evidence and testimony, cross-examine witnesses and present arguments in support of their respective positions. The IBT was represented by attorney Roland R. Acevedo; Jackson presented his own defense (with assistance from Local 299 member Donna McCuiston).

The following findings and recommendations of the panel are based upon the entire record in this case including a transcript of testimony offered at the hearing, the other documents entered into evidence, the Panel’s consideration of the witnesses’ testimony and their demeanor at the hearing, and the parties’ post-hearing briefs. As discussed below, subsequent to the hearing, Panel Chair William Moore recused himself from the Hearing Panel. He has not participated in the deliberations leading to the Panel’s findings and recommendations, nor has he participated in the preparation of this Report.

## **Background**

James D. Jackson is a long-time Teamster member as well as an experienced Local and International Union official. From 1986 through 1993, Jackson served as a Local 299 Business Agent assigned to employers in the car haul industry. In 1995, Jackson served as a Local 299 organizer. In 1996, he served as a trustee on the Local's Executive Board. From 1997-1998, he held the position of Local 299 Vice-President and from 1999 through December 2003, he was the Local's Secretary-Treasurer. Also during the period beginning in 1997 or 1998 through November 2002, Jackson was responsible for assisting in the representation of members employed at the Cobo Conference/ Exposition Center in Detroit, Michigan.

Jackson has also held various appointed positions within the IBT. In 1996-1997, Jackson served as the Acting Director of the IBT's Automotive Transporters Industry Division. From 1998 through December 2001, he served as an International Representative. From 1995 until approximately 1999, Jackson was also a trustee of the Teamster Affiliates Pension Plan.

Jackson has known former Local 614 Principal Officer and member Michael C. Bane for approximately 20 years. Bane was permanently barred from the union effective July 17, 2001 pursuant to an IRB decision finding that Bane intentionally gave misleading testimony to the IRB regarding his contact with certain members and associates of organized crime. Paragraph E.10 of the Consent Decree between the IBT and the Government prohibits Teamster officers, employees and members from knowingly associating with any individual who has been barred from participating in union affairs, as does the International Constitution.

In its February 27, 2007 report, the IRB alleged that Jackson spoke with Bane by telephone on numerous occasions after the effective date of the bar. Exhibits accompanying the IRB report included records of 252 telephone calls between Jackson's cell phone and Bane's residential phone number during the period July 26, 2001 and January 19, 2006.

At the close of a sworn deposition taken by the IBT on April 17, 2002 in connection with another matter, Jackson acknowledged that he had spoken with Bane by telephone up to a dozen times during the preceding nine months. Jackson stated that he believed he could still have contact with Bane because the IRB's decision had not yet been certified by the U.S.

District Court for the Southern District of New York and Bane had not exhausted his appeals, and because nobody had specifically told him not to contact Bane. In response, the IBT informed Jackson that the bar was effective as of July 17, 2001, the date that the IRB had issued its decision.

Jackson claims that he did not speak to Bane again after April 17, 2002. Jackson's cell phone records, however, show that 114 of the 252 calls between Jackson's cell phone and Bane's residential phone occurred after that date. Jackson maintains that, while the telephone records may show that calls occurred between Bane's home phone and Jackson's cell phone, he was not speaking to Michael Bane. Instead, he was returning calls to one of several other individuals who sometimes used Bane's home phone, including Bane's brothers Joe Bane Jr. and Archie Bane, Bane's son Baby Joe, and an individual Jackson referred to as Boo Boo.

### **Procedural Issues**

At the hearing and in his post-hearing brief, Jackson has urged that the hearing was procedurally unfair. Thus, he claims that he was entitled to be represented by counsel at the hearing, and that the IBT denied him this right by denying his request (and later requests by a lawyer he was then considering retaining) for postponement of the hearing. Jackson also claimed that he was not provided with adequate information regarding the rules and procedures governing the hearing, and in particular was not informed about his right to call witnesses. He asserts that as a result of the foregoing he was denied a fair opportunity to present a defense. The Panel finds that Jackson's allegations of procedural unfairness are uniformly without merit.

Section 101(a)(5) of the Labor-Management Reporting and Disclosure Act ("LMRDA") provides that unions may not impose discipline on a member without first affording the member certain procedural due process, including notice of the specific charges, a reasonable time to prepare a defense, and a full and fair hearing. Section 101(a)(5) does not require, however, that unions afford a charged member the same level of procedural safeguards required in criminal proceedings.

Jackson had more than sufficient notice to adequately prepare his defense. The IRB's February 27, 2007 referral and supporting exhibits put Jackson on notice that under the Consent Decree and the IRB's court-

approved rules of operation, the IBT would only have 90 days in which to respond to the IRB with its final decision, and that failure to do so could be considered failure to cooperate with the IRB. The IBT's February 27, 2007 response to the IRB, on which Jackson was also copied, put Jackson on notice that the IBT intended to file the recommended charge and appoint a hearing panel pursuant to Article XIX of the International Constitution. On March 7, 2007, the IBT sent Jackson notice by next day air delivery that the hearing had been scheduled for April 5, 2007. That letter also advised Jackson that he was entitled to the assistance of counsel at the hearing. Given all of the circumstances, including the fact that this case did not involve complex issues of law or fact, and turned almost exclusively on information that was already in Jackson's possession, the notice afforded to Jackson in this instance was more than sufficient to meet the LMRDA's due process requirements.

The notice given Jackson also provided him with ample opportunity to retain and prepare counsel to represent him at the hearing. Even if it had not, the IBT's decision to deny Jackson's untimely requests for postponement of the hearing date would not violate the due process requirements of the LMRDA. The LMRDA does not afford union members a right to counsel in disciplinary hearings, and the IBT's current practice of allowing members to be represented by counsel in hearings involving charges referred by the IRB does not create an entitlement to counsel as a matter of right.

Jackson waited until March 28, 2007, barely a week before the scheduled hearing, to initially request (through an attorney who initially disclaimed that he was even representing him) a postponement of some two months, ostensibly to locate counsel. By letter dated March 29, 2007, attorney Hugh M. Davis notified the IBT that he had met with Jackson for the first time that morning and was willing to represent him, but had an unspecified conflict on April 5 and needed additional time to familiarize himself with Jackson's case. The IBT denied Jackson's request for a two-month postponement in light of the IRB's 90-day time limit. Davis then advised the IBT that he was representing Jackson and modified Jackson's adjournment request to a one-month postponement. After that request was also denied, Davis requested an extension of at least two weeks, citing the need "to familiarize myself with the file, do some research, consult with my client and clear my schedule." Counsel for the Panel promptly reiterated

through an e-mail message dated April 3 that the IBT was not in a position to adjourn the hearing at such a late date.

Given the late date of the requests as well as the time constraints imposed by the IRB, the IBT's decision to deny Jackson's requests for postponement of the hearing date were reasonable and consistent with due process. Moreover, the panel allowed the parties to submit post-hearing briefs, thus giving Jackson's counsel the opportunity to make any legal arguments Jackson wished to present to the panel. Jackson's post-hearing brief reiterates Jackson's claim that he was entitled to counsel at the hearing, but does not identify any specific instance in which Jackson was prejudiced by the absence of counsel at the hearing.

Jackson also claimed that the IBT did not respond to his March 28, 2007 request for information regarding the rules and procedures governing the hearing. Specifically, Jackson claims that he was not given prior notice of his right to call witnesses in support of his defense. Several times during the course of the hearing, he requested an adjournment of the hearing in order to allow him to produce witnesses that, according to Jackson, would testify that they called Jackson from Bane's home phone. The panel chair denied Jackson's requests.

The record demonstrates that Jackson was sufficiently informed of the rules and procedures applicable to the hearing, including the right to call and examine witnesses. The IRB's cover letter and accompanying referral provided to Jackson on February 27, 2007 informed Jackson that the matter would be heard pursuant to Article XIX of the *International Constitution*, which sets out the minimum due process requirements for a union disciplinary hearing, including the right "to appear in person, and with witnesses." *IBT Constitution*, Article XIX, Section 1(c).

The IBT's letter dated March 7, 2007, likewise informed Jackson that he would be allowed the assistance of counsel, and "a full opportunity to present or examine all witnesses, introduce evidence, and make any argument . . ." relevant to the charges. In response to Jackson's request dated March 28, 2007, that he be provided with "all applicable rules, procedure, guidelines, rights and obligations of the parties applicable to such hearings, and any rules of evidence . . ." as well as any sources containing relevant precedents, counsel for the Panel promptly informed Jackson's

counsel of the procedures set forth in the IBT Constitution and that he could locate relevant precedents through the website located at [www.irbcases.org](http://www.irbcases.org).

The information provided to Jackson by the IBT prior to the hearing more than amply advised him about his right to present witnesses at the hearing. There is no merit to the claim that he did not know he could present witnesses until after the hearing commenced. Notices provided by the IRB and by the IBT explicitly stated otherwise.

Moreover, Jackson for a number of years served as a Local and International Union official. As discussed above, Jackson served on the Executive Board of Local 299 for over 10 years. One of the functions of an Executive Board officer is to sit on Local Union hearing panels and hear internal union charges filed by members under Article XIX of the International Constitution.<sup>1</sup> In doing so, Jackson would certainly have been required to become familiar with minimum due process requirements set forth in Article XIX, including the right of the accused to present witnesses. Jackson has also attended two prior IRB hearings, once as a charged party himself and once as an observer. Jackson was the subject of IRB charges in 1993 and was present at his own hearing. Jackson acknowledged that, more recently, he attended the IRB hearing that resulted in Michael Bane being barred from the union.

In light of the information provided to Jackson by the IBT, as well as his many years of experience as a Union official, the Panel rejects Jackson's claim that he was unaware of his right to call witnesses prior to the hearing.

Jackson raised a second issue at the hearing (which he appears to have abandoned in his lawyer's post hearing brief). Thus, at the commencement of the hearing, Jackson objected to Panel Chair William Moore, asserting that Moore is biased, and that he should be removed from the Panel. Specifically, Jackson alleged that Moore was responsible for posting comments on an internet message board ([www.teamster.net](http://www.teamster.net)) regarding the IRB's referral of charges against Jackson. The record does not reflect the evidentiary basis for this claim, and Jackson has not identified any ruling or

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<sup>1</sup> . Article XIX, Section (1)(a). Jackson testified at his IRB deposition on April 27, 2006 that his principal duties as Local 299 Secretary-Treasurer included conducting hearings and investigations for charges that Local 299 members filed against other members. IBT Exh. 10 at 25, lines 2-4.



action by Moore during the course of the hearing that prejudiced his ability to present his defense. We find no evidence of any prejudicial rulings or actions by Moore while he was serving as Panel Chair.

Jackson's mere allegations of bias, without more, are plainly insufficient to require that Moore be removed from the Panel. Nonetheless, Moore has decided to recuse himself from the Panel to avoid any argument that the Panel's deliberations and this report are in any way infected by bias or prejudice. As indicated previously, Brother Moore has played no role in the Panel's decision or the preparation of this Report.

### **Summary of Evidence Against Jackson**

The IRB charge adopted and filed by the IBT alleged that, from July 26, 2001 through January 19, 2006, while an IBT member, Jackson had knowing and purposeful contact with Bane, who had been permanently barred from the IBT on July 17, 2001. It is further alleged that this conduct violated Article II, Section 2(a) and Article XIX, Sections 7(b)(1), (2) & (5) of the IBT Constitution, and Paragraph E.10 of the Consent Decree.

The telephone records obtained by the IRB and introduced into evidence here establish that, during the period July 26, 2001 to January 19, 2006, there were a total of 252 calls between Jackson's cell phone number and Bane's home telephone number. Seventy-eight of those calls lasted three minutes or longer. Jackson has not challenged the authenticity or the accuracy of the phone records themselves.

Jackson was first questioned about his contacts with Bane on April 17, 2002, at the close of a sworn examination conducted by the IBT in connection with an investigation involving Cobo Hall. Jackson readily admitted that he had been in contact with Bane as recently as the day before, and estimated that he had spoken with Bane up to a dozen times since July 17, 2001. Although Jackson acknowledged knowing that the IRB had issued a decision permanently barring Bane from the Union, he denied knowing that he was prohibited from having contact with Bane.

Jackson offered several explanations during his 2002 examination as to why he believed the IRB's July 17, 2001, decision did not immediately bar him from having contact with Bane. He admitted that had regularly read the back of the Teamster magazine, and was aware that other Teamsters had

been suspended or barred for having contact with a barred member. But, Jackson also stated that he was aware that in several other cases, the IBT or local officers had issued communications that specifically informed members not to have contact with a particular barred member. According to Jackson, he assumed that he could continue to have contact with Bane until someone specifically told him not to do so.

In fact, Jackson was very familiar with the IRB proceedings against Bane. He acknowledged that he attended the IRB hearing on the charges that led to Bane's bar. He also admitted he read not only the notices regarding Bane's case at the back of the magazine, but the full IRB decision itself. Jackson maintained, however, that he did not believe that the IRB's decision would take effect until it was approved by the District Court and Bane had exhausted all of his appeals. When questioned as to whether he sought legal advice with respect to the effect of the IRB decision when it was issued, he claimed that he did talk to an attorney who formerly represented Local 299, and that the gist of the attorney's response was "that yes, you are still innocent until proven guilty."

In either case, upon questioning at his IRB deposition in April 2006 and during his testimony before the Panel relating to these charges, Jackson admitted that at least as of April 17, 2002, he clearly understood that he was prohibited from having any contact whatsoever with Michael Bane.<sup>2</sup> The telephone records subpoenaed by IRB show, however, that telephone calls continued to occur between Bane's home phone number and Jackson's cell phone after April 17, 2002. Of the 252 calls documented in the record, 114 took place after April 17, 2002 and 40 of those calls lasted for three minutes

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<sup>2</sup> At the hearing, Jackson claimed that IBT Investigator Tom Schatz, who was present at the April 17, 2002 deposition, told him that if he was going to talk to Bane, he should do so from his home phone or from a payphone rather than from his union cell phone. Jackson says that he rejected this suggestion, but claimed that this was part of an attempt by the IBT to "set him up." Tr. at 57-58. This allegation is repeated again in Jackson's post hearing brief as support for the notion that, had Jackson wanted to communicate with Bane after the April 17, 2002 deposition, he would not have used his union cell phone to do so. The Panel discredits Jackson's claim that Schatz advised Jackson that he could converse with Mike Bane, or any other barred person for that matter, by using his home phone or a pay phone and, additionally, rejects his assertion that Schatz or the IBT were trying to "set him up."

or longer. The calls continued for nearly four more years, until January 16, 2006.

For his part, Jackson flatly denies that he had any contact with Bane after April 17, 2002. When questioned about the telephone records to the contrary, Jackson argued that the records do not show that he actually talked with Bane. Jackson maintained that after April 17, he did not answer any call identified on his cell phone display screen as coming from Bane's home phone number, but rather let the call go to voice mail. If the message was from Bane himself, he did not return the call. Jackson maintains, however, that several of Bane's family members were frequently at Bane's home and used Bane's phone to call Jackson regarding various union matters. These individuals included Bane's brothers Joe Jr. and Archie, Bane's son "Baby Joe," and Robin Kraft, a relative of Bane's wife or girlfriend, who Jackson referred to as "Boo Boo." Jackson stated that he would return the call to the Bane home only if the message was from one of these other individuals. Jackson claimed that he spoke with "Boo Boo" not more than a couple of times, with Archie a "little more frequent," and with Joe Bane, Jr. "pretty frequent."

At the hearing, Jackson continued to assert that he had no contact with Bane after April 17, 2002. In fact, the record shows a pattern of calls between Jackson cell phone number and Bane's home phone number that contradict this claim. If, as Jackson says, he always let calls from the Bane home number go to voice mail first to verify the identity of the caller, then none of the calls placed from Bane's home after April 17, 2002 should have lasted more than the time it would take to leave a voice-mail. The telephone records show, however, that at least 20 calls placed from Bane's home to Jackson's cell lasted three minutes or more. On at least 10 such occasions, there had not been a preceding call for at least four days, eliminating the possibility that Jackson had been alerted to the identity of the caller by an earlier voice mail message. When questioned about such calls, Jackson said that there may have been times when he could not see his cell phone display and inadvertently picked up a call from Bane's number without first receiving a voice mail. Yet, he continued – incredibly – to assert that he had no contact with Bane whatsoever.

Jackson was also questioned about calls he placed to Bane's phone that were 3 minutes or more in length, but which were not preceded relatively closely in time by a call that could reflect a voice-mail message to

which he was responding. Jackson indicated that he would not always return calls immediately. If he did not return a call from Joe Bane Jr., Archie, Baby Joe or “Boo Boo” within a relatively brief period of time, however, it is unclear why Jackson would try to reach them at Bane’s home phone number given Jackson’s testimony that none of these individuals lived at the Bane home. Moreover, there appear to be at least five occasions where Jackson called Bane’s home without having received a call of any length from the Bane home number for 20 or more days.

Telephone records showing 93 calls between Jackson and Joe Bane Jr.’s own cell phone during the period July 25, 2002 and May 25, 2006 undermine Jackson’s claim that he was calling Bane’s home to speak to Joe Bane Jr. Clearly, Jackson knew how to reach Joe Bane Jr. directly when he needed to. Jackson’s claim is further undermined by the fact that on at least eight occasions, Joe Bane Jr.’s cell phone was engaged in a call with another unidentified number at the same time that Jackson’s cell phone was engaged in a call with Bane’s home number.

### **Analysis**

A Teamster member who knowingly associates with a person who has been barred from participating in union affairs violates the Consent Decree as well as Article II and Article XIX of the IBT Constitution. This well-established prohibition is widely known throughout the Union, and is a rule with which Teamsters are required to comply if they are to enjoy privileges of holding office with and/or membership in the Teamsters. In order to establish that a member “knowingly associated” with a barred person, it must be proven that the contact was knowing and purposeful and not incidental or fleeting. Purposeful contact can occur in a business or social setting and does not need to involve an illegal purpose.

1. **Jackson’s Contact with Bane Prior to the 2002 IBT Deposition was Intentional and Undertaken with Knowledge that Bane was Barred.**

The charges allege, and the Panel finds, that Jackson’s telephone contacts with Bane during the period July 18, 2001 up to the IBT deposition on April 17, 2002 constituted knowing and intentional association with an individual permanently barred from membership in violation of the Consent Decree and the IBT Constitution.

Jackson has admitted that he personally attended the hearing on the charges that led to Bane's bar, read notices regarding the case published in the back of the Teamster magazine, and read the full IRB decision barring Bane shortly after it was issued. He also acknowledged having read summaries of other cases in which Teamster members were suspended or barred for having contact with a permanently barred member.

Despite these admissions, Jackson maintains that he did not know the bar was effective as of July 17, 2001, but he cannot point to anything in the IRB decision or elsewhere indicating that the bar would not take effect immediately. If in fact Jackson did wonder whether the effective date of the bar would be delayed until the decision was certified by the District Court, there is no evidence that he sought guidance on this issue from IBT legal counsel, his fellow Union officers or anyone else. Jackson claimed for the first time during the April 5<sup>th</sup> hearing that he had consulted with a Local 299 attorney regarding the bar, but asserts that he was told only something to the effect that you are innocent until proven guilty.

Even if the Panel could find that Jackson was genuinely unaware that his contacts with Bane were prohibited, this would not end our analysis. Jackson was an elected Local Union officer throughout the period July 18, 2001 through April 17, 2002, and had held positions of responsibility in the Local and International Unions for many years prior to that time. As a union officer, Jackson had a duty and responsibility to be informed about the rules governing the Local and the International Union. As noted in a recent IBT decision in a factually similar case (Decision re: John Kikes (October 25, 2005 at p. 12-14)), the knowledge element of knowing association may be satisfied by proof that the Teamster officer knew *or should have known* of the prohibition.

The Panel finds that Jackson's contacts with Bane prior to the April 2002 examination were intentional, and that Jackson knew or should have known of Bane's bar. Thus, those contacts violated the Consent Decree and IBT Constitution.

2. Jackson Continued to Associate with Bane Even After Jackson Received Personal Notice that Such Contacts Were Prohibited.

Regardless of whether Jackson's contact with Bane prior to April 17, 2002 violated the Consent Decree and the IBT Constitution, the Panel finds

that Jackson continued to have knowing and intentional contact with Bane for a period of approximately four years after being clearly informed at the April 17, 2002 examination that such contact was prohibited.

Jackson does not dispute that at least as of April 17, 2002, he was aware that contact with Bane violated the Consent Decree and the IBT Constitution, but denies that any contact took place after that date. Jackson's denials are not credible given overwhelming evidence consisting of the telephone records subpoenaed by the IRB, which reflect multiple contacts between Jackson and Bane.

As discussed above, the records show that there were approximately 114 telephone calls between Jackson's cell phone and Bane's home phone between April 18, 2002 and January 19, 2006, forty of which were 3 minutes or longer in duration. Jackson asserts that at no time during any of these calls did he speak to Bane. Rather, he claims he was returning calls to other Bane family members who frequented the house. If there were only a few calls at issue, Jackson's explanation might conceivably be plausible. But, the explanation strains credulity when one also considers his claim that not once during the course of 114 calls between Jackson's cell phone and Bane's home phone did Jackson ever speak to Bane. Moreover, the pattern of calls documented by the phone records is inconsistent with Jackson's claim that he was just returning calls to other family members visiting Bane's home.

In his post-hearing brief, Jackson claims that the telephone records prove only that calls occurred between two telephone numbers, and that this evidence is insufficient to prove that any contact actually occurred between Jackson and Bane. Not so. The evidence, taken as a whole, including Jackson's long standing friendship with Bane, admitted frequent conversations with Bane prior to April 17, 2002, and manifestly implausible efforts to explain the post 2002 calls as limited to conversation with Bane's extended family members who were sporadically present in Bane's home, amply warrant the inference that Jackson maintained close contact with Bane even after he admits he was told that the contact was forbidden. Furthermore, in this regard, the IBT is not required to disprove every alternative explanation Jackson offers, regardless of how improbable or otherwise contradicted by evidence in the record.

### **Recommended Penalty**

Having determined that Jackson had knowing and intentional contact with Bane after Bane was permanently barred from the Union, we must determine an appropriate penalty for his actions. In determining an appropriate penalty for a member's prohibited association with a barred individual, consistent with the just cause standard that is embedded in the Consent Decree, the following are among the factors that we understand are appropriately considered:

1. The timing, nature frequency and duration of the contacts;
2. Who initiated the contacts and the circumstances under which they may have been reciprocated;
3. The extent to which the bar against the individual with whom improper contacts occurred was clearly communicated throughout the Union by the IRB and/or the International Union;
4. The charged member's position in the Union and history of misconduct, if any;
5. Whether the charged member was truthful when confronted by the allegations of improper contacts;
6. The nature and credibility of any explanations or defenses offered by the charged member; and
7. Whether penalties short of permanent expulsion will likely deter future improper contacts by the charged member and/or others.

On the record before us, the Panel must conclude that most, if not all, of these factors militate strongly in favor of Jackson's permanent expulsion from the Union. While we recognize that the penalty of permanent expulsion is extreme, particularly for someone like Mr. Jackson who has been involved with the Union for virtually all of his adult life, the paramount objective of the Consent Decree of ensuring that all vestiges of corruption be purged from the Union justifies permanent expulsion in cases such as this one. Bluntly stated, barred means barred, and knowing association with

barred persons can rarely, if ever, be excused. A pattern of knowing association with a barred person, particularly when as here it reflects the charged member's conscious and deliberate choice to disregard his obligations under the Consent Decree and the IBT Constitution, will normally result in permanent expulsion.

Jackson was in frequent and regular contact with Bane over a period of nearly five years after he knew that Bane was permanently barred from the Union. We have rejected his claim that he did not know that Bane was barred or that members were forbidden from having intentional contact with him prior to April of 2002. But, irrespective of this, we are troubled by Jackson's failure to discontinue contact with Bane even after he was expressly notified at his sworn examination on April 17, 2002, that such contact was prohibited. The telephone records subpoenaed by IRB indicate 114 telephone calls between Jackson and Bane – after Jackson says he first knew such contacts were forbidden. The records additionally show that Jackson was not merely a passive recipient of unwanted calls from Bane. Jackson frequently initiated the calls and appears to have been a willing participant in these communications.

Jackson's official positions in the Union, which he held when a significant number of the improper contacts with Bane occurred, also militate in favor of his permanent expulsion. Although Jackson does not presently hold any Local or International Union positions, he was Local 299's Secretary-Treasurer until December of 2003, and he has a long history of high-profile involvement in the Union.

Jackson's prior disciplinary record is also far from perfect. This is at least the second time in Jackson's career that he has been the subject of internal charges. On at least one previous occasion he was charged at the recommendation of the IRB. In October 1993, after a hearing conducted pursuant to an IRB referral, then IBT General President Carey found Jackson guilty of creating an appearance of impropriety and bring reproach upon the Union in violation of the IBT Constitution when he referred, in preference to members with more seniority, his own relatives and relatives of other Local 299 officers for employment at a trucking company that had a collective bargaining agreement with Local 299. Jackson was suspended for 12 months without pay as a result of that decision.



Also troubling is Jackson's implausible efforts to deny that he had any contact with Bane after being told on April 17, 2002 that such contact was prohibited. Subpoenaed phone records confirm that there was extensive contact with Bane after that date. Jackson's efforts to argue that the phone records do not reflect conversations with Bane, but rather all involved fortuitous conversations with various Bane relatives and acquaintances who happened to be passing through Bane's residence at various times, are unworthy of belief and have been discredited by the Panel.

Jackson was on notice not later than April 17, 2002 that contacts with Bane were prohibited and that he could be expelled from the Union for engaging in them. If he had truly respected the admonitions provided to him at that time, it is inconceivable that he would have engaged in telephone conversations reflected in the subpoenaed phone records (even with Bane family members and friends). Instead, it is evident that he continued to contact and converse with Bane for nearly four more years. The Panel can only conclude that any penalty short of permanent expulsion will be ineffective in deterring Jackson, and others, from engaging in improper contacts with Bane.

The Panel is additionally constrained to reject several arguments advanced by Jackson at the hearing and/or in his lawyer's post hearing brief which do not warrant a mitigated penalty in any respect. First, we cannot and do not accept Jackson's claim that Bane's bar and Jackson's subsequent contact with Bane are unconnected to the Consent Decree's primary object of purging the influences of organized crime from the Union. Mr. Bane was barred for providing misleading testimony about his past associations with people such as Vincent Meli, Vito Giacalone, Anthony LaPiana and Nove Tocco, all of whom have been identified as prominent members or associates of organized crime in Detroit. We cannot, and do not, accept Jackson's suggestion that there is a meaningful distinction between associating with organized crime figures and lying under oath about such associations.

Second, we reject the insinuation, raised by Jackson at the hearing and by his lawyer in his post hearing brief, that it is Jackson's internal Union political activities that caused the charges to be brought against him. No evidence was presented that supports the suggestion that IRB's investigation and deliberations with respect to charges against Mr. Jackson were motivated by IBT politics. Nor has Jackson otherwise supported his claim

that political animus is behind the IBT's acceptance of IRB's referral or in its prosecution of the referred charges.

Finally, the Panel believes that a penalty less than expulsion would be inconsistent with previous IBT and IRB decisions. Neither Jackson nor his lawyer have cited a single precedent which would support mitigating the penalty to something less than a permanent bar.

In light of the foregoing findings, the two remaining members of the Panel recommend that, effective immediately, J.D. Jackson be:

1. Permanently barred from holding membership in, contracting with, consulting with and/or seeking or holding office, position or employment, directly or indirectly, with the IBT or any other IBT-affiliated entity or Fund;
2. Permanently barred from seeking or accepting money or other compensation directly or indirectly, for any goods and services from the IBT, or any other IBT-affiliated entity or Fund, other than receipt by Jackson of vested benefits to which Jackson may otherwise lawfully be entitled by reason of prior participation in the IBT or an IBT – affiliated entity or Fund;
3. Permanently prohibited from having any contributions made on his behalf to any IBT-affiliated benefit funds by any IBT-affiliated entity;
4. Permanently barred from participating in the affairs of the IBT or any other IBT-affiliated entity or Funds or any of its sponsored benefit plans;
5. Permanently barred from contact and association with officers, members, employees, representatives and agents of the IBT or any other IBT-affiliated entity or Fund.

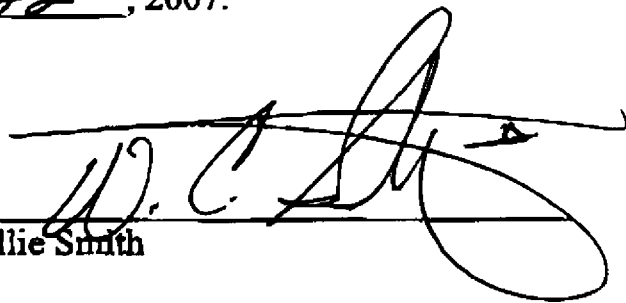
[SIGNATURES OF PANEL MEMBERS ON FOLLOWING PAGE]

SO UNANIMOUSLY DECIDED AND RECOMMENDED on

5/22, 2007.

By: \_\_\_\_\_

W.C. Willie Smith



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By: \_\_\_\_\_

Doug Norris

SO UNANIMOUSLY DECIDED AND RECOMMENDED on

May 16, 2007.

By: \_\_\_\_\_  
W.C. Willie Smith

By: Doug Norris  
Doug Norris