

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	88 Civ. 4486 (LAP)
Plaintiff,	:	APPLICATION 98 OF THE
v.	:	INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD	:	-- OPINION AND DECISION OF THE
OF TEAMSTERS, <u>et al.</u>	:	INDEPENDENT REVIEW BOARD
Defendant.	:	IN THE MATTER OF MICHAEL C. BANE
	:	

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the 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 May 22, 2001, and thereafter determined, on the charges filed against Michael C. Bane ("Bane"), current IBT Local 614 President.

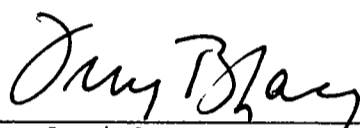
Bane was charged failing to cooperate with the IRB by giving intentionally misleading testimony concerning knowledge and relationship with Vincent Meli, Vito William Giacalone, Anthony LaPiana, Jr. and Nove Tocco in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1), 7(b)(2) and 14(i) of the IBT Constitution.

Having considered the evidence and post-hearing submissions by the Chief Investigator, the IRB found that the charges against the Bane was proved. As a penalty, Bane has been permanently barred from membership in the IBT and may not hereafter obtain employment, consulting or other work with the IBT or any IBT-affiliated entity.

Enclosed with our July 17, 2001, Opinion and Decision is the December 21, 2000, IRB Investigative Report with exhibits 1 - 21 and the May 22, 2001, IRB Hearing Transcript with exhibits IRB-1 - IRB-27.

It is respectfully requested that an Order be entered affirming the IRB's July 17, 2001, Opinion and Decision if Your Honor finds it appropriate.

Dated: July 17, 2001

By: 
Frederick B. Lacey
Member of the
Independent Review Board

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA :
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: Plaintiff, : 88 Civ. 4486 (LAP)
: :
: -v.- : MEMORANDUM AND ORDER
: :
: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, :
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: Defendant. :
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LORETTA A. PRESKA, United States District Judge:

This opinion emanates from the voluntary settlement of an action commenced by the United States of America against, inter alia, the International Brotherhood of Teamsters ("IBT" or "union") and the IBT's General Executive Board. The settlement is embodied in the voluntary consent decree order entered March 14, 1989 ("Consent Decree"). The goals of the Consent Decree are to rid the IBT of the hideous influence of organized crime and establish a culture of democracy within the union. The long history of this case has been set forth in the Court's numerous prior opinions. Accordingly, only those facts necessary for resolving the instant matter shall be set forth.

Currently before the Court is Application 98 of the Independent Review Board ("IRB") ("Application 98"), dated July 18, 2001. In Application 98, the IRB requests that the Court affirm the IRB's July 17, 2001 Opinion and Decision ("IRB

Decision"). For the reasons set forth below, I grant IRB Application 98 and affirm the IRB Decision in all respects.

BACKGROUND

I. The IRB Charges

Michael C. Bane ("Bane") is the former President and principal officer of Local 614 of the International Brotherhood of Teamsters ("IBT"). On December 21, 2000, the IRB issued a report to the IBT recommending disciplinary charges against Bane. (Independent Review Board Hearing Transcript, May 22, 2001 (the "IRB Hearing Tr."), Ex. 1 (Letter from John J. Cronin, Jr. to James P. Hoffa) at 1). Specifically, Bane was charged with bringing reproach upon the union and failing to cooperate with the IRB, in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1), 7(b)(2) and 14(i) of the IBT Constitution, by giving intentionally misleading testimony at his October 6, 2000 sworn examination concerning his knowledge of, and relationship and association with, members and associates of the Detroit La Cosa Nostra ("LCN"), including Vincent Meli ("Meli"), Vito William Giacalone ("Vito Giacalone"), Anthony LaPiana, Jr. ("LaPiana"), and Nove Tocco ("Tocco"). (Id., Ex. 1 (Memorandum from Members of the Independent Review Board to James P. Hoffa ("Hoffa Mem.)) at 1, 8-19). The IRB advised the IBT that, pursuant to Paragraph G(e) of the Consent Decree and Paragraph I(6) of the IRB Rules, the union was required to take appropriate

action on the charges within 90 days (i.e., by March 21, 2001). (Id. at 1-2; see Consent Decree ¶ G(e); IRB Rules ¶ I(6)). The IRB also advised the IBT that without the testimony of certain federal law enforcement agents, any record that the IBT developed would be incomplete. (IRB Hearing Tr., Ex. 1, Hoffa Mem. at 2).

On February 1, 2001, the IBT sought an order providing, inter alia, a procedure for the union to hear the testimony of federal agents concerning Bane. United States v. IBT ("Brennan & Bane I"), No. 88 Civ. 4486 (LAP), slip op. at 5 (S.D.N.Y. Apr. 20, 2001) (IRB Hearing Tr., Ex. 13). On April 6, 2001, the IBT sought, inter alia, a waiver or extension of the 90-day period in which to consider the IRB's proposed charges. Id., slip op. at 6. By decision dated April 20, 2001, this Court denied the IBT's April 6, 2001 request. Id., slip op. at 6-10. By decision dated April 24, 2001, this Court denied the IBT's February 1, 2001 request. United States v. IBT ("Brennan & Bane II"), No. 88 Civ. 4487 (LAP), slip op. at 7-9 (S.D.N.Y. Apr. 24, 2001) (IRB Hearing Tr., Ex. 14).

By letter dated April 25, 2001, the IBT adopted and filed the charges and referred the matter back to the IRB for adjudication. (IRB Hearing Tr., Ex. 15). That same day, the IRB advised Bane that a hearing on the charges would be held on May 22, 2001 in Washington, D.C. (Id., Ex. 16). The IRB also advised Bane that he could request that the hearing be held in

Detroit if that would be a more convenient venue for him or his witnesses. (Id.). Bane subsequently requested to have the hearing held in Detroit; the IRB granted this request. (Id., Ex. 17). Bane requested several adjournments of the hearing due to his eye surgeries and the health of his counsel's mother; the requests were denied. (Id., Exs. 17-20). In addition, on May 10, 2001, Bane submitted a motion to dismiss the charges against him, arguing that his due process rights at his October 6, 2000 sworn examination were violated because the counsel representing him at the deposition was purportedly representing the IBT. (Id., Ex. 23). The IRB subsequently ruled that it would address the motion after post-hearing submissions. (Id., Ex. 24).

II. The IRB Hearing

The hearing was held on May 22, 2001. The Chief Investigator's case consisted of testimony from former Department of Labor Special Agent Craig Woodhouse ("Special Agent Woodhouse"), Federal Bureau of Investigation ("FBI") Special Agent Louis Paul Russo ("Special Agent Russo") and FBI Special Agent Gregory Keller. (Opinion and Decision of the Independent Review Board, July 17, 2001 (the "IRB Decision"), at 4). The Chief Investigator also introduced various exhibits from the IRB Report, including documents and telephone conversations that were intercepted and recorded pursuant to court order. (Id.). Bane testified in support of his case and introduced 49 exhibits,

primarily consisting of sworn affidavits from various individuals. (Id.).

A. Bane's Membership in the IBT

The documentary evidence established that Bane initially joined the IBT through Local 299 in Detroit and then transferred his membership in 1966 or 1967 to Local 614 in Pontiac, Michigan. (IRB Decision at 1-2; see also Independent Review Board Investigative Report, Dec. 21, 2000 (the "IRB Report"), Ex. 1 at 4, Ex. 4 at 4-6). In 1968, Bane also joined Local 794 of the Hotel Employee and Restaurant Employee Union ("HERE"). (IRB Decision at 2; see also IRB Report, Ex. 4 at 5-6). In February 1976, Bane was indicted in United States District Court for the Eastern District of Michigan for felony violations of federal labor laws. (IRB Decision at 2, 10 n.11; see also IRB Report, Ex. 5 at 12). Specifically, Bane was charged with embezzlement of HERE union funds. (IRB Decision at 2; see also IRB Report, Ex. 1 at 10, Ex. 5 at 12). In December 1977, Bane was convicted after a three-week jury trial and was sentenced in February 1978 to six months' imprisonment. (IRB Decision at 2, 10 n.11; see also IRB Report, Ex. 5 at 12). After he was convicted, Bane was banned from holding union office for five years. (IRB Decision at 2; see also IRB Report, Ex. 1 at 10-11). In 1984, after the ban ended, Local 614 hired Bane as a business agent. (IRB Decision at 2; see also IRB Report, Ex. 1 at 11-12). Bane served

as business agent until February 1989, and was elected President of the local in October 1989. (IRB Decision at 2; see also IRB Report, Ex. 1 at 17). Bane served as President of the local from January 1990 until the IRB Decision. (IRB Decision at 1-2; see also IRB Report, Ex. 1 at 3, Ex. 4 at 19). In addition, in May 2000, IBT General President James Hoffa appointed Bane to be an International Representative.

B. Anthony LaPiana

Previously, at his October 6, 2000 sworn examination, Bane testified that he had limited contact with LaPiana, which revolved solely around insurance policies held by Local 614 that LaPiana administered. (IRB Decision at 5; see also IRB Report, Ex. 4 at 42). Bane denied knowledge of LaPiana's home address or telephone number and denied that he ever called LaPiana at home. (IRB Decision at 5 & n.6; see also IRB Report, Ex. 4 at 47). Bane also denied that he and LaPiana attended a dinner for former IBT General President Jackie Presser ("Presser"). (IRB Decision at 8; see also IRB Report, Ex. 4 at 46-47).

At the IRB hearing, Special Agent Russo testified that the FBI considers LaPiana to be a member of the Detroit LCN. (IRB Decision at 4; see also IRB Hearing Tr. at 123; IRB Report, Ex. 5 at 36-37). Special Agent Russo's declaration (Declaration of Louis Paul Russo, sworn to on April 12, 2000 (the "Russo Declaration")), portions of which were also submitted at the

hearing, similarly stated that Tocco had informed the FBI that LaPiana was a member of organized crime. (IRB Decision at 5; see also IRB Report, Ex. 5 at 72).

With respect to Bane's association with LaPiana, the Chief Investigator submitted evidence of tape-recorded telephone conversations establishing that on several occasions between December 1985 and April 1986, Bane made telephone calls during which he spoke with or attempted to speak with LaPiana. (IRB Decision at 5; see also IRB Report, Exs. 8, 13-16 (transcripts of telephone calls)). During one telephone conversation between Bane and LaPiana on December 27, 1985, Bane identified himself only as "Mike" and referred to LaPiana as "Babe"; LaPiana referred to Bane as "Buddy." (IRB Decision at 5-7; see also IRB Report, Ex. 13 (transcript of telephone call)). The call did not contain any reference to IBT members' insurance claims. (See IRB Report, Ex. 13). During a second telephone conversation between Bane and LaPiana on January 20, 1986 -- when Bane called LaPiana at his home -- Bane referred to LaPiana as "Baby," and LaPiana referred to Bane as "Mike" and "pal." (IRB Decision at 7-8; see also IRB Report, Ex. 14 (transcript of telephone call)). Again, the telephone call did not contain any discussion of IBT members' insurance claims.¹

¹ In addition, the Chief Investigator submitted evidence that on January 31, 1986, Bane telephoned LaPiana's office and
(continued...)

In addition, the Russo Declaration stated that on August 9, 1985, a confidential informant advised the FBI that LaPiana and Bane attended a dinner given for Presser on August 1, 1985. (IRB Decision at 8; see also IRB Report, Ex. 5 at 21). Bane himself submitted an affidavit which stated that he and Bane had attended a dinner in 1985 given by the Central Conference of Teamsters in honor of Presser and that LaPiana was present at the dinner. (IRB Decision at 8). Bane also submitted a printed program from an IBT conference, held from July 26, 1985 through August 2, 1985, indicating that Presser was scheduled to attend a dinner. (Id. at 8 n.7).²

(...continued)
asked for "Tony" in an attempt to obtain tickets for an upcoming Red Foxx concert at the Premier Center; again, IBT members' insurance claims were not discussed. (IRB Report, Ex. 8 (transcript)). Similarly, the Chief Investigator submitted evidence that on April 9, 1986, Bane left a message for LaPiana at his office with no reference to insurance claims. (Id., Ex. 15 (transcript)).

² The Russo Declaration provided further information corroborating contact between Bane and LaPiana. For example, according to the affidavit, on March 5, 1999, an informant told the FBI that he had seen Bane and LaPiana together at a restaurant in Detroit in 1982. (IRB Report, Ex. 5 ¶ 87, at 41-42). A second and separate informant told the FBI in April 1994 and March 1997 that Bane was a close associate of LaPiana. (Id. ¶ 86, at 40-41). On June 5, 1999, a third and separate informant told the FBI that Bane knew LaPiana and that Joseph Vitale had told him that Bane entrusted Vitale with a message for LaPiana. (Id. ¶ 88, at 42).

C. Vincent Meli

Previously, at his October 6, 2000 sworn examination, Bane testified that he did not know Meli and that he never met or spoke with him. (IRB Decision at 9; see also IRB Report, Ex. 4 at 35). He also denied that he knew Meli's wife or that he greeted Meli or members of Meli's family in a federal courtroom in 1978. (IRB Decision at 9; see also IRB Report, Ex. 4 at 35-36).

At the IRB hearing, Special Agent Russo testified that the FBI considers Meli to be a member of the Detroit LCN. (IRB Decision at 8-9; see also IRB Hearing Tr. at 115-17; IRB Report, Ex. 5 at 7). Similarly, Special Agent Woodhouse testified that former Detroit Police Department Chief George Edwards had publicly identified Meli as an LCN member. (IRB Decision at 9; see also IRB Hearing Tr. at 52-54, 58). In addition, the Russo Declaration stated that Tocco had informed the FBI that Meli was a member of organized crime. (IRB Decision at 5; see also IRB Report, Ex. 5 at 72). Moreover, additional documentary evidence submitted by the Chief Investigator established that a federal indictment charging Meli with extortion and his membership in the Detroit LCN were widely reported in the Detroit metropolitan area in the 1970s. (IRB Decision at 9; see also IRB Report, Ex. 7).

With respect to Bane's knowledge of and relationship with Meli, Special Agent Woodhouse testified that in 1978 -- when Meli

was on trial and Bane was being sentenced in the Detroit federal courthouse -- Woodhouse observed Bane greet Meli in one of the courtrooms during a break and also speak with and kiss Meli's wife. (IRB Decision at 11 & n.13; see also IRB Hearing Tr. at 64-67, 85-86, 91-92). Woodhouse, who was investigating connections between organized crime and organized labor at the time, testified that he maintained an independent recollection of the event because he considered it significant that an IBT official was well acquainted with a member of the Detroit LCN. (IRB Decision at 11; see also IRB Hearing Tr. at 77, 92). Woodhouse also testified that in 1992, following entry of the Consent Decree, he recognized that the 1978 encounter was relevant evidence of Bane's connection with members of organized crime and prepared an affidavit for the IRB describing the incident. (IRB Decision at 11; see also IRB Hearing Tr. at 68; IRB Report, Ex. 9 (Affidavit of Craig Woodhouse, sworn to on September 1, 1992)).

The Russo Declaration corroborated Special Agent Woodhouse's testimony, indicating that Bane and Meli were both present in the Detroit federal courthouse on February 3, 1978. (IRB Decision at 11 n.13). Specifically, the declaration stated that the docket sheet for Meli's criminal case indicated that a jury was empaneled on February 3, 1978 and that the docket sheet for Bane's criminal case indicated that he was sentenced on that same

date. (IRB Report, Ex. 5 at 12, 26-27). In addition, the Russo Declaration stated that on May 3, 1996, Department of Labor Compliance Officer Donald Wheeler told Department of Labor Special Agent William Wharton that he was also present during Meli's 1978 trial and that he observed Bane enter the courtroom during a break and greet Meli "as if they were friends." (IRB Decision 11 n.14; see also IRB Report, Ex. 5 at 26). The Russo Declaration also stated that Tocco informed the FBI that Bane had known Meli since at least 1972. (IRB Decision at 12; see also IRB Report, Ex. 5 at 71).³

The Chief Investigator also introduced evidence that on January 31, 1986, Bane placed a telephone call to Health & Welfare Plan, Inc. (which was LaPiana's office) and asked for LaPiana in an attempt to get tickets for a Red Foxx concert. (IRB Decision at 9-10; see also IRB Report, Ex. 8 (transcript of telephone call)). After learning that LaPiana was not in, Bane asked to speak with "Vince" and then clarified that he wanted to speak with "Mr. Meli." (IRB Decision at 9; see also IRB Report, Ex. 8 (transcript of telephone call)). Bane testified at the

³ The Russo Declaration provided further information corroborating the relationship between Bane and Meli. For example, on November 18, 1996, a reliable confidential informant told Special Agent Russo that Bane knew Meli and that Meli was "best of friends" with Bane's father. (IRB Report, Ex. 5 at 28). On March 5, 1999, a second and separate reliable confidential source told Special Agent Russo that Bane had golfed with Meli at the Wolverine Golf Club and that Meli knew the Bane family. (Id. at 28-29).

hearing that he had no memory of the event, (IRB Decision at 9; see also IRB Hearing Tr. at 293), and submitted affidavits from Florence Holmes and Martin Kelly stating that Bane attempted to contact Meli because Kelly had told him that Meli had access to tickets for the concert. (IRB Decision at 10; see also IRB Hearing Tr. at 292-96). Bane also submitted an affidavit from Timothy Roach stating that Bane had told various persons that he did not know Meli. (IRB Decision at 10).

D. Nove Tocco

At his October 6, 2000 sworn examination, Bane admitted that Tocco had visited the Local 614 office some time during the 1990s but denied that Tocco had asked him to get a job for Gerard DeMichele. (Id. at 12; see also IRB Report, Ex. 4 at 39-41).

At the IRB hearing, the Chief Investigator introduced various documents establishing that Tocco was a recognized organized crime figure in the Detroit area during the 1990s. (IRB Decision at 12; see also IRB Report, Ex. 5 at 63-64). In addition, with respect to Bane's association with Tocco, the Russo Declaration stated that an FBI surveillance report reflected that on July 17, 1992, Tocco visited the Local 614 office. (IRB Decision at 12; see also IRB Report, Ex. 5 at 49). The Russo Declaration also stated that in March 2000, Tocco told Special Agent Russo that he went to the Local 614 office in 1991 or 1992, met with Bane and solicited Bane's help in getting a job

for DiMichele; after the meeting, Bane beeped and alerted him that the FBI had visited the office to ask why Tocco had been there. (IRB Decision at 12, 18; see also IRB Report, Ex. 5 at 70-71). The Chief Investigator also introduced evidence of two telephone calls that took place on July 24, 1992 and August 4, 1992 during which Tocco told DiMichele that he had spoken with Bane about getting him a job and that he should contact Bane. (IRB Decision at 12; see also IRB Report, Exs. 20, 21 (transcripts of telephone calls)). Bane, meanwhile, denied that he discussed getting a job for DiMichele and claimed that he had an "open door policy" under which anyone could visit and that Tocco paid him a "social visit." (IRB Decision at 12; see also IRB Hearing Tr. at 290-91).

E. Vito Giacalone

Previously, at his October 6, 2000 sworn examination, Bane testified that he first met Vito Giacalone once in 1998 at a convalescent home where Bane's father was recovering from a broken ankle. (IRB Decision at 13; see also IRB Report, Ex. 4 at 27-28). In addition, Bane denied meeting Vito Giacalone in the Detroit federal courthouse when he was on trial and denied introducing Vito Giacalone to anyone in his family at that time. (IRB Decision at 13; see also IRB Report, Ex. 4 at 30). Bane also testified that he did not recall meeting Anthony Giacalone, the son of Tony Giacalone, in the Detroit federal courthouse when

he was on trial. (IRB Decision at 13-14; see also IRB Report, Ex. 4 at 33).

At the IRB hearing, Special Agent Russo testified that the FBI considers Vito Giacalone, also known as "Billy" and "Billy Jack," to be a Capo in the Detroit LCN. (IRB Decision at 13; see also IRB Hearing Tr. at 105-06). In addition, the Chief Investigator introduced documents establishing that Vito Giacalone's membership in the Detroit LCN and his 1977 federal indictment and subsequent trial on charges of conspiracy and running an illegal gambling business were widely reported in the Detroit metropolitan newspapers. (IRB Decision at 13; see also IRB Report, Ex. 10). The Chief Investigator also introduced the transcript of Vito Giacalone's 1998 guilty plea to charges of racketeering conspiracy, during which he admitted the existence of the Detroit LCN and his membership in it. (IRB Decision at 13; see also IRB Report, Ex. 11 at 17, 21-22).

The Russo Declaration provided evidence of an association between Bane and Vito Giacalone. According to the declaration, Tocco told FBI agents that Bane knew Vito Giacalone, Tony Giacalone and their sons. (IRB Decision at 14; see also IRB Report, Ex. 5 at 66). In addition, according to the declaration, Bane's 1977 trial was held in the Detroit federal courthouse from November 28, 1977 to December 20, 1977, while Vito Giacalone's trial was held there from October 12, 1977 through December 16,

1977 -- almost a three-week overlap. (IRB Decision at 14 n.16; see also IRB Report, Ex. 5 at 12, 27, 32-33). Moreover, according to the declaration, Nancie Attie, Bane's former wife, told Special Agent Russo on July 8, 1992 that Bane introduced her to either Vito or Anthony Giacalone in 1978 when the trials of Bane and one of the Giacalones were being held close in time. (IRB Decision at 14; see also IRB Report, Ex. 5 at 31; IRB Hearing Tr. 212-13).⁴ Bane himself submitted an affidavit from Attie in which she stated that she remembered being introduced in the 1970s by Bane to someone connected to the "Jacoloni" trial in the Detroit federal courthouse. (IRB Decision at 14).⁵

III. The IRB's Decision

Based upon the substantial documentary and testimonial evidence, the IRB concluded that Bane gave intentionally misleading testimony at his October 6, 2000 sworn examination concerning his knowledge of and relationship with Meli, LaPiana, Tocco, and Vito Giacalone. (Id. at 20-21). The IRB first determined that "Bane misled the IRB concerning his relationship

⁴ Anthony Giacalone was not a co-defendant during Vito Giacalone's 1977 trial. (IRB Report, Ex. 5 at 32).

⁵ The Russo Declaration provided additional evidence corroborating the association between Bane and Vito Giacalone. For example, on July 3, 1995, a reliable confidential informant told the FBI that Bane had maintained contact with Giacalone. (IRB Report, Ex. 5 at 35). On June 15, 1999, a second reliable confidential source told Special Agent Russo that Bane "definitely" knew Giacalone. (Id. at 35-36).

and association with Vincent Meli." (Id. at 15). Specifically, the IRB found that Bane's testimony that he did not know or attempt to contact Meli was disproven by the intercepted telephone call on January 31, 1986 and by the 1978 courtroom exchange between Bane, Meli, and Meli's wife. (Id.). With respect to the 1978 courtroom exchange, the IRB expressly credited Special Agent Woodhouse's account of the 1978 meeting based on its observation of his demeanor, his training as an investigator and his documentation of the event. (Id.). With respect to the January 31, 1986 telephone call, the IRB rejected Bane's attempt to portray the call as the result of a fortuitous tip from friends that Meli had access to tickets for the Red Foxx concert rather than the result of their existing relationship. (Id.). The IRB reasoned that even if the impetus to make the call originated with others, Bane nonetheless felt comfortable enough to make the phone call and refer to Meli as "Vince," indicating that he knew Meli. (Id. at 16).

The IRB next determined that "Bane's efforts at his October 6, 2000 sworn examination to minimize his relationship with LaPiana were intended to mislead the IRB." (Id. at 17). The IRB found that Bane's testimony that he never called LaPiana at his home and that he did not know LaPiana's home telephone number was refuted by the intercepted telephone calls Bane made to LaPiana on December 27, 1985 and January 20, 1986, one of which was made

to LaPiana's home. (Id. at 16). The IRB also found that Bane's claim that the only contact he had with LaPiana was limited to insurance business was similarly refuted by these calls during which Bane and LaPiana recognized each other's voices, spoke in very familiar and friendly terms (including "buddy" and "babe") and never discussed insurance claims. (Id. at 16-17). Indeed, the IRB noted that the substance of the January 20, 1986 conversation revealed a "sharing of close, confidential information which obviously had nothing to do with any legitimate insurance business." (Id. at 17). Finally, the IRB found that the substance of the December 27, 1985 call -- when Bane attempted to get a telephone number needed by Bane's father during the holidays and during which the speakers referred to eating together and to the health of one's family as being most important in life -- demonstrated that Bane felt comfortable calling LaPiana at home, that such a call "would not have been carried on by persons who did not have a close relationship," and that there were "common values and interests and long-time ties" implicit in the call which "strongly suggest[ed] a personal relationship inconsistent with the narrow commercial relationship Bane tries to project." (Id.).

The IBT also determined that Bane intentionally misled the IRB at his October 6, 2000 sworn examination when he testified that Tocco had not asked him to get a job for DeMichele. (Id. at

18). Although the IRB noted that Tocco's credibility was "open to question," it found his account of the July 1992 meeting more believable and credited it, stating that after an absence of contact for fifteen years, "it is doubtful" that Tocco would have visited Bane for purely social reasons. (Id.). The IRB also found the Tocco's description of the purpose of the meeting was corroborated by the intercepted telephone calls on July 24, 1992 and August 2, 1992 during which Tocco, DeMichele and others discussed the fact that Bane would arrange a job for DeMichele at the union. (Id.). As further corroboration for Tocco's account of the meeting, the IRB noted that the FBI had been conducting surveillance of the local at the time Tocco visited its office and that DeMichele was considered by the FBI to be an associate of the Detroit LCN. (Id.). The IRB observed that "[c]ritically, after the meeting [between Tocco and Bane], Tocco relates [to the FBI in 2000] that Bane beeped Tocco to alert him that the FBI had come to Bane at the Local office to ask why he was meeting with Tocco." (Id.).

The IRB further determined that Bane's testimony at his October 6, 2000 sworn examination with respect to Vito Giacalone "was intended to cover up ties . . . with organized crime." (Id. at 19). The IRB found that Bane's claim that he first met Vito Giacalone in 1998 was contradicted by the statements of Tocco and Attie to the FBI, as well as by Attie's affidavit stating that

she remembered being introduced to someone connected to the "Jacoloni" trial in the Detroit federal courthouse in the 1970s. (Id. at 18-19).

The IRB concluded that Bane's "false denials and claims of little or no contact with members or associates of the Detroit LCN Family were apparently intended to present a picture of nothing other than minimal, non-purposeful contact with LCN members." (Id. at 19). In addition, the IRB declined to credit Bane's testimony based on its observation of Bane's demeanor, the numerous contradictions in his testimony and his own telephone conversations. (Id.). The IRB also denied Bane's motion to dismiss. (Id. at 19-20). The IRB noted that Bane provided no evidence that the attorney who represented him during his sworn examination had any input into the decision to charge him; indeed, the IRB noted, the recommendation to charge Bane originated with the IRB, and the IBT referred the IRB's charges back without any additional proof. (Id.). In addition, the IRB noted that Bane conceded during the hearing that his testimony at the sworn examination would have been the same regardless of the attorney who represented him. (Id. at 20, n.24). Accordingly, the IRB concluded that "Bane asserts an unspecified wrong for which no prejudice has been shown." (Id. at 20).

Having found that Bane intended to mislead the IRB concerning his connections with members of the Detroit LCN, the

IRB permanently barred him from membership in the IBT and from obtaining employment or consulting with the IBT. (Id. at 21). The IRB observed that Bane's conduct struck at the core of the Consent Decree's goal to "free [the] IBT of 'the hideous influence of organized crime'" and that his non-cooperation -- obstructing contacts between an influential local officer and organized crime -- particularly hindered and obstructed the IRB's work. (Id.). Given Bane's high level position in a large local and the absence of any mitigating factors, the IRB concluded that a permanent bar was the only suitable remedy. (Id.).

DISCUSSION

Bane raises a variety of arguments regarding the charges against him. Specifically, he argues that his due process rights were violated and that he did not receive a "full and fair" hearing for various reasons, (Memorandum and Objections to Application No. 98 of the Independent Review Board in the Matter of Michael C. Bane ("Bane Mem.") at 3-4, 6-9); that his motion to dismiss should have been granted, (id. at 10-12); that the evidence did not support the IRB's findings, (id. at 2, 12-26); and that the sanction imposed was "vastly disproportionate" to the nature of the charge against him and to sanctions rendered in other cases, (id. at 2, 5). As an initial matter, I note that, in his 28-page memorandum of law, Bane fails to cite a single case in support of any of his arguments. This Court and the

Court of Appeals have issued over two hundred reported decisions in this case, establishing the legal standards and settling the law in a number of areas raised by Bane in his objections. Bane's complete silence with respect to this precedent is particularly deafening given the large volume of decisions issued with respect to the Consent Decree and IRB disciplinary proceedings. See United States v. IBT ("Parise"), 970 F.2d 1132, 1134 (2d Cir. 1992) ("The case law within our circuit swells with decisions emanating from the Teamsters Litigation.").

I. Bane Received a Full and Fair Hearing

Bane argues that he was denied a "full and fair" hearing under section 101(a)(5)(C) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 411(a)(5)(C). As a general matter, it is well settled that "section 101(a)(5)(C) does not require that union disciplinary hearings incorporate the specific protections associated with judicial proceedings, including the right to be represented by counsel and the technical rules of pleading, procedure, and evidence," Frye v. United Steelworkers of Am., 767 F.2d 1216, 1224 (D.C. Cir. 1985), and that "[n]ot all of the due process protections available in the federal courts apply to union disciplinary proceedings," United States v. IBT ("Carey & Hamilton"), 247 F.3d 370, 385 (2d Cir. 2001). Rather, such proceedings "need only adhere to the 'basic principles of due process.'" Id.; see also Ritz v.

O'Donnell, 566 F.2d 731, 737 (D.C. Cir. 1977) (courts reviewing internal union disciplinary actions should intervene under section 101(a)(5) "only if there has been a breach of fundamental fairness"). There has been no breach of the basic principles of due process here. Indeed, Bane received notice of the charges against him and a hearing concerning the charges at which he was permitted to cross-examine the Chief Investigator's witnesses, to testify in his defense, and to offer evidence and witnesses in his defense.

A. Bane's Complaint That the IRB's Report Lacked a Recommendation Concerning Discipline

Bane complains that the IRB Report did not include a recommendation concerning discipline. (Bane Mem. at 3, 8). The Consent Decree provides that after an investigation, the IRB "shall issue a written report detailing its findings, charges, and recommendations concerning the discipline of union officials, members, employees, and representatives. . . ." (Consent Decree ¶ G(d); see also IRB Rules ¶ I(1)). The IRB fully complied with this provision by recommending in its Investigative Report that the IBT file disciplinary charges against Bane.

To the extent Bane argues that the IRB was also required to propose a specific sanction in its report -- before its charges were even heard and decided -- his arguments find no support in the Consent Decree or the IRB Rules. Under the Consent Decree, IRB-proposed charges are first referred to the IBT, which must

take action within a 90-day period (the "90-day referral period"). (Consent Decree ¶ G(e); IRB Rules ¶ I(4), (5)). After action by the IBT, the IRB reviews such action and, if the IRB finds the resolution proposed by the IBT to be inadequate, the IRB notifies the union of its view and the reasons for it. (Consent Decree ¶ G(f); IRB Rules ¶ I(7)). The IBT then has ten days to take any additional action or to remedy defects. (Consent Decree ¶ G(g); IRB Rules ¶ I(8)). If the IRB subsequently determines that the IBT failed to take satisfactory action to remedy the defects, it then convenes a hearing. (Consent Decree ¶ G(g); IRB Rules ¶ I(8)). As such, the process plainly contemplates allowing the IBT, as an initial matter, to craft an appropriate sanction. In any event, Bane fails to identify any prejudice that resulted from the lack of a specific recommended sanction in the IRB Report.

B. Bane's Argument That the IBT Was Required to Hold a Hearing On the IRB's Proposed Charges

Bane also complains that the IBT did not hold a hearing in connection with the IRB's proposed charges against him. (Bane Mem. at 3, 7-8). When the IRB referred its charges to the IBT, it noted that Special Agent Russo would not testify before a union panel and that any record developed before the IBT would necessarily be incomplete. (IRB Hearing Tr., Ex. 1 at 2). The IBT subsequently referred the matter back to the IRB for adjudication. (Id., Ex. 15). The IBT's decision to refer the

charges back to the IRB without a hearing was entirely appropriate and permissible under the Consent Decree. Indeed, the IBT is not required to hold a hearing with respect to each set of proposed charges referred by the IRB. Rather, it is required to "undertake whatever action is appropriate under the circumstances to resolve the referred matter." (IRB Rules ¶ I(5)) (emphasis added). Here, because Special Agent Russo would not testify before the IBT panel, the IBT's decision to refer the matter back to the IRB was wholly appropriate.

In addition, Bane does not identify any prejudice stemming from the IBT's action. The IRB is authorized to exercise the same investigatory and disciplinary authority as that held by the IBT's General President and General Secretary-Treasurer. (Consent Decree ¶ G(b); see also United States v. IBT ("IRB Rules"), 803 F. Supp. 761, 792 (S.D.N.Y. 1992) ("The parties agreed that the IRB would have the investigatory and disciplinary authority of the General President and General Secretary-Treasurer."), aff'd in part, rev'd in part on other grounds, 998 F.2d 1101 (2d Cir. 1993)). Accordingly, a union member has no complaint that the IRB, instead of the IBT, holds a hearing on disciplinary charges. Indeed, IRB hearings afford union members even greater procedural protections than those held by the IBT. See United States v. IBT, ("Carey Disqualification"), 156 F.3d 354, 362 (2d Cir. 1998) ("Disciplinary proceedings before the IRB

follow procedures that fully comply with, and even surpass, the procedural protections of § 101(a)(5)."); cf. United States v. IBT ("Adelstein"), 998 F.2d 120, 126 (2d Cir. 1993) ("[W]e doubt that § 101(a)(5) affords Union members any greater procedural protections than those which they already enjoy under the terms of the Consent Decree.").⁶

C. Bane's Complaint That the 90-Day Referral Period Was Extended Without His Consent

Bane also complains that the 90-day referral period, (Consent Decree ¶ G(e); IRB Rules I(6)), was extended without his consent. Bane, however, fails to cite any provision of the Consent Decree or IRB Rules or any case law requiring that the IBT or the IRB obtain the consent of a charged party in the event that the IBT does not issue a decision within 90 days of the IRB's referral of proposed charges. The 90-day referral period regulates the interaction between the IRB and the IBT, ensuring that the IBT "promptly" takes appropriate action, as required by Paragraph G(e) of the Consent Decree. See IRB Rules, 803

⁶ Bane also complains that, in referring the matter back to the IRB, the IBT did not issue written findings setting forth the action it was taking and the reason for it. (Bane Mem. at 3, 7-8). The IBT, however, expressly stated that it filed and adopted the charges and referred them back to the IRB for adjudication. (IRB Hearing Tr., Ex. 15). In any event, Bane again fails to identify any prejudice flowing from the IBT's conduct. The reason for the IBT's referral was obvious: the IRB had stated that any IBT record would necessarily be incomplete without the testimony of the federal agents, and the IBT could not obtain the testimony of the agents before a union panel.

F. Supp. at 798. It does not give charged parties any substantive right to a hearing within 90 days. In any event, the IRB never issued a decision extending the 90-day period in this case. In addition, Bane fails to identify any prejudice stemming from the alleged extension of the 90-day referral period. Indeed, this argument undercuts Bane's separate argument, addressed below, that he lacked sufficient time to prepare a defense to the charges.

D. Bane's Complaint That He Lacked Adequate Time to Prepare A Defense Before the IRB

Bane complains that he received only 26 days' notice of the May 22, 2001 IRB hearing and asserts that he was entitled to at least 30 days' notice pursuant to paragraph F(A) of the Consent Decree. Bane, however, is incorrect; he enjoys no entitlement to 30 days' notice. The Consent Decree provision on which Bane relies does not refer to IRB hearings but rather to the procedures that previously governed matters before the Independent Administrator. (Consent Decree ¶ F(A)). The Independent Administrator's role and authority under the Consent Decree terminated in October 1992, nine months after certification of the results of the IBT's 1991 international election. (Id. ¶ B.3(3); see generally United States v. IBT ("Webster Appointment"), 12 F.3d 360, 362 (2d Cir. 1993)). In contrast, the Consent Decree provision governing IRB hearings states that the IRB shall "promptly" convene a hearing if it

concludes that the IBT failed to take or propose satisfactory action. (Consent Decree ¶ G(g)). The IRB Rules expressly provide that a charged person "shall be given a reasonable time, in no event less than 10 days, to prepare a defense." (IRB Rules ¶ J(2) (emphasis added)).

Nor has Bane shown any prejudice from not receiving an additional four days' notice of the hearing date. In this regard, he fails to allege -- much less demonstrate -- that any specific evidence or witnesses he wanted to produce before the IRB actually would have been produced if he had received an additional four days' notice. In addition, Bane had notice of the IRB's charges as early as December 2000, upon issuance of the IRB Report.⁷

⁷ With respect to Bane's complaint that the IRB denied his various requests to adjourn the May 22, 2001 hearing, (Bane Mem. at 9), this Court has observed that:

[D]elaying the IRB from fulfilling its role under the Consent Decree would undermine the interests of third parties, including the IBT general membership and, in this case, especially the members of . . . Local 614, in the prompt adjudication and resolution of IBT disciplinary matters.

Indeed, "in this case, the need for the [IRB] to proceed with the hearing [and decision is] particularly urgent because the union [is] faced with the need to purge itself of corruption. . . . Requiring the [IRB] to delay either its hearing, or its decision . . . [may] unduly hamper[] the union, especially one that ha[s] been found to be
(continued...)

E. Bane's Complaint That He Was Unable to
Subpoena or Cross-Examine Certain Witnesses

Bane also complains that the IRB failed to produce confidential and other informants (such as Tocco), whose hearsay testimony was introduced at the hearing, and that he lacked subpoena power to compel their appearance for cross-examination. (Bane Mem. at 4, 9-10).

Neither the IBT Constitution nor the Consent Decree, however, grants IBT members compulsory process rights in disciplinary hearings. Carey & Hamilton, 247 F.3d at 385. In addition, it is well established that a "full and fair" hearing does not require that a union member have the power to subpoena witnesses to appear at his disciplinary hearing. United States v. IBT ("Nunes"), No. 91-6300, Order at 3 (2d Cir. Mar. 27, 1992); see also United States v. IBT ("Carey Subpoenas"), 992 F. Supp. 598, 600 (S.D.N.Y. 1998); United States v. IBT ("Simpson Subpoenas"), 870 F. Supp. 557, 560-61 (S.D.N.Y. 1994). Although Bane was not permitted to subpoena witnesses, he was permitted to, and did, testify in his own defense and present numerous affidavits from witnesses in an attempt to rebut the charges against him (although, as the IRB found, several of those

(...continued)

riddled with corruption for years.

Brennan & Bane I, slip op. at 8-9 (citations omitted) (alterations in original); see also Carey & Hamilton, 247 F.3d at 388 (same).

affidavits actually supported the charges against him, (see IRB Decision at 8 (discussing Aloisio affidavit), 19 (discussing Attie affidavit))). In addition, he was permitted to, and did, cross-examine Special Agent Woodhouse concerning his meeting with Meli in the Detroit federal courthouse in 1978 and Special Agent Russo concerning the informants' statements to the FBI. (IRB Hearing Tr. at 70-90, 92-94, 168-259, 266). Although Bane was unable to convince the IRB to discredit the testimony of Special Agents Woodhouse or Russo, that "does not mean that under the law [the Court is] bound to follow that he was deprived of a full and fair hearing." Carey & Hamilton, 247 F.3d at 386 (rejecting charged party's argument that he was deprived of full and fair IRB hearing because he was unable to subpoena witnesses, where party testified in his own defense, presented other evidence to rebut the charges against him, and cross-examined witnesses presented at hearing).

In addition, the IRB properly relied on the hearsay statements of confidential and other informants. It is well established that reliable hearsay is admissible in IBT disciplinary proceedings, see United States v. IBT ("Boggia"), 167 F.3d 113, 118 (2d Cir. 1999); United States v. IBT ("DiGirlando"), 19 F.3d 816, 823 (2d Cir. 1994); United States v. IBT ("Cimino"), 964 F.2d 1308, 1312 (2d Cir. 1992); United States v. IBT ("Senese & Talerico"), 941 F.2d 1292, 1297-98 (2d Cir.

1991); United States v. IBT ("Cherilla"), 782 F. Supp. 256, 260 (S.D.N.Y. 1992), and may alone provide sufficient evidence to support a disciplinary decision, Cimino, 964 F.2d at 1312. "Hearsay statements may gain reliability by corroborating one another or by including specific details." DiGiriamo, 19 F.3d at 823; see also Adelstein, 998 F.2d at 124-25; United States v. IBT ("Wilson, Dickens and Weber"), 978 F.2d 68, 72 (2d Cir. 1992); United States v. IBT ("Cozza"), 764 F. Supp. 797, 808 (S.D.N.Y. 1991). This Court and the Court of Appeals have repeatedly upheld reliance on cooperating witnesses and confidential informants in disciplinary matters under the Consent Decree. See, e.g., DiGiriamo, 19 F.3d at 820-21; Cozza, 764 F. Supp. at 807, 809; United States v. IBT ("Trivigno"), 791 F. Supp. 421, 423-24 (S.D.N.Y. 1992).

Where a charged party challenges the admission of hearsay, "[t]his Court's review is limited to assessing whether the determination of reliability by the [IRB] was arbitrary or capricious." Senese & Talerico, 745 F. Supp. at 914. Here, the informants' statements were consistently corroborated by other evidence in the record. For example, Tocco's statement that Bane knew Meli was corroborated by (1) Special Agent Woodhouse's testimony concerning the exchange that took place in the Detroit federal courthouse in 1978 among Bane, Meli, and Meli's wife, (IRB Decision at 10-11, 15); and (2) the intercepted January 31,

1986 telephone call, during which Bane asked for "Vince" and then clarified that he wanted to speak with "Mr. Meli," (id. at 9, 15). Similarly, Tocco's statement that he asked Bane to obtain a job for DeMichele was corroborated by the intercepted telephone calls on July 24, 1992 and August 4, 1992, during which Tocco described that he had spoken with Bane about obtaining DeMichele a job. (Id. at 12, 18). In addition, Tocco's statement that Bane knew Vito Giacalone was corroborated by Attie's statements to the FBI and her affidavit, in which she stated that she was introduced to Anthony or Vito Giacalone when Bane was on trial in the Detroit federal courthouse. (Id. at 14, 18-19). Court records documented that Vito Giacalone (and not Anthony Giacalone) was on trial in 1977. (IRB Report, Ex. 5 at 32). Moreover, another informant's statement that Bane and LaPiana attended a dinner for Presser was corroborated by the Aloisio affidavit and by a printed program for an IBT conference. (IRB Decision at 8 & n.7). Viewed together, the informants' statements plainly presented a consistent and overwhelmingly clear picture of Bane's knowledge of and relationship with Meli, LaPiana, Tocco, and Vito Giacalone. See Cimino, 964 F.2d at 1312 (hearsay statements reliable where they "paint a consistent picture").

Moreover, although cross-examination may add to a statement's reliability, it is well settled that the absence of

cross-examination does not render evidence unreliable or incapable of supporting a factual finding. See Wilson, Dickens & Weber, 978 F.2d at 72 ("Despite the fact that the hearsay declarants were not cross-examined, the evidence before the independent administrator was reliable and supports his decision."); see also Carey Disqualification, 156 F.3d at 364 (party's inability to cross-examine witnesses during investigation "need not invalidate the results of that investigation"). In any event, Bane was not prejudiced by his inability to cross-examine the informants directly. Bane was permitted to cross-examine Special Agent Russo concerning the declarants' statements -- which he did, through counsel, both ably and thoroughly. (IRB Hearing Tr. at 168-259, 266). In addition, Bane testified in his own defense and he submitted numerous affidavits from others attempting to rebut the informants' statements.

F. Bane's Complaint That General Secretary-Treasurer Keegal Failed to Appear For Cross-Examination

Bane also complains that IBT General Secretary-Treasurer Keegal ("Keegal") failed to appear for cross-examination. (Bane Mem. at 4, 9). Putting aside the fact that Bane has no right to compel the appearance of witnesses before the IRB or to cross-examine parties who do not appear, (see supra, I.E), Keegal played no substantive role in bringing charges against Bane; the charges against him were investigated and proposed by the IRB,

not Keegal. Indeed, Keegal's actions were limited to adopting and filing the IRB's proposed charges and referring them back to the IRB for adjudication. (IRB Hearing Tr., Ex. 15). Once the charges were referred back to the IRB, the burden was then on the Chief Investigator to prove the charges. (See generally IRB Rules ¶ J(6)). Accordingly, cross-examination of Keegal would not have provided relevant or useful information.⁸

G. Bane's Argument That He Was Punished For Uncharged Conduct

Bane argues that he is being punished for contacts with members or associates of organized crime that occurred outside the five-year statute of limitations in the IBT Constitution. (Bane Mem. at 3, 6-7). This argument is without merit; Bane was not charged with contacts with members or associates of organized crime that occurred outside the statute of limitations but rather with failing to cooperate with the IRB in 2000.

Bane also appears to contend that he had no reason to mislead the IRB in 2000 about contacts he had with organized crime members outside the statute of limitations because he could not have been punished for such contact. (Id. at 7). Bane's

⁸ Bane also asserts that he needed testimony from IBT General President James Hoffa and IBT General Counsel Patrick Szymanski to rebut Tocco's statements to the FBI. (Bane Mem. at 10). Bane, however, does not assert that any of these individuals had personal knowledge of his relationship with Meli, LaPiana, Tocco or Vito Giacalone or of any other matter relevant to the charges.

contention, however, simply asserts yet another protestation of his innocence of the charges against him when the overwhelming evidence indicates, as the IRB found, that Bane did in fact mislead the IRB during his October 2000 sworn examination. In any event, Bane was charged with failing to cooperate with the IRB concerning his knowledge of and association with organized crime members -- as he is required to do, (see Consent Decree ¶ G(c); IRB Rules ¶ L) -- during time periods within the five-year statute of limitations, and the IRB found that those charges had been proved. Any other possible charge, such as actual association with members of organized crime, is irrelevant.

H. Bane's Argument Entitled "THE CHARGE"

Bane presents a final argument simply denominated as "THE CHARGE." (Bane Mem. at 4-5). He first appears to complain that although he was asked more than 900 questions during his sworn examination, he answered only a handful of them falsely. There is no de minimus exception to the duty to cooperate with the IRB, however, and this argument is unavailing.

Bane also appears to argue that he did not testify falsely at his sworn examination but that he merely could not remember events that occurred some 22 years earlier. Bane's argument is contrary to the evidence. As an initial matter, Bane's misleading testimony about attempting to obtain a job for

DiMichele concerned events that took place in 1992, only eight years before his sworn examination. (IRB Decision at 12). More substantially, however, Bane's testimony at his sworn examination was not that he could not remember certain facts one way or the other; rather, his testimony contained outright denials or denials qualified by "not that I remember." For example, when asked about his meeting with Tocco, Bane first testified, "Like I say, it wasn't really a meeting. He just happened to stop in there. I was in my back office. He come in and said hi. We reminisced a few minutes and he left." (IRB Report, Ex. 4 at 40). When asked if Tocco ever asked him to get jobs for his friends or family, Bane testified, "Not that I know of. Not that I recall." Id. When asked whether Tocco requested that Bane get DeMichele a job at the local, Bane testified, "No, he couldn't be hired," and when asked whether Tocco requested that Bane get DeMichele a job if he became a member of the local, Bane testified, "No, not that I can recall." (Id. at 41; see also, e.g., id. at 47 (Bane denies that he knew LaPiana's home telephone number, denies that he ever called LaPiana at his home, and states that he spoke with LaPiana "not much, I know that, if at all"), 35 (Bane's testimony that he did not "know of" ever meeting Meli, that he did know him, and that he did not "know of" ever speaking with him)). There was more than adequate evidence from which the IRB could find that Bane failed to cooperate with

the IRB and gave intentionally misleading testimony in his October 6, 2000 examination.⁹

II. Ample Evidence Supported the IRB's Decision

Bane also challenges the sufficiency of the evidence in connection with the IRB's decision, (Bane Mem. at 12-25), arguing that it was "not justified by a preponderance of the reliable evidence [and is] inconsistent with the record," (*id.* at 12).

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 ("Simpson"), 120 F.3d 341, 346 (2d Cir. 1997) (quoting DiGirlando, 19 F.3d at 819-20). Specifically, 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,' DiGirlando, 19 F.3d at 820, but something 'more than a mere scintilla.'"

⁹ Under his argument "THE CHARGE," Bane also complains that he was not informed of the topics that would be covered in his October 6, 2000 sworn examination and therefore could not adequately prepare for it. (Bane Mem. at 5). There is no requirement that the Chief Investigator provide IBT members with a roadmap of his questions. In any event, Bane cannot identify any prejudice from this alleged violation, because he was offered an opportunity to amend his testimony and declined to do so (other than changing one minor reference). (IRB Hearing Tr. at 267-68, 273-75).

Simpson, 120 F.3d at 346 (quoting Cimino, 964 F.2d at 1311-12).

"Substantial evidence includes 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Id. (quoting Cimino, 964 F.2d at 1311-12).

Moreover, the mere possibility of drawing two inconsistent conclusions from the evidence "does not prevent an administrative agency's finding from being supported by substantial evidence."

Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 620 (1966).

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 them. Carey &

Hamilton, 247 F.3d at 380; Carey Disqualification, 156 F.3d at 365; see also 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.

Applying these deferential standards, the IRB's decision is affirmed. With respect to Bane's testimony at his sworn examination concerning Meli, the IRB expressly credited the testimony of Special Agent Woodhouse regarding the 1978 courtroom exchange among Bane, Meli, and Meli's wife, given its observation of Woodhouse's demeanor, his training as an investigator, and his

subsequent documentation of the event; the IRB also expressly discredited Bane's testimony in light of the substance of and circumstances giving rise to the January 31, 1986 tape-recorded telephone call during which Bane attempted to speak with "Vince." (IRB Decision at 15-16). With respect to Bane's testimony at his sworn examination concerning LaPiana, the IRB considered the content of and familiar terms and voices used in the December 27, 1985 and January 20, 1986 tape-recorded telephone calls between Bane and LaPiana (one of which Bane made to LaPiana's home) and determined that they "strongly suggest a personal relationship" that was inconsistent with and outweighed Bane's claim that their association was limited to insurance business. (Id. at 16-17). With respect to Bane's testimony at his sworn examination concerning Tocco, the IRB expressly credited Tocco's account of his meeting with Bane in the 1990s and found it to be "more believable" than Bane's account in light of the absence of any contact between Tocco and Bane for the prior fifteen years and the July 24, 1992 and August 2, 1992 tape-recorded telephone conversations during which Tocco indicated that he had asked Bane to get DiMichele a job. (Id. at 17-18). With respect to Bane's testimony at his sworn examination concerning Giacalone, the IRB credited the statements of Tocco and Attie (whose affidavit was submitted by Bane) which indicated that Bane had some association with Giacalone in the 1970s. All of these credibility findings

were within the provence of the IRB, the factfinder, and none was arbitrary or capricious.

III. The IRB Correctly Denied Bane's Motion to Dismiss

Bane also argues that the IRB should have granted his motion to dismiss, contending that his due process rights were violated because the attorney who represented him during his October 6, 2000 sworn examination, Gerry Miller, Esq., actually represented the IBT and thus had a conflict of interest. (Bane Mem. at 10-12). Bane contends that Miller acted, by analogy, as "a prosecutor sitting in as defense counsel in an interrogation of a suspect and then claiming no conflict of interest because the suspect had not yet been charged with anything" and asserts that he "should have been allowed to re-take his sworn examination." (Id. at 11-12).

As the IRB correctly noted, (see IRB Decision at 20), Bane failed to put forward any evidence that Miller (or even the IBT) had any input in the IRB's decision to discipline him. Indeed, the charges were initially recommended to the IBT by the IRB. In addition, Bane failed to adduce any evidence that Miller (or, again, even the IBT) offered any proof during the IRB hearing concerning the charges against him. In any event, Bane has not shown any prejudice from Miller's presence at his sworn examination. Bane was given the opportunity at the IRB hearing to amend his prior testimony -- in the event that Miller's

presence caused him to testify falsely -- but declined to do so, and instead reaffirmed the testimony he gave. (IRB Decision at 20 n.24; see also IRB Hearing Tr. at 273-75).

IV. The IRB's Sanction Was Proper

Finally, Bane argues that the sanction imposed by the IRB -- expelling him from the union and banning him from working with the union -- was "vastly disproportionate" to the conduct with which he was charged and to sanctions imposed in other cases. (Bane Mem. at 2, 5).

The relevant inquiry with respect to an IRB sanction is not whether the Court agrees or disagrees with it but rather is limited to whether the IRB made an allowable judgment in its choice of remedy. See Giacumbo, 170 F.3d at 143. Accordingly, the IRB's choice of sanction will not be overturned unless the Court finds the remedy "unwarranted in law or without justification in fact." Carey & Hamilton, 247 F.3d at 389 (quoting Simpson, 120 F.3d at 348); see also Carey Disqualification, 156 F.3d at 366. A lifetime ban on membership and employment with the union is a permissible sanction because it is authorized by the IBT Constitution and rules. See Carey & Hamilton, 247 F.3d at 390 (finding that even lifetime ban on purely social association with union has basis in IBT rules); Boggia, 167 F.3d at 120 ("There is no dispute that the IBT Constitution provides that a member may be stripped of membership

rights if found guilty of misconduct."). In addition, 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. See Giacumbo, 170 F.3d at 144 ("Uneven application of sanctions does not normally render the sanction imposed in a particular case arbitrary and capricious."); United States v. IBT ("Sansone"), 981 F.2d 1362, 1372 (2d Cir. 1992).

Here, as the IRB recognized, (IRB Decision at 21), Bane's relatively high-level position in the union -- President of a large local union and International Representative -- justifies the sanction. See Carey & Hamilton, 247 F.3d at 389-90 ("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. . . . Such an abuse of trust by a powerful administrative official undermines the faith of the public and the IRB members in the ability of the union to conduct its day-to-day affairs in a trustworthy and honest way."); 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").

Moreover, as the IRB recognized, (see IRB Decision at 21), Bane's failure to cooperate and to provide truthful testimony concerning his ties to Meli, LaPiana, Tocco, and Vito Giacalone

strikes at the very heart of the Consent Decree's goal of freeing the union from "the hideous influence of organized crime." See United States v. IBT, 3 F.3d 634, 636 (2d Cir. 1993). Indeed, by intentionally giving misleading testimony, Bane intended to prevent the IRB from discovering the full scope of his association with organized crime members. Bane's misconduct was thus extremely serious and warranted a most severe sanction.

CONCLUSION

For the foregoing reasons, Application 98 of the IRB is granted and the IRB decision is affirmed in all respects.

SO ORDERED:

Dated: New York, New York
April 18, 2002


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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

Plaintiffs,

-v-

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.

Defendants
-----X

APPLICATION NO. 98
-----X

JUN - 7 2002

SECRET

ORDER

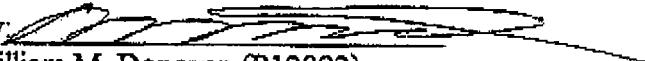
88 Civ. 4489 (LAP)

S/O B

NOTICE OF APPEAL

Notice is hereby given that Michael C. Bane, Respondent in Application 98 of the Independent Review Board, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order of Loretta A. Preska, United States District Court Judge dated April 18, 2002.

DONOVAN & MORDELL, P.L.C.

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Dated: June 4th 2002