

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,      :
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                                : 88 Civ. 4486 (DNE)
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                                : APPLICATION XXXIII OF THE
                                : INDEPENDENT REVIEW BOARD
                                : --OPINION OF THE
                                : INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD      :
OF TEAMSTERS, et al.,         :
                                : IN THE MATTER OF THE HEARING
                                : OF DOMINIC FRONCILLO
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Pursuant to Paragraph O. of the Rules of 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 David N. Edelstein, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on April 23, 1996, and thereafter determined, on the charge filed against Dominic Froncillo ("Froncillo").

Froncillo was charged with knowingly associating with members of La Cosa Nostra while he was a member of Local Union 807. Having reviewed the evidence and post-hearing submission, by the Chief Investigator, the IRB found that the charge against Froncillo of knowingly associating with members of La Cosa Nostra was proved. As a penalty, Froncillo 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.

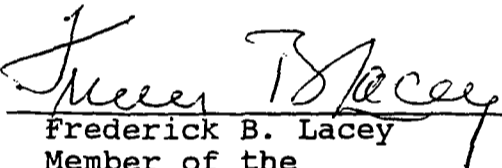
Given the IRB's determination, we do not find it appropriate to stay the Opinion or the penalty imposed pending

review by Your Honor as we found it in the best interest of the IBT that Froncillo immediately be barred from IBT membership.

Enclosed with the July 2, 1996, Opinion are the following exhibits:

- 1) February 14, 1996, IRB Investigative Report (w/exhibits 1-17);
- 2) Federal Bureau of Investigation Exhibits 1-27 to Exhibit 3 of the IRB Investigative Report;
- 3) April 23, 1996, Froncillo Hearing Transcript (w/exhibits 1-7).

It is respectfully requested that an Order be entered affirming the IRB's July 2, 1996 Opinion if Your Honor finds it appropriate.

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

Dated: July 2, 1996

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In re: DOMINIC FRONCILLO : OPINION AND DECISION OF
IBT Local 807 : THE INDEPENDENT REVIEW
: BOARD
: :
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On February 14, 1996, the Independent Review Board ("IRB") transmitted an investigative report concerning allegations of wrongdoing by Local 807 member Dominic Froncillo ("Froncillo") to the International Brotherhood of Teamsters ("IBT") General President for appropriate action. The IRB report recommended that a charge be filed against Froncillo for bringing reproach upon the IBT by knowingly associating with a member of the Genovese Family of La Cosa Nostra ("LCN"), Alphonse Malangone, while an IBT member in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(1), (2) and (9) of the IBT Constitution. By letter of February 15, 1996, the IBT General President referred the charge concerning Froncillo back to the IRB for adjudication. On April 23, 1996, the IRB held a hearing on the charge against Froncillo in New York, New York. Our opinion follows.

At the April 23, 1996, hearing, Froncillo appeared without counsel. The Chief Investigator's presentation consisted of exhibits¹ including a declaration by FBI Special Agent Brian F. Taylor and brief testimony from Special Agent Taylor. Mr. Froncillo elected not to testify. Thus the evidence tendered by the Chief Investigator was uncontradicted and unchallenged by

¹ "IO" refers to Chief Investigator's Exhibits which, together with the IRB Investigative Report dated February 14, 1996, were collectively marked as IRB Exhibit 1 at the hearing of April 23, 1996. "Decl. Ex." refers to the Exhibits to the Declaration of FBI Supervisory Special Agent Brian Taylor, which is IO-3 of IRB Exhibit 1. "Tr." refers to the transcript of the hearing.

Froncillo. In his deposition of July 20, 1994, prior to the hearing, Froncillo testified that he began shaping at the Jacob Javits Convention Center ("Javits Center") on July 3, 1990. (IO-7 at 4) He thereafter became a member of IBT Local 807 on February 19, 1991. (IO-1). Since that time, Froncillo has worked as an IBT Local 807 member in its trade show division, working at the Javits Center as well as conventions at various hotels. (IO-7 at 3-4) On January 19, 1996, Local 807 suspended Froncillo for failing to pay union dues for a six-month period dating back to August 1995. (IO-1). Prior to working at the Javits Center, Froncillo was unemployed for between one to two years following a five to ten-year employment with Mannix Industries in Long Island, in a non-union job, installing aluminum windows. (IO-7 at 5-6; IO-9 at 5).

According to the FBI, Alphonse (Ally Shades) Malangone ("Malangone") is a "Capo" in the Genovese LCN Family who took over "Crazy" Tommy Contaldo's ("Contaldo") crew after Contaldo's death in 1989.² (Tr. 12-14; IO-3 at ¶¶ 27-31). LCN members Salvatore Gravano, Vincent Cafaro and Alphonse D'Arco corroborated this opinion.

² The FBI opinion was stated through Special Agent Brian F. Taylor who has worked for the FBI for over nineteen years, eighteen of those conducting organized crime investigations. He is currently the Coordinating Supervisory Special Agent of all organized crime investigations in the New York City metropolitan area. Special Agent Taylor has testified as an expert witness in numerous criminal trials and other legal proceedings in the past concerning organized crime. (IO-3 at ¶¶ 1-7). We accept Special Agent Taylor as an expert in the designated areas and we accept his testimony as credible.

Self-admitted former Gambino LCN Family Underboss Salvatore "Sammy the Bull" Gravano ("Gravano"), in a July 1992 interview with the FBI, identified Malangone from a photograph as a Capo in the Genovese LCN Family. (Decl. Ex. 4). In an October 17, 1994, declaration provided by Gravano in connection with the proceedings entitled United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 90 Civ. 0963 (S.D.N.Y.), Gravano described Malangone as a Genovese "Family captain ... [who] is into shylocking, gambling, the Fulton Fish Market, a Brooklyn disco, and the Javits Center." (Decl. Ex. 5 at ¶ 23). According to Gravano, Malangone was very close to Gambino LCN Family Capo Anthony Ciccone ("Ciccone"). (Id.).

Vincent Cafaro, a self-admitted member of the Genovese LCN Family, in an October 2, 1986, statement supplied to the FBI described "Ally Shades" Malangone as a member of "Crazy" Tommy Contaldo's Genovese LCN Family crew, in which Contaldo served as Capo. (Decl. Ex. 1 at 5). Alphonse D'Arco ("D'Arco"), a self-admitted member (and one time acting Boss) of the Luchese LCN Family, also acknowledged Malangone's organized crime ties. (Decl. Ex. 6) In a January 7, 1992, interview with the FBI, D'Arco stated that the Genovese, Gambino and Luchese LCN Families control the trade waste associations in the New York City metropolitan area and Malangone controlled the associations in Brooklyn and New Jersey for the Genovese Family. (Decl. Ex. 6).

Further, on numerous occasions, law enforcement officers have observed Malangone with other LCN figures: for example, on December 20, 1988, Malangone attended Gambino LCN Family Boss John

Gotti's ("Gotti") Christmas Party at the El Caribe Country Club in Brooklyn, New York. (IO-12). Several other organized crime figures also attended including Gotti, Gravano, Ciccone and Genovese LCN Family members Alan Longo ("Longo") and Gerald Guadagno ("Guadagno").³ (Id.). On the evening of April 16, 1989, detectives of the Kings County District Attorneys office surveilled Pastels Disco ("Pastels") in Brooklyn where Malangone acted as the club's manager. (IO-3 at ¶ 33; Decl. Ex. 9) On that night, based upon reliable information, the FBI believes that a reception was held at Pastels to celebrate the induction of Malangone's son Frank into the Genovese LCN Family. (Id.) Those in attendance included Ciccone, Malangone, Longo and Elio "Chinatown" Albanese ("Albanese").⁴ (Id.)

These were not the only organized crime celebrations Malangone was observed attending. On October 27, 1989, the Organized Crime Task Force observed Malangone arriving with Longo at the Ravenite Social Club in New York City for the birthday of Gotti. (IO-14; IO-3 at ¶ 34). Among those present were LCN members Gotti, Longo, Malangone and Ciccone. (IO-14). In addition, on September 19, 1992, law enforcement officials observed

³ The FBI considers Longo and Guadagno to be soldiers in the Genovese LCN Family. (IO-3 at ¶¶ 38, 43). As discussed infra at pp. 16 to 18, Froncillo at his deposition testified to knowing Longo and Guadagno and associating with both of them on numerous occasions since becoming an IBT member. (IO-3 at ¶¶ 65-66; IO-9 at 26, 27-28, 44-45, 46-49).

⁴ The FBI considers Albanese to be a soldier in the Genovese LCN Family and a close associate of Malangone (IO-3 at ¶ 50). As discussed infra at p. 18, Froncillo testified that he knew Albanese for ten years and has seen him three or four times since working at the Javits Center. (IO-9 at 34-35).

Malangone at the wedding reception of Daniel Marino, Jr., son of Gambino LCN Family Capo Daniel Marino, Sr., at the Garden City Hotel. (IO-3 at ¶ 37; Decl. Ex. 13). Those in attendance included Gambino LCN Family members Jerry Brancato ("Brancato"), Ciccone, Peter Gotti and Longo. (Decl. Ex. 13). Similarly, on November 18, 1989, New York City Police Department detectives observed Malangone at the Scarpaci Funeral Home in Brooklyn, New York, for Contaldo's wake. (IO-3 at ¶ 35; Decl. Ex. 11). Those in attendance included LCN members Longo, Guadagno, Albanese, and Gotti. (Decl. Ex. 11).

Further, on February 28, 1990, detectives from the Waterfront Commission of New York Harbor surveilled the 461 Court Street Club in Brooklyn, which is a known Gambino LCN Family social club. (IO-3 at ¶ 36). The detectives observed Malangone meeting at the club with a large number of LCN figures including Gotti, Peter Gotti, Ciccone, Brancato, Anthony Pimpinella and Anthony Anastasio ("Anastasio"), all of whom the FBI considers to be members of the Gambino LCN Family. (Id.; Decl. Ex. 12).

Froncillo testified in his deposition that he knew Malangone for ten to fifteen years. (IO-9 at 10). This was a relationship that extended well beyond chance meetings. Froncillo attended Malangone's son's wedding in approximately July 1990 at the "El Caribe" Club at the senior Malangone's invitation. (Id. at 15). Further, Malangone attended Froncillo's father's wake in July 1992. (Id. at 23).

Froncillo also admitted going to Pastels, where he knows Malangone to be the club manager, between ten and twenty times since the club opened. (IO-9 at 10). Froncillo testified to

seeing Malangone on several occasions there, both at night and during the day when the club was closed to social functions. (Id. at 10-14, 56-57). In addition, on April 16, 1989, law enforcement officials surveilling Pastels during the reception following Frank Malangone's induction into the Genovese LCN Family observed a white 1981 Cadillac registered to Froncillo's wife in Pastels' parking lot. (Tr. 20-21; Decl. Ex. 9). Others in attendance that evening included Malangone, his son, Frank Malangone, Albanese, and Longo, who, as noted above, are all considered by the FBI to be Genovese LCN Family members. (IO-3 at ¶¶ 33, 49, 53; Tr. 20; Decl. Ex. 9). At the hearing, Froncillo did not deny this association. (Tr. 24).

The Pastels reception and Malangone's son's wedding were not the only times Froncillo was observed with Malangone in the company of Malangone and his associates, thus further supporting the inference that he knew of Malangone's ties to organized crime. On December 17, 1990, after Froncillo had begun working at the Javits Center, the New York City Police Department's Organized Crime Intelligence Division, while conducting a surveillance of Malangone, observed Froncillo in conversation for five minutes with Malangone, Albanese, and John Giangrande, (whom the FBI considers to be an "associate" of the Genovese LCN Family) at the corner of Mulberry and Grand Streets in Lower Manhattan. (IO-3 at ¶ 59; Decl. Ex. 24). The four men then entered Ruggero's Restaurant ("Ruggero's) on Grand Street where they remained for over an hour. (Id.). Next, Froncillo, Malangone and Giangrande left Ruggero's and walked to 171 Mulberry Street, which according to the FBI was

a known Genovese LCN Family social club that Thomas Cestaro ("Cestaro") ran. (Id.).

Malangone's LCN ties have been highly publicized. In April 1988, the Permanent Subcommittee on Investigations of the United States Senate issued a report publicly identifying Malangone as a member of the Genovese LCN Family. (Decl. Ex. 7). In addition, New York City newspapers have reported Malangone's ties to organized crime. (IO-13). Froncillo testified in his deposition that he has been reading the New York Daily News "regularly" for twenty years. (IO-9 at 45-46).

Froncillo testified to visiting Malangone at Pastels in his office twice in 1994 during the day when the club was closed for business. (IO-9 at 11-12, 14). During his deposition, he stated that he had seen Malangone approximately five or six times in 1994 alone.⁵ (IO-9 at 11). In addition, Froncillo admitted attending a Christmas party in Pastels during December 1993 where he saw Malangone. (IO-9 at 17). It may be fairly inferred that, by repeatedly going to Pastels, Malangone's place of operation, Froncillo intentionally insured meeting with Malangone.

⁵ Froncillo further testified at his deposition to seeing Malangone six months before at the wake of a man known to him only as "Rocky", which wake he attended with Gus Lauro. (IO-9 at 23). On November 14, 1995, the IRB permanently barred Lauro from the IBT for knowingly associating with members of organized crime, including Malangone. Lauro had also been a member of IBT Local 807 working at the Javits Center. In connection with that proceeding, Lauro testified that he had known Froncillo for years, that Froncillo knew Malangone, and that he had seen Froncillo at Pastels on ten occasions. (Decl. Ex. 27 at 30-32). Froncillo similarly testified that he had known Lauro for twenty years. (IO-9 at 43).

Further, Froncillo testified that he has had several contacts with Malangone at Dino's Hair Salon ("Dino's") in Brooklyn since becoming an IBT member. (IO-9 at 29). According to the FBI, members of the Luchese, Gambino and Genovese families have frequented Dino's for the past fifteen years. (IO-16). In his deposition, Froncillo stated he went to Dino's "once every two months." (IO-9 at 28). He admitted seeing Malangone there two or three times in the twelve months prior to his July 20, 1994 examination. (Id. at 29). Froncillo said he would greet Malangone when they met at Dino's. (Id.). As with Pastels, by going to Dino's, Froncillo could ensure contact with Malangone and other members of organized crime.

On April 8, 1988, Vincent ("Fish") Cafaro ("Cafaro"), a self-admitted member of the Genovese LCN Family, in an affidavit submitted to the Permanent Subcommittee on Investigations of the Senate Committee on Government Affairs, testified about organized crime's, and in particular the Genovese LCN Family's, control over jobs in the Javits Center. (Decl. Ex. 2). Cafaro stated that:

I had the convention center operations for our brugad (family). I used those unions to get jobs for friends and have influence when we needed it. If I needed something done - a job or some other favor - I would call Jimmy Angellino, a wise guy with the Columbo family. Angellino worked at the Convention Center and ran things for the families. Several different types of unions were important to keep operations going at the convention center and each of these unions answered to one of the families. For example, the Bonanno brugad controlled the loading dock and my brugad controlled the carpenters and the expos (laborers).

(Decl. Ex. 2 at 19).

The IRB has found on several occasions that Local 807 members working at the Javits Center were members of organized

crime or "knowingly associated" with LCN members. For example, on May 26, 1994, the IRB found that Charles Zancocchio was a member of the Bonanno LCN Family and permanently barred him from the IBT. On August 2, 1994, the IRB found that Armando Rea was also a Bonanno LCN Family member and permanently barred him from the IBT. On September 29, 1995, the IRB permanently barred Michael Porta, Jr. for knowingly associating with Gambino LCN Family members Ciccone and Anastasio. On November 14, 1995, the IRB found that Lauro knowingly associated with Genovese LCN Family members Malangone and Longo and permanently barred Lauro from the IBT. Zancocchio, Rea, Porta and Lauro were all members of Local 807 working at the Javits Center.

In addition, Cafaro's brother-in-law, Leslie J. Matthews ("Matthews"), was among the select group that received the Javits Center jobs, the most lucrative in Local 807's jurisdiction. (IO-11 at 6, 16; IO-5 at 4-5). Matthews testified that he obtained employment at the Javits Center through then Local 807 union delegate Jackie Lenihan ("Lenihan") (now deceased) after meeting him while fishing on Long Island in 1986. (IO-11 at 6). According to Froncillo, he too obtained his position at the Javits Center as a result of a chance meeting at a Queens restaurant with Lenihan. (IO-7 at 6; IO-9 at 38-39). Although he had not previously met Lenihan, Froncillo testified that he started speaking with Lenihan at the restaurant's bar and Lenihan told Froncillo he could obtain employment at the Javits Center. (IO-9 at 39).

It appears from prior proceedings that Lenihan had a history of helping persons with ties to organized crime, and

specifically with ties to Malangone, to obtain work at the Javits Center. Aside from Cafaro's brother-in-law, Matthews, Porta also testified that in 1990, after he was barred from his office in the International Longshoremen's Association as a result of a felony conviction, he met Lenihan at a luncheon and Lenihan told Porta that he could shape at the Javits Center. (IO-17 at 6). Porta had known Malangone for fifteen or twenty years.⁶

On the basis of the foregoing, we find that the LCN ties of Malangone have been proven. Special Agent Taylor, who has conducted organized crime investigations for over eighteen years, testified at the hearing that Malangone is a member of the Genovese LCN Family. (Tr. 12-14). Gravano identified Malangone as a Capo in the Genovese LCN Family. (Decl. Exs. 4 & 5 at 9). Cafaro described Malangone as a member of then Genovese Capo "Crazy" Tommy Contaldo's crew. (Decl. Ex. 1 at 5). In addition, law enforcement officers observed Malangone on numerous occasions in the presence of other members of organized crime such as John Gotti, Gravano and Anthony Ciccone. (Decl. Exs. 8-10). On the basis of this hearsay evidence which we find to be reliable, we determine that Malangone's membership in the Genovese LCN Family was clearly established.⁷

⁶ See Investigations Officer v. Porta, Decision of the Indep. Review Board, slip op. at 6 n.8 (September 29, 1995), aff'd, United States v. IBT, 908 F. Supp. 139 (S.D.N.Y. 1996).

⁷ In Investigations Officer v. Lauro, the Independent Review Board, in permanently barring Lauro from the IBT based upon his "knowing association" with Malangone and Longo, concluded that Malangone was a Genovese LCN Family member. See id., Decision of the Indep. Review Board, slip op at 2-3, 7 (November 14, 1995), aff'd, United States v. IBT, 910 F. Supp. 139 (S.D.N.Y. 1995).

Turning to Froncillo's knowledge of Malangone's LCN ties, Malangone's Genovese LCN Family membership was publicized by the United States Senate and in local newspapers. (IO-13; Decl. Ex. 7). Moreover, given their longstanding friendship, Froncillo's knowledge of Malangone's ties to organized crime may be inferred from the length and nature of his relationship with Malangone, which included Froncillo and Malangone meeting in the company of other LCN members. See Investigations Officer v. Senese, Decision of the Indep. Adm'r, slip op. at 37 (July 12, 1990) (citations omitted), aff'd, 745 F. Supp. 908 (S.D.N.Y.), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S. Ct. 1161 (1992) ("In the absence of direct evidence of knowledge of the organized crime ties of an associate, I conclude that such knowledge may be inferred from the duration and quality of the association.").

As has been noted, in 1994, Froncillo and Malangone had been friends for between ten to fifteen years. (IO-9 at 10). Malangone attended the wake for Froncillo's father in July 1992. (Id.) Froncillo attended Malangone's son's wedding in July 1990 at El Caribe where he saw LCN members Longo and Guadagno. (Id.) Further, based on Froncillo's wife's car being observed in the parking lot of Pastels on April 16, 1989, during what appears to have been the celebration for Malangone's son's induction into the Genovese LCN Family, there is a strong inference that Froncillo attended that organized crime event, a fact he did not deny at the hearing. (Tr. 24). On that occasion numerous members of organized crime besides Malangone were present, including Ciccone, Longo and Albanese. (IO-3 at ¶ 60; Decl. Ex. 9).

In addition, on December 17, 1990, law enforcement officers observed Froncillo together with Malangone and Genovese LCN Family member Albanese and associate John Giangrande, for nearly an hour and a half, first speaking on a street corner and later at a known Genovese social club run by Cestaro. (IO-3 at ¶ 59; Decl. Ex. 24). Moreover, the circumstances under which Froncillo obtained his work at the Javits Center suggest that Froncillo was the knowing beneficiary of Malangone's LCN ties. Froncillo testified that Lenihan offered him a job at the Javits Center, notwithstanding that the two men had never before met. (IO-9 at 38-39). Lenihan had previously helped organized crime associates, such as Porta and Cafaro's brother-in-law, Matthews, get Local 807 jobs at the Javits Center. As Gravano noted, one of Malangone's rackets was the Javits Center. (Decl. Ex. 5 at ¶ 23).

Accordingly, given Froncillo's longstanding relationship with Malangone, Froncillo's attendance at gatherings of other organized crime figures with Malangone, the widespread public information concerning Malangone's ties to organized crime and the circumstances surrounding Froncillo's employment at the Javits Center, Froncillo's knowledge of Malangone's ties to organized crime was established. See, e.g., Investigations Officer v. Cozza, Decision of the Indep. Adm'r, slip op. at 24-25 (January 4, 1991), aff'd, U.S. v. IBT, 764 F.Supp. 797 (S.D.N.Y. 1991), aff'd, without op. United States v. IBT, 956 F.2d 1161 (2d Cir. 1992) (the Independent Administrator held that "given [respondent's] long standing relationships with these men, it is inconceivable that he

was unaware that they were infamous members of Pittsburgh's underworld").

Based upon the number and nature of Froncillo's contacts with Malangone over the years, as well as Froncillo's contacts with other Genovese LCN Family members, the evidence established that Froncillo's associations with Malangone occurring after Froncillo became an IBT member were purposeful and not incidental. Froncillo admitted that since becoming a member of IBT Local 807 in 1991, he was with Malangone on at least nine different occasions. (IO-9 at 11, 12, 16-17, 22-23). In that regard, he repeatedly visited places where he was certain to encounter Malangone and other members of organized crime. Froncillo testified in July 1994 that he saw and greeted Malangone at Dino's Hair Salon two or three times in the prior twelve-month period alone. (IO-9 at 29). In addition, Froncillo admitted going to Pastels Disco, where he knew Malangone worked as manager, at least three times after becoming an IBT member. (Id. at 12, 16-17). Moreover, Froncillo testified that twice in 1994 he stopped at Malangone's office at Pastels in the daytime, when the club was not open for business, to say hello. (Id. at 12, 14).

Further, Froncillo said he attended a December 1993 Christmas party at Pastels where, it appears, he would have seen Malangone. (Id. at 17). In total, Froncillo testified in July 1994 that he had seen Malangone a total of five or six times in 1994. (Id. at 11). Given the length and nature of the relationship, it may be fairly inferred that this relationship

continued after Froncillo's July 1994 testimony; and Froncillo offered no evidence at the hearing that it had terminated.

By seeking out Malangone at Malangone's workplace and going to Dino's where Malangone regularly went, Froncillo ensured that he would meet with Malangone. It makes no difference whether these contacts were social in nature. United States v. IBT, 824 F. Supp. 410, 414 (S.D.N.Y. 1993) (holding purposeful contacts may occur in either a business or social setting), aff'd, 19 F.3d 816 (2d Cir.), cert denied, 115 S.Ct. 199 (1994).

Aside from Malangone, Froncillo admitted in his deposition knowing and meeting with other individuals with ties to organized crime, including Longo, Albanese and Guadagno. (IO-9 at 27-28, 32-33, 34, 37, 44-49). Froncillo's association with these other LCN figures further supports the inference that Froncillo's meetings with Malangone were "not inadvertent, incidental or fleeting." Investigations Officer v. Adelstein, Decision of Indep. Adm'r, slip. op. at 17 (Sept. 14, 1992), aff'd, United States v. IBT, 808 F. Supp. 279 (S.D.N.Y. 1992), aff'd, United States v. IBT, 998 F.2d 120 (2d Cir. 1993).

As to Longo, as noted, the FBI considers him to be a soldier in the Genovese LCN Family with close ties to Malangone. (IO-3 at ¶ 43; Tr. 15-16). FBI Special Agent James Kossler previously identified Longo as a Genovese soldier during his August 1988 trial testimony in the proceeding entitled United States v. Local 359, et al., 87 Civ. 7351 (S.D.N.Y.).⁸ (Decl. Ex. 17 at 881-

⁸ In United States v. Local 1804-1, Int'l Longshoremen's Ass'n, 90 Civ. 0963 (S.D.N.Y.), criminal investigator Kenneth J. McCabe of the U.S. Attorney's Office for the
(continued...)

82). Cafaro corroborated this. In a February 23, 1987, statement provided to the FBI, Cafaro described a 1984 incident where Malangone, Contaldo (who then headed the crew now led by Malangone) and Longo asked Cafaro to mediate a potential dispute between the Genovese and Luchese LCN Families concerning a "numbers spot" Malangone, Contaldo and Longo opened in Brooklyn near a gambling business operated by Anthony "Buddy" Longo, a Luchese LCN Family Capo. (Decl. Ex. 19). In addition, law enforcement officials observed Longo on numerous occasions with other members of organized crime, including at Gotti's 1989 Christmas party at El Caribe and his October 27, 1989, birthday party at the Ravenite social club. (Decl. Exs. 8 & 10). Longo also attended the reception held for Frank Malangone at Pastels in April 1989 following his apparent induction into the Genovese Family. (Decl. Ex. 9).

Froncillo acknowledged that Longo has visited his home. (IO-9 at 47). In his July 1994 deposition, Froncillo admitted seeing Longo at least ten times after he began working at the Javits Center, (id. at 45), including five or six times at the coffee shop across the street from M&R Meats in Brooklyn, on which occasions they spoke to each other. (Id. at 27-28). In addition, Froncillo testified that he saw Longo at the Turquoise Club twice and at M&R Meats on three occasions between 1991 and 1992. (Id. at 27-28, 32-33).

⁸(...continued)

Southern District of New York similarly testified in April 1991 that Longo is "a soldier in the Genovese Crime Family." (Decl. Ex. 18 at 755).

As to Guadagno, the FBI also considers him to be a soldier in the Genovese LCN Family, in Malangone's crew. (IO-3 at ¶ 38). According to the FBI, Guadagno served as Contaldo's driver and messenger prior to Contaldo's death in 1989. (Id. at ¶ 39). FBI surveillance of Contaldo in 1985 revealed Guadagno in Contaldo's presence on ten occasions at restaurants, diners, street corners and parked cars. (Id.) Guadagno, along with several other organized crime members, including Malangone and Longo, attended Gotti's Christmas Party at El Caribe in 1988. (IO-12). On November 18, 1989, Guadagno attended Contaldo's wake along with Malangone, Longo and Albanese. (Decl. Ex. 11).

Further as to Guadagno, Froncillo admitted knowing a man known as "Fat Jerry" for ten years. (IO-9 at 46). He testified at his deposition that he had seen "Fat Jerry" five or six times since Froncillo began working at the Javits Center. (Id.) Froncillo further testified that the two men had visited each other's homes in the past. (Id. at 47). Froncillo admitted that he had seen "Fat Jerry" at Malangone's son's wedding at El Caribe in 1990 and at "Rocky's" wake. (Id. at 48). In addition, Froncillo saw "Fat Jerry" two or three times at Dino's and twice at the Turquoise Club since Froncillo began working at the Javits Center. (Id. at 49). Based on the evidence, the "Fat Jerry" that Froncillo associated with was Guadagno. IO-3 at ¶ 38.)

As to Albanese, Froncillo also admitted knowing someone with the nickname "Chinatown". (IO-9 at 34). According to the FBI, Albanese, who is also known as "Chinatown," is a member of the Genovese LCN Family and close associate of Malangone, controlling

some of Malangone's gambling interests in the South Street Seaport. (IO-3 at ¶ 50). Albanese attended the April 16, 1989, reception at Pastels, along with Malangone, Longo and Froncillo, for Frank Malangone. (Decl. Ex. 9). Albanese also attended Contaldo's wake in November 27, 1989, along with Malangone, Longo and Guadagno. (Decl. Ex. 11). In addition, pursuant to a June 27, 1995, indictment in the Southern District of New York charging him and Guadagno with illegal transportation and dealing in explosive materials, as well as conspiracy to commit bank robbery, Albanese pled guilty to both crimes, resulting in his company's expulsion from the Fulton Fish Market. (IO-3 at ¶¶ 55-57; Decl. Exs. 15, 16 & 23).

Froncillo admitted knowing "Chinatown" for ten years. (IO-9 at 34). At his deposition, Froncillo testified to last seeing "Chinatown" a year before, and to seeing him at Pastels once or twice since Froncillo began working at the Javits Center. (Id. at 34-35). He further testified to seeing "Chinatown" at the Turquoise Club a total of three or four times on which occasions they greeted each other. (Id. at 37). As discussed above, on December 17, 1990, Froncillo was observed engaged in a conversation with Malangone and Albanese at the corner of Mulberry and Grand Streets in Manhattan before entering Ruggero's Restaurant on Grand Street where they remained for over one hour. (IO-3 at ¶ 59; Decl. Ex. 24). Based on the evidence, the "Chinatown" that Froncillo associated with was Albanese.

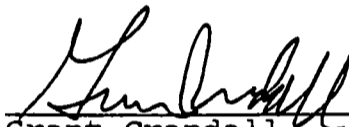
Froncillo's contacts with LCN members Longo, Guadagno and Albanese, given their relationships with Malangone, supports the

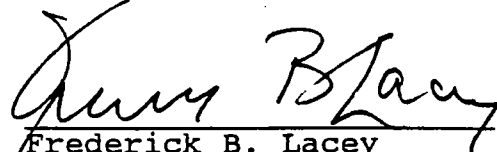
inference that his associations with Genovese LCN Capo Malangone were purposeful, and not incidental, fleeting or unknowing. See, e.g., Investigations Officer v. Lauro, Decision of the Indep. Adm'r, slip op. at 6 (November 14, 1995), aff'd, United States v. IBT, 910 F.Supp. 139 (S.D.N.Y. 1996) (holding Lauro's knowledge of contacts between Malangone and Longo with other LCN figures supports the conclusion that his contacts were purposeful).

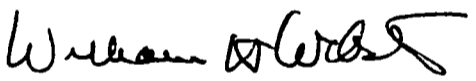
CONCLUSION

Based upon the foregoing, the evidence has established that Dominic Froncillo brought reproach upon the IBT and violated the IBT Constitution by knowingly associating with members of Organized Crime. Accordingly, Froncillo is permanently barred from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Froncillo also may not hereafter obtain employment, consulting or other work with the IBT or any IBT-affiliated entity.

Members of the
Independent Review Board


Grant Crandall


Frederick B. Lacey


William H. Webster

Date: July 2, 1996

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,
Plaintiff,

-against-

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, et al.,
Defendant.

MEMORANDUM & ORDER
88 Civ. 4486 (DNE)

-----X
IN RE: APPLICATION XXXIII OF THE
INDEPENDENT REVIEW BOARD
-----X

EDELSTEIN, District Judge:

This opinion emanates from the voluntary settlement of an action commenced by plaintiff United States of America against, inter alia, defendants International Brotherhood of Teamsters ("IBT") and the IBT's General Executive Board embodied in the voluntary consent order entered March 14, 1989 (the "Consent Decree"). Pursuant to the Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters ("IRB Rules"), ¶ 0, the Independent Review Board ("IRB") has made an application to this Court seeking approval of its decision in this matter.

Application XXXIII presents for this Court's review the decision of the IRB regarding disciplinary charges brought against Dominic Froncillo ("Froncillo"), a former member of IBT Local 807 ("Local 807" or "the Local") located in Long Island City, New York. These charges are contained in an investigative

report issued by the IRB on February 14, 1996.¹ In this report, the IRB charged Froncillo as follows:

While an IBT member you brought reproach upon the IBT and violated your membership oath in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) [of the IBT Constitution] to wit:

While a member of IBT Local 807, you knowingly associated with members of organized crime including, but not limited to, Alphonse Malangone.

(Proposed Charges Against Former Local 807 Member Dominic Froncillo ("Proposed Charges") (Feb. 14, 1996), at 19.) The IRB forwarded these charges and its report to the IBT on February 14, 1996. (Letter from John J. Cronin, Jr., Independent Review Board Administrator, to International Brotherhood of Teamsters General President Ron Carey (Feb. 14, 1996).)

By letter dated February 15, 1996, the IBT referred the charges against Froncillo back to the IRB. On February 16, 1996, the IRB served upon Froncillo a "Notice of Hearing" (the "Notice"), informing him that a hearing in this matter was scheduled for March 28, 1996, in the IRB's offices in Washington, D.C. (Letter from John J. Cronin, Jr., Independent Review Board

¹ The IRB is vested with broad investigatory and disciplinary powers. The IRB's investigatory authority is coextensive with that of the General President and the General Secretary-Treasurer under the IBT Constitution and applicable law. See February 2, 1994, Memorandum & Order, 842 F. Supp. 1550, 1551-52 (S.D.N.Y. 1994); see also August 19, 1991, Opinion & Order, 803 F. Supp. 761, 768 (S.D.N.Y. 1992), aff'd in relevant part, 998 F.2d 1101 (2d Cir. 1993). Under the Consent Decree, the IRB must use this authority, among other things, to investigate allegations of corruption within the IBT, allegations of influence by La Cosa Nostra or other organized crime groups upon IBT members or activities, and any failure of IBT members or leadership to cooperate fully with the IRB. 842 F. Supp. at 1551-52; see Consent Decree § G(a).

Administrator, to Dominic Froncillo (Feb. 16, 1996).) The Notice also informed Froncillo that, at his hearing, he could "present any evidence relevant to defense of the charges against [him]."

Id. In addition, the Notice notified Froncillo of his "right to be represented at the hearing by counsel or by an IBT member."

Id.

On February 20, 1996, Froncillo acknowledged his receipt of the Notice, and requested that the hearing be held in New York instead of Washington, D.C. (Letter from Dominic Froncillo to John J. Cronin, Jr., Independent Review Board Administrator (Feb. 20, 1996).) On February 23, 1996, the IRB informed Froncillo that his request had been approved, and that his hearing now was scheduled for April 23, 1996, in Manhattan. (Letter from John J. Cronin, Jr., Independent Review Board Administrator, to Dominic Froncillo (Feb. 23, 1996).) On March 26, 1996, the IRB telephoned Froncillo's residence to confirm Froncillo's receipt of the IRB's February 23, 1996, letter. (Letter from John J. Cronin, Jr., Independent Review Board Administrator, to Dominic Froncillo (Mar. 26, 1996).) The IRB's March 23, 1996, letter states that "[t]he woman who answered the [phone] call stated that you received [the] February 23, 1996 letter . . . and, as far as she knew, you plan to be at the April 23, 1996[,] hearing in New York." Id.

On April 23, 1996, the IRB held a hearing on the charges against Froncillo in Manhattan (the "hearing"). Froncillo appeared at the hearing without counsel. At the hearing, the

Chief Investigator presented the IRB with exhibits, including a declaration by FBI Special Agent Brian F. Taylor ("Taylor"), and heard brief testimony from Taylor. (Opinion and Decision of The Independent Review Board, In re: Dominic Froncillo ("IRB Opinion & Decision") at 1 (July 2, 1996).) Taylor has been "an expert witness" in numerous organized crime trials and "has worked for the FBI for over nineteen years, eighteen of those conducting organized crime investigations." Id. at 2 n.2. Because Froncillo elected not to testify, "the evidence tendered by the Chief Investigator was uncontradicted and unchallenged by Froncillo." Id. at 1-2.

One of the exhibits presented to the IRB was a deposition given by Froncillo on April 29, 1994. Id. at 1; (Proposed Charges at Exh. 7, at 4.) This deposition was taken by Charles M. Carberry, Esq., the Chief Investigator of the IRB. (Proposed Charges at Exh. 7, at 1.) At his deposition, Froncillo testified that he began "shaping" at the Jacob Javits Center (the "Javits Center") on July 3, 1990. (IRB Opinion & Decision at 2.) He subsequently became a member of Local 807 on February 19, 1991. Id. From that date forward, Froncillo worked as a Local 807 member in the Local's trade show division, working at the Javits Center and at conventions at various hotels. Id. On January 19, 1996, Local 807 suspended Froncillo for failing to pay union dues for a six-month period commencing in August 1995. Id. Prior to working at the Javits Center, Froncillo was unemployed for between one and two years following a five to ten-year employment

with Mannix Industries in Long Island, in a non-union job installing aluminum windows. Id.

Froncillo also testified at his deposition that he knew Alphonse ("Ally Shades") Malangone ("Malangone") for ten to fifteen years. Id. at 5. The Chief Investigator presented the IRB with substantial evidence that Malangone was a member of the Genovese La Cosa Nostra ("LCN") Family. For example, according to Taylor's declaration, Malangone is a "Capo" in the Genovese LCN Family. Id. at 2; (Proposed Charges at Exh. 3, at 8.) In addition, Malangone's ties to organized crime are well-publicized. (IRB Opinion & Decision at 7.) In April 1988, the United States Senate's Permanent Subcommittee on Investigations issued a report publicly identifying Malangone as a member of the Genovese LCN Family. Id. The New York Daily News and The New York Times also have reported Malangone's ties to organized crime. Id. Moreover, Malangone's ties to organized crime have been corroborated by self-admitted members of the Gambino LCN Family, such as Salvatore ("Sammy the Bull") Gravano ("Gravano") and Vincent Cafar, as well as by Alphonse D'Arco, the former "acting Boss" of the Luchese LCN Family. Id. at 2. Gravano described Malangone as a Genovese "Family Captain . . . [who] is into Shylocking, gambling, the Fulton Fish market, a Brooklyn disco, and the Javits Center." Id. at 3. Law enforcement officials also have observed Malangone with other LCN members, including Gambino LCN Family Boss John Gotti ("Gotti") and Gravano. Id. at 2-4.

In addition, the Chief Investigator presented the IRB with evidence that Malangone associated with organized crime figures on many occasions over a substantial period of time. For example, Malangone attended a number of "organized crime celebrations." Id. at 4. First, on December 20, 1988, Malangone attended Gotti's Christmas party at the El Caribe Country Club in Brooklyn, New York. Id. Second, On April 16, 1989, detectives of the Kings County District Attorney's Office surveilled Pastels Disco, a Brooklyn disco which Malangone managed. Id. On that night, the FBI believes that a reception was held to celebrate the induction of Malangone's son Frank into the Genovese LCN Family. Id. Third, on October 27, 1989, the Organized Crime Task Force observed Malangone arriving with Genovese LCN Family member Alan Longo ("Longo") at the Ravenite Social Club in New York City for Gotti's birthday. Id. Fourth, on November 18, 1989, New York City Police Department detectives observed Malangone at the Scarpaci Funeral Home in Brooklyn for the wake of "Crazy" Tommy Contaldo, a former member of the Genovese LCN Family. Id. at 2, 5. Fifth, on February 28, 1990, detectives from the Waterfront Commission of New York Harbor surveilled the 461 Court Street Club in Brooklyn, the Gambino LCN Family social club. Id. at 5. The detectives witnessed Malangone meeting at the club with a large number of LCN figures, including Gotti, and other individuals who the FBI considers Gambino LCN Family members: Anthony Ciccone, Jerry Brancato, Anthony Pimpinella and Anthony Anastasio. Id. Sixth, on September 19, 1992, law

enforcement officials observed Malangone at the wedding reception of Daniel Marino, Jr., the son of Gambino LCN Family Capo Daniel Marino, Sr., at the Garden City Hotel. Id. at 4-5.

In addition, the evidence presented to the IRB demonstrates that Froncillo had contact with Malangone over several years. For example, Malangone invited, and Froncillo attended, Malangone's son's wedding during July 1990, at the El Caribe Club. (IRB Opinion & Decision at 5.) Malangone also attended Froncillo's father's wake in July 1992. Id. Moreover, Froncillo admits that after he became an IBT member, he saw Malangone between ten and twenty times at Pastel's Disco ("Pastel's"), which Malangone managed. Id.; (Proposed Charges at 11.) Several of these visits occurred in private, during non-business hours, when Pastel's was closed to the public. (IRB Opinion & Decision at 6.) In addition, on April 16, 1989, law enforcement officials surveilling Pastel's during the reception following Frank Malangone's induction into the Genovese LCN Family observed a white 1981 Cadillac in Pastel's parking lot tht was registered to Froncillo's wife. Id.

Froncillo was also observed in the company of Malangone and his associates on December 17, 1990. Id. On this date, the New York City Police Department's Organized Crime Intelligence Division ("OCI") conducted a surveillance of Malangone. Id. During this surveillance, OCI observed Froncillo speaking to Malangone, Elio "Chinatown" Albanese, Longo, and John Giangrande, all of whom the FBI considers to be Genovese LCN Family members,

at the corner of Mulberry and Grand Streets in Manhattan. Id. The OCI observed all four men enter Ruggero's Restaurant ("Ruggero's") on Grand Street, and remain there for over one hour. Id. After leaving Ruggero's, the OCI witnessed Froncillo, Malangone, and Giangrande walk to 171 Mulberry Street, which the FBI believes to be a "known Genovese LCN Family social club." Id. at 6-7.

Finally, Froncillo testified that he has had several contacts with Malangone at Dino's Hair Salon ("Dino's") in Brooklyn since becoming an IBT member. Id. at 8. According to the FBI, members of the Luchese, Gambino, and Genovese LCN Families have frequented Dino's for the past fifteen years. Id. In his deposition, Froncillo stated that he went to Dino's "once every two months." Id. Froncillo admitted seeing and greeting Malangone at Dino's two or three times in the twelve months prior to his deposition. Id.

Based on the evidence presented at the hearing, the IRB found that "the evidence established that Dominic Froncillo brought reproach upon the IBT and violated the IBT Constitution by knowingly associating with members of organized crime." Id. at 19. First, the IRB "determine[d] that Malangone's membership in the Genovese LCN Family was clearly established." Id. at 10. The IRB found the hearsay evidence presented to it at the hearing to be reliable. Id. It further noted that, in an earlier decision, the IRB found Malangone to be a Genovese LCN Family member. Id. at 10 n.7. The IRB stated that "[i]n Investigations

Officer v. Lauro, the [IRB], in permanently barring Lauro from the IBT based upon his 'knowing association' with Malangone and Longo, concluded that Malangone was a Genovese LCN Family member." Id. (citing Decision of the Independent Review Board, slip op. at 2-3, 7 (Nov. 14, 1995), aff'd, United States v. IBT, 910 F. Supp. 139 (S.D.N.Y 1995)).

Next, the IRB found that, in light of the evidence presented to it, "Froncillo's knowledge of Malangone's ties to organized crime was established." Id. at 12. The IRB noted that Malangone's LCN membership was reported by the United States Senate and by local newspapers. Id. Moreover, the IRB found that "given their longstanding friendship, Froncillo's knowledge of Malangone's ties to organized crime may be inferred from the length and nature of his relationship with Malangone, which included Froncillo and Malangone meeting in the company of other LCN members." Id. (citation omitted).

Having held that the charges against Froncillo had been proved, and having considered the gravity of the charges, the IRB permanently barred Froncillo from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Id. at 19. The IRB further ruled that Froncillo may not hereafter obtain employment, consulting or other work with the IBT or any IBT-affiliated entity. Id.

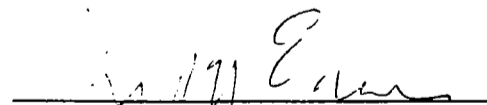
This Court received IRB Application XXXIII, consisting of the IRB's Opinion and Decision concerning Froncillo together with supporting exhibits, on July 3, 1996. By letter dated July 12,

1996, Chambers notified Froncillo that if he wished to object to the IRB's findings and rulings, he could submit any objections to IRB Application XXXIII to this Court no later than ten days from the date of the letter. (Letter from Jennifer A. Meyer, Law Clerk to the Honorable David N. Edelstein, United States District Judge for the Southern District of New York, to Dominic Froncillo (July 12, 1996) (on file with Clerk of the Southern District of New York).) This Court received no response from Froncillo.

Having carefully reviewed the IRB's Opinion and Decision, as well as the exhibits attached thereto, this Court finds that the IRB's decision is not arbitrary and capricious. See IRB Rules, ¶ 10 ("[i]n reviewing actions of the IRB, this Court shall apply the same standard of review applicable to review of final federal agency action under the Administrative Procedure Act"); see also May 6, 1994 Opinion & Order, slip op. at 4 (S.D.N.Y 1994). This Court finds that the IRB received adequate proof that Malangone was a member of organized crime. In addition, this Court finds that the IRB sufficiently established that Froncillo knew that Malangone was an organized crime member. This Court further finds that the Chief Investigator presented the IRB with proof that Froncillo knowingly associated with Malangone. Accordingly, the decision of the IRB is affirmed in its entirety.

SO ORDERED.

DATED: New York, New York
December 9, 1996


U.S.D.J.