

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	88 Civ. 4486 (DNE)
	:	
Plaintiff,	:	APPLICATION XXIII OF THE
	:	INDEPENDENT REVIEW BOARD
v.	:	--OPINION AND DECISION OF
	:	THE INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD	:	IN THE MATTER OF THE
OF TEAMSTERS, et al.,	:	HEARING ON CHARGES AGAINST
	:	MICHAEL PORTA, JR.
Defendant.	:	
	:	

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 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 June 7, 1995, and thereafter determined, on the charge filed against Michael Porta, Jr. ("Porta").

Porta 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 the post-hearing submissions, the IRB found that the charge against Porta of knowingly associating with members of La Cosa Nostra has been proved.

As a penalty, Porta was permanently barred from membership in the IBT.

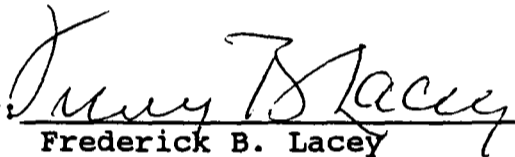
Given the IRB's determination, we do not find it appropriate to stay our decision and the penalty imposed pending review by Your

Honor as we found it in the best interest of the IBT that Porta immediately be barred from IBT membership.

Enclosed with the September 29, 1995, Opinion are the following exhibits:

- 1) January 30, 1995, IRB Investigative Report (w/exhibits 1-43);
- 2) June 7, 1995, Porta Hearing Transcript (w/exhibits 1-10).

It is respectfully requested that an Order be entered affirming the IRB's September 29, 1995, Opinion, if Your Honor finds it appropriate.

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

Dated: September 29, 1995

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In re: Michael Porta, Jr. : OPINION AND DECISION OF  
: THE INDEPENDENT REVIEW  
: BOARD  
-----X

On January 30, 1995, the Independent Review Board ("IRB") transmitted an investigative report concerning allegations of wrongdoing by Local 807 member Michael Porta, Jr. ("Porta") to the International Brotherhood of Teamsters ("IBT") General President Ron Carey for appropriate action. The IRB report recommended that a charge be filed against Porta for bringing reproach upon the IBT by knowingly associating with members of organized crime, more specifically, members of the Gambino Family of La Cosa Nostra ("LCN"), 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 dated January 31, 1995, the IBT referred this charge back to the IRB for adjudication. On June 7, 1995, the IRB held a hearing on the charge against Porta in New York City and post-hearing briefing has been completed. Our decision follows.

The bulk of Porta's working life has placed him in positions where he has had contact with persons engaged in organized crime. Thus, for 35 years, Porta, until his conviction in February 1990 and his resulting ban from employment on the Waterfront, was a member of ILA Local 1814. (Tr. 41; IO-1 at 4-5).<sup>1</sup> For 22 of those

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<sup>1</sup> "Tr." refers to the transcript of the June 7, 1995, hearing; "IO" refers to Investigations Officer's Exhibits; and "Decl. Ex." refers to the Exhibits to the Declaration of FBI Supervisory Special Agent Brian Taylor, which is IO-2.

At the hearing, FBI Special Agent Russo testified that in arriving at his conclusions concerning the individuals named in the charge, he relied upon the exhibits to Special Agent Taylor's Declaration.

years Porta also served as a Delegate with ILA Local 1814. (Tr. 64-65; IO-1 at 5). He was also appointed trustee of several ILA pension and benefit funds during this time. (Tr. 64-65). For at least the period of Porta's ILA membership, ILA Local 1814 was under the control and influence of the Gambino LCN Family<sup>2</sup> See testimony of FBI Special Agent Russo. (Tr. 17-18).<sup>3</sup> During this same time, Porta had longstanding friendships with LCN Gambino Family members that worked for ILA Local 1814, including Anthony Ciccone ("Ciccone") and Anthony Anastasio ("Anastasio"). (Tr. 40, 41, 71; IO-1 at 16-17; IO-11 at 35-36).<sup>4</sup>

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<sup>2</sup> In United States v. Gallo, 86 Cr. 452 (E.D.N.Y), aff'd, 863 F.2d 185 (2d Cir. 1988), cert. denied, 109 S. Ct. 1539 (1989), the government established the existence of the Gambino organized crime Family.

<sup>3</sup> Special Agent Russo has worked for the FBI for seventeen years, sixteen of those conducting organized crime investigations. He is currently the Acting Supervisor of the Gambino Organized Crime Squad, where he has worked since January 1990. Special Agent Russo has testified as an expert witness in organized crime trials in the past. (IO-22).

<sup>4</sup> During his employment with ILA Local 1814, Porta also had contact with Anthony Pimpinella (Executive Vice-President of ILA Local 1814), Anthony Scotto (President), Jerome Brancato, Manuel LoPorto and Frank Dapolito, who worked on the Waterfront. (IO-1 at 12, 21-25, and 36-38). The FBI considers all of these men to be members of the Gambino LCN Family. (Tr. 14-16). Self-admitted Gambino LCN Family Underboss Salvatore Gravano has corroborated the Gambino LCN Family membership of Ciccone (Capo), Pimpinella (soldier in Ciccone's crew), Brancato (soldier in Ciccone's crew), Anastasio (soldier in Ciccone's crew), Scotto (former head of Ciccone's crew) and Dapolito (Capo). (Decl. Ex. 1 at 4375; Decl. Ex. 14; Decl. Ex. 16). Porta testified that he has known Pimpinella for forty years and heard about his involvement in organized crime. (IO-1 at 13-15). Porta stated that while working at ILA Local 1814, he knew Scotto was convicted of labor racketeering. (TR. 75; IO-1 at 21-23). Porta also testified that he has known Dapolito for 35-40 years, and said "Manny Butch" LoPorto was a friend for many years. (IO-1 at 36-39).

According to a report by the President's Commission on Organized Crime, the Gambino LCN Family took control of the ILA and the Brooklyn Waterfront in 1937 when Albert Anastasia, the purported head of the infamous "Murder Incorporated," assumed control of six ILA Locals. (Decl. Ex. 39 at 36). In 1953 the American Federation of Labor expelled the ILA, after a 60-year affiliation, because the ILA permitted criminal elements to "destroy its integrity and its trade union character and... failed to rid itself of corrupt elements." (Decl. Ex. 39 at 37).

In or about 1956, Albert Anastasia surrendered control of ILA Local 1814 to his brother Anthony. (Id.) When Anthony died in 1963, his son-in-law, Anthony Scotto ("Scotto"), became ILA Local 1814's President. (Id.) Scotto was a Gambino LCN Family Capo and remained President of ILA Local 1814 until his 1980 conviction for labor racketeering. (Id.). During Scotto's tenure, Gambino LCN member Anastasio, nephew of both Albert and Anthony, served as Executive Vice-President of ILA Local 1814. (Id.). In 1980 Anastasio and Scotto were convicted of labor racketeering for receiving illegal employer payoffs. (Decl. Ex. 40 at 46).

Porta stated that he worked with Scotto for many years on the Waterfront and visited Scotto's home for a social function (IO-1 at 22-23); that Anastasio was a friend of forty years (IO-11 at 35-36); and that he continued to have contact with Anastasio after Anastasio's conviction. (IO-1 at 19; IO-11 at 36; Tr. 68-69).

Notwithstanding the foregoing convictions, described in more detail below, Gambino LCN Family members maintained control over ILA Local 1814 throughout Porta's employment there. In an interview with the FBI on July 29, 1992, Gambino Underboss

Salvatore Gravano ("Gravano") confirmed that Gambino LCN Family Boss John Gotti ("Gotti") controlled the "ILA and the piers in Brooklyn" through Ciccone. (Decl. Ex. 16). Porta, who does not deny knowing of the allegations of Ciccone's LCN connection, described Ciccone as a friend "for at least forty years." (IO-1 at 16).

As part of its continuing effort to rid the Waterfront and the ILA of organized crime influence, in February 1990 the United States instituted a civil RICO suit against ILA Local 1814 and five other Locals. The complaint alleged an "unholy alliance" among the ILA, Union Officials, Waterfront businessmen, members of the Genovese LCN Family in New Jersey, and members of the Gambino LCN Family in Brooklyn and Manhattan. (IO-8). Individual ILA Local 1814 defendants included Ciccone, Anastasio, Pimpinella and Joseph Colozza. (Id.).

On December 17, 1991, ILA Local 1814 entered into a Consent Decree settling the civil RICO case against it and the Court appointed a Monitor to oversee certain of its operations.<sup>5</sup> (IO-10 at 3). Pursuant to this Consent Decree, Ciccone, Colozza and Pimpinella agreed to resign permanently from all positions with Local 1814, and any other ILA-affiliated entities, and were barred from any future employment on the Waterfront. (IO-10 at 15-16).

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<sup>5</sup> After a trial, Judge Sand found that since the 1950's the Gambino and Genovese LCN Families had an "arrangement" whereby the Gambino Family would dominate the Brooklyn piers and the Genovese Family the New Jersey piers. See United States v. Local 1804-1, Int'l Longshoreman's Assoc., 812 F. Supp. 1303, 1312 (S.D.N.Y. 1993). According to Judge Sand, their activities included extortion from employers seeking the "privilege of doing business on the Waterfront and illegal payoffs to union officials to gain unlawful advantage over their competitors." Id.

A default judgment was entered against Anastasio prohibiting any future dealings with the ILA and he was ordered to make restitution. (IO-9).

In 1990, the United States also charged Porta with receiving illegal benefits while a trustee of ILA Local 1814 benefit plans. His cousins Joseph and Robert Colozza were also charged. On February 2, 1990, Porta pleaded guilty to using his position as a fund trustee to receive knowingly and wilfully economic advantage in the form of loans and commissions from the banks in which he deposited employee benefit funds, in violation of 18 U.S.C § 1954. (IO-4 at 46-47; IO-5). On April 18, 1990, Porta was sentenced to two years probation, 300 hours of community service and a \$3,000 fine. (IO-12). As a result of this conviction, pursuant to 29 U.S.C. § 504, Porta was barred for a period of thirteen years from, among other things, serving as an officer or employee of any labor organization. (IO-5 at 2; Tr. at 72). Further, he was effectively barred from working on the Waterfront as the Waterfront Commission would not license him. (Tr. 73).

Three years after Porta's conviction, in United States v. Local 1804-1, Int'l Longshoremen's Assoc., 812 F. Supp. 1303, 1313 n.13 (S.D.N.Y. 1993), Judge Sand termed the scheme Porta participated in as a "[t]wenty-year bank manipulation of union benefit funds by ILA Officers and LCN associates."<sup>6</sup>

Notwithstanding his conviction, and though barred from working on the Waterfront, Porta quickly began employment at the Javits

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<sup>6</sup> The Government presented evidence in Int'L Longshoreman's Assoc. that Porta received pay-offs from an employer called Express Industries to maintain labor peace on the Waterfront. (Decl. Ex. 43 at 459-61).

Center in New York city as a member of IBT Local 807 in March 1990, one month after his guilty plea. (Tr. 42).

Like the Waterfront, jobs at the Javits Center were under the influence of organized crime, this time exercised through IBT Local 807. Vincent 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 Governmental Affairs, explained:

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).<sup>7</sup>

(IO-1 at 884).<sup>8</sup>

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<sup>7</sup> Cafaro's Affidavit is an exhibit to the April 1988 report by the Permanent Subcommittee on Investigations, Organized Crime: Twenty Five Years After Valachi. Cafaro had a "numbers" business in West Harlem that netted him \$2 million a year, which he split with Genovese LCN Family Boss "Fat" Tony Salerno. (IO-13 at 880) Cafaro said that the Genovese LCN Family made a lot of money from gambling "but our real power, our real strength, came from unions." (Id. at 881).

<sup>8</sup> Gravano also stated in a Declaration that Alphonse "Ally Shades" Malangone is a Genovese Family captain who is into "shylocking, gambling . . . and the Javits Center." Decl. Ex. 14 ¶ 2). Porta testified that he has known "Ally Shades" Malangone for fifteen or twenty years from the Waterfront and has seen and spoken with "Ally Shades" since working at the Javits Center, the last time being approximately one year prior to Porta's July 1994 examination under oath. (IO-11 at 44-45). The FBI considers Malangone to be a Capo in the Genovese LCN Family. (Tr. 14-16).



Recent proceedings before the IRB have indicated that the LCN has had extensive influence over IBT Local 807 and with the Javits Center. On May 31, 1994 Robert Rabbitt, Sr., the Local 807 Foreman who ran the "shape" at the Javits Center, settled with the IRB charges made against him (for taking payoffs from exhibitors) by resigning from the IBT for a period of five years. Rabbitt also pleaded guilty to a criminal charge on June 8, 1994 (falsifying business records) and was sentenced to 1-1/2 to 3 years in prison.<sup>9</sup> On May 26, 1994 the IRB found that Charles Zancocchio, also a Local 807 member employed at the Javits Center, 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, another Local 807 member working at the Javits Center, was also a Bonanno LCN Family member. He too was permanently barred from the IBT.<sup>10</sup>

As we have noted, in March 1990, Porta quickly became a member of IBT Local 807 and found a job at the Javits Center. (IO-1 at 8; Tr. 42).

We find that Porta knowingly associated with Gambino LCN Family Capo Ciccone while a member of IBT Local 807 and that Ciccone at all relevant times has been a "Capo" or "Caporegime" in the Gambino LCN Family. (Tr. 14-16).

At his deposition in Int'l Longshoremen's Assoc., Ciccone admitted knowing several Gambino LCN members including Gotti, Paul Castellano, Anastasio and Gravano. (Decl. Ex. 4 at 4, 13, 14-15,

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<sup>9</sup> Porta described Rabbitt as a friend. Rabbitt helped Porta get on the shape list at the Javits Center. (IO-1 at 9).

<sup>10</sup> Porta knew Rea for "a good thirty-five, forty years" prior to getting a job at the Javits Center. (IO-1 at 30).

37). In an intercepted conversation on January 17, 1986, Gotti discussed Ciccone's status in the Gambino Family and the delivering of funds by Ciccone to other Family members, including Castellano and Gotti, from "scores" he made on the docks. (Decl. Ex. 6 at 4, 9). At the trial in United States v. John Gotti and Frank Locassio, 90 Cr. 1051 (E.D.N.Y.), Gravano testified that Gotti in 1986 named Ciccone Capo of a Family Crew formerly headed by Scotto, and that Ciccone runs the piers and controls the unions and docks for the Gambino Family. (Decl. Ex. 1 at 4077-78, 4370). According to Gravano, Ciccone maintained control over the longshoremen's union through "his position" with the union and through members of the Gambino LCN Family in the union who answered to him. (Decl. Ex. 1 at 4370-71).

Ciccone was on the Executive Board of ILA Local 1814 from 1967 until he resigned in 1980 after the Waterfront Commission determined that he had violated the Taft-Hartley Act, 29 U.S.C. § 186, and New York Labor Law § 723, for making personal use of union property. See Ciccone v. Waterfront Comm'n, 52 N.Y.S.2d 913, 437 N.Y.S.2d 661 (1981). Subsequently, Frank Lonardo, the president of Local 1814, arranged for Ciccone to be hired as his assistant. (Decl. Ex. 4 at 43-44).

Like Anastasio and Pimpinella, Ciccone was a named defendant in the 1990 Int'l Longshoremen's Assoc. case. As we have noted, as part of the Consent Decree entered into by ILA Local 1814 on December 17, 1991, Ciccone agreed to resign permanently from all positions with Local 1814 and was permanently barred from any employment by any entity doing business on the Waterfront. (IO-10 at 15). In an October 17, 1994 Declaration submitted in connection

with the Government's motion to hold Ciccone in contempt for violating this Consent Decree, Gravano described some of Ciccone's activities as Gambino LCN Capo. These included attending a meeting of Gambino Family Captains after the Paul Castellano murder, attending meetings with other LCN Families on behalf of the Gambino Family, illegal gambling and loansharking, and controlling the piers for the Gambino Family. (Decl. Ex. 14 at 2-5). According to Gravano, Ciccone reported personally to Gotti. (Decl. Ex. 14 at 4).

Ciccone used a social club at 461 Court Street in Brooklyn, New York as his headquarters. (Tr. 36). According to the testimony of Special Agent Russo, which we find credible and accept, Ciccone met members of his crew at the club, as well as members of other LCN Families, for the purpose of conducting labor racketeering, gambling, loansharking, and other illegal activities. (Tr. 36). The FBI has observed Ciccone at 461 Court Street on numerous occasions with other organized crime persons.<sup>11</sup> In addition, Matteo Ruggiero ("Ruggiero"), who the FBI believes is an associate of the Gambino LCN Family in Ciccone's crew (Tr. 27-28), stated in a deposition on August 6, 1993 that he sees Ciccone at that social club usually every day. (Decl Ex. 22 at 127-30). Ruggiero also said that he saw Gotti there approximately six or

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<sup>11</sup> For example, on February 28, 1990 Ciccone and LCN members Pimpinella, Alphonse Malangone and Brancato, among others, were observed together at 461 Court Street. (Decl. Ex. 23) And on June 8, 1992 Ciccone was observed exiting 461 Court Street, looking around and going back into the club. (Decl. Ex. 30). Also observed on June 8, 1992 were Anastasio and Ruggiero. (Id.)

seven times. (Decl. Ex. 22 at 54-56, 183-84).<sup>12</sup> Gravano has identified 461 Court Street as "Cicccone's Social Club." (Decl. Ex. 14 ¶ 6).

Given the reliability of the hearsay evidence we have considered, we find that Cicccone is a member of LCN, specifically, the Gambino LCN Family. Since Porta began working at the Javits Center in March 1990 as a member of IBT Local 807, by his own admission, he has seen Cicccone approximately ten times (IO-1 at 18; Tr. 49). After being questioned by the IRB's Investigator in April 1994 about Cicccone's organized crime ties and his contacts with Cicccone, Porta attended Cicccone's son's wedding at the El Caribe in June 1994. (Tr. 52-53; IO-11 at 20-21, 67). Indeed, Cicccone, in inviting Porta to the wedding, sent the invitation to Porta's home. (IO-11 at 20-21). Porta also testified that he spoke with Cicccone at the wedding and asked Cicccone "how come none of the ILA people [they] worked with were at the wedding." (IO-11 at 24). According to Porta, Cicccone said they (meaning the ILA people) "were not allowed at the wedding." (IO-11 at 24-25).

Porta testified that since starting employment at the Javits Center, he has been in the social club at 461 Court Street from two to five times.<sup>13</sup> (Tr. 47-48). When asked for what purpose he went to the social club, Porta said that he would be in the neighborhood

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<sup>12</sup> Porta said that he knows Ruggiero from working on the Waterfront. He also admitted seeing Ruggiero "once or twice" on Court Street since Porta began working at the Javits Center. (IO-1 at 41-41).

<sup>13</sup> At his first examination in April 1994, Porta testified that since March 1990 he had gone to Cicccone's club three or four, "possibly five" times. (IO-1 at 28). At his next examination in July 1994, and at the hearing in June 1995, Porta reduced it to two times. (Tr. 47; IO-14 at 14).

and run into people he knew, and get invited into the club for coffee. (IO-1 at 28-29; IO-11 at 14-15). Given the nature of this "club," we do not find his explanation credible.

During his testimony in United States v. Rastelli, 85 CR 354 (E.D.N.Y.), FBI Special Agent Pistone, who worked undercover for five years investigating organized crime, described the function of a social club for organized crime members and associates as "a members only type gathering place for individuals of a certain crew." (Decl. Ex. 20 at 2294). The club at 461 Court Street is considered by the FBI to be Ciccone's headquarters. While Porta contended that he was merely invited inside for a cup of coffee on the occasions of his visits (Tr. 80), the very fact of his familiarity with the club - and his visits - speak volumes as to continuing his associations with LCN members.

Aside from his visits to the club at 461 Court Street, and attending Ciccone's son's wedding, Porta also stated during his first sworn examination on April 26, 1994 that he saw Ciccone in the Fall of 1993. (IO-11 at 17). Porta explained that he saw Ciccone as he was driving down the street in Brooklyn and Porta "stopped to say hello to him." (Id.) Porta testified that before that, he saw Ciccone "two, three, four" months before. (Id.) Porta has also testified that he saw Ciccone two or three times in 1993 and "at least twice" in 1994. (IO-11 at 20-22).

Porta, in his deposition, testified that Ciccone has been a friend of his thirty-forty years. (IO-1 at 16; IO-11 at 19). He knows Ciccone by the nickname "Sonny". (IO-11 at 19). He met Ciccone when he, Porta, joined the ILA and they "worked together on the Waterfront." (IO-1 at 16; IO-26). Porta acknowledged

attending not only Ciccone's son's wedding, but his daughter's wedding as well. (IO-11 at 20-21).

Porta's knowledge of Ciccone's membership in organized crime cannot be doubted. It has been well publicized. In April 1988, a Permanent Subcommittee on Investigations report publicly identified Ciccone as a member of the Gambino LCN Family. (IO-17). In addition, there have been several newspaper reports over the years concerning Ciccone's organized crime ties. (Decl. Ex. 12). For example, in a December 19, 1991 New York Times article concerning the appointment of a monitor over ILA Local 1814, Ciccone is identified as a "top member of the Gambino crime family and a close associate of Mr. Gotti." (Id.) And in an October 25, 1993 New York magazine cover story about "How the Feds Got Gotti," Ciccone's picture appears on a chart entitled "Gotti's Gang" with Ciccone's name underneath a caption reading "CAPODECINA".

During his April 1994 deposition, Porta admitted he read stories concerning Ciccone's ties to organized crime up to four years before. (IO-1 at 26-27). And at the hearing before the IRB, Ciccone admitted that he learned of allegations that Ciccone was a member of organized crime in 1991 "when the ILA case was going on." (Tr. 71). When asked what he meant by the ILA case, Porta explained it "was a case brought by the Government . . . against six locals . . . pertaining to organized crime." Id. Porta acknowledged that one of the locals was ILA Local 1814, where he worked with Ciccone. (Id.) Despite reading stories about Ciccone's ties to organized crime, and learning about them from the case against ILA Local 1814 where he worked with Ciccone, Porta never asked Ciccone about these allegations. (Tr. 71; IO-1 at 27).

It is also clear he did not terminate his relationship with Ciccone.

We also find that Porta knowingly associated with Gambino LCN Family member Anastasio while a member of IBT Local 807 and that Anastasio at all pertinent times has been a member of the Gambino LCN Family in Ciccone's "crew". (Tr. 14).

Gravano has identified Anastasio as a "made member in the Gambino Family for as long as I can remember" and a soldier in Ciccone's crew. (Decl Ex. 14 ¶ 19; Decl. Ex. 16).

As we have noted, during Scotto's tenure as President of ILA Local 1814, Anastasio served as Executive Vice-President of Local 1814 (Decl. Ex. 39 at 38); and like Scotto, Anastasio was convicted in 1980 of labor racketeering. See United States v. Scotto, 79 Civ. 32 (S.D.N.Y.), aff'd 641 F.2d 47 (2d Cir. 1980), cert. denied, 452 U.S. 961 (1991). As we have also noted, like Ciccone, Anastasio was also a defendant in the 1990 Int'l Longshoremen's Assoc., and as a result, was prohibited "from participating in or having any future dealings of any nature whatsoever with any officer, agent, representative, employee, or member of the International Longshoremen's Association, or any other labor organization." (IO-8; IO-9).

Anastasio has been observed on many occasions at Ciccone's headquarters at the 461 Court Street Social Club, including times when Ciccone was present. (Decl. Exs. 26, 29, 30, 32-34, 36, 38).

As with Ciccone, we find that Anastasio is a member of LCN, specifically the Gambino Family.<sup>14</sup>

Porta, since joining IBT Local 807, has continued his contacts with Anastasio. He has seen Anastasio between twenty to twenty-five times since working at the Javits Center. (IO-1 at 19).

Porta has known Anastasio for at least forty years and clearly has remained a close friend of Anastasio's, a friendship that included visits to Anastasio's home. He has had numerous contacts with Anastasio in recent years. While he explains these contacts as being solely to purchase airline tickets at Anastasio's travel agency, we find it is unlikely that this was the principal reason for such contacts. Porta resides in Westbury, Long Island, and of course works in Manhattan. On the other hand, Anastasio's travel agency is located in the Bay Ridge or Bensonhurst area of Brooklyn and thus out of the ordinary travel path that Porta would pursue in going to and from his employment. It is also noted that Porta was extremely vague and imprecise as to the number of times he has seen Anastasio in recent years. (IO-11 at 36-37; Tr.43).

There is no doubt that Anastasio has been publicly identified as a member of the Gambino LCN Family. (IO-17). Indeed, there have been several newspaper reports describing Anastasio's organized crime ties and his ties to ILA Local 1814 which the Gambino LCN Family controlled. (IO-18).

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<sup>14</sup> Ruggiero also stated that he usually sees at the 461 Court Street Club Brancato and Pimpinella, soldiers in Ciccone's crew. (Decl. Ex. 14 at 7). Gravano has also identified Ruggiero as "an associate of the Gambino LCN family affiliated with Ciccone's Crew." (Id. at 8).



Porta stated at his April 1994 examination that he had heard allegations that Anastasio was accused of racketeering. (IO-1 at 20); and at the hearing before the IRB, Porta testified that he had heard allegations that Anastasio was a member of organized crime. (Tr. 68). He also knew that Anastasio was convicted in 1980 of labor racketeering for taking money from employees as an officer of ILA Local 1814 during the time Porta too was an officer of ILA Local 1814. (Tr. 67). Porta testified that he visited Anastasio in Danbury Federal Prison in Connecticut in 1981 or 1982. (Tr. 68-69; IO-11 at 19-20); and Porta knew that as a result of Anastasio's convictions, Anastasio, like Porta, was barred from being an officer of a union. (Tr. 69).

While Porta acknowledged at the hearing before the IRB that, as an ILA Local 1814 officer, he had a fiduciary responsibility to prevent organized crime influence (Tr. 77-78), he would have us believe that he never asked Anastasio about the allegations of Anastasio's ties to organized crime. (Tr. 67-68, 78). However, Porta added that "the Anastasio family was always involved with the Waterfront and since I was . . . 13 years old . . . I have known most of these people and it's been in the newspapers and all so I have known it, yes, but I was never told that if they were involved in organized crime or alleged that they could not work for a union." (Tr. 77). Porta then stated that "it's just something you don't do." (Tr. 78).

Porta knew moreover, that "Tough Tony" Anastasia is the brother of Albert Anastasia and was involved on the docks with Scotto and convicted for racketeering. (Tr. 68). Porta added that

"Tough Tony" was Scotto's father-in-law and Anastasio's uncle.  
(Id.).

Based upon the foregoing facts and findings, we have determined that Porta brought reproach upon the IBT by knowingly associating with members of the Gambino LCN Family while a member of Local 807, through contacts that were purposeful and not incidental or fleeting. Investigations Officer v. Senese, Decision of the Independent Administrator, slip op. at 35 (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).

Porta argues that he is not at fault in that the IBT did not notify him that associating with members of organized crime violates the IBT Constitution and that to punish him for such conduct violates his rights under § 101(a)(5) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411(a)(5). A similar contention was raised in United States v. Int'l Broth. of Teamsters (Senese & Talerico), 745 F.Supp. 908 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991), cert. denied, 112 S.Ct. 1161 (1992), where respondents had asserted that they lacked notice that associating with members of organized crime could subject them to union discipline. United States District Judge Edelstein rejected this defense, stating that "it defies logic to then determine that a specific allegation of such association [associating with organized crime figures] would not 'bring reproach upon the union.'" Id. at 913 (quoting United States v. Int'l Broth. of Teamsters (Friedman & Hughes), 743

F.Supp. 155, 164 (S.D.N.Y. 1990), aff'd, 905 F.2d 610 (2d Cir. 1992).

It is true that Senese and Talerico were IBT officers and that Porta is not. However, Porta's prior background with the ILA reflects that he held responsible positions as a delegate and, while serving as such, those around him, including Anastasio and Scotto, both Gambino LCN members, were convicted for labor racketeering as were many other ILA officials. Nor do we overlook the fact that in February 1990 Porta himself was convicted while serving as a trustee of Local 1814 Benefit Plans. Anastasio and Ciccone were defendants in this action. Moreover, the history of Local 1814 during the period of Porta's membership is that it was studded with members of organized crime. Given the background of government action to oust organized crime members from Local 1814, Porta cannot validly contend that he lacked notice that associating with members of organized crime brings reproach upon a union.

Beyond the factual answer to this defense, LMRDA § 101(a)(5) does not support the lack of notice claim. The statute merely provides that, before being disciplined, Porta was entitled to receive written charges, adequate time to prepare to meet the charges, and a full and fair hearing. These requirements were met.

Porta also contends that the "casual" nature of his contacts with Anastasio and Ciccino, when considered with the fact that he did not hold an office in the IBT, defeats the charge brought against him here. We reject this contention.

Rank and file union members, although not officers, are also subject to discipline for knowingly associating with members of organized crime. See IBT Constitution, Article II, Section 2(a).

See also Investigations Officer v. DiGirlando, Decision of Ind. Adm'r (January 20, 1993), aff'd sub nom. United States v. Int'l Broth. of Teamsters, 824 F.Supp. 410 (S.D.N.Y. 1993), aff'd 19 F.3d 816 (2d Cir.), cert. denied, 115 S.Ct. 199 (1994).

Porta seemingly argues also that his contacts were "innocent" associations and not for "improper purposes." Again, the same contention has been raised by other respondents and is answered by DiGirlando, 19 F.3d at 822. The associations need merely be "calculated" or "conscious choices" to violate the "knowing association" proscription. We find that the contacts previously described that Porta had with Anastasio and Ciccone meet that standard.

On the basis of the foregoing, we find just cause to determine that the charge that Porta brought reproach upon the IBT has been established.

#### CONCLUSION

We find that the charge against Porta of having knowingly associated with members of La Cosa Nostra has been proved. It has been firmly established that Porta, a working Teamster member for Local 807, has knowingly and purposefully associated frequently -- at the 461 Court Street Social Club and elsewhere -- with individuals who are members of, or who are closely associated with, the Gambino LCN Family. As such, Porta has brought reproach upon the IBT and violated Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (9) of the IBT Constitution.


Accordingly, Porta is permanently barred from holding membership in or any position with the IBT, or any IBT-affiliated entity, in the future. Porta also may not hereafter obtain

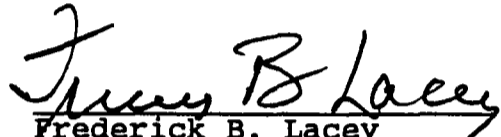
employment, consulting or other work with the IBT or any IBT-affiliated entity.

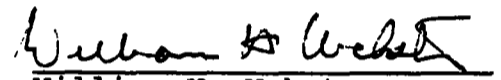
Dated: September 29, 1995

Members of the  
Independent Review Board

by:

  
Grant Crandall

  
Frederick B. Lacey

  
William H. Webster

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 XXIII 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 ("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 XXIII presents for this Court's review the decision of the IRB regarding disciplinary charges brought against Michael Porta, Jr. ("Porta"), a former member of IBT Local 807 located in Long Island City, New York. These charges are contained

in an investigative report issued by the IRB on January 30, 1995.<sup>1</sup>

In this report, the IRB charged Porta 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 Anthony "Sonny" Ciccone and Anthony Anastasio.

(Proposed Charges Against Local 807 Member Michael Porta, Jr., (January 30, 1995), at 25-26.) The IRB forwarded these charges and its report to the IBT on January 30, 1995.

By letter dated January 31, 1995, the IBT referred the charges against Porta back to the IRB for adjudication. A hearing on the above-quoted charges was scheduled for March 15, 1995 ("the hearing"). On February 1, 1995, the IRB sent a Notice of Hearing ("the Notice"), a copy of the IRB investigative report with exhibits, and the IRB Operating and Hearing Rules to Porta. The Notice informed Porta that the purpose of the hearing was to determine whether the charges contained in the investigative report were supported by the evidence, and stated that Porta would "be permitted to present any facts, evidence, or testimony that is

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<sup>1</sup> 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).

relevant to the issues before the IRB." (Independent Review Board Notice of Hearing (January 31, 1995), at 1-2.) The Notice further informed Porta that he had the right to be represented at the hearing by counsel or by an IBT member. Id. at 1. Due to a variety of conflicts, Porta's hearing was rescheduled several times and was held June 7, 1995.

At the hearing, the IRB heard testimony from Special Agent Carmine Russo ("Russo") of the Federal Bureau of Investigation ("FBI"), "an expert witness in organized crime trials," (Opinion and Decision of the Independent Review Board, In re: Michael Porta, Jr. (September 29, 1995) at 2 n.2)) ("IRB Opinion and Decision"), and reviewed Russo's sworn declaration, which was submitted as an exhibit. The IRB also reviewed and submitted as an exhibit the sworn declaration of FBI Special Agent Brian Taylor upon which Russo's testimony at the hearing relied. IRB Opinion and Decision at 1 n.1. Russo testified that Porta was a member of the Gambino Family of La Cosa Nostra in New York and that Porta, at all pertinent times, had associated with members of organized crime. Russo testified that his conclusion was based on his experience investigating organized crime in the New York City area, his review of documents, and his conversations with Special Agents over whom he had supervisory responsibility. The IRB found Russo's testimony and sworn declaration to be credible. IRB Opinion and Decision at 2 n.2, 10.

Following Russo's testimony, Porta appeared and testified at the hearing. Porta was represented by counsel, Mr. Charles L.



Weintraub ("Weintraub"), at the time. Although Porta stated that he knew many individuals who are alleged to be members of organized crime or associated with members of organized crime, at the time he associated with these people he was unaware of the fact that these people were alleged to be members of organized crime or associated with members of organized crime. Porta further claimed that he was not a member of organized crime and was not associated with members of organized crime. Porta also testified about his membership in Local 807, the type of labor he performed while a member of Local 807, and his knowledge that some members of Local 807 had been charged with being members of organized crime during his membership in Local 807.

Following this testimony, Porta's attorney, Weintraub, called four witnesses to testify on Porta's behalf. Weintraub first called James Lawrence ("Lawrence"), a member of Local 807. Lawrence testified that he knew Porta, worked with Porta, discussed personal matters with Porta, and considered Porta to be an honest person.

Weintraub also called Bernard Weisman ("Weisman"), a sales representative for a company that sells children's and adults' furniture and accessories. Weisman stated on the record that he knew Porta because Porta had assisted him during several gift shows at the Javits Center when Porta worked at the Javits Center while a member of Local 807. Weisman testified that, as a result of this assistance, he considered Porta to be an excellent and courteous worker. Weisman further stated that Porta had never asked Weisman

for money or otherwise acted improperly during their encounters at the Javits Center.

The third witness Weintraub called was Francis T. Genco ("Genco"). From 1990 to 1995, Genco was the manager of installation and dismantle services at Freeman Decorating Company ("Freeman"), the largest general contractor at the Javits Center. Genco testified that during his employment by Freeman he came into contact with Porta at the Javits Center on more than one occasion. Specifically, Porta worked for Genco as a rigger on various exhibits, such as the auto show. Genco described Porta as an excellent worker who interacted well with his co-workers, other tradesmen, and clients. In addition, Genco testified that he never saw Porta engage in any illegal or questionable activities at the Javits Center.

Finally, Weintraub called Stanley R. Gilbert ("Gilbert") to testify at the hearing on Porta's behalf. Gilbert testified that he had known Porta at least twenty years. Gilbert further stated that he had visited the social club at 461 Court Street in Brooklyn, New York, and that he never saw Porta in the club. When asked by members of the IRB, Gilbert stated that he did not know certain alleged members of organized crime and that he had never heard any discussions regarding the social club's ties to organized crime.

At the conclusion of the hearing, the IRB imposed a post-hearing schedule on the hearing participants. The IRB informed the participants that fourteen days following the IRB's receipt of the

hearing transcript, the Investigations Officer Mr. Charles M. Carberry ("the Investigations Officer") was required to serve and file a post-hearing memoranda. Then, ten days after Porta received the IRB's memoranda, Porta was required to deliver his answering memoranda and file it with the IRB, after which time the Investigations Officer had five days to reply.

Porta submitted a post-hearing memorandum, dated August 18, 1995, to the IRB. In this document, Porta argued that his contacts with members of organized crime "were infrequent, of short duration, . . . and were frequently serendipitous." Post Hearing Memorandum of Michael Porta, Jr. at 1 (August 18, 1995). Porta also asserted that, because he "was never informed by the IBT that casual contacts with individuals allegedly involved with organized crime could be considered a violation of the IBT Constitution," it would be unfair to subject him to a penalty based on such conduct. Id. at 2. Porta further claimed that his "contacts with individuals allegedly tied to organized crime [are] significantly diminished because he never held office with nor was ever employed in any capacity by Union 807 . . . ." Id. Finally, Porta contended that the IRB should not find that he knowingly associated with members of organized crime while a member of the IBT because "the casual nature" of his contacts with members of organized crime had a "lack of any impact" upon Local 807 and because Porta's "exemplary" work performance rendered such a finding inappropriate. Id.

Based on the evidence produced at the hearing, the IRB held

that it had been established by a preponderance of the evidence, see IRB Rules, ¶ J.6, that Porta at all pertinent times had "brought reproach upon the IBT by knowingly associating with members of the Gambino LCN Family while a member of Local 807, through contacts that were purposeful and not incidental or fleeting." IRB Opinion and Decision at 16. The IRB found the hearsay evidence it heard at Porta's hearing to be reliable. Id. at 10. It further found that Porta's testimony at the hearing and in depositions confirmed that Porta knowingly associated with various members of organized crime while he was a member of Local 807. Id. at 10-15. In addition, the IRB addressed the four arguments Porta raised in his post-hearing memorandum and rejected each one. Id. at 16-18. Although the IRB's Opinion and Decision did not address the testimony given at the hearing by Porta's four witnesses, it was not obliged to do so because none of the testimony presented by these witnesses "call[ed] into question the bulk of the allegations" made against Porta by the IRB. See United States v. International Brotherhood of Teamsters (Joseph Cimeno, Jr.), 964 F.2d 1308, 1312 (2d Cir. 1992), aff'g 777 F. Supp 1130 (S.D.N.Y. 1991).

Having held that the charges against Porta had been proved, and having considered the seriousness of the charges, the IRB permanently barred Porta from holding membership in or any position with the IBT or any IBT-affiliated entity in the future. IRB Opinion and Decision at 18-19. The IRB further ruled that Porta may not hereafter obtain employment, consulting, or other work with

the IBT or any IBT-affiliated entity. Id. at 18-19.

This Court received IRB Application XXIII consisting of the IRB's Opinion and Decision concerning Porta together with supporting exhibits on October 6, 1995. By letter dated that same day, Chambers informed Porta that if he wished to object to the IRB's findings and rulings, he could submit any objections to IRB Application XXIII to this Court no later than fourteen days from the date of the letter. Letter from James C. Maroulis, Law Clerk to the Honorable David N. Edelstein, United States District Judge, to Charles L. Weintraub, Esq., Defense Counsel (October 6, 1995) (on file with Clerk of the Southern District of New York). On October 25, 1995, Chambers spoke with Weintraub and learned that Porta had terminated Weintraub's services effective that day, October 25, 1995. Subsequently, Weintraub confirmed this conversation in letters addressed to this Court. Letter from Charles L. Weintraub, Esq., to the Honorable David N. Edelstein, United States District Judge (November 6, 1995) (on file with Clerk of the Southern District of New York); Letter from Charles L. Weintraub, Esq., to the Honorable David N. Edelstein, United States District Judge (October 26, 1995) (on file with Clerk of the Southern District of New York). On October 27, 1995, this Court received via Express Mail a handwritten letter from Porta dated October 27, 1995, objecting to the IRB's findings and rulings. Porta included with this letter a copy of the post-hearing memorandum prepared by Weintraub for Porta on August 18, 1995.

Porta's October 27, 1995, letter objecting to the IRB's

Opinion and Decision is untimely because this Court did not receive it until well-past the fourteen-day deadline set by this Court for the submission of objections. The fact that Porta terminated his attorney's services does not alter the status of Porta's submission as untimely for two reasons. First, this termination occurred after the fourteen-day deadline for the submission of objections had expired. Second, Porta fired Weintraub only after Weintraub received this Court's letter regarding the submission deadline for submitting objections. Porta had ample notice of his time to submit objections, and he cannot unilaterally extend his time to file objections by terminating Weintraub's services. Consequently, this Court did not consider Porta's objections in its review of IRB Application XXIII.

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 or capricious. See IRB Rules, ¶ 0 ("In 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).

Moreover, this Court's finding in the instant case would remain unchanged even if this Court considered the objections Porta submitted to the IRB's Opinion and Decision. This Court has reviewed the substance of Porta's objections and finds that each of them is meritless.

Accordingly, the decision of the IRB is affirmed in its

entirety.

SO ORDERED.

DATED: New York, New York  
November 21, 1994

  
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U.S.D.J.