
INVESTIGATIONS OFFICER,

Claimant,

v.

JAMES BUCKLEY, JAMES McNEIL,
DOMINICK MILANO, DAVID MORRIS
and MICHAEL MORRIS,

Respondent.

**DECISION OF THE
INDEPENDENT ADMINISTRATOR**

The Investigations Officer charged the five respondents in this matter with:

[A]cting in a manner to bring reproach upon the union, violating [their] fiduciary duties as a union officer[s], violating [their] oath and interfering with Local 707's and the IBT's legal obligation under the Consent Order, in violation of Article II, Section 2(a) and Article XIX, Sections 6(b)(1), (2) and (5) of the IBT Constitution.

The allegation underlying the charges is that the respondents all "knowingly associated with Nicholas Grancio ["Grancio"], a member of La Cosa Nostra."

A hearing commenced before me on August 9, 1991, and concluded on the adjourned date of September 17, 1991. Having reviewed the evidence presented, the arguments of counsel and the post-hearing submissions, I find that the Investigations Officer has satisfied his just cause burden of proving his charge against each of the five respondents by a preponderance of the evidence.

THE RESPONDENTS¹

James McNeil ("McNeil") and Michael Morris ("M. Morris") are the former President and Secretary-Treasurer, respectively, of IBT Local Union 707 located in Woodside, New York. In a decision issued on May 22, 1991, in a separate matter captioned Investigations Officer v. Morris and McNeil (IO Ex. 24),² I suspended McNeil and M. Morris from the IBT for a period of five years for: (1) embezzling monies and property from Local 707; and (2) fraudulently appropriating and converting to the use of others (including Grancio) Local 707 money and property. My May 22, 1991, Decision was affirmed by the United States District Court for the Southern District of New York (Judge David N. Edelstein) in United States v. IBT (In Re: Application XXXVIII), 88 Civ. 4486 (DNE), slip op., (S.D.N.Y. October 9, 1991).

¹ Originally, the Investigations Officer had charged eight respondents. Prior to the hearing, three of those respondents, Grancio, Henry Saltalamachea, and Vincent Cordato, resolved the charges against them by agreement with the Investigations Officer. Saltalamachea and Cordato were charged with "knowingly associating" with Grancio. Grancio was charged with being a member of La Cosa Nostra. Those agreements, which were approved by Judge David N. Edelstein, United States District Judge for the Southern District of New York, on August 14, 1991, by way of Application XLIX, provided that Grancio, Saltalamachea and Cordato would resign permanently from all offices, employment and membership (except Cordato) in the IBT or any IBT-affiliated entity. Cordato's agreement permitted him to retain his IBT membership. Grancio and Saltalamachea also agreed not to become involved in the affairs of any IBT entity.

² The Investigations Officer's Exhibits will be referred to as "IO Ex." In this case, the reference is to the Investigations Officer's Exhibit 24.

At the commencement of the hearing, I rejected M. Morris' and McNeil's objections to the proceedings. T10-2 to T11-3. It is now settled that the voluntary resignation of Union officers and members does not deprive the Independent Administrator of jurisdiction to hear charges against them. United States v. IBT (In Re: Application XIII), 745 F.Supp. 189, 192 (S.D.N.Y. 1990). It has also been settled for some time that reliable hearsay is admissible in these proceedings. See United States v. IBT (In Re: Application XIV), 745 F.Supp. 908, 914 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292, 1297-1298 (2d Cir. 1991).

The remaining three respondents are all Local 707 officers. James Buckley ("Buckley") is the current President. T74-21 to 22. Dominick Milano ("Milano") is the current Secretary-Treasurer. T159-14. David Morris ("D. Morris") serves as a Trustee and as a Business Agent. T199-24 to 25. D. Morris is the son of M. Morris. Id. at p. 14.

THE IBT CONSTITUTIONAL PROVISIONS

The charges here implicate two provisions of the IBT Constitution -- Article II, Section 2(a) and Article XIX, Section 6(b). "Article II, Section 2(a) is the IBT membership oath, which provides in pertinent part that every IBT member shall 'conduct himself or herself in a manner not to bring reproach upon the Union . . .'" United States v. IBT (In Re: Application XXII), 764 F.Supp. 797, 799 (S.D.N.Y. 1991).

M. Morris and McNeil did not appear or participate in the hearing before me on the instant charges. In fact, by letter dated August 8, 1991, the attorney for M. Morris and McNeil stated that these two respondents had "retired and withdrew from membership in the Teamsters." It was further claimed that their resignations had deprived me of jurisdiction to adjudicate any charges against them and thus they "decline[d] to participate" in the hearings. Independent Administrator's Ex. 2. Attached to the August 8, 1991, letter, however, was a document entitled "Statement of James E. McNeil and Michael J. Morris." That statement challenged, on several general levels, the disciplinary proceedings conducted pursuant to the March 14, 1989, Consent Order entered into between the Government and the IBT leadership. It also challenged the specific charges currently pending against them as well as those already heard and decided in my May 22, 1991, Decision. Ibid. M. Morris and McNeil also submitted, through counsel, an August 7, 1991, letter which stated that they "object[ed] to the introduction of any hearsay evidence at any hearing involving charges against them." Ibid.

On August 8, 1991, I wrote to the attorney for M. Morris and McNeil and "suggested that it would be well for you to appear [at the hearing] so that you can place on the record whatever position you wish to take." As noted, he did not appear. T7-6 to 23.³

³ Cites to the Transcript of the hearing first refer to the page number (in this case "T7" refers to Transcript page 7) and then to the line numbers (in this case "6 to 23" refers to line 6 through line 23).

Article XIX, Section 6(b), is a non-exhaustive list of the "bas[e]s for charges against members, officers, [and] elected Business Agents" Included in that list are:

(1) Violation of any specific provision of the Constitution, Local Union Bylaws or rules or order, or failure to perform any of the duties specified thereunder.

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

(5) Conduct which is disruptive of, interferes with, or induces others to disrupt or interfere with, the performance of any union's legal or contractual obligations. Causing or participating in an unauthorized strike or work stoppage.

THE INVESTIGATIONS OFFICER'S EVIDENCE

The Taylor Declaration

In proving his case, the Investigations Officer relied primarily on the Declaration of Federal Bureau of Investigation ("FBI") Special Agent Brian F. Taylor ("Agent Taylor") along with numerous exhibits attached thereto. IO Ex. 1 (sometimes hereinafter referred to as the "Taylor Declaration"). Although Agent Taylor did not testify on direct examination, counsel for Buckley, Milano and D. Morris did cross examine him. T32-23 to T72-21.

Agent Taylor has been a Special Agent with the FBI for over fifteen years. For over fourteen of those years he has been investigating organized crime activities or supervising other Special Agents conducting such investigations. IO Ex. 1 at ¶1. Agent Taylor's work has focused on the New York City vicinity since

1979. Id. at ¶¶ 2-4. The Taylor Declaration provides a comprehensive description of the structure of La Cosa Nostra (¶¶ 9-15); details La Cosa Nostra's involvement in Labor Racketeering (¶¶ 16-20); and also describes, in some detail, the Columbo Family of La Cosa Nostra, an organized crime group headquartered in New York City. Id. at ¶¶ 21-27. Grancio's ties to the Colombo Family are also discussed. Id. at ¶¶ 28-35. Lastly, the Taylor Declaration details each of the respondents' associations with Grancio. Id. at ¶¶ 48-57 ("Buckley"); ¶¶ 69-76 ("McNeil"); ¶¶ 77-84 ("Milano"); ¶¶ 85-98 ("D. Morris"); and ¶¶ 99-113 ("M. Morris").

Given Agent Taylor's many years of experience, his extensive knowledge of the structure and inner workings of La Cosa Nostra, and his specific knowledge of the Colombo Family of La Cosa Nostra and Grancio's link to that Family, I accept Agent Taylor as an expert in this case.

The Organized Crime Connections Of Grancio

The Investigations Officer alleges that the five respondents here have "knowingly associated with Nicholas Grancio, a member of La Cosa Nostra." Through the Taylor Declaration, extensive evidence was introduced which conclusively supports the finding that Grancio is not only a member of the Colombo Organized Crime Family, but, in fact serves as a "Capo"⁴ in that Family. IO Ex. 1

⁴ "Capos" are the La Cosa Nostra family's first line of supervisors below the "Boss" and the "Under Boss." IO Ex. 1 at ¶ 13.

¶¶ 28-35. In fact, the three respondents that participated in the hearing (Buckley, Milano and D. Morris) "have not disputed the I[nvestigations] O[fficer's] assertion that Grancio has been named as a member and associate of L[a] C[osa] N[ostra]." Respondents' Answering Memorandum at p. 1.

Given Agent Taylor's expert knowledge regarding organized crime's structure in New York City, especially that of the Columbo Family, as well as the extensive corroborating proofs submitted as exhibits to the Taylor Declaration, I conclude that Grancio is a member of the Columbo Family of La Cosa Nostra and serves as a "Capo" in that Family. In fact, given that the three respondents who participated in the hearing did not dispute Grancio's organized crime membership, I could reach no other conclusion.⁵

Respondents' Association With Grancio

On or about July 28, 1989, the Investigations Officer, pursuant to his authority under the Consent Order, served a notice upon Grancio requiring his sworn testimony. IO Ex. 24 at p. 19 ¶ 7. At the time, Grancio was the Vice-President of Local 707. Id. at p. 17 ¶ 3. Instead of testifying before the Investigations Officer, Grancio resigned his position with Local 707. Id. at p. 19 ¶ 7. See also, IO Ex. 1 at pp. 21-22; IO Ex. 1(AA) at pp. 64-

⁵ As noted earlier, the Investigations Officer had originally charged Grancio along with the other respondents. Grancio was charged with being a member of La Cosa Nostra. As also noted, Grancio and two of the other respondents resolved their charges prior to the hearing by agreeing to permanently withdraw from the IBT and all of its affairs. See p. 2, n. 1.

68; IO Ex. 4 at pp. 301-304, 325, 376. It is clear, however, that with respondents' knowledge and consent and despite his claimed resignation from Local 707, Grancio continued as a presence within the Local.

After his resignation, Grancio visited the Local 707 Union hall some 32 times. IO Ex. 30 (Local 707's daily sign-in sheet). Milano testified that he saw Grancio in the Union hall after his resignation roughly "three or four times." IO Ex. 1(Y) at pp. 24-25. Specifically Milano stated that he saw Grancio "in the kitchen" and "going to the welfare department in the back." Ibid. See also T172-17 to 19. Milano also indicated that when he saw Grancio in the Union hall he would say something in the nature of "Hello, how are you doing?" T173-7 to 10.

D. Morris testified that he had seen Grancio in the Local 707 Union hall "maybe ten or twelve times" since his resignation. I.O. Ex. 1(Z) at p. 30.

Buckley also testified that he had seen Grancio in the Union hall "two or three" times since his retirement, once in the welfare department, twice drinking coffee in the kitchen, once alone, and once talking "to one of the girls from welfare." Buckley would also speak with Grancio and say: "[h]ello, good bye, how do you feel, how is your retirement?" IO Ex. 1(U) at pp. 16-17. Buckley also testified that he was not "surprised" to see Grancio in the Union hall. Id. at p. 17. See also T91-23 to T95-11.

M. Morris testified to seeing Grancio "maybe fifteen times" in Local 707's offices. IO Ex. 1 (AA) at pp. 25-26. In fact, one

time Grancio "stopped by" to see Mr. Morris in his Union office. Id. at p. 25.

Lastly, when McNeil testified before the Investigations Officer on May 25, 1990, he stated that he had just seen Grancio in the Union hall as recently as "last week," and, in fact, McNeil invited Grancio to the Union hall. IO Ex. 1(X) at p. 38.

In addition to those contacts at the Union hall, Grancio was also present at a Local 707 Shop Steward's breakfast held on April 6, 1991. This was, of course, well after Grancio's resignation from Local Union office.

Although the three respondents who participated in the hearing denied that they were involved in the decision to invite Grancio to the Steward's breakfast, it is clear that they all knew Grancio was asked to attend the breakfast and they did not object to his presence.

For example, Buckley testified that during a Local Union Executive Board meeting that he attended prior to the Steward's breakfast, McNeil announced that he was going to invite the "retired officers." IO Ex. 1(U) at p. 22. Buckley understood that to mean that "Grancio was going to" be at the breakfast. T144-14 to 25. Buckley never "ask[ed] anyone whether or not it was a good idea to have Grancio come to the" breakfast. T145-15 to 21. Nor did Buckley object to Grancio coming. T145-22 to 23. At no time did Buckley say "Grancio should not be at this meeting." T146-5 to 7.

D. Morris also recalled McNeil making the statement at an Executive Board meeting that Grancio would be invited to the Steward's breakfast along with other retired business agents. T233-9 to T234-13. D. Morris did not "invoke any objection" to the announcement that Grancio would be at the Steward's breakfast. T237-8 to 11; T224-19 to 23.

Milano testified that he "agreed" with the decision to invite Grancio to the breakfast. T189-11 to 21.

M. Morris was also at the Executive Board meeting when McNeil made the announcement that there would be "guest speakers" at the Steward's breakfast. IO Ex. 26. Given the testimony of the three respondents who participated in the hearing before me, it is clear that McNeil also announced that Grancio would be one of those invited to attend the breakfast.

Once at the breakfast meeting, Grancio sat at the dais with the Local 707 Executive Board members and other guests, including retired boxer Floyd Paterson (IO Exs. 17, 19 & 23). Buckley specifically testified that he did not object to Grancio sitting on the dais. T146-8 to 10. In fact, Buckley testified that he was not even "disturb[ed]" to sit on the same dais with Grancio, despite being aware of the allegations concerning Grancio's organized crime ties. T146-18 to 24. D. Morris also testified that he did not make "any objection to the fact that Mr. Grancio was sitting on the dais to be presented to all of [the] members on that day." T225-20 to 24. D. Morris also testified that he did not raise any objection after the meeting. T226-12 to 17. A

photograph taken at the meeting depicts D. Morris standing and applauding in the audience as Grancio is standing at the dais. IO Ex. 21.

There is no indication in the record that any of the other respondents objected to Grancio sitting on the dais.

Grancio also took the podium at the meeting and greeted those in attendance. T225-13 to 17. The minutes of the meeting reflect that Grancio "thanked the stewards for their support while he was in office, and hoped they will continue to support Brothers McNeil and M. Morris against their present problems." IO Ex. 27. The "present problems" referred to by Grancio included the then pending charges against McNeil and M. Morris that they authorized the Local to give Grancio, a member of La Cosa Nostra, a vehicle as a retirement gift in violation of the Local's by-laws and in breach of their fiduciary duties to the membership. In my May 22, 1991, Decision, I found this charge had been proven and I suspended McNeil and M. Morris from the IBT for a period of five years. IO Ex. 24 at pp. 27-28. There is no indication in the record that any of the respondents objected to Grancio addressing those in attendance.

The tone of the meeting was further set by the attorney for McNeil and M. Morris who also spoke at the breakfast. During his

presentation, he characterized the pending charges as "innuendos, phony rumors and lies." IO Ex. 27.⁶

THE MERITS OF THE CHARGES

The standard for testing a "knowing association" charge is clear:

[I]n order for the Investigations Officer to sustain his burden of proving a prohibited association with organized crime members, he must show that the contacts in question are purposeful and not incidental or fleeting. Such contacts may be shown in either a business or social context In determining whether the Investigations Officer has sustained his burden of proving a prohibited association, the focus will be placed on the nature and not the number of contacts in question.

[Investigations Officer v. Senese, et al., Decision of the Independent Administrator (July 12, 1990) at pp. 35-36, aff'd, United States v. IBT (Application XII), 745 F. Supp. 900 (S.D.N.Y. 1990), aff'd, 941 F.2d 1292 (2d Cir. 1991).]

The three respondents that participated in the hearing argue that they did not "purposefully associate" with Grancio. Respondents' Answering Memorandum at p. 10. It is suggested that the associations here were "incidental" and "fleeting."

In making this argument, respondents ignore the fact that they are officers of the Local and that they themselves do not challenge the finding that Grancio is a member of La Cosa Nostra. Thus, when

⁶ The attorney for McNeil and M. Morris also belittled the then pending charges at a general membership meeting conducted shortly after the Steward's breakfast. Addressing the membership, the attorney made light of Grancio's organized crime connections and drew laughter and applause from those in attendance including McNeil and M. Morris when he spoke about organized crime links to the Union. IO Ex. 32 (Video tape excerpt of Local 770 April 15, 1991, membership meeting).

they meet Grancio in the Union hall, greet him with a friendly "hello" and then go on their merry way, such contacts can not be considered "incidental" or "fleeting." The nature of such contacts (the focus of our inquiry) is clear -- the contacts evidence a tolerance on respondents' behalf to the presence of a La Cosa Nostra member in the Local.

Following his resignation from the Local -- Grancio resigned rather than testify before the Investigations Officer -- Grancio visited the Union hall some 32 times. The respondents saw Grancio leisurely drinking coffee in the Local's kitchen. One would think that Grancio's presence would prompt an outraged response and Grancio's immediate ejection from the Union hall with a stern warning that he not return. At the very least, one would expect Grancio to be asked why he was "visiting" the Local. Instead, the signal sent to Grancio by the respondents was clear -- you are always welcome here.

M. Morris even permitted Grancio to visit him in his Local Union office. McNeil himself invited Grancio to the Union hall on at least one occasion. Such contacts are nothing less than purposeful.

The respondents' "knowing association" with Grancio is best illustrated by their standing idly by while Grancio attended the Stewards' breakfast at McNeil's invitation as a celebrated guest. The respondents also permitted Grancio to address those in attendance and applauded his comments. Given their positions as Local Union officers, such actions clearly evidence a continued,

"purposeful association" with Grancio. Again, the message here is clear -- Local 707's Executive Board condones organized crime's presence in Union affairs.

Under these circumstances, such contacts are improper, significant and grave. By entering into the March 14, 1989, Consent Order, the IBT has committed itself to ridding the Union of its organized crime influences. Such a goal can not be realized if Local Union officers permit a La Cosa Nostra Capo to visit the Local Union hall on a whim and to drink coffee in the Local's kitchen. In the same connection, the IBT will never be free of its reputation as a Union riddled with organized crime's taint if Local Union officers permit a La Cosa Nostra Capo to attend Stewards' meetings, allow him to sit on the dais with other members of the Executive Board and other invited guests (including a celebrated sports figure), and allow him to address the Stewards in attendance.

Accordingly, I can reach no other conclusion than that the Investigations Officer has proved his charges by a preponderance of the evidence.⁷

⁷ As noted, the three respondents who participated in the hearing did not challenge the conclusion that Grancio was a member of La Cosa Nostra. See p. 7, supra. Given the knowledge each of the respondents possessed regarding Grancio's organized crime's links, it is not surprising that they have not challenged the finding, See, e.g., T177-11 to 14; and IO Ex. 1(Y) at p. 9 (Milano "read a few years back allegations that Nick Grancio was involved in organized crime."); T220-21 to 25, T223-25 to T224-4, IO Ex. 1(Z) at p. 17 (D. Morris read newspaper articles about Grancio's organized crime membership and knew that the first charge against M. Morris and McNeil involved allegations about Grancio and La Cosa
(continued...)

THE PENALTY IMPOSED

Given the indifference demonstrated by respondents to Grancio's organized crime membership and their willingness to encourage his continued affiliation with the Local, the only fit penalty is to ban these men forever from the Union. The IBT can never achieve its noble goal of becoming an organization free of corruption if men like these remain part of the organization. Accordingly, respondents are to forever remove themselves from all of their IBT-affiliated Union positions (including membership in the IBT) and draw no money or compensation therefrom, or from any other IBT-affiliated source at any time in the future.

My usual practice in disciplinary proceedings has been to stay penalties pending review by Judge Edelstein, however, I have deviated from that practice in the past where the circumstances warranted. The circumstances here do not warrant a stay, thus respondents' banishment from the IBT shall be effective immediately.

⁷(...continued)

Nostra.); T116-7 to 17, IO Ex. 1(U) at pp. 8-10 (Buckley also read newspaper articles alleging that Grancio was connected to organized crime and he knew that Grancio had retired because of an allegation that he was a member of organized crime.).

M. Morris and McNeil were also privy to substantial evidence of Grancio's organized crime links. In connection with the earlier charges against M. Morris and McNeil, Grancio's organized crime links were explored. As stated in my May 22, 1991, Decision, at p. 24, "the evidence regarding Grancio's organized crime ties is offered to show that responsible officers of Local 707 should have been on notice of allegations concerning the activities of Grancio."

Buckley, Milano and D. Morris are currently running in a Local Union officer election at Local 707 on an incumbent slate. T255-16 to 22. Buckley is running for President (T258-17 to 18), Milano is running for Secretary-Treasurer (T258-14 to 15), and D. Morris is running for Recording Secretary (T258-20 to 21). The ballots will be counted December 7, 1991. T257-1 to 12. If I stay this decision pending Judge Edelstein's review, it can not be reasonably expected that all submissions will be filed with him in sufficient time for him to review the record and render a decision prior to December 7. Accordingly, I can not permit these respondents to continue to seek election to Local Union office. As made clear, they have no place in the IBT, let alone on the Local 707 Executive Board.⁸

RESPONDENTS' BENEFITS

In the past, I have imposed sanctions impacting upon other respondents' employee benefits, including pension, health and welfare benefits. See Investigations Officer v. Senese, et al., Supplemental Decision of the Independent Administrator (November 29, 1990), aff'd, United States v. IBT (Application XVI), 753 F. Supp. 1181 (S.D.N.Y. 1990). Before imposing such sanctions, however, I have invited such respondents to submit a schedule of

⁸ While I indicated at the hearing that I would make an effort to issue a decision in this matter before the Local's nominations meeting, given the scheduling of matters and my other commitments as Independent Administrator, that was not possible. In any event, as I also stated on the record, I certainly did not "want to hold this up until after December 7." T259-14 to T-260-5.

benefits as well as a memorandum on the issues raised in imposing sanctions touching upon those benefits. The Investigations Officer, the Government and the IBT are also invited to submit memoranda on the subject.

None of the respondents in this case chose to provide me with submissions regarding their benefits. However, in the previous matter, Investigations Officer v. Morris and McNeil, Decision of the Independent Administrator (May 22, 1991), aff'd, United States v. IBT (Application XXXVII), slip op., (S.D.N.Y. October 9, 1991), M. Morris and McNeil provided me with a list of benefits to which they claimed entitlement. In my May 22, 1991, Decision, I made several determinations with respect to those benefits. See Morris and McNeil at pp. 28-31. The sanctions imposed upon M. Morris' and McNeil's employee benefits were to remain in place for the term of their five-year suspensions imposed as a result of embezzling Local 707 assets. In the instant matter, M. Morris and McNeil are permanently debarred from the IBT. Accordingly, the sanctions imposed upon M. Morris' and McNeil's benefits in Morris and McNeil at pp. 28-31, are now effective in perpetuity.

I turn now to the remaining respondents, Buckley, D. Morris and Milano. Despite their failure to provide me with submissions as to their benefits, sanctions impacting upon their employee benefits, to the extent they exist, are also in order.

The first category of benefits to address are those that are administered by both IBT-affiliated persons or entities, on the one hand, and non-IBT affiliated persons and entities, on the other.

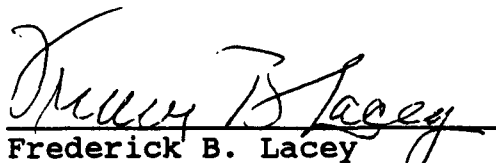
In the ~~past~~, I have characterized such benefits as "Third-Party Plans." If respondents are participants in any Third-Party Plan, I direct that the IBT and any affiliate that may contemplate doing so, to discontinue making payment of Union funds to such Third-Party Plans on respondents' behalf. This ruling does not interfere with respondents' right to receive any benefits that may already be vested in such plans.

In addition, to the extent the IBT or any IBT-affiliated entity contemplates making the payment of any benefits to respondents which are under their exclusive control (such as bonuses and Local controlled severance plans), they are hereby directed not to make such payments.

I ask the Investigations Officer to send copies of this Decision to any IBT-affiliated entity that he suspects may seek to transfer benefits to respondents.

APPLICATION TO JUDGE EDELSTEIN

Notwithstanding the fact that I have not stayed the penalties imposed herein, I will submit this Decision to Judge Edelstein for his review and approval by way of Application in accordance with the procedures set forth in the Consent Order.



Frederick B. Lacey
Independent Administrator

Dated: November 18, 1991