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FD-267

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September 8, 1999

SENT VIA UPS OVERNIGHT

Lawrence Brennan, President
Joint Council 43
2801 Trumbull Avenue
Detroit, Michigan 48216

Re: Decision of Joint Council 43 on Charge against Former
Local 337 Trustee and Business Agent Robert L. Spencer

Dear Mr. Brennan:

The Independent Review Board has reviewed Joint Council 43's decision of August 2, 1999, in the above-captioned matter and finds the decision to be not inadequate.

Very truly yours,

Members of the
Independent Review Board

By:


John J. Cronin, Jr.
Administrator

cc: Marc G. Whitefield, Esq.
Patrick J. Szymanski, Esq.

BEFORE THE EXECUTIVE BOARD OF
MICHIGAN TEAMSTERS JOINT COUNCIL NO. 43

In The Matter Of The Charges Filed By

COLONEL W. MYERS

Against

ROBERT L. SPENCER

Charges Dated: March 11, 1999
Hearings Held: April 8 & July 9, 1999
Decision Dated: August 2, 1999

Under date of March 11, 1999 Colonel W. Myers, a member and officer of Local 337, filed charges against Robert L. Spencer, a retired officer and former member of Local 337, alleging that he allowed Christopher Roach, an employer, to maintain a sham membership in the Local Union and had entered into a sham collective bargaining agreement with Roach in order to permit him to fraudulently obtain the sham membership (4/8/99, Exh. 1¹). These charges and the initial notice of hearing were served upon Spencer by process server on March 20, 1999 (4/8/99, Exh. 2). Notice of the July 9 hearing was mailed to attorney Julie Abear, Spencer's court-appointed co-guardian and co-conservator, in a letter dated June 18, 1999 (7/9/99, Exh. 4).

1. Procedural History.

The charges against Spencer had been proposed by the Independent Review Board (IRB) in a communication to the Executive Board of Joint Council 43 dated December 14, 1998, which also proposed related charges against former Local 337 member Christopher Roach (4/8/99, Exh. 3). In a letter dated December 29, 1998 the IRB agreed to "extend the deadline for a

¹ Exhibits admitted at prior hearings on these cases, including the 2/8/99 hearing on the charges against Roach, will be identified by hearing date and exhibit number.

final report" on Spencer, without date, " in light of his current medical condition (2/8/99, Exh. 3)." However, by letter dated March 8, 1999, the IRB asked the Joint Council to " schedule a hearing on those charges" because " it appears that Mr. Spencer is capable of attending a hearing on the charges" based on " reports" it had received (4/8/99, Exh. 11).

Joint Council Secretary-Treasurer Joseph Valenti appointed a panel to hear the charges against Spencer.² The panel consisted of Local 164 Secretary-Treasurer William A. Bernard, who chaired the proceedings, Local 614 President Michael C. Bane and Local 486 Vice President James Ayers (4/8/99, Exh. 2). The hearing was transcribed by court reporter Dale E. Rose of Renaissance Court Reporters. Valenti has also appointed Kenneth Hollowell replace Joint Council 43 President Lawrence Brennan on the Joint Council 43 Executive Board for the purpose of deciding this case. At both the April 8 and July 9 hearings Charging Party Myers appeared personally, as provided in Article XIX, Section 1 (c) of the IBT Constitution.

² Because Joint Council President Brennan is also involved in the case as the President of Local 337, Joint Council Secretary-Treasurer Valenti appointed the panel to hear and recommend a decision in this case and a replacement for Brennan on the Joint Council Executive Board for purposes of deciding this case. See Article XIX, Sections 1 (a) and 6 of the IBT Constitution.

Charged Party Spencer did not appear at the April 8 hearing, in person or otherwise, and the trial proceeded in his absence, as required by Article XIX, Section 2(d) of the IBT Constitution. At the hearing Myers submitted into evidence only exhibits attached to the IRB's report, including the transcript of Spencer's sworn examination on March 6, 1998 (4/8/99, Exh. 7) and other documents which had also been previously furnished to Spencer. Later on April 8, after the hearing had been closed, Joint Council 43 Secretary-Treasurer Valenti received a written request dated April 7 to postpone the hearing from attorney Julie Abear, Spencer's court-appointed co-guardian and co-conservator, which she had faxed to a different office at the Trumbull Avenue complex in Detroit (7/9/99, Exh. 1). By letter dated April 8 Valenti advised attorney Abear that the hearing had already closed when her request was received and made the first of many requests that she produce medical documentation of Spencer's medical condition (7/9/99, Exh. 2).³ By letter dated April 23, 1999 attorney Abear responded, without supporting documentation, that Spencer had

suffered a stroke last fall, and has been suffering from the effects since that time, including neurological and

³ "We have two concerns with your request. Second, and more important, what pro[ba]tive medical documentation do you have to support the request. We shall await your response to our two concerns, which should include pro[ba]tive medical documents..."

cognitive deficits. The Oakland County Probate Court has appointed a family friend and myself as co-guardians/conservators for him. [¶] In addition, Robert Spencer has been hospitalized on three separate occasions during the past six weeks as a result of a very serious heart condition, including multiple episodes of congestive heart failure. [¶] As a result of his current health status, Robert Spencer is unable to attend or participate in a hearing at this time. At a minimum, until his heart condition stabilizes, we cannot commit to a new hearing date.

By letter dated June 18, 1999⁴ Bernard notified attorney Abear that the panel had decided to grant her request to reopen the hearing, that she would be permitted to represent Spencer at the reopened hearing on July 9, and that she would be "expected to offer evidence concerning his [Spencer's] current and recent medical condition as well as in defense of the charges." (7/9/99, Exh. 4) By letter dated July 8 attorney Abear advised Bernard that she would appear on Spencer's behalf but did not expect that Spencer would be well enough to appear with her because "he is experiencing continuing difficulty with congestive heart failure symptoms and has been very weak" (7/9/99, Exh. 5).

At the July 8 hearing attorney Abear presented Oakland County Circuit Court directives appointing herself and Wanda Reed

⁴ Informal consultations with IRB representatives took place in the interim.

co-conservators and co-guardians of Robert Lee Spencer, a "protected and legally incapacitated person" (7/9/99, Exh. 6). Instead of presenting documentation concerning Spencer's medical status, attorney Abear acknowledged that she was not qualified to give expert testimony concerning Spencer's condition and called Reed as her only witness (Tr. 7/8/99 at 26). According to Reed, Spencer currently has "cognitive defects as well as diabetes, congestive heart failure and [] low blood sugar levels [,] long term memory ... not good[,] many episodes of strokes [and] some twisting of his mouth [, needing] 24-hour care and supervision seven days a week" (Id. at 28). Reed testified that Spencer had been hospitalized four times in an unspecified five week period at Henry Ford Hospital and at Grace Hospital in Detroit (Id. at 29). She also testified that his breathing capacity was limited due to his heart condition, that his episodes of hospitalization required IVs and oxygen, that he is awaiting a heart transplant, and that he is taking 14 different medications including Coumadin (Id. at 30-31).

When asked about supporting medical documentation, attorney Abear said she "can certainly obtain ... and submit that" but had not thought she would need it because "I expected as of last week that he would be able to be here, so that wasn't anticipated." (Id. at 32) At Bernard's request attorney Abear agreed to

provide the panel with the medical records "in seven to ten days" (Id. at 37). At attorney Abear's request, Joint Council 43 representatives agreed to provide her with copies of the charges and exhibits previously in evidence and the 4/8/99 transcript were made available to her (Id. at 37-38). Except for what may be made of this discussion, the hearing closed without attorney Abear presenting any evidence or argument on Spencer's behalf in defense of the merits of the charge.

By letter from Joint Council 43 counsel dated July 10 attorney Abear was furnished copies of the exhibits presented into evidence at the April hearing and reminded that she had agreed to provide medical documentation by no later than July 19, i.e. ten days after the hearing. In response to counsel's July 21 communication that the panel had not yet received the promised documentation and was prepared to determine what course of action it will take if it was not provided, attorney Abear replied by letter dated July 22 that Spencer "has again been hospitalized on an emergency basis for congestive heart failure", which has prevented her from obtaining "all of the medical records", but that "I should have records by Monday, July 26, 1999 and will forward them to your attention immediately." No further oral or written communication has been received from attorney Abear by

the panel or by Joint Council counsel as of July 29, when the panel decided to close the record and issue this decision.

2. Decision To Close The Record.

The panel has determined to close the record and decide the merits of the charges based upon the record as it stands because we lack adequate and competent substantiation of Spencer's allegedly incapacitating medical condition. Attorney Abear was placed on written notice no fewer than five (5) times--on April 8, on June 18, on July 9, on July 10, and finally on July 21--that the panel needed proper documentation of Spencer's medical status. Regrettably, despite promises, she has failed to provide it. It is not a herculean task. Lawyers and paralegals routinely obtain hospital and medical records related to clients by mail in a matter of several days. Hearsay testimony from a lay witness concerning medical opinions, diagnoses, and prognoses, is obviously unacceptable. Attorney Abear has given us no choice but to decide the merits of the charges on the basis of the current record.

We observe in this regard that at the July 9 hearing attorney Abear also presented no evidence on Spencer's behalf concerning the merits of the charges. Although her comments suggest that she knew nothing of them or what had taken place at

the April 8 hearing, she had to know better. Her April 7 letter indicates that she had specific knowledge of the charges, Valenti's April 8 letter gave her clear notice that the hearing had proceeded in her absence, and Spencer had previously been sent all of the exhibits that were offered in support of the charges at the earlier hearings. Nevertheless attorney Abear waited until the close of the July 9 hearing to request further particulars concerning the charges, copies of the exhibits, and the 4/8/99 hearing transcript, which means she had no plans to present any defense of the charges on July 9 despite clear notice in our June 18 letter that she should be prepared to do so. We reluctantly conclude that, on Spencer's behalf, she has waived the right to present further evidence in defense to Myers' charges.⁵

3. Decision On The Merits.

(A). **The Roach Decision.**

In a decision dated February 12, 1999 on the companion charges to those in question here, the Joint Council 43 Executive

⁵ Her indifference towards the charges contrasts with her concern at the 7/9/99 hearing that Spencer had not yet received his pension and retiree health insurance benefits, matters clearly beyond the jurisdiction of this panel.

Board concluded that former Local 337 member Christopher Roach had violated the IBT Constitution as charged, and in remedy directed that he be expelled and permanently barred from membership in the International Brotherhood of Teamsters. This conclusion was based on evidence that Roach maintained a sham membership in violation of Article XIV, Section 3 of the IBT Constitution through the ruse of negotiating a collective bargaining agreement never intended to cover any employee other than himself. The Joint Council determined that Roach was an investment entrepreneur who concluded that joining the Union would in some way further his opportunities through another corporation he owned to exploit or deal in investments held by between 20 and 30 Teamster entities and/or their jointly administered trusts.

In a letter dated February 18, 1999 the IRB advised Joint Council 43 that it "finds this decision to be not inadequate."

2. Summary Of The Evidence Involving Spencer.

Spencer, a Local 337 Trustee and Business Representative, joined the Teamsters in 1969 and was a full-time employee of Local 337 for over 20 years. He resigned from his Local 337 positions and membership because of health concerns on December 31, 1998. Since then he has been on withdrawal from membership in Local 337. Inactive members on withdrawal remain subject to

charges under Article XIX, Section 1(g) of the IBT Constitution.⁶

At his sworn examination by the IRB, Spencer testified that he was introduced to Roach in 1993 at a restaurant near the Detroit produce terminal, that Roach said he needed a union contract because he planned to go into the computer business and approach customers such as the UAW and other unions, that Roach also said he planned to hire between four and six people, and that Spencer asked Roach to call when he was "[got himself] together." (4/8/99, Exh. 7 at 11). Late in 1994, Spencer, on behalf of Local 337, signed a contract with Roach although at the time Spencer not knowing whether Roach's company employed Local 337 members or for that matter had any employees other than Roach (Id. at 12).

Roach's sworn examination provides a different, less innocent view of these facts. According to Roach, he had another employee, Richard Tringale, whom he chose not to employ under the Local 337 labor agreement.⁷ Tringale reportedly has family

⁶ "Charges may be preferred against a suspended member or an inactive member who has been issued a withdrawal card. Such suspended member or inactive member on withdrawal may utilize the appellate procedures available under this Constitution with respect to any charges filed against him."

⁷ We know, and so would Spencer, that Tringale's family runs at least one business that has a Local 337 contract, and it is located at the produce terminal where Spencer met Roach.

connections to at least one organized crime figure in the Detroit area. While a member of Local 337 Roach attended several general membership meetings and voted in Local and International Union officer elections. Roach testified that he terminated his Local 337 membership late in 1997 because it was not giving him any benefit, that by then his company had become a vehicle for personal investments, and did little, if any, computer business (2/8/99, Exh. 4 at 6, 10, 12-13, 18 & 20).

However Roach's lapse in membership also coincided with reports of his other company's participation in certain dealings involving millions of dollars in assets belonging to a Chicago Teamsters pension fund that resulted in Roach's receipt of hundreds of thousands of dollars, which he sent to Grand Cayman. See: Wall Street Journal, 10/31/97 at A24 (attached).

In the absence of additional testimony or other rebuttal or exculpatory evidence on his behalf, we are persuaded by the circumstantial evidence, including the Tringale connection, that Spencer knew, or had reason to believe, from the outset or at some point during the three year period of Local 337 membership, that Roach did not plan to hire additional employees in his computer business and had other objectives in mind when he negotiated the contract and became a union member. In such circumstances, and given Roach's other lucrative, Teamster-

connected activities, we find that Spencer's involvement in negotiating Roach's collective bargaining agreement and membership in Local 337 was knowing and not innocent.

CONCLUSION AND REMEDY

We conclude that the evidence sustains Myers' charge that Spencer knowingly allowed an employer to maintain a membership in Local 337 in violation of Article XIV, Section 3 of the IBT Constitution, and the parallel provisions of Local 337's Bylaws, through the ruse of negotiating a collective bargaining agreement with Christopher Roach, Inc. that was never intended to cover any employee other than Roach, an employer ineligible for membership in the union.

Article XIV, Section 3 of the IBT Constitution provides in substance that members authorize their Local Union to act as their exclusive bargaining representative in negotiating and administering collective bargaining agreements with their employer. In this case, as Spencer knew, Roach was the employer and, if only because of Tringale's subsequent but non-covered employment and Roach's failure to hire anyone else, we also find that Spencer knew that Roach never intended to have rank-and-file employees for Local 337 to represent in collective bargaining.

We also conclude that Spencer did not allow Roach to join Local 337 because of any practice in Roach's industry that only union members can or should do union work, or because of any personal, family, or industry tradition of union membership in Roach's business. Spencer knew that Roach was an investment entrepreneur who believed that joining the Union would in some way further his opportunities to exploit or deal in investments held by other Teamster entities and/or their jointly administered trusts, and Spencer for his own reasons not in the interest of Local 337, decided to facilitate Roach's schemes.

Penalties that may be imposed for violation of the IBT Constitution include expulsion from membership and an order permanently barring the person from Teamster membership.⁸ Myers' charges request that we impose these penalties upon Spencer, and we agree that such relief is warranted based upon the record in this case.

Accordingly, we recommend that the Joint Council Executive Board find and conclude that Robert L. Spencer has violated the IBT Constitution as charged and, in remedy, that he be expelled

⁸ See Article XIX, Section 10(a) of the IBT Constitution.

and permanently barred from membership in the International Brotherhood of Teamsters.

William A. Bernard w/ approval

WILLIAM A. BERNARD
Local 164 Secretary-Treasurer &
Panel Chair

Michael C. Bane w/ approval

MICHAEL C. BANE
Local 614 President &
Panel Member

James Ayers w/ approval

JAMES AYERS
Local 486 Vice-President &
Panel Member

We approve and adopt the findings, conclusions, and decision recommended by the panel. The Charged Party has the right to appeal this decision as provided in Article XIX, Section 2 of the IBT Constitution.

Kenneth Hollowell w/ approval

KENNETH HOLLOWELL, Local 247
President, Replacing Lawrence
Brennan, Joint Council 43
President

Joseph Valenti w/ approval

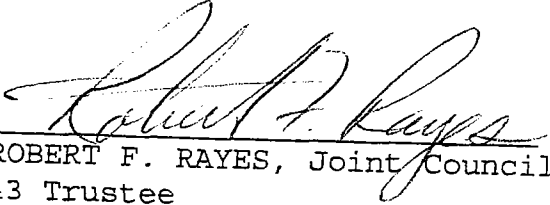
JOSEPH VALENTI, Joint Council
43 Secretary-Treasurer

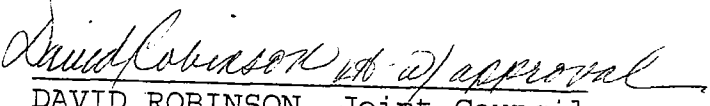
Robert C. Finney w/ approval


ROBERT C. FINNEY, Joint Council
43 Vice President

Donald G. Smith w/ approval

DONALD G. SMITH, Joint Council
43 Recording Secretary


ROBERT F. RAYES, Joint Council
43 Trustee


DAVID ROBINSON, Joint Council
43 Trustee


GREG NOWAK,
Joint Council 43 Trustee