

INDEPENDENT REVIEW BOARD
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Chief Investigator:

Charles M. Carberry, Esq.
Investigations Office
17 Battery Place, Suite 331
New York, NY 10004

January 25, 2012

VIA UPS GROUND

Administrator:
John J. Cronin, Jr.

Board Members:
Benjamin R. Civiletti, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004

Joseph E. diGenova, Esq.
diGenova & Toensing, LLP
1776 K Street, NW, Suite 737
Washington, DC 20006

The Honorable William H. Webster
1850 K Street, NW, Suite 1100
Washington, DC 20006

Hon. Loretta A. Preska
United States District Court
United States Courthouse
500 Pearl Street, Room 1320
New York, NY 10007

Re: APPLICATION 155 OF THE INDEPENDENT REVIEW BOARD

Dear Judge Preska:

I transmit herewith one original and one copy of Application 155 of the Independent Review Board, submitting the Opinion and Decision regarding Leif Thornton, Cheryl Milisi, Francis Dizoglio John Logan and Nicholas Murphy, approved by the IRB, to Your Honor for review, and if appropriate, to be "so ordered."

In addition to the Application, enclosed please find the original and one copy of:

- (a) the January 25, 2012, Opinion and Decision of the IRB;
- (b) an Acknowledgment of Receipt; and
- (c) an Affidavit of Service.

If you find it appropriate, I respectfully request that a member of Your Honor's staff file the original Application, Opinion and Decision, Acknowledgment of Receipt and Affidavit of Service with the Clerk's office.

Respectfully submitted,

Members of the
Independent Review Board

By: 

John J. Cronin, Jr.
Administrator

JJC:cft

Pursuant to the Consent Order of the United States District Court, S.D.N.Y.
United States -v- International Brotherhood of Teamsters 88 CIV. 4486 (LAP)

Enclosures

cc: Tara M. La Morte, AUSA
Charles M. Carberry, Esq.
Bradley T. Raymond, Esq.
James Tewhey, Esq.
Leif Thornton
Cheryl Milisi
Francis Dizoglio
John Logan
Nicholas Murphy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	88 CIV. 4486 (LAP)
	:	
v.	:	APPLICATION 155 OF THE
	:	INDEPENDENT REVIEW BOARD
INTERNATIONAL BROTHERHOOD OF	:	-- OPINION AND DECISION OF
TEAMSTERS, <u>et al.</u>	:	THE INDEPENDENT REVIEW
	:	BOARD IN THE MATTER OF
Defendants.	:	LEIF THORNTON, CHERYL MILISI
	:	FRANCIS DIZOGLIO, JOHN LOGAN
	:	AND NICHOLAS MURPHY

Pursuant to Paragraph O. of the Rules and Procedures for Operation of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IRB Rules"), Application is made by the IRB for ruling by the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York, on the issues heard by the IRB during a hearing on October 11, 2011, in Boston, Massachusetts.

The first charge in this inquiry, applicable to all respondents, arises out of two expenditures in excess of \$10,000 made by the local in connection with its 75th anniversary celebration. The first of these expenditures was a purchase of a 1933 Ford truck for \$13,300 by John Perry ("Perry") and Patrick Geary ("Geary") on June 20, 2008. The respondents in this inquiry did not become aware of this purchase until 20 days later at the June 30 executive board meeting. The members were not informed of the expenditures until the general membership meeting on September 21, at which time, no vote was taken nor was approval

sought. The second concerns the expenditure of over \$90,000 in connection with the anniversary party, including over \$45,000 for catering and over \$12,000 for video recording. These significant non-routine expenditures likewise were never put to a vote before the members, nor were the actual costs disclosed to the membership.

The second charge in this inquiry, applicable to respondents Francis Dizoglio ("Dizoglio"), John Logan ("Logan"), and Nicholas Murphy ("Murphy"), is that they violated Article X, Section 8(b) of the IBT Constitution and Section 12 of the Local 82 bylaws when they simply signed their approval of financial reports prepared by Perry without first verifying the bank account balances or any supporting financial documentation. Each of the three respondents testified previously that they had reviewed and signed only reports already completed by Perry.

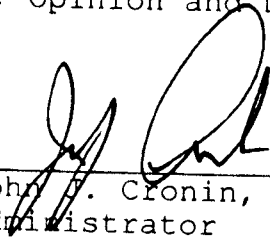
The IRB holds that each of the five respondents be barred permanently from holding office or employment with Local 82 or any successor union.

Enclosed with our January 25, 2012, Opinion and Decision are the October 24, 2010 Investigative Report (Exhibit A) and Exhibits 1-41 (Appendix to Exhibit A) on CD disk, CIO's Pre-Hearing Memorandum and Supplemental Exhibit 42 (Exhibit B) on CD disk, October 11, 2011 IRB Hearing transcript (Exhibit C), IRB Reference Documents 1-3 (Exhibit D), Exhibits IRB-1 to IRB-8 (Exhibit E), and Submissions introduced at the October 11, 2011 IRB Hearing from Leif Thornton (Exhibit F), Francis Dizoglio

(Exhibits G), John Logan (Exhibit H), and Nicholas Murphy (Exhibit I).

It is respectfully requested that an Order be entered affirming the IRB's January 25, 2012, Opinion and Decision if Your Honor finds it appropriate.

By:



John F. Cronin, Jr.
Administrator

Dated: January 25, 2012

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IN RE: : OPINION AND DECISION
 : OF THE INDEPENDENT
Leif Thornton, Cheryl Milisi; : REVIEW BOARD
Francis Dizoglio; John Logan; and :
Nicholas Murphy :
 :
 :
-----x

Introduction

On October 14, 2010, the Independent Review Board ("IRB") recommended that Local 82 members John Perry ("Perry"), Patrick Geary ("Geary"), Leif Thornton ("Thornton"), Cheryl Milisi ("Milisi"), Francis Dizoglio ("Dizoglio"), John Logan ("Logan") and Nicholas Murphy ("Murphy") be charged with bringing reproach upon the IBT and violating their Oath of Office in violation of Article XIX, § 7(b)(1) and (2) of the International Brotherhood of Teamsters ("IBT") Constitution by violating Section 14(A)(8) of the Local 82 Bylaws when they did not obtain the required membership approvals for substantial non-routine expenditures. The IRB also recommended that Dizoglio, Murphy, and Logan be charged with bringing reproach upon the IBT and violating their Oath of Office by failing to perform their duties as Trustees under Article X, Section 8(a) and (b) of the IBT Constitution.

Procedural History

A hearing was held before a panel of the IBT on February 15, 2011, and the respondents were found liable. On March 24, 2011, James P. Hoffa, the general president of the IBT, adopted as to each of the respondents the panel's recommended sanction of a prohibition on holding office for three years. On June 7, 2011, the IRB issued a letter stating that the proposed sanction was inadequate. By letter dated June 16, 2011, Mr. Hoffa opted not to modify the IBT sanction as to the board members. A hearing before the IRB was held on October 11, 2011, in Boston, Massachusetts. Messrs. Perry and Geary entered into agreements on February 7, 2011, and September 7, 2011, respectively, and were not subjects of the October hearing.

Prior to the hearing, the IRB's chief investigator, Charles Carberry, filed a prehearing memorandum on September 21, 2011. Mr. Carberry's memorandum set forth the following background facts, which the respondents do not dispute.

Background Facts

All respondents were members of the executive board of Local 82, located in Boston. Carberry Memo at exh. 1-4. The principal officer and only full-time employee of Local 82 was John Perry, no longer a party to this inquiry by

virtue of his September 7, 2011 agreement. *Id.* at exh. 3. Respondent Thornton has been a member of Local 82 since 1982, a trustee since 2004, and Vice President since 2007. *Id.* at exh. 17. Respondent Milisi has been a member since 1990 and recording secretary since 2007. *Id.* at exh. 20. Respondent Dizoglio has been a member since 1984 and a trustee since 1999. *Id.* at exh. 24. Respondent Logan has been a member since 1984 and a trustee since 2007. *Id.* at exh. 25-26. Respondent Murphy has been a member since 1987 and a trustee since 2007. *Id.* at exh. 26-27. Each of the five respondents received an annual stipend of \$2,200 for their service. *Id.* at exh. 3.

The executive board is authorized to purchase property and to make expenditures on behalf of the local pursuant to the Local's bylaws. Section 14(A)(18). The Bylaws require that the board seek approval from the membership for all such expenditures barring "routine expenditures not of a substantial nature." *Id.* The IBT's Local Union Financial, Administrative Policies and Procedures Manual recommends that purchases exceeding \$10,000 be considered non-routine requiring membership approval. Carberry Memo at exh. 40 and 45.

The Charges

The first charge in this inquiry, applicable to all respondents, arises out of two expenditures in excess of \$10,000 made by the local in connection with its 75th anniversary celebration. The first of these expenditures was a purchase of a 1933 Ford truck for \$13,300 by Messrs. Perry and Geary on June 20, 2008. The respondents in this inquiry did not become aware of this purchase until 20 days later at the June 30 executive board meeting. Carberry Memo at exh. 32. The members were not informed of the expenditures until the general membership meeting on September 21, at which time no vote was taken nor was approval sought for what was at that point a *fait accompli*. *Id.* at exh. 34. The second concerns the expenditure of over \$90,000 in connection with the anniversary party, including over \$45,000 for catering and over \$12,000 for video recording. 2008 Form LM-2. These significant non-routine expenditures likewise were never put to a vote before the members, nor were the actual costs disclosed to the membership.

The second charge in this inquiry, applicable to respondents Dizoglio, Logan, and Murphy, is that they violated Article X, Section 8(b) of the IBT Constitution and Section 12 of the Local 82 bylaws when they simply

signed their approval of financial reports prepared by Perry without first verifying the bank account balances or any supporting financial documentation. Each of the three respondents testified previously that they had reviewed and signed only reports already completed by Perry. 6/9/2010 Logan Exam. at 12-15; 6/9/2010 Dizoglio Exam. at 34-38; 6/9/2010 Murphy Exam. at 34-38.

Testimony by the Respondents

The respondents do not dispute that neither the party expenditures nor the purchase of the truck were ever put to a membership vote. Tr. 10/11/11 at p. 26¹ ("As an executive board we do not refute the fact procedural errors were made by not obtaining membership approval for the 75th anniversary party and the purchase of the 1933 antique truck.") Nor do they dispute that they failed to verify the monthly trustee reports. *Id.* at 27 ("As far as the verification of the monthly trustee reports, it is not contested that the trustee reports should have been verified with the bank statements.") As the respondents admit the substance of the charged conduct, the IRB turns to the mitigating factors raised in the respondents' testimony.

¹ "Tr. 10/11/11" as used herein refers to the transcript of the October 11, 2011 IRB hearing in Boston.

Respondents testified persuasively that Mr. Perry, together with relatives and friends (not members of the board), exerted a great degree of influence over the operations of the local. Tr. 10/11/11 at p. 19 ("It was John Perry and the gentlemen that hung with him. They knew everything. We really knew nothing.")

Additionally, respondents testified persuasively that they received no training or instruction in how to carry out their duties. Tr. 10/11/11 at 11 (Mr Logan: "We were never educated—I wasn't—on the proper procedures as far as the trustee"); at 12 ("Mr. Murphy: "Like others on the board, I struggled to understand those minimal duties at considerable cost to myself."); at 14 (Mr. Dizoglio: "The question that's on my mind right now is . . . why [Perry and Geary] didn't train us or minimal training or whatever or tell us what our minimal duties were."); at 21 (Ms. Milisi: "The only way I learned how to do [my job] was I took the previous secretary's notes, and I followed it from there . . . I was never trained."); at 29 (Mr. Thornton: "[I]t's pretty obvious that we didn't receive any education. We were never told that we could go to - that we could be educated by the IBT International.") Respondents testified that as a result of their lack of training and experience, they followed Mr. Perry's instructions without

question. Tr. 10/11/11 at 29 (Mr. Thornton, reading a statement on behalf of all respondents: "We did not engage in the day-to-day running of the local, and we relied heavily on the full-time officer for guidance regarding our duties as executive board members, foolish as it was. * * * We totally relied on John Perry to instruct us.")

Several respondents testified as to their volunteer service to the community (Tr. pp. 14-15, 30-31), and others submitted letters attesting to their character. The IRB finds these to be credible and commends the respondents on their service, and takes these representations into account in forming its opinion.

Analysis of the IBT's Proposed Sanction

Having heard the testimony, and having reviewed the letters of character submitted as exhibits, the IRB is persuaded that the respondents' failures to carry out their duties were not motivated by malice. The IRB is persuaded that the respondents did not intend to deceive the membership or to achieve personal gain at the expense of their brother Teamsters. The IRB agrees with Mr. Thornton's statement that they were "rank and file members" who "relied heavily on [Perry] for guidance regarding our duties as executive board members, foolish as it was." Tr. at 29. For that reason, the IRB concurs with Mr. Murphy's

argument that suspending their memberships is unwarranted.
Tr. at 13.

Nonetheless, whether because of poor training or the overbearing personality of Mr. Perry, the fact remains that each of the respondents had a sworn duty to protect the interests of his or her brother Teamsters. Each of the respondents stood by while Perry treated Local 82 as his plaything, and none fulfilled his or her responsibility to act as a check on Perry's autocratic rule. The constitution and bylaws of the union invest the trustees with the duty to see that their brother Teamsters' dues are spent wisely and according to the rules. In this duty, the respondents failed, and for that failure, there must be some consequence.

The IBT's recommended sanction, regrettably, creates no such consequence. The IBT recommended that each of the officers be barred from holding office or employment with the local for three years. Because Local 82 was in trusteeship, during which period each officer by operation of the trusteeship would be barred from holding office anyway, and because that period may extend throughout the entirety of the IBT's recommended three-year debarment, the recommended sanction is illusory. The IRB believes a more substantial remedy is necessary.


Conclusion

For the reasons outlined above, the IRB holds that each of the five respondents be barred permanently from holding office or employment with Local 82 or any successor union. This remedy is not unduly harsh; no respondent will be suspended or expelled from the union. They will not be prevented from working or earning their livelihood, nor will they be barred from exercising their rights as union members, save the right to stand for office. They are simply prevented from ever again serving in that position of their brothers' trust of which they have shown themselves to be unworthy.

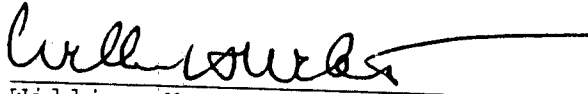
Dated: January 25, 2012

Respectfully Submitted,

Members of the
Independent Review Board


Benjamin R. Civiletti


Joseph E. diGenova


William H. Webster

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.

Defendants.

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:
: 88 Civ. 4486 (LAP)
: ACKNOWLEDGMENT OF RECEIPT
: OF THE OPINION AND
: DECISION OF THE
: INDEPENDENT REVIEW BOARD
: IN THE MATTER OF
: LEIF THORNTON, CHERYL MILISI
: FRANCIS DIZOGLIO, JOHN LOGAN
: AND NICHOLAS MURPHY

This Court hereby acknowledges that the Opinion and Decision of the IRB of Application 155 of the Independent Review Board ("IRB") for the International Brotherhood of Teamsters ("IBT") has been received by this Court, and that this Court has caused to be filed the original documents concerning the Opinion and Decision of Application 155 of the IRB with the Clerk of the Court of the Southern District of New York.

This Court further certifies that the instant Acknowledgment of Receipt ("the Acknowledgment") has been filed with the Clerk of the Court of the Southern District of New York, and that a copy of the Acknowledgment has been forwarded to the following:

John J. Cronin, Jr.
444 North Capitol Street, NW, Suite 528
Washington, DC 20001
Administrator of the Independent Review Board

James R. Tewhey, Esq
70 Washington Street, Suite 405
Salem, Massachusetts 01970-3520
Counsel for Nicholas Murphy

Leif Thornton
56 Mansfield Street
Weymouth, Massachusetts 02190-3127
Respondent

Cheryl Milisi
8 Hubbardston Road
Dorchester, Massachusetts 02125-1027
Respondent

Francis Dizoglio
5 Transit Street, Apt. #1
South Boston, Massachusetts 02127-2725
Respondent

John Logan
231 Meadow Street
Carver, Massachusetts 02330-1524
Respondent

Dated: New York, New York

_____, 2012

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, et al.

Defendants.

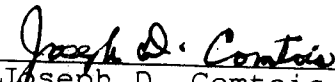
88 Civ. 4486 (LAP)
AFFIDAVIT OF SERVICE

Joseph D. Comtois hereby deposes and says:

1. I am the Assistant to the Administrator in the office of the Administrator of the Independent Review Board. On January 25, 2012, I caused to be delivered via UPS Ground to the Honorable Loretta A. Preska one executed original and one copy of Application 155, the executed original and one copy of the Opinion and Decision of the IRB, and the original and one copy of the Acknowledgment of Receipt.

2. I also caused a copy of Application 155 along with the enclosures to be delivered to:

Tara La Morte, AUSA, via UPS Ground
Charles M. Carberry, Esq., via UPS Ground
Bradley T. Raymond, Esq., via Hand Delivery
James R. Tewhey, Esq., Via UPS Ground
Leif Thornton, Member Local 82, Via UPS Ground
Cheryl Milisi, Member Local 82, via UPS Ground
Francis Dizoglio, Member Local 82, via UPS Ground
John Logan, Member Local 82, Via UPS Ground


Joseph D. Comtois

Sworn to and subscribed
before me this 25th day

of January 2012


JOANNE C. BATZ
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires March 14, 2012