In the Matter of ROME ALOISE	Before the INDEPENDENT REVIEW OFFICER

OPINION OF THE INDEPENDENT REVIEW OFFICER

October 24, 2017

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I. INTRODUCTION

On February 10, 2016, the Independent Review Board ("IRB") issued its investigative report (the "Charge Report") on Rome Aloise to the International Brotherhood of Teamsters ("IBT") General Executive Board ("GEB") recommending that three charges be filed against Aloise (the "Charges"). [1]

Charge One alleges that Aloise brought reproach upon the IBT, violated the Taft Hartley Act, 29 U.S.C. § 186(b), engaged in acts of racketeering and violated the injunction in paragraph E(10) of the Consent Order, by requesting and receiving things of value from IBT employers in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2), (11) and (13) of the IBT Constitution. In particular, the IRB alleged that, in 2013, while an International Vice President, President of Joint Council 7 and Principal Officer of Local 853, Aloise requested and received things of value from Southern Wine and Spirits, an employer of Teamster members with whom Aloise was negotiating. The alleged things of value were six admissions to a Playboy Super Bowl party for another Teamster official and his family and friends, a job for Aloise's cousin, and the retention of his cousin in his job after the employer determined he (the cousin) was not performing as required. In addition, in February and March 2013, Aloise allegedly requested a thing of value, a job for the same cousin, from Gillig Corporation, a Teamster employer.

Charge Two alleges that Aloise brought reproach upon the IBT, violated Article XII, section 1(b) and Article XIV, Section 3 of the IBT Constitution and Article IV, Section 6 and Article XVIII, Section 6 of the Local 853 Bylaws in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1) and (2) of the IBT constitution. Specifically, Count Two alleges that, in 2004

[1] A disc of that investigative report with cover letter and exhibit list are labeled Independent Disciplinary Office Exhibits 1 and 1A, and a separate disc containing the associated exhibits is labeled Exhibit 1B. (Hereinafter, all IDO exhibits will be identified as "IDO-[number]").

and subsequent years, while Principal Officer of Local 853, Aloise entered into collusive, sham collective bargaining agreements with an employer, the Grand Fund LLC ("GrandFund"). Mr. Aloise allegedly allowed the employer to select the bargaining agent for his employees and caused Local 853 to commit an unfair labor practice in violation of 29 U.S.C. §158(b)(1)(a) by interfering with the employees' right to select their representative. In addition, Aloise failed to follow IBT constitutional and Local 853 Bylaw requirements regarding contract negotiations and ratifications. Further, in 2012, Aloise allegedly allowed an ineligible person to obtain and retain membership in Local 853, in violation of Article XIV, Section 3 of the IBT constitution.

Lastly, Charge Three alleges that Aloise brought reproach upon the IBT through a pattern of misconduct in connection with the Local 601 officer election that included: violating the prohibition against using union resources to promote a candidate in a union election, in violation of Title 29, United States Code, Section 481(g); breaching his fiduciary duties under Title 29, United States Code, Section 501(a); attempting to interfere with members' LMRDA rights under Title 29, United States Code, Section 411(a)(2), (4) and (5); and violating Article XIX, Sections 1(a) and 7(b)(10) of the IBT Constitution; all in violation of the IBT Constitution, Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (10). Specifically, the IRB alleges that, in 2013, while an International Vice President, and Principal Officer of both Joint Council 7 and Local 853, Aloise engaged in a pattern of misconduct designed to prevent a fair officer election in Local 601, including by using union resources to support a candidate and subvert her opponents and attempting to deny members' LMRDA rights to free speech, to sue and to fair hearings. In addition, Aloise allegedly breached his fiduciary duties by ignoring, when known to him, his chosen candidate's wrongdoing and also by failing to act to end her known defiance of the General Secretary's instructions concerning her local's sabbatical policy. By failing to ensure the internal

political rights of IBT members to a fair election, Aloise is also alleged to have breached his fiduciary duties under Title 29, United States Code, Section 501(a).

Under the Final Agreement and Order (the "Final Order"), approved on February 17, 2015, in *United States v. International Brotherhood of Teamsters*, *et al.*, 88 Civ. 4486 (LAP), the matter was transferred to the jurisdiction of the Independent Disciplinary Officers ("IDO").

II. PROCEDURAL HISTORY

On February 23, 2016, General President James P. Hoffa (hereinafter, the "General President") adopted and filed the Charges against Aloise. (IDO-2). The IBT initially noticed a panel hearing for April 26, 2016. (IDO-3). Following an extension request by the IBT (IDO-4), the then-Independent Review Officer ("IRO"), Benjamin Civiletti, set a new deadline of July 17, 2016 for the IBT to make a determination on the Charges. (IDO-5). On April 7, 2016, the IBT noticed a new hearing date of June 6, 2016. (IDO-6).

By letter dated May 24, 2016, Viet Dinh, Esq., counsel for the IBT, informed the Independent Investigations Officer ("IIO") that Aloise's counsel had been advised by the Department of Justice ("DOJ") that Aloise was the target of an investigation relating to the same conduct implicated in the IIO's charges and, therefore, the IBT intended to seek a stay of the hearing until after the DOJ completed its investigation. (IDO-7). Mr. Civiletti denied any further extension of the IBT's deadline to adjudicate the Charges for failure to show just cause. (IDO-8). On June 3, 2016, Mr. Dinh notified Mr. Civiletti that DOJ's investigation necessitated an indefinite extension of the hearing on Aloise's charges and that, therefore, the IBT had suspended the hearing previously scheduled to begin on June 6, 2016. (IDO-9). In response to the IBT's decision to suspend the hearing, Mr. Civiletti requested a reply within 20 days as to whether or not the IBT would proceed with a hearing on the charges and render a decision prior to the September 15, 2016 deadline, indicating that if the IBT chose not to hold a hearing, the IRO would convene a *de novo*

hearing and render a decision. (IDO-10). On August 5, 2016, Mr. Dinh advised that the IBT would not hold a hearing and referred the matter back to the IRO for adjudication. (IDO-11). The IRO issued a notice for an October 11, 2016 hearing. (IDO-12).

On September 15, 2016, counsel for Aloise submitted a letter to Mr. Civiletti stating that he would be soon be undergoing surgery and would not be able to attend the scheduled hearing in October but would be available in January 2017. (IDO 14). On October 6, 2016, the IDO issued notice of postponement of the hearing. (IDO-15). On October 11, 2016, Mr. Civiletti tendered his resignation as IRO to the Honorable Loretta A. Preska, United States District Judge for the Southern District of New York. (IDO-16).

On December 16, 2016, Judge Preska approved the joint application by the IBT and the United States Attorney's Office to appoint me as the IRO. On January 11, 2017, I advised Aloise that the *de novo* hearing would be held on March 14, 2017. Aloise submitted a letter motion requesting that the hearing again be adjourned until the completion of DOJ's investigation. (IDO-23). *See supra* p. 3. On February 21, 2017, I denied the request and ordered that the hearing proceed as scheduled. (IDO-25). On March 10, 2017, in response to a notice from the IIO that he intended to call Aloise as a witness at the hearing, Aloise's counsel requested an adjournment of the hearing in order to have additional time to prepare Mr. Aloise to testify. (IDO-26). I denied Aloise's requested adjournment but granted him two additional days to prepare for the hearing. (*Id*.).

The *de novo* hearing was held on March 14 and 16, 2017, at the Sheraton Fisherman's Wharf, in San Francisco, California. Mr. Aloise testified in his own defense. Pamela McKenna, Vice President of Human Resources and Labor Relations at Gillig LLC; Dennis Howard, President and CEO of Gillig LLC; and Lawrence Yoswa, Principal Officer of Local 792 and President of

Joint Council 32, were all called to testify on Aloise's behalf. Aloise was also called as the sole witness by the IIO's lead investigator, Charles Carberry, who conducted the hearing for the IIO. In addition to his direct examination of Aloise on his own case, Mr. Carberry cross-examined him on the defense case. (March 2017 Hearing Transcript ("Hearing Tr." or "Tr.")).

Following the conclusion of the hearing in this action, and after careful, complete consideration of the testimony of the above-listed witnesses, the exhibits, and the parties' post-hearing submissions, I now make the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

A. Aloise's Background

Rome Aloise is a fifty-year veteran of the IBT. (Hearing Tr. at 124). He began his IBT career as a member at the age of 16. (*Id.*). He landed his first position as an IBT employee in 1975. (*Id.* at 125). In addition to holding many IBT jobs over the years, Aloise has served in numerous leadership roles in his local and throughout the IBT for decades. (*Id*. at 125-35). At the time of the hearing, Aloise's impressive array of positions in the IBT included: (i) principal officer of Local 853, the largest local in Northern California with a total of approximately 11,500 members (*id*. at 126; 244-45); (ii) president of IBT Joint Council 7 (*id*. at 127-28); vice president at-large for the GEB (*id*. at 130); director of the Dairy Conference (id. at 131); director of the Food Processing Division (*id*. at 132); trustee and chairman of the investment committee for the Western Conference of Teamsters Pension fund (*id*. at 133-34); trustee for the Teamsters Benefit Trust (*id*. at 134); a trustee for the Voluntary Employee Benefits Fund (*id*.); board member for the IBT 401(k) plan (*id*. at 134-35); and executive vice president for the California Labor Federation, a non-Teamster labor organization (*id*.).

B. The Super Bowl Party Admissions for William C. Smith

In late January 2013, William C. Smith, the Executive Assistant to General President Hoffa and the President of Local 891 (Ex. 1 at 7), received tickets to the upcoming Super Bowl in New Orleans. (Tr. 181). Smith had asked Aloise to assist him in gaining access to a liquor industry party held before the Super Bowl. (Tr. 187-88). Smith did not know the name of the party at the time of his request to Aloise. (*Id.*; Ex. 84). By January 30, 2013, just a few days before the Super Bowl, Aloise was still working on identifying the party and obtaining access for Smith. (Ex. 84).

At the same time that Aloise was trying to fulfill Smith's request for access to a liquor industry party at the Super Bowl, Aloise was helping IBT Local 792, located in Minneapolis, Minnesota, in contract negotiations with Southern Wine and Spirits ("SWS"), a large nationwide liquor distributor and significant Teamsters employer. (Tr. at 37, 168-69; Ex. 1 at 87-88). Local 792 had rejected a previous contract proposal from SWS in October 2012. (Tr. at 37, 266-67; Ex. 195 at 1). At the request of SWS, on January 30th, Aloise joined Local 792's principal officer, Lawrence ("Larry") Yoswa, to negotiate on behalf of the union. (Tr. at 267-79). Aloise had approximately thirty-five years of experience negotiating with SWS. (Tr. 168). Aloise spent the day of the 30th hammering out a deal with SWS for the Local. (Tr. 184-85). Simultaneously, he was working through SWS's outside counsel, Stuart Korshak, to procure admissions to a party for Smith. (Tr. 186). In an e-mail dated January 30, 2013, Korshak wrote to the President and CEO of SWS, Wayne Chaplin, and described the day's negotiations with Local 792. (Ex. 78). In addition to praising Aloise for his contribution to the negotiations, Korshak passed along Aloise's solicitation of assistance in procuring access to a liquor industry party at the Super Bowl for an associate of General President Hoffa. (*Id.*; Tr. at 186). The e-mail from Korshak to Chaplin, which Korshak forwarded to Aloise the same day, states,

> Rome has lead [sic] the negotiations for the [Local] all day and caucused with Yoswa several times when he was balking at a rationale [sic] deal. We will get a good deal done tonight. When you talk to Rome about Washington and California legislation, you should thank him for his assistance on Minnesota. It would have continued to be a mess without him. . . . Also, Rome wants to get six tickets for Hoffa's team to the liquor industry's party at the Super Bowl this weekend. Can SWS help?

(Ex. 78). Chaplin did not know the name of the liquor industry party, so he asked Korshak for more information. (*Id*.; Tr. at 187). Korshak sought assistance from Aloise to identify the party, which Korshak suggested could be the Playboy Party Presented by Crown Royal (the "Super Bowl Party" or "Party"). (Ex. 82). After some research by Korshak and Smith, it was ultimately determined that the Playboy Party was the one that Smith wanted to attend. (Tr. at 188; Exs. 87, 89, 90).

The next day, January 31, 2013, in an e-mail, Korshak identified the party for Chaplin and reiterated that Aloise "would like to get one of Hoffa's key guys 6 passes or tickets to [the Super Bowl Party]. His name is WC Smith. I told [Aloise] you would try to help." (Ex. 87). Diageo, the producer of Crown Royal, was a sponsor of the Party. SWS is a distributor of Diageo products. A SWS employee forwarded Korshak's e-mail to Chaplin to Mark Hubler of Diageo seeking assistance. (*Id*. ("See below, can you help me with this? Happy to pay. Thanks.")). Shortly thereafter, Hubler confirmed that he could provide access to the Party for six people under Smith's name but that he needed the name of all of Smith's guests, per Playboy's rules. (*Id*.). Korshak forwarded the e-mails with Hubler to Aloise. (*Id*.). Korshak also forwarded an e-mail to Aloise between him (Korshak), Chaplin and others at SWS, in which Korshak advised Chaplin, "I told [Aloise] you are working on getting Hoffa's guy the passes for tomorrow night's Super Bowl Party in New Orleans. He said to thank you." (Ex. 88).

By the evening of January 31, 2013, Aloise was assured that he had obtained access to the Super Bowl Party for Smith. (Ex. 90). In an e-mail to Smith, Aloise advised Smith of such and

highlighted the role that SWS played in procuring the admissions to the Party from Diageo. (*Id.*). Aloise wrote,

> "The owner of Southern Wine and Spirits made the call to Diageo who owns Crown Royal, and there will be six tickets under your name. I should have the confirmation tomorrow. All those bunnies, Nancy will have you in handcuffs!!!!"

(*Id.*). Smith replied, "Your [sic] the best . . . . . Thanks." (*Id.*). During the afternoon of February 1, 2013, the day of the Party, Aloise forwarded an e-mail chain to Smith to confirm that the admissions were indeed lined up. (Ex. 92 ("Read all the way down. You should be set. Any problems call the person on the bottom of the email string. Have fun!!")). The e-mail chain includes e-mails between Chaplin of SWS and Hubler of Diageo. (*Id.*). In one e-mail in the chain, Hubler offered Chaplin the assistance and phone number of Diageo's "GM of TX/LA" in the event that there were any issues with Smith's access to the Party, to which Chaplin responded, "Mark thanks for your help very much appreciated." (*Id.*).

The Super Bowl Party was a private, invite-only event hosted by Playboy and sponsored by Diageo and others. (Exs. 373 at 9-10; 387 at 2). According to a Playboy representative, the company spent approximately $400,000 to $500,000 to produce the event. (Ex. 373 at 12). And sponsors, like Diageo (through Crown Royal), paid a sponsorship fee, which allowed them both naming rights and a set number of admissions to the Party. (Ex. 373 at 8, 12-13). Admissions to the Party could be obtained primarily through the sponsors. (Ex. 373 at 16-17). In addition, Playboy sold admissions, both individual tickets and tables, to a ticket broker that could sell them on the secondary market. (Exs. 379, 381, 382, 383; 373 at 15-16). The ticket broker, National Event Co. ("NECO"), paid approximately $1,000 per admission for 100 admissions. (Ex. 373 at 15-16). McIlhenny Tabasco, one of the Party's sponsors, also paid $1,000 per admission for those admissions above the amount allotted to it through its sponsorship. (Ex. 377).

Smith, his wife, and two of his friends attended the Playboy Party on the night of February 1, 2013. About a week later, Aloise wrote to Chaplin to thank him (and his father, the SWS Chairman) for getting the Playboy Party admissions for Smith. (Ex. 332 ("I am remiss in not thanking you and your dad for the passes into the Super Bowl party. Hoffa's Ex Asst and his friends loved it.")).

C. Aloise's Efforts to Help Mark Covey Get a Job

Mark Covey is Aloise's cousin. (Tr. 161). Covey is also a Teamster. (*Id*.). As described by Aloise, Covey, who is in his late 50's, is "mentally challenged" and has "little formal education." (*Id*.). In around late 2012, Covey lost his job with Caterpillar, a union employer that closed the facility in which Covey worked. (*Id*.). After losing his job, Covey turned to Aloise for assistance getting employment. (*Id*. at 162).

1. Gillig

Gillig LLC is a union employer that manufactures buses. (Tr. 89; Ex. 174 at 7). Gillig employs hundreds of members of Local 853. (Tr. at 89). In 2013, the Local 853 business agent for Gillig was Bo Morgan. (Ex. 5 at 37). In 2012, Gillig took over the facility from Caterpillar where Covey had worked. (Ex. 107). On February 25, 2013, Aloise sent an e-mail to Pamela McKenna, Gillig's Director of Human Resources and Labor Relations, asking her to hire Covey. (Ex. 98). The subject of the e-mail was "Mark Covey." (*Id*.). Aloise wrote,

> "Mark is my cousin who worked at Caterpillar parts warehouse prior to you guys taking over. He is a bit backward but is a good snd [sic] constant worker. He filled out an app today and I would consider it a personal favor if you can find him something. Even the janitor starting intro job would be wonderful."

(*Id*.). Two days later, Aloise forwarded McKenna an e-mail he received from Covey in which Covey expressed concern that Gillig did not have an open position for his skillset. (Ex. 108). McKenna replied. (*Id*.). She informed Aloise that Covey was in a group of applicants who would

be interviewed for a position with the company, although there were no janitorial positions open at the time. (*Id*.). Aloise wrote her back: "Thanks, always need someone to sweep whatever, I appreciate all you are doing." (*Id*.).

Gillig interviewed Covey. (Tr. at 103; Ex. 117). The company decided not to hire him. According to McKenna, the interviewers did not believe that Covey would be a good assembler, the job that was available at the time. (Tr. at 104). On March 20, 2013, McKenna informed Aloise of the company's decision. (Ex. 109). Aloise was not pleased. He wrote to McKenna to try to persuade her to give Covey further consideration. He implored McKenna,

> "Over the years I have asked for very few favors. Can you push this around a little and give him some considerstion [sic]. Maybe get some dispensation from the top. He is never going to be a disciplinary problem and will be there everyday [sic]"

(Ex. 109). In McKenna's eyes, Aloise was just asking her to "help [him] out a little bit, like a lot of other people might do." (Tr. 105-06).

Aloise was upset that Gillig had rejected his cousin. (Tr. at 164). He contacted Bo Morgan, Local 853 vice president and the business manager for Gillig. (Ex. 106). Via e-mail, Aloise advised Morgan that Gillig had rejected a job application from Covey after an interview and that he was "pissed at [McKenna] . . . Fuck [Gillig] from now on, they get no favors, everything gets taken on, and she can go fuck herself." (*Id*.). In closing, Aloise reiterated to Morgan what he had previously written to McKenna, he was asking McKenna for a favor in hiring Covey: "I very seldom lower myself to ask for a favor, but that is how I asked her . . . ." (*Id*.). After Morgan offered to assist Aloise by asking McKenna to "revisit" Covey's application or "grovel a bit," Aloise wrote, "[f]uck [McKenna], I have a long memory." (*Id*.). Even without an explicit request from Aloise, Morgan called McKenna. (Ex. 5 at 44). He told her that by rejecting Covey's job application she had angered Aloise. (*Id*.). McKenna responded that she did not do so intentionally.

(*Id*.). Gillig has "strict hiring procedures" that Covey could not surmount. (*Id*.). No further steps were taken by Aloise or anyone else at Local 853 with respect to Gillig. (Tr. 108).

2. SWS

On March 22, 2013, two days after Aloise learned that he had failed in his initial attempt to land Covey a position at Gillig, Aloise contacted Robert Strelo, one of Local 853's business agents for SWS (Ex. 6 at 6, 13), to seek Strelo's assistance on Covey's behalf. (Ex. 114). A few weeks later, on April 8, Covey updated Aloise on the SWS situation; there were no jobs in the warehouse listed on the SWS on-line system and Strelo had not yet contacted him. (Ex. 118). Aloise again contacted Strelo to find out if Strelo had talked to anyone at SWS about Covey's interest in a job. (Ex. 111). Strelo apprised Aloise that he had indeed contacted Tom Passantino, who was in the human relations department at SWS, about Covey. (Ex. 116). Aloise requested that Strelo "tell [Passantino] to hire the little sob [sic], as a janitor in the [warehouse] whatever." (*Id*.).

In early May, Covey checked in with Aloise to let him know that there had been no progress on SWS. (Ex. 121). Aloise forwarded the e-mail to Strelo. (*Id*.). Strelo committed to reaching out to SWS via Tom Steeno, SWS's Vice President of Operations, and Passantino. (*Id.*). By May 13, 2013, Covey had been to SWS three times, but there was no job opening. (Ex. 123). Aloise grew impatient at the lack of progress. (Tr. at 205). According to SWS policy, Covey could not apply for a job until a vacancy was posted on the SWS website. (Ex. 123). Strelo reported to Aloise that he complained to SWS's Steeno to get Covey an interview, which was successful despite a policy of conducting interviews only after a position is available. (*Id*.). Internally at SWS, Covey's ties to Aloise were noted. (Ex. 129). Passantino urged his colleagues to "keep on top" of the Covey situation because "if Mr. Covey somehow is overlooked I'm certain that [Aloise] will not be amused." (*Id*.).

As Aloise began his push for Covey at SWS, he was involved in negotiations with SWS on a number of issues, including over the staffing of a new supply center in Tracy, California and the organizing of direct sales delivery ("DSD") salespeople. (Tr. 193-200; Ex. 1 at 95-97; Ex. 110; Ex. 112; Ex. 120; Ex. N42). The very people sitting across the table from Aloise in the negotiations were the individuals he sought help from for Covey. On May 14, 2013, Rick Krakoff, an attorney for SWS, wrote to Aloise about an upcoming meeting the next day between Local 853 and SWS and Young's Market Company ("YMC") in connection with the union's efforts to organize the DSD salespeople. (Tr. at 207-09; Ex. 124). Krakoff notified Aloise that Tom Steeno was expected to attend for SWS. (Ex. 124). Aloise replied, "If Steeno doesn't hire mark covey I might now show up;" *i.e.*, Aloise would have to talk to Steeno in person if nothing was done to advance Covey's job search by the time of the meeting. (Ex. 124; Tr. 209-10). Krakoff answered that he had just talked to Steeno and that Steeno represented that he was working with Bob Strelo on getting Covey a job at SWS. (*Id*.). Aloise again expressed his frustration that there was no progress on Covey. (Tr. at 210-11; Ex. 126). To which Krakoff assured Aloise that there was movement at SWS. (Ex. 126). The daytime janitor (a "swamper") position had been posted, which would go to the current nighttime janitor, thus, opening up the nighttime janitor position for Covey to apply. (*Id*.). Krakoff believed that the open position "should go to" Covey. (*Id*.). As he had warned, (*see* above), Aloise attended the meeting with Steeno on May 15. (Ex. 127).

The SWS nighttime janitor position became available on May 17th. (Ex. 128). By May 20th, SWS determined that there were no internal union applicants for the nighttime janitor position, so the position would be posted for the general public. (Ex. 129). The CBA that governed the relationship between the union and SWS permitted SWS to consider applicants nominated by

Local 853 as well as nonunion members. (Ex. 115 at Art. 2, Sec. 1).[2] SWS's Passantino invited Covey to go to SWS to submit his application. (Ex. 128). SWS kept Aloise in the loop regarding the advancement of Covey's application. (Ex. 129; 131). SWS hired Covey on June 10, 2013. (Ex. 103; Tr. at 213-14).

Aloise understood the value of a job at SWS. (*See* Ex. 103 ("Keep that job until you retire."); Ex. 135). Covey, however, nearly lost the job before his probationary period was complete. (Tr. at 214-17).[3] SWS was concerned that Covey could not handle the responsibilities. (*Id.*; Ex. 102). This was not an ordinary union member struggling to keep up with the demands of a new job -- this was Aloise's relative. When a colleague asked Steeno to advise on how best to handle Covey, Steeno forwarded the message to SWS's outside lawyers, Korshak and Krakoff. (Ex. 102). He wrote, "This is Rome's relative that he gave me so much crap about hiring. Lot's [sic] of pressure on both Strelo and me to get it done. Any suggestions?" (*Id.*). Korshak forwarded Steeno's message to Aloise. (*Id.*). He asked Aloise "What do you want me to do?" (*Id.*). Aloise preferred that SWS retain Covey despite his apparent shortcomings. (*Id.*). SWS did as Aloise wanted. (Tr. at 217; Ex. 347 ("Tom [Passantino"] will make sure the guy [Covey] keeps working for SWS . . . ."")). Strelo, in an e-mail with the subject "Cousin Mark," informed Aloise that he and Steeno "came to an agreement that as long as [Covey] isn't lazy . . . then Steeno can live with it!" (Ex. 136). Aloise, for his part, gave Covey a pep talk ("You need to work harder and get the

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[2] The CBA between SWS and the Union states, in pertinent part,

> **Article 2 - Union Security**
> **Article 2, Section 1. Hiring**
> **2.1.1** When new or additional employees are needed, the Employer shall notify the Union having jurisdiction of the number and classification of the employees needed. Said Union shall have forty-eight (48) hours to nominate applicants for such jobs.
> **2.1.2** The Employer shall choose between any nominees of the Union and any other applicants on the basis of their respective qualifications for the job. No applicant will be preferred or discriminated against because of membership or nonmembership in the Union. The Employer agrees to notify the Union promptly of all employees leaving its employment.

[3] Covey was subject to firing without recourse during the probationary period. (Ex. 115 at Art. 5, Sec. 3.1).

jobs done faster and more completely"), and reminded him that Covey's failure would reflect poorly on him (Aloise). (Ex. 193 ("Step up and get it done. I don't need ypu [sic] to embarrass me.")).

D. GrandFund and Charles Bertucio's Membership in Local 853

1. Background

GrandFund is an intermediary that connects service providers in the healthcare and pension sectors with union funds. (Tr. at 140). The company's principal and sole owner is Charles Bertucio. (*Id.*; Ex. 2 at 6). Bertucio and Aloise have known each other for over thirty years. (Tr. at 140; Ex. P at 196).[4] They are not particularly close ("friendly acquaintances"), but they socialize on occasion and they have spent time together at union-related events. (Tr. at 141-43; Ex. P at 196). For instance, both were on the Executive Committee of the James R. Hoffa Memorial Scholarship Fund (the "Hoffa Fund") (Ex. 1 at 33; Ex. 2 at 24-25). Bertucio has also maintained personal relationships with other union leaders, including General President Hoffa and his Executive Assistant, William C. Smith. (Ex. 2 at 28-32). Bertucio participated in an annual golf trip with IBT leaders such as Hoffa and Smith. (*Id.*). Aloise did not join them.

Bertucio founded GrandFund in 1989. (Ex. P at 140-41). He sold his 100% ownership stake in the company to Ullico in 2001. (*Id.* at 141). In late 2003, Bertucio reacquired GrandFund. (Tr. 145). Edward Logue worked for Bertucio in the early days at GrandFund and rejoined the company in early 2004 as a full-time W-2 employee. (Ex. P at 150; Tr. 144-45). Logue was a three-time cancer survivor who was interested in joining the IBT in order to secure health benefits. (Ex. 2 at 19 (Logue told Bertucio of his interest in joining the union); Ex. P at 151-52). He was also a friend of Aloise. (Tr. at 144). Aloise and Logue had worked together when Logue was a

[4] Lettered exhibits refer to the exhibits submitted on behalf of Aloise at the *de nov*o hearing.

representative of the machinist union. (*Id*.; Ex. 1 at 57). After returning to GrandFund, Logue sought out Aloise for advice on how to secure health and welfare benefits. (*Id*. at 145; Ex. 1 at 57). The two men discussed what would go into a collective bargaining agreement in response to Logue's concerns. (*Id*.; Ex. 1 at 59). At the time, GrandFund had only two employees, Logue and Lisa Ramsey, Bertucio's sister. (*Id*. at 146). Ramsey started working at GrandFund on March 1, 2004. (Ex. P at 117-18; Ex. 4 at 5-6; Ex. 36). Vicky Lanini, a third employee, joined soon after. (Ex. P at 47). Lanini already had medical insurance when she was hired for GrandFund; primary through her previous employer and secondary through her husband. (*Id*. at 52). Upon joining GrandFund and the union, Lanini received her medical insurance through them. (*Id*. at 52-53).

Aloise has been the sole business agent for GrandFund for the entirety of its relationship with the union. (Ex. 1 at 56-63; Ex. 34; Ex. 174 at 4). Logue was the initial shop steward. (Tr. at 151). Logue died in 2006. (Ex. P at 163). Thereafter, Lanini became shop steward. (Tr. at 151).

2. The 2004 CBA

Aloise negotiated the initial GrandFund collective bargaining agreement ("CBA") with Bertucio (with input from Logue) in early 2004. (Tr. at 147-48). Aloise was not present for a vote by the two GrandFund employees to approve the proposed CBA. (*Id*. at 148). On March 4, 2004, Aloise signed a subscriber's agreement resulting in health coverage, among other benefits, for Bertucio and the GrandFund employees through the Teamsters Benefit Trust ("TBT"). (Ex. 27 at 4; Exs. 41-43). The CBA was executed on March 8, 2004, with Aloise signing on behalf of the union and Bertucio as the employer. (Ex. 27). The same day, Aloise and Bertucio finalized the Application and Subscriber's Agreement for the Teamster Benefit Trust and supplemental applications for the TBT's Retirement Security and 401(k) Plans. (Exs. 41-43). Ramsey and Logue signed their union authorization cards on March 24, 2014. (Exs. 36, 37). Lanini began working at GrandFund on May 3, 2004, and joined the union on May 19, 2004. (Ex. 38). There

was little internal discussion about the initial contract amongst the employees at GrandFund before it was approved. Logue told Ramsey about the CBA, and Ramsey simply said "okay." (Ex. P at 132). At no time did Ramsey discuss the CBA with Aloise. (*Id*. at 132-33).

The 2004 CBA contained basic protections and benefits for the GrandFund employees. (Ex. 27; Tr. at 149). In addition to minimum wage guarantees, overtime pay, sick leave, a vacation accrual system, and a grievance procedure, employees received health and welfare benefits through a Teamsters Benefit Trust Plan and a pension through the Supplemental Income 401k Plan Trust Fund. (Ex. 27). In particular, sales representatives were guaranteed a monthly base salary of $5,000.00, with the opportunity to earn commissions, the amount of which was left "[t]o be determined." (*Id*. at 4, Art. 11). There was only one sales representative, Lanini. Clerical employees were to be paid an hourly rate of $20, which was to increase $1 per year for the life of the CBA. (*Id*.). There was only one clerical employee, Ramsey, who was not aware that her salary was controlled by the terms of the CBA. (Ex. P at 123-24). In addition to her salary, Ramsey was paid a discretionary bonus not reflected in the CBA. (*Id*.).

The health and welfare benefits, which also included life insurance, a dental plan, orthodontia coverage, vision care benefits, and prescription drug benefits, were to be supported by monthly contributions from GrandFund of $675.00 per employee. (Ex. 27 at 4, Art. 8). Although the CBA provided for employee and employer contributions to a 401(k) plan, the employer's contribution amount was not determined until 2005. (*Id*. at 5, Art. 12; Exs. C, D).

Pursuant to the subscriber's agreement on the TBT application, Bertucio, even as a non-collectively bargained employee was covered as a supervisor. (Ex. 41; Ex. P at 165-67). Accordingly, Bertucio received the same health benefits under the CBA as his employees. (*Id*.).

3. The 2007 CBA

The GrandFund's second CBA was executed in 2007. (Ex. 28). There is scant evidence of how the negotiations were conducted or who took part in them. In general, Aloise would negotiate with Bertucio based on the opinions voiced by GrandFund's employees regarding what changes they would like to see in the contract. (Tr. at 155). He had no specific recollection of meeting with any employees before his negotiation with Bertucio. Ramsey, one of two GrandFund employees at the time, was aware that a new CBA was coming up, but left it to Lanini, the shop steward, to review the CBA to determine what, if any, changes would be requested. (Ex. P at 108, 132). Ramsey simply told Lanini that whatever she (Lanini) thought was good would be fine with Ramsey. (*Id*. at 111-12). Lanini had no recollection of the contract negotiations. (*Id*. at 59-60).

The new CBA was nearly identical in form and substance to the previous contract except that employer contribution amounts to the health and welfare fund were increased and the pension contribution was defined to match the supplemental agreement between Aloise and Bertucio from 2005. (Ex. 28 at 4-5). In addition, the clerical employee salary rate contained in the 2007 CBA inexplicably reduced Ramsey's salary. (*Id*.). Whereas the 2004 CBA provided for Ramsey to receive $22 per hour in 2006, the new CBA granted her a $20 per hour salary in 2007, to go up $1 per year through 2011. (*Id*.). Ramsey did not notice the mistake when she reviewed the 2007 CBA. (Ex. P at 109-10, 127). The apparent error eluded Lanini as well. (*Id*. at 60-61).[5] Ultimately, Ramsey was not paid according to the 2007 CBA. (*Id*. at 122-130). Lanini's sales commission rate was left "[t]o be determined." (Ex. 28 at 4).

[5] Bertucio maintains that the decreased salary number was merely a typographical error. (Ex. P at 164 ("it's just something that I didn't watch . . . . I just didn't look at it closely, just assuming that it was going to up a dollar a year.").

4. The 2012 CBA

When it came time to renew the CBA for 2012, Aloise notified Lanini that a new contract needed to be negotiated. (Ex. P at 61-62). Lanini set up a meeting with Aloise and Bertucio. (*Id*. at 62). The meeting with Bertucio, Aloise and Lanini took place over lunch. (Ex. P at 63, 171). There was some discussion about the new CBA and what they were having for lunch. (*Id*. at 63). Following the lunch meeting, Lanini and Ramsey also met over lunch at a restaurant to review the new CBA. (Ex. P at 65-68; Ex. 3 at 12-13). Ramsey was fine with the contract despite the fact that her hourly rate was based on the erroneously lower rate set in the prior contract. (*Id*.; Ex. 29 at 5, Art. 11; Ex. 28). Other than an address change for Bertucio, the contract remained substantially unchanged. (Ex. 29). The sales commission calculation continued to be left out of the contract. (Ex. 29 at 4, Art. 11). Aloise had never before negotiated for Local 853 members with commission based employees that failed to set a rate for commission payments. (Ex. 1 at 60).[6]

5. The 2015 CBA

In advance of the expiration of the 2012 CBA, on December 20, 2014, Aloise e-mailed Bertucio to advise him that negotiations over the new contract were needed. Aloise wrote, "We need to meet to renew your contract, have actual negotiations and a vote, signed into by all people covered by the contract, or I have to disclaim interest. Let's talk during the week." (Ex. 55). Aloise sent the e-mail after having read an IRB opinion involving an "improper contract." (Ex. 1 at 63). The IRB opinion motivated him to follow the directives of the IRB regarding the proper procedures for a CBA renewal.

[6] The IIO points out that in Lanini's initial testimony, in 2016, she said that she did not know how her commission payments were determined. (Ex. 3 at 10-12). When it came time to testify before the IBT panel in the Bertucio matter, however, Lanini had no trouble explaining the commission rate she was paid at GrandFund. (Ex. P at 69, 92-93). Whether Lanini's newfound knowledge of her commission rate was genuine or not, the CBA was silent on the issue in 2004, 2007, and 2012, and left to the sole discretion of Bertucio.

At no point during Ramsey's union membership did she ever talk to anyone at Local 853 (other than clerical staff regarding dues payments), including Aloise, the business agent for GrandFund. (Exs. 4 at 10; P at 131-33).

6. Bertucio's Membership in the Union

In around early 2012, following a health and welfare audit of GrandFund, Bertucio received a telephone call from an auditor or a lawyer who advised him that if he wanted to maintain his benefits he would have to join the union. (Ex. 2 at 20-21).[7] Although Bertucio could have obtained health insurance on the open market at a comparable rate to what he had been receiving through the union, he insisted that the continuity and convenience of dealing with only one insurance company (as opposed to two if he had the company's insurance and his own separate insurance) was of value to him. (Ex. P at 168-69).[8] At the time, Bertucio described himself as the president of GrandFund. (Exs. 30, 58).

Bertucio then put the wheels in motion to join Local 853. On March 5, 2012, Lanini contacted Aloise via e-mail with the news that Bertucio was possibly going to join the local. (Ex. 63). Lanini's wrote, "We have a couple of changes to the contract, if necessary??? The name is now Corp instead of LLC and the company address has changed. Also, I'm not sure if Charlie was joining us, as a member of 853, did he tell you?? I can ask him if need be. Who do I need to send these changes to???" (*Id.*). Although Aloise responded to Lanini's e-mail, he did not address the possibility of Bertucio's membership. (*Id.* ("Me or Jennifer")). About a month later, Bertucio,

[7] Bertucio suggested that his change in status at GrandFund to an employee by virtue of the company changing from an LLC to an S corporation may have prompted the call from the auditor. (Ex. 2 at 21; Ex. P at 167-68).
[8] Bertucio has also claimed that private health insurance would not necessarily have been more expansive than the group coverage he received through the union. (Ex. P at 170). There is nothing in the record to confirm or contradict this claim.

through his sister, sought advice from Lanini and Aloise on the appropriateness of joining the union. (Ex. N22). Ramsey wrote to Lanini,

> Charlie asked me to follow up with you that the contract with Local 853 and the GrandFund has been done? Also he again wants me to confirm with you and Rome that it is O.K. with him joining the union. I filled out his application but he asked me to check with you one more time before I mail it.

(Ex. N22).[9] Lanini confirmed that it was acceptable for Bertucio to join the union. She also indicated that she had spoken to Aloise about Bertucio's membership application. Lanini's e-mail to Ramsey states, "Yes, you are fine to put Charlie in the Teamsters. Rome did say there is an initiation fee. . . ." (*Id.*).[10]

Bertucio's membership application was received by the union on or about April 19, 2012. (Ex. 30). He paid his initial fee on or about May 11, 2012. (*Id*. at 5). Aloise maintains that he was not aware that Bertucio joined the union until 2015, when Aloise called Bertucio because he had learned that Bertucio received a deposition subpoena from the IIO's chief investigator. (Tr. at 158-59). I find it more likely than not that Aloise was aware that Bertucio was joining the union in 2012. As reflected in Lanini's e-mail above, Aloise was consulted on Bertucio's membership in 2012, (Ex. 63), and he advised Lanini that Bertucio would have to pay an initiation fee (Ex. N22).

E. The 2013 Local 601 Election

1. Background

Local 610 is located in Stockton, California. It is part of Joint Council 7. Aloise had been the president of Joint Council 7 since 2009, and was during the relevant time period. (Tr. 128). In

[9] Ramsey similarly testified before the IBT Panel in the Bertucio hearing that, "[Bertucio] got the papers to fill out and sign, and he had asked me to check with Vickie to check with [Aloise] to make sure it was okay for him to join before I turned the papers in for him." (Ex. P at 112).

[10] During her testimony before the IBT Panel in the Bertucio matter, Lanini could not recall whether she actually spoke to Aloise or a "middleman," possibly Aloise's assistant, Jeanine. (Ex. P at 71-72).

December 2013, following November nomination meetings, Local 601 held an officer election. (Exs. 202, 203). Ashley Alvarado was running for re-election as the Local's principal officer. (Exs. 200, 205, CCC). She ran against two opposition slates, one led by Rolando Pimentel and the other by Juanlucio Reyes. (Exs. 212, 213). Reyes's father had been the Secretary-Treasurer of the Local prior to Alvarado's victory in 2010. (Ex. 288). Ultimately, Alvarado prevailed in the 2013 election.

2. Aloise's Support for the Alvarado Campaign

In early 2013, Aloise made his support for Alvarado, the incumbent, clear in an e-mail to John Hailstone, a former Local 948 business agent. (Ex. 205). Aloise wrote:

> Rumor has it that you or someone that is being advised by you are planning to become involved in the Local 601 election. I hope that is not true . . . . 948 is open season, I understand that, but I don't want any interference in Local 601.

(*Id*.). When May came around and Aloise learned from Alvarado that Hailstone had not heeded his warning, Aloise again contacted Hailstone to express his displeasure. (Ex. 200). Aloise did not mince words: "Let me make it clear anyone who runs against [Alvarado] is running against me and I will treat them accordingly from now on and forever." (*Id*.). Aloise used his Teamster's e-mail account for both communications.

a. Aloise's Creation of Campaign Leaflets for Alvarado

In August 2013, again using his union e-mail account, Aloise communicated with Alvarado to discuss her campaign. In particular, he created a promotional leaflet (on the union system) and proposed that Alvarado use it to attack and "destroy" one of her rivals, Reyes. (Exs. 206, 207). The draft leaflets that Aloise created were made using a union computer. (Ex. 1 at 142-43; Ex. 213). He further provided advice on how and where to distribute the leaflets. (Exs. 207, 323). In early November, as the election grew closer, Aloise continued to provide counsel via his union e-mail on the most effective way to distribute misinformation to neutralize both of Alvarado's rivals.

(Exs. 211, 212, 213). Around the same time, Aloise asked a vendor to design literature for Alvarado's campaign. (Exs. 218, 220). An associate of the vendor communicated with Aloise, over his union e-mail account, on design suggestions. (Exs. 216-17, 221, 223, 224-31). The vendor's creations were apparently never distributed in the campaign, nor was the vendor paid. (Ex. 1 at 144).

b. Aloise's Letter of Support for Alvarado

In October 2013, in response to a request by Alvarado and her campaign manager, Aloise penned a letter of support for Alvarado on IBT letterhead, which he signed as International Vice President. (Exs. 349-51; Tr. at 225-26). In relevant part, the letter stated,

> Unfortunately, the leadership at Local 601 prior to you let many companies run away from the Union contracts and allowed many workers to be exploited and abused by the bosses. You have dedicated yourself and the Local to put an end to these abuses, and also to help those workers who need the Union in their workplace. This takes real leadership, which you have exhibited since you were overwhelmingly elected by the membership of Local 601. I look forward to working with you and your staff in the future to bring success to our program, which without your help and dedication, would not be in existence now.

(Ex. 349).

c. The October Disciplinary Hearing

Pimentel and Salas filed a disciplinary complaint with Joint Council 7 against Alvarado and others in the leadership of Local 601 in late June 2013. (Ex. 258). A Joint Council panel was constituted to hear the charges in July, but Pimentel and Salas withdrew their complaint. (Exs. 258, 282 at 15-16, 287 at 2, 315). When they refiled charges in September 2013 (Ex. 259), Aloise changed the panel's composition. (Ex. 278 at 6-7; Tr. at 226-27).[11] The original panel that Aloise chose for the July 2013 hearing consisted of Carlos Borba, Dave Hawley, and Vic Shada, Jr. (Ex.

[11] The charges Pimentel and Salas filed were as follows: (1) Alvarado; Ted Parmentier, Local 601 President; and Alberto Zamora, Trustee violated the IBT Constitution and Local Bylaws by paying business agents and other staff wages never discussed with or approved by the executive board or the general membership, and (2) Alvarado brought reproach on the union by knowingly associating with a convicted felon. (Ex. 278 at 7).

287). For the October 8th panel, Aloise replaced Borba with Sam Rosas. (Ex. 260). Aloise and Rosas had previously engaged in a number of communications regarding their support for and involvement in Alvarado's campaign (Exs. 207, 311, 312, 314). Before appointing Rosas to the panel, on September 16, Aloise forwarded Rosas an e-mail containing the refiled charges. (Ex. 313). Aloise advised Rosas, "Keep this to yourself, but let's talk about it." (*Id.*). On October 11th, the panel determined that Alvarado had not committed the alleged offenses. (Ex. 267). Aloise approved the panel's decision the same day. (*Id.*). The Joint Council approved the panel's decision during a Joint Council Executive Board meeting on October 29, 2013. (Ex. 268 at 8).

d. The October 9th Letter

After the panel disciplinary hearing was concluded, Alvarado and an attorney for Joint Council 7, John Provost, complained to Aloise that Pimentel had attempted to take photographs of Alvarado during the hearing. (Tr. at 227). The next day, by e-mail, Alvarado complained to Aloise that her election opponents, including Pimentel, were using a doctored and unflattering photograph of her from the Unity Conference (not the disciplinary hearing) in their campaign materials.[12] (Ex. 269).

Aloise sprang into action. After receiving a draft of a letter from Provost, (Tr. at 228), Aloise instructed a Joint Council employee to put the letter on Joint Council letterhead. (Ex. 273). In substance, the letter warned Pimentel and Zacharias Salas, a member of Pimentel's slate, that

[12] Alvarado's e-mail to Aloise stated,

> Salas, Pimentel and Reyes are handing out the same leaflet in all the plants that are still running. A leaflet in which they used a picture of me at the Unity Conference and phot shop my hand to appear like I am giving the bird. They are so low class! Juanlucio started distributing the leaflets first and about two days later Salas and Pimentel starting distributing them too. Some of my members have approach [sic] me to let me know that they know it is not my hand. Last night at Eckert Cold Storage Escalon, a member came and said "could they not find a skinny hand like yours?" "they use a fat hand that looks fake, we know your hands are small and thin. They are idiots and people don't like that." This is what he said and I am glad people are smarter than that. Thank you Rome.

(Ex. 269).

they could be in violation of an unidentified Joint Council rule that prohibits the taking of photographs at Joint Council hearings. (Ex. 273; Ex. 1 at 137). The letter warned,

> I have been informed that one or both of you took pictures of Ashley Alvarado and Alberto Zamora during yesterday's hearing on your charges against them. I do not have first-hand knowledge of whether you did so or not but I am writing to advise you that the Joint Council absolutely prohib*its* the taking of pictures during its hearings.
>
> If any pictures of anyone in attendance at the hearing should surface I am going to hold both of you accountable. That would be a chargeable offense and appropriate charges against you under the IBT Constitution would be brought. If you did not take any pictures, that's fine. But if you did, I suggest you destroy them rather than risk them being published at some point, whether by your action or otherwise.

(*Id*.). As instructed, the letter was put on Joint Council 7 letterhead, signed by Aloise as Joint Council President, and distributed to Pimentel and Salas. (Exs. 257, 271). The Joint Council does not have a rule prohibiting the taking of photographs during its hearings. (Tr. at 229). The IBT Constitution does prohibit disruptive conduct at union proceedings. (Tr. at 230).

e. The Kenneth Absalom Letter

On October 22, 2013, the Pimentel and Salas slate filed a defamation lawsuit against Joaquin Ramirez, a member of Local 601, for allegedly disseminating pro-Alvarado leaflets that contained accusations that Pimentel and Salas were convicted felons. (Ex. 240). Pimentel and Salas were represented in the case by an attorney named Kenneth Absalom. (*Id*.; Tr. at 233). Ramirez was represented by the Beeson Firm.[13] (Exs. 241, 242). Absalom was a labor attorney who Aloise viewed as working for the opposition to Alvarado; namely the Pimentel slate. (Tr. at 233). On Aloise's behalf, an attorney at the Beeson firm drafted a letter for distribution to the principal officers within Joint Council 7 advising them not to work with Absalom. (Ex. 237; Tr. 234). The letter stated, in pertinent part,

[13] The Beeson firm also represented Joint Council 7 throughout 2013. (Ex. 282)

> Kenneth Absalom, an attorney from San Francisco, recently filed a lawsuit against a Teamster who supports the reelection of Ashley Alvarado, Secretary-Treasurer of Teamsters Local 601. In my opinion, this lawsuit appears politically motivated and calculated to chill Teamster members from getting involved in their Local Union election. . . . If your Local Union currently retains Kenneth Absalom as legal counsel, you may want to consider another Union side law firm.

(Ex. 237). Aloise signed the letter and had it distributed on Joint Council letterhead on November 5, 2013 (the "November 5th Letter"). (Exs. 198; 239). November 6, 2013 was the start of the Local 601 nominations meetings. (Ex. 202). Alvarado, Reyes, and Pimentel were nominated to run for Secretary-Treasurer. (*Id.*).

Aloise's intention in sending the November 5th Letter was expressed in an e-mail he sent to attorney David Rosenfeld. (Exs. 201; 237). Aloise wrote to Rosenfeld, "This guy [Absalom] is definitely tied into Lucio Reyes and Hailstone who have formed this unholy alliance to remove [Alvarado] from 601 . . . and take things back over. This will happen over my dead body." (Ex. 201).

f. Attacking Pimentel's Campaign Manager

A few days later, on November 12, 2013, shortly before ballots were to be distributed for the December election (ex. 252), Robert Bonsall, an attorney at the Beeson firm, e-mailed Aloise about Joseph Romero, Pimentel's campaign manager. (Ex. 236). Bonsall laid out for Aloise two options for attacking Romero as a means to damage Pimentel's campaign. (*Id.*). Option one involved filing a complaint against Romero with the Department of Labor for providing free services to the Pimentel campaign despite being a union employer. (*Id.*). Bonsall suggested that this option would be better left to after the election in the event that Alvarado lost. (*Id.*). The second option would involve Aloise or Barry Broad (*see* below), contacting politicians for whom Romero worked to express to the politicians their "great displeasure that someone from [the politicians'] staff was getting deeply involved in the politics of a Local Union within [the

politicians'] jurisdiction . . . ." (*Id.*). According to Bonsall, the second option could result in the politicians (Romero's presumed employers) putting pressure on Romero to disclose valuable information to Alvarado about who was supporting the Pimentel and Reyes slates "at [a] very critical time in the campaign." (*Id.*).

Aloise, using his Teamster e-mail, forwarded Bonsall's e-mail to Barry Broad and Doug Bloch. (*Id.*). Broad was the legislative representative for a Teamsters state lobbying organization, the California Teamsters Public Affairs Council ("CTPAC").[14] (Ex. 254; Tr. at 240). Bloch was the political coordinator for Joint Council 7. (Tr. at 240). Aloise requested that Bloch and Broad,

> "check this out and if [Romero] is in fact working for these people [the politicians]. I want them to have an earful and let them know that this will be a problem for them now and in the future. Let me know what you find out. [Romero] is doing the work for the person running against Ashley Alvarado."

(Ex. 236). Aloise was "upset" that the politicians "might allow one of their staff members to interfere in an election of a Local Union affiliated with the "Joint Council." (Ex. 184 at ¶ 32).

Aloise himself contacted one of the politicians believed to be employing Romero, Congressman John Garamendi. (*Id.*; Tr. at 240-41). The congressman informed Aloise that Romero had been nothing more than a campaign volunteer. (Ex. 263). Before Broad contacted State Senator Lois Wolk, Aloise reminded him that he (Aloise) "take[s] this extremely personal and [the State Senator] should know that [Romero] will have some [Department of Labor] issues over this that can drag her into it if she is paying him." (*Id.*). Broad contacted Wolk and learned that Romero did not work for her either. (Ex. 184 at ¶ 32.).

[14] CTPAC was supported through two California Joint Councils, 7 and 42, by a per capita tax paid from members' dues. (Ex. 255). Aloise is one of the Co-Chairs of its Executive Committee. (*Id.*).

3. The Election Protest Hearings

Following Alvarado's election victory, Pimentel, Reyes, and Salas filed protests with the Joint Council. (Exs. 316, 317).[15] On February 13, 2014, the protests were heard by a panel that Aloise selected and which was composed of Dave Hawley, Carlos Borba, and Jim Tobin. (Ex. 330 at 6; 319 at 2). On June 4, 2014, the hearing panel concluded that the protests were without merit. (Ex. 319 at 8). The Joint Council Executive Board, which included Aloise and Sam Rosas, approved the hearing panel's decision the same day. (Ex. 318 at 7).

4. Alvarado's Failure to Comply with IBT Directives

The IBT conducted an audit of Local 601 in 2011. (Ex. 306). The audit covered the period November 1, 2008 through December 31, 2010. (*Id*.). Alvarado was the principal officer for the Local during the audit, but not during the period audited. One of the results of the audit was a finding that the Local's sabbatical policy was "convoluted" and lacked specificity. (*Id*. at 8). The auditor instructed the Local to review its sabbatical policy and "adopt a specific policy" taking into consideration the IBT Constitution and the Local's contract with the California Processors that was intended to be the basis for the policy in the first place. (*Id*.). In addition, the auditor requested

[15] Pimentel's protest letter contained the following charges: (1) the Local declined to conduct the election during the "peak food processing season" when most members would be present to vote, as opposed to December when many of the members are away because the food processing work of the Local's members is seasonal; (2) Alvarado and her supporters "picked up ballots from members, filled out ballots of members, and offered money or turkeys to members who voted for her slate through a raffle, participation in which was limited to members who produced evidence that they had cast ballots for" Alvarado's slate; and (3) Alvarado's slate improperly obtained addresses and telephone numbers of members by using the access she and her supporters had to such information because of her position as the Local's principal officer, all of which was not disclosed to or shared with other candidates. (Ex. 316). Reyes's protest letter, in sum and substance, alleged that Alvarado and her supporters: (1) offered tickets to a raffle for $1,000 in exchange for votes; (2) improperly obtained and used members' contact information; (3) campaigned at an employer's property where other slates' members were not permitted to enter; (4) gave out turkeys in exchange for votes; (5) intimidated a member to vote for Alvarado; (6) tampered with ballots; and (7) manipulated rules and procedures for ballot counting to benefit Alvarado. (Ex. 317).

that the Local "list accrued vacation and sabbatical as an obligation on the Trustees Report." (*Id*. at Schedule D-1).

By October 2011, the auditor's instructions had not been followed. (Ex. 294). A letter from the General Secretary-Treasurer of the IBT, dated October 24, 2011, set forth a list of the auditor's directives and noted that the Local had fallen short of fulfilling its obligations to enact remedial responsive measures. (*Id*.). Having received no response from Local 601 by January 2012, the General Secretary-Treasurer again wrote to Alvarado seeking an update on the auditor's recommendations. (Ex. 295). Finally, on January 24, 2012, Alvarado responded. (Ex. 296). In her letter to the General Secretary-Treasurer, Alvarado claimed that the "Local Union is in the process of reviewing its sabbatical leave plan which should be completed within the next sixty (60) days." (*Id*.). She further contended that the Local's Monthly Trustee Reports would include all accrued leave obligations, both vacation and sabbatical, on its books. (*Id*.).

Nonetheless, as of March 2013, none of what Alvarado claimed that the Local would do to comply with the auditor's recommendations had been completed. (Ex. 297). On March 1, 2013, prompted by Alvarado's inaction, the General Secretary-Treasurer again requested an update on the Local's action items with respect to the sabbatical policy and related accounting. (*Id*. "[A]s of the January 2013 Trustees Report . . . the Local still has not made the necessary adjustments to reflect the obligation and the Special Fund.")). Two months later, the General Secretary-Treasurer wrote to Alvarado to advise her that he had not yet received a response to his March 1, 2013 letter. (Ex. 298). He demanded an immediate response. (*Id*.).

In the summer of 2013, Alvarado received advice from attorney Bonsall at the Beeson law firm on how to deal with her belated response to the auditor. (Ex. 299). In a June 24, 2013 e-mail, Bonsall instructed Alvarado on steps she could take to fulfill two of the auditor's directives: (i)

establish a Special Fund account and (ii) include the sabbatical and vacation obligations in the monthly Trustee Report. (*Id*.). As to the need to revise the Local's sabbatical policy, Bonsall noted that the best route would be to eliminate it altogether. (*Id*.) In Bonsall's view, total elimination would make the most sense because a policy that covers all of her staff would not be "sustainable," but drafting one that covers only select individuals would be difficult. (*Id*.). He suggested that Alvarado wait to address the sabbatical policy until after the December 2013 election because it would "create[] a political problem" for her in an election year. (*Id*.). To do this, he advised her to move on the Special Funds and Trustee Report issues but to delay (again) on the sabbatical policy. (*Id*.) Finally, Bonsall suggested that Alvarado confer with Aloise. (*Id*.).

Alvarado forwarded Bonsall's e-mail to Aloise. (*Id*.). She wrote, "I cannot make any changes to the Sabbatical leave right now because as I explained to Bob, it could be a political issue with my EB, and in general." (*Id*.). She further asked Aloise to talk to the General Secretary-Treasurer on her behalf to help her delay changes to the Sabbatical policy until after the election "so that [she does not] have to deal with the political risk?" (*Id*.). Aloise agreed to talk to the General Secretary-Treasurer on her behalf. (*Id*. ("Yes I will do it.")). At the time, Aloise was not aware for how long Alvarado had been delaying implementation of a new Sabbatical policy. (Tr. at 254). On July 2, 2013, Bonsall forwarded his earlier e-mail to Alvarado to prompt an update. (Ex. 307). Alvarado again turned to Aloise. She forwarded Bonsall's latest e-mail to Aloise and asked him if he had talked to the General Secretary-Treasurer "regarding giving [her] some time to make the changes regarding Sabbatical after the election as I feel this may be an issue for a couple of people on my board." (*Id*.).

Aloise met with the General Secretary-Treasurer about a week later. (Tr. at 255). He has no memory, however, of talking to the General Secretary-Treasurer about Alvarado's failure to

follow through on her commitment. (Tr. at 255-56). On September 5, 2013, Alvarado sent the General Secretary-Treasurer a status report summarizing the Local's progress on the pending issues. (Ex. 302). She followed Bonsall's advice from June. (*Id*.; Ex. 299). She represented that the Local was still reviewing and evaluating its sabbatical policy and was "hopeful of completing [the] process and implementing a revised . . . plan by January 1, 2014." (Ex. 302). The General Secretary-Treasurer sent no additional reminders or inquiries until September 25, 2015, following another audit that covered the period from January 1, 2011 through May 2015. (Ex. 303). The Local's sabbatical policy still had not been revised. (*Id*.). After one more letter from the General Secretary-Treasurer, on November 2, 2015, (ex. 304), Alvarado replied to say that, amongst other things, a new policy, which would eliminate sabbatical leave for all employees, would be in place by December 31, 2015. (Ex. 305).

IV. LEGAL CONCLUSIONS

A. Standard of Proof

In order to uphold the charges against Aloise, I must find that they are supported by a preponderance of reliable evidence. *See* Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings (hereinafter, "The Rules"), at Para. C; *see also United States v. IBT [Simpson]*, 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), *aff'd*, 130 F.3d 341 (2d Cir. 1997). The reliable evidence can include both direct and circumstantial evidence, as well as hearsay. *See* The Rules at paragraph L ("all evidence and testimony offered at the hearing may be accepted . . . to be weighed post-hearing in light of the hearing testimony and post-hearing submissions"). *See also United States v. IBT [Adelstein]*, 998 F.2d 120 (2d Cir. 1993); *United States* v. *IBT [Wilson, Dickens, and Weber]*, 978 F.2d 68, 72 (2d Cir. 1992).

B. Aloise Improperly Solicited and Accepted Things of Value

In 2013, Aloise improperly requested Super Bowl Party admissions from an IBT employer, SWS, for the Executive Assistant to the General President while in the midst of negotiations with SWS over the Local 792 contract. He then compounded this offense by asking Gillig, another IBT employer, to do him a favor by hiring his out-of-work Teamster cousin, Mark Covey. When Gillig rejected Covey, Aloise turned back to SWS for help at a time when he was negotiating with the company on two fronts in California. These actions jeopardized the integrity of the union's collective bargaining process and supposed arms-length negotiations with employers.

1. The Law

The Labor Management Relations Act ("LMRA" or "Taft-Hartley Act") prohibits labor union officials from requesting, demanding, receiving or accepting a thing of value from a union employer. 29 U.S.C. § 186(b) ("[i]t shall be unlawful for any person to request, demand . . . or accept . . . any payment . . . or thing of value"). Similarly, the IBT Constitution prohibits "[a]ccepting money or other things of value from any employer or any agent of an employer, in violation of applicable law." IBT Const., Art. XIX, § 7(b)(13). As a general proposition, the purpose of the Taft-Hartley Act was to combat corruption in unions. *See, e.g.*, *United States* v. *Cody*, 722 F.2d 1052, 1057 (2d Cir. 1983). The amendments to the Act, as expressed in the Labor Management Reporting and Disclosure Act ("LMRDA" or "Landrum-Griffin Act"), evidenced Congress's view that labor officials were to serve as fiduciaries to their members. (*Id.*).

To establish a violation of Section 186, the preponderance of the reliable evidence must show that: (1) Aloise was an officer of a labor organization; (2) Aloise directly or indirectly requested, demanded, received, accepted, or agreed to accept, delivery of a thing of value; (3) the employer who was requested to deliver or who did deliver the thing of value employed individuals who were members of a labor organization of which Aloise was an officer; (4) the employer was

in an industry affecting interstate commerce; and (5) Aloise acted knowingly and willfully. *See*, 2-51, Modern Federal Jury Instruction – Criminal, § 51.02 (Matthew Bender). As a general intent crime, to establish willfulness under Section 186, the IIO need only prove that Aloise intended to do the act in question and intended the reasonable and probable consequences of that act. *See United States* v. *Georgopoulo*s, 149 F.3d 169, 172 (2d Cir. 1998); *United States* v. *Francis*, 164 F.3d 120, 121–22 (2d Cir. 1999) ("In the case of general-intent crimes, the government need prove only that the defendant intended to do the act in question and intended the reasonable and probable consequences of that act. The government would not need to prove that the defendant intended to violate the law or bring about some specific result.") (citations omitted). Moreover, there is no need to demonstrate that Aloise acted with a corrupt purpose to find a violation of the statute. *See United States.* v. *IBT (Perrucci)*, 965 F. Supp. 493, 499 (S.D.N.Y. 1997) (citing *United States* v. *Ricciardi,* 357 F.2d 91, 99 (2d Cir.), *cert. denied*, 384 U.S. 942 (1966)); *United States* v. *Pecora*, 484 F.2d 1289, 1294 (3d Cir. 1973) (rejecting need to demonstrate corrupt purpose for violation of Section 186(b)).

A violation of Section 186 is also a listed act of racketeering under Title 18, United States Code, § 1961(1), which equates to a violation of Article XIX, Section 7(b)(11) of the IBT Constitution and paragraph E(10) of the Consent Order. *See* 18 U.S.C. § 1961(1)(C) (defining "racketeering activity" as "any act which is indictable under" Title 29, United States Code, Section 186); IBT Const., Art. XIX, § 7(b)(11) (defining basis for charge against a member as "[c]ommitting any act of racketeering activity as defined by applicable law."); Consent Order, ¶ E(10) (permanently enjoining IBT members from committing acts of racketeering). Article XIX, Section 7(b)(2) of the IBT Constitution prohibits violations of the oath of loyalty to the Local Union and the IBT. *See* IBT Const., Art. XIX, § 7(b)(2). Finally, the IBT Constitution requires

each member to conduct himself in such a way as to avoid bringing reproach upon the Union. *See* IBT Const., Art. II, § 2(a).

A "thing of value" under the relevant statutes and rules can have both an objective and subjective connotation. *See United States* v. *Roth*, 333 F.2d 450, 453 (2d Cir. 1964) ("Value is usually set by the desire to have the 'thing' and depends upon the individual and the circumstances."); *United States v. IBT (Perrucci)*, 965 F. Supp. 493 (S.D.N.Y. 1997) (finding alleged "worthless" boat to be "thing of value" in light of recipient's conduct evidencing value he placed in boat). This follows from courts' consistent broad reading of the term "thing of value" under bribery and associated statutes. *See Roth*, 333 F.2d at 453 ("Congress gave the broadest possible scope to the statute by adding to the word 'money' the words 'or other things of value'"); *United States* v. *Williams*, 705 F.2d 603, 605 (2d Cir. 1983) ("The phrase 'anything of value' in bribery and related statutes has consistently been given a broad meaning to carry out the congressional purpose of punishing misuse of public office.") (internal citation omitted); *United States* v. *Schwartz*, 785 F.2d 673, 680 (9th Cir. 1986) ("Ordinarily . . . the measure of value is not limited to commercial or monetary worth . . . . [t]hat value commonly extends in scope to include intangibles has been the conclusion of various courts when faced with the task of construing criminal statutes that contain the term *thing of value*.") (emphasis in original). In other words, just because something is free does not mean it is worthless, or without value, under the bribery laws. An individual's desire for an object or intangible item, such as a service or employment, can suffice. *See, e.g.*, *Roth*, 333 F.2d at 453; *United States* v. *Douglas*, 634 F.3d 852, 858 (6th Cir. 2011) (finding jobs are "things of value" under Section 186). Put another way, whether someone can be improperly influenced is not measured by whether the offered thing has a particular monetary value so long as it is an object of desire. *See Schwartz*, 785 F.2d at 680.

2. Discussion

a. Aloise Requested and Received Free Super Bowl Party Admissions Through SWS

Aloise requested things of value, the Super Bowl Party admissions (the "Party Admissions" or the "Passes"), from a union employer, SWS, during the course of contract negotiations. Aloise takes great pains to attack the objective value of the Party Admissions in order to strip them of any legal value. While perhaps raising doubts about the actors in the secondary ticket sales market, Aloise cannot overcome common sense. Most importantly, the Passes had subjective value for Smith. Smith wanted the Passes. He made his desire evident to Aloise. (Exs. 89, 90). Smith also put in effort to determine which party was being hosted by a liquor industry member. (*Id.*; Tr. at 188). Aloise, in turn, through SWS's attorney, made it evident to SWS that Smith, a high-ranking Teamster close to the General President (*i.e.*; "one of Hoffa's key guys" (ex. 87)) wanted access to a Super Bowl party. (Ex. 78). And Aloise wanted to procure the Passes for Smith. The request from Aloise had the desired effect on SWS. The company's top people sprang into action and procured the passes from Diageo, even offering to pay for them. (Ex. 87).

Put in simplest terms, a union employer procured something for a top union official that the union official wanted and could not otherwise obtain without paying, all because of a request from Aloise. Section 186 was designed to prevent the procuring of favors for union officials by employers to avoid an employer winning the allegiance of a union official whose loyalty is to run to the members, not the employer. *See Roth*, 333 F.2d at 453 ("The purpose of the statute was 'to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers.'") (quoting *United States* v. *Ryan*, 225 F.2d 417, 426 (2d Cir. 1955)). SWS did a favor for Aloise in the middle of a contract negotiation. Whether or not Aloise lacked corrupt intent is of no moment. *See IBT (Perrucci)*, 965 F. Supp. at 499 ("a violation

of Section 186 does not require that the transfer of a thing of value to a union official be done with a corrupt purpose").

Furthermore, Aloise's claim that he lacked the requisite mental state to violate Section 186 is unsuccessful. (*See* Aloise Br. at 61-63). Section 186 is a general intent crime. As such, the evidence must show "only that the defendant intended to do the act in question and intended the reasonable and probable consequences of that act." *United States* v. *Francis*, 164 F.3d 120, 121–22 (2d Cir. 1999). Aloise's contention that he could not violate Section 186 because he did not believe that promotional items, such as the Party Passes, would have any monetary value does not counter the evidence that he knew what he was doing would result in an employer giving a thing of value to a union official. Even without knowing what value secondary market sellers put on the passes, Aloise was well aware that Smith desired to get into the Party and could not do so without the help of SWS. Thus, although free, the Passes were far from worthless. Aloise also knew that SWS was willing to pay for the Passes in order to satisfy a favor for "one of Hoffa's key guys." (Ex. 87). Aloise himself placed value in the tickets because he was willing to risk his reputation by asking for a favor for a high-ranking Teamster official from an employer during a contract negotiation. He was not just helping out a friend, he was helping out a powerful friend in the IBT. Moreover, it is of no moment that Aloise was not interested in attending the Party. He wanted the Passes so that he could provide them to Smith.[16]

[16] To the extent it is necessary to establish the elements of a violation of Section 186, there is no dispute that SWS is in an industry affecting interstate commerce. (*See* Ex. 1 at 87-88; Tr. 168).

b. Aloise Requested and Accepted Employment for His Cousin Mark Covey

Aloise's requests to two union employers for a job for Mark Covey also violates the statutory prohibition of Section 186 and the related IBT Constitutional provisions. There is no question that a job can be a thing of value under Section 186. *See United States* v. *Douglas*, 634 F.3d 852, 858 (6th Cir. 2011) (finding jobs "thing of value" under LMRA; "[t]he value of a job . . . is undeniable."). Employment as a "thing of value" under the law does not hinge on whether it is a legitimate job or an illegitimate job, such as a "no-show." It is enough that Aloise requested and received something that he coveted (*i.e.*, subjective value) from union employers in service of one person, his cousin. *See Roth*, 333 F.2d at 453 ("Value is usually set by the desire to have the 'thing'"). When he put family before the union, he breached his fiduciary duty to those he served. In support of charges of bringing reproach upon the Union against officials in a Local who recommended relatives of union members for jobs, former General President Carey explained, "[a]n appearance of nepotism and favored treatment is created by any hiring of a relative of a Local Union official by an employer with which that Local Union has a collective bargaining relationship. Employers who hire relatives of union officials with whom they bargain may believe that they are 'owed' something in return." General President Carey's Decision in Teamsters Local Union 299, Oct. 23, 1993 (available on IRB Cases at http://www.irbcases.org/). Aloise's conduct was likewise reproachful.

Aloise contends that his efforts on Covey's behalf are nothing more than what any union leader would and should do for an unemployed member. Here, Aloise's words are his own undoing. He repeatedly described what he did for Covey as seeking a "personal favor" for his "cousin," (Exs. 98, 109), and that Covey's failure would reflect poorly on him (Aloise). (Ex. 193). Aloise's bluster may have been just that, but it does negate the fact that he actively sought a favor from an employer.

Moreover, Aloise pushed the case for Covey in the middle of negotiations with SWS, this time for work in California, and an organizing campaign for workers employed by SWS. (Tr. 193-200; Exs. 1 at 95-96; 110, 112, 120, N42). He was trying to place local members at SWS's Tracy warehouse facility and to organize a new class of SWS salespeople, DSD workers. (*Id*.). By doing this, he put his work on behalf of his members and future members on par with a personal favor. This situation, while lacking the patina of organized crime or overt corruption, falls squarely within the ambit of conflicts of interest that the LMRA was intended to preclude. Why SWS did Aloise the favor of hiring Covey is not relevant. *See Cody*, 722 F.2d at 1059 ("the employer's purpose for making a payment is irrelevant since all payments, aside from those statutorily excluded, are unlawful"). At the same time when Aloise's position at the union was paramount in the minds of SWS leadership, (Ex. 129), he put pressure on the company to hire his cousin. It was a strong arm-tactic he utilized apparently with little thought to its propriety.

As reflected in SWS internal e-mails, SWS did not consider Covey just as any other unemployed union member, he was Aloise's cousin and someone who garnered significant attention. (Exs. 129, 102). Additionally, the CBA permitted the union to endorse a candidate outside of SWS in the event that no one from SWS applied for the job. The union, pursuant to Aloise's demand, endorsed Covey; no other unemployed Local 853 member was considered even though Aloise admitted that there were other out-of-work Teamsters. (*See* Ex. 1 at 93 (Aloise assumed that there were union members joining the ranks of the unemployed every day)). While the night janitor job may not have been desirable to anyone within SWS, it had a definite upside for unemployed Teamsters, as Aloise pointed out to Covey when Covey was on the brink of losing the job. (Ex. 135 "[t]his [job] has good pension and healthcare that you don't have to pay for, there aren't other jobs like this")).

In sum, I find that the IIO established by a preponderance that Aloise's conduct with respect to soliciting the Super Bowl Party Admissions for Smith and the jobs for Mark Covey violated Section 186, and, thus, brought reproach upon the IBT, in violation of the IBT Constitution, Article II, Section 2(a). I also find that Aloise violated Article XIX, Section 7(b)(13) of the IBT Constitution by accepting favors from SWS in the form of the Admissions for Smith and a job offer for Covey.

C. The GrandFund Collective Bargaining Agreements were Sham Contracts

As the business agent of GrandFund, Aloise failed to ensure that GrandFund employees meaningfully negotiated, voted on, and had their employment governed by, the collective bargaining agreements ("CBAs") with their employer. Although the GrandFund CBAs certainly provided some benefits to the employees of GrandFund, they could not be described as serving the purposes of collective bargaining. For eleven years, Aloise did not communicate with GrandFund employees, discuss the terms of the CBAs, or ensure that they supported ratification. Throughout this period, the GrandFund CBAs did not govern the company's relationship with its employees or even reflect the salary of the company's only salaried employee. This improper arrangement was permitted, even encouraged, by Aloise as the business agent for GrandFund employees. As such, the GrandFund CBAs were "sham" contracts in the simplest meaning of the word. Thus, Aloise failed in his responsibilities as a representative for GrandFund employees, violating Article XII, Section 1(b) of the IBT Constitution and Article XVIII, Section 6 of Local 853's Bylaws. Accordingly, I find that Aloise brought reproach upon IBT.

1. The Law

Title 29, United States Code, Section 158(b)(1)(A) prohibits labor organizations and their agents from restraining or coercing employees in the exercise of their right to organize or engage in collective bargaining as provided in Section 157. *See* 29 U.S.C. § 158(b)(1)(A); 29 U.S.C. § 157; *Int'l Ladies Garment Workers* v. *NLRB*, 366 U.S. 731, 736-39 (1961). Relatedly, Article XII, Section 1(b) of the IBT Constitution[17] and Article XVIII, Section 6 of Local 853's Bylaws require member-employees to vote to approve collective bargaining agreements.[18] The process for voting to approve a collective bargaining agreement, per the Local's rules, is as follows:

> Whenever a collective bargaining agreement is about to be negotiated, modified, or extended at the request of this Local Union, the principal executive officer shall call a meeting at which the membership shall determine and authorize the bargaining demands to be made.

(Ex. 47).[19]

Interference with the principles underlying the federal labor laws, the IBT Constitution and Local Bylaws, such as proposing or enforcing sham contracts, brings reproach upon IBT.[20] *See In re: Bradley D. Slawson et. al.* (IBT Hearing Panel Mar. 28, 2013) (Ex. 73); *In re Robert* F. *Holmes and Thomas Werthman* (Local 337 Exec. Bd. Mar. 13, 2000) (Ex. 345). As defined by the IBT in *Slawson*, a "sham" contract is an agreement that is "entered into by a labor union which does not

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[17] IBT Constitution, Article XII, Section 1(b)(1), states, in relevant part that, "[a]greements shall either be accepted by a majority vote of those members involved in negotiations and voting, or a majority of such members shall direct further negotiations before a final vote on the employer's offer is taken . . . ."

[18] Article XVIII, Section 6 of the Local 853 bylaws provides that "[r]atification of agreements or amendments shall be subject to vote in the same manner as provided for in connection with bargaining demands as set forth in Section 27(a) . . . ." Although there was no Section 27(a) in the Bylaws at the time, the omission was unintentional. (*See* Ex. 47).

[19] Charge Three also contains an allegation that Aloise violated Article XIV, Section 3 of the IBT Constitution. This provision of the Constitution provides, in pertinent part,

> "Every member covered by a collective bargaining agreement at his place of employment authorizes his Local Union to act as his exclusive bargaining representative with full and exclusive power to execute agreements with his employer governing terms and conditions of his employment."

IBT Const., Art. XIV, Sec. 3.

[20] IBT Constitution, Art. II, Sec. 2(a) requires each member to conduct himself in such a way as to avoid bringing reproach upon the Union. *See* IBT Const., Art. II, §2(a).

have a legitimate collective bargaining purpose, such as when benefiting the supposed employer is the real purpose for the relationship." *Slawson* at 25; *see also Holmes, Ex. A "Guidelines for Avoiding Sham Contract Problems"* ("A collective bargaining agreement should not be entered into, renewed or maintained unless there is a legitimate union purpose for it."). "Among the purposes that are not legitimate are situations in which an agreement is entered into, renewed or maintained the terms of which are not honored and which are not intended to be enforced." *Id.* The "Guidelines for Avoiding Sham Contract Problems," attached to the *Holmes* decision, further advises, in relevant part, that (1) IBT and Local Bylaws with respect to ratification and adoption must be followed; and (2) all CBAs shall be diligently policed and enforced. *Id.*

2. Discussion

In brief, the IIO charges that Aloise brought reproach upon the IBT by entering into sham contracts with GrandFund. The IIO alleges that Aloise repeatedly violated "the requirements in the Local's Bylaws and the IBT Constitution regarding GrandFund contract negotiations demonstrate[ing] that the contracts were shams." In support of the charge, the IIO highlights the lack of member participation in the negotiation of the CBAs and lack of adherence to terms of the CBAs.

In response to the IIO's charge, Aloise claims that it is unclear what constitutes a sham contract such that that he was not on notice that his conduct as it relates to the GrandFund CBAs was improper. In addition, Aloise distinguishes his situation, in which the GrandFund employees benefited from the CBAs, with cases involving sham contracts that appeared to be made solely for the purpose of benefiting the employer. Aloise also points out, correctly, that many IBT cases involving sham contracts centered on improper and corrupt connections with organized crime – something completely absent from the instant case. *See, e.g., In re: Anthony Antoun* (IRB Sept. 21, 1999); *In re: Michael Mirabello et al.* (IRB Aug. 5, 1999). Other sham contract cases involved

clear instances of self-dealing by employers, also distinguishable from the instant case. *See, e.g., In re: Larry Stein* (IRB Oct. 18, 2000); *In re: Bernard Tennenbaum et al.* (IRB Apr. 20, 2000). Finally, Aloise contends that there is no evidence that he engaged in self-dealing and that the IIO is merely nitpicking the voting procedures of a small employer.

At the outset, I am not persuaded that there was a lack of clarity regarding what constitutes a sham contract such that Aloise was not given fair notice of the line between proper and improper conduct. The IBT itself, in *Slawson,* and Local 337, in *Holmes,* have provided ample details of the contours of a sham CBA. *See In re: Bradley D. Slawson et. al.* (IBT Hearing Panel Mar. 28, 2013) (Ex. 73); *In re Robert* F. *Holmes and Thomas Werthman* (Local 337 Exec. Bd. Mar. 13, 2000) (Ex. 345). Even a simple perusal of the dictionary could have clarified what is a "sham" and what is legitimate. *See Merriam-Webster On-Line Dictionary,* https://www.merriam-webster.com/dictionary/sham, (defining "Sham" as "an imitation or counterfeit purporting to be genuine") (last visited Sept. 27, 2017). A contract purporting to provide bargained for rights of employees that is neither bargained for nor contains the actual terms of the employees' employment is a sham. Moreover, there was no bargaining going on over the course of the relationship, despite the employees' general satisfaction with their employer and the CBA's benefits.

I do not find, however, that the IIO has established by a preponderance that Aloise improperly permitted Bertucio to choose Local 853 as its bargaining agent. The drive to unionize appears to have come from Logue's reasonable desire to obtain health care in light of his history. (Ex. 1 at 57; Ex. 4 at 9-10; Ex. P at 102-03; Tr. at 145). And, in particular, Logue had a pre-existing relationship with Aloise. (Tr. 144-45; Ex. P at 48). The sloppy paperwork surrounding

the initiation of the Local 853-GrandFund relationship does not so much evidence bad faith on Aloise's part, but a casualness that later blossomed into something more problematic.

For example, Aloise cannot escape the conclusion that the GrandFund CBAs lacked a "legitimate collective bargaining purpose." *See Slawson* at 25. The contracts simply were not followed. As described below, all of the terms of the GrandFund CBAs were not honored nor intended to be enforced. *See Holmes*, Ex. A. Throughout the eleven years that Aloise spent as GrandFund's business agent, Aloise treated his role with little interest. Aloise failed to consult meaningfully with GrandFund employees about their demands or even ensure that they had an opportunity to vote on their CBA. Aloise never spoke or met with Lisa Ramsey, the only salaried employee at GrandFund, to determine whether she had bargaining demands or gauge her support for any of the CBAs. (*See* Ex. P at 132-33). Tellingly, Aloise e-mailed Bertucio in December 2014, advising that GrandFund must "have actual negotiations and a vote, signed into by all people covered by the contract." This communication further evidences that no legally meaningful negotiations or documented voting had occurred prior to that time.

When asked about the 2007 CBA approval process, Lanini did not recall even seeing the erroneous salary calculation or voting on it. (*See* Ex. 3 at 12 (Lanini's deposition testimony: "Q: Have you ever voted on that bargaining agreement? A: Yes. Q: When? A: In '12.")). As to the 2012 process, Lanini recalled talking to Aloise when he advised her that a new agreement was needed, but beyond that they engaged in no other discussions about the contract outside the presence of Bertucio. (Ex. P at 61-63). Without consulting with the covered employees before engaging in negotiations with Bertucio, Aloise could not adequately represent the members. Aloise's conduct stands in sharp contrast to that of other Local 853 business agents who also represented small shops. For example, Bo Morgan described having members come to the union

hall to discuss a new CBA in advance of a ratification vote, after which a member of the Local would conduct the vote. (*See* Ex. 5 at 26-27).

Most damaging, it is undisputed that the terms of the GrandFund CBAs did not govern the financial arrangement between the employer and members. (Ex. P at 127-28). The CBAs, while setting a monthly salary for the sales employee (Lanini), left the commission rates to be determined by the employer. (Ex. 27 at 4; Ex. 28 at 4; Ex. 29 at 4). Aloise had never negotiated a CBA with an indeterminate commission rate for salespeople. (Ex. 1 at 60). This omission evinces Aloise's lax attitude toward the CBA and his role as business agent for GrandFund. The 2007 CBA actually reduced Ramsey's salary below the 2004 CBA rate. Nonetheless, the salary provisions of the 2007 and 2012 CBAs were not enforced. (Ex. P at 127-28). Moreover, at the time of her testimony in 2015, Ramsey was unaware that the CBA even controlled her salary and had never spoken to anyone at Local 853. (*Id.* at 123-24). Thus, by Aloise failing to ensure that the GrandFund CBAs' terms were implemented, he did not "diligently police[] and enforce[]" the CBAs. *See Holmes*, Ex. A.

The preponderance of the evidence demonstrates that the process by which each of the three GrandFund CBAs were negotiated and enforced contravenes the principles underpinning collective bargaining, the IBT Constitution, and Local 853's Bylaws. Aloise's course of conduct reflects a lack of respect for his role as the sole business agent and representative of GrandFund members. Aloise did not represent the GrandFund members in any meaningful negotiation with their employer, as he never held any meetings to discuss and receive authorization to bargain for their demands (*see* Ex. 47, Aug. 21, 2015 Aloise letter describing Local 853 procedure for CBA negotiations), and he failed to monitor the enforcement of the CBAs. The CBAs served primarily

as a means for the members to obtain and then maintain health care. The rest of the contract was essentially superfluous.

Further, Aloise cannot use the egregious circumstances surrounding the conduct at issue in prior sham contract cases to excuse his own conduct. The GrandFund CBAs were sham contracts. By failing to ensure a compliant collective bargaining process, Aloise violated Article XII, Section 1(b) of the IBT Constitution and Article XVIII, Section 6 of Local 853's Bylaws, and brought reproach upon IBT.[21]

D. Aloise Engaged in Reproachful Conduct in Connection with the 2013 Local 601 Election

Aloise's conduct in the lead up to and in the aftermath of the 2013 Local 601 election was reproachful. His unbridled support for Ashley Alvarado, and the steps he took to ensure her victory, crossed the line that divides protected, legitimate support for a candidate and abuse of a system that places limits on advocacy. Aloise used union resources, from the IBT e-mail system to his Joint Council 7 presidential letterhead, to support her candidacy. He threatened and bullied Alvarado's opponents and their supporters. Even where Aloise's individual acts may not have been violative of a particular IBT Constitutional provision or related law, the cumulative nature of his conduct demonstrates a patent contempt for the rules and fair elections.

1. The Law

a. The IBT Constitution and Local Bylaws

In addition to specifically charging Aloise with violating the reproach clause of the IBT Constitution, Article II, Section 2(a), the IIO maintains that Aloise's efforts to support Alvarado's campaign violates Section 2(a) even where individual acts may not have violated any particular provision of the Constitution or other laws. As part of the union's membership oath, the IBT

[21] I find that that IIO has failed to establish by a preponderance that Aloise's conduct in connection with Bertucio's membership in the union was reproachful.

Constitution requires members to conduct themselves "at all times in such a manner as not to bring reproach upon the Union." IBT Const, Art. II, § 2(a). The reproach standard is broad; it encompasses both Constitutional violations and conduct that otherwise reflects negatively on the union, including acts that violate criminal statutes. *See United States v. IBT [Friedman and Hughes]*, 905 F.2d 610, 619-20 (2d Cir. 1990) (rejecting attempt by union to limit scope of reproach clause to only acts specifically prohibited in the IBT Constitution); *United States* v. *IBT [Hogan and Passo]*, No. 88 CIV. 4486 (LAP), 2003 WL 21998009, at *11 (S.D.N.Y. Aug. 22, 2003)*, aff'd sub nom. United States v. Hogan*, 110 F. App'x 177 (2d Cir. 2004) ("an IBT member may be disciplined for conduct that brings reproach upon the union regardless of whether the misconduct charged would also violate a criminal statute"). Moreover, where individual acts might fail to meet the "bring reproach" standard, but are part of a pattern of activity that demonstrates general disregard for the law or rules of the union, a finding of reproachful conduct can be upheld. *See United States* v. *IBT [Ligurotis]*, 814 F. Supp. 1165, 1181-84 (S.D.N.Y. 1993); *United States v. IBT [Simpson]*, 931 F. Supp. 1074, 1090 (S.D.N.Y. 1996), *aff'd sub nom. United States* v. *IBT, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO*, 120 F.3d 341 (2d Cir. 1997) ("a pattern of conduct [can] constitute[] a violation of the IBT Constitution, even if no single element of the pattern is itself a violation").

In addition, a violation of any of the provisions of the Constitution, a Local's bylaws or the oaths of office or loyalty to one's Local or the IBT are chargeable offenses contained in a non-exhaustive list of chargeable conduct in the Constitution. *See* IBT Const, Art. XIX, § 7(b)(1) and (2).[22] The IBT Constitution also prohibits "[r]etaliating or threatening to retaliate against any

[22] Article XIX, Section 7(b)(1), provides that a basis for a charge can be a "[v]iolation of any specific provision of the Constitution, Local Union Bylaws or rules of order, or failure to perform any of the duties specified thereunder." IBT Const, Art. XIX, § 7(b)(1).

member for exercising rights under the IBT Constitution or applicable law," including the right to vote, seek election to office, or support the candidate of one's choice. *See* IBT Const., Art. XIX, § 7(b)(10).

b. The LMRDA

In Charge Three, the IIO further alleges that Aloise violated a number of provisions of the LMRDA. The LMRDA was enacted "to encourage democratic self-governance in unions" and "to correct widespread abuses of power and instances of corruption by union officials." *Kazolias* v. *IBEWLU*, 806 F.3d 45, 51 (2d Cir. 2015) (citing *Franza* v. *Int'l Bhd. of Teamsters*, Local 671, 869 F.2d 41, 44 (2d Cir. 1989)). *See also Sheet Metal Workers' Int'l Ass'n* v. *Lynn,* 488 U.S. 347, 354 (1989) ("LMRDA's basic objective [is] 'to ensure that unions are democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections.' ") (internal alterations omitted) (quoting *Finnegan* v. *Leu,* 456 U.S. 431, 441 (1982))); *United Steelworkers of Am., AFL–CIO–CLC* v. *Sadlowski,* 457 U.S. 102, 112 (1982) ("Congress adopted the freedom of speech and assembly provision in order to promote union democracy. It recognized that democracy would be assured only if union members are free to discuss union policies and criticize the leadership without fear of reprisal.") (internal citations omitted).

i. Section 401

First, the IIO alleges that Aloise violated Section 401(g) of the LMRDA, Title 29, United States Code, Section 481(g), through his use of union resources in support of Alvarado. Section 401(g) prohibits the use of union funds to promote a candidate. Specifically, the statute provides,

> No money received by any labor organization by way of dues, assessment or similar levy and no moneys of an employer shall be contributed or applied to promote the

Section 7(b)(2) provides that a charge may be brought for a "[v]iolation of oath of office or of the oath of loyalty to the Local Union and the International Union."
IBT Const, Art. XIX, § 7(b)(2).

> candidacy of any person in any election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

29 U.S.C. § 481(g). "An expenditure of any size may constitute a violation." *Donovan* v. *Metropolitan Dist. Council of Carpenters*, 797 F.2d 140, 145 (3rd Cir. 1986) (quoting *Shultz* v. *Local 6799, United Steelworkers of America*, 426 F.2d 969, 972 (9th Cir. 1970). By extension, the use of union resources, such as computers, the e-mail system, or fax machines to promote a candidate's campaign are prohibited. *See Solis* v. *Local 9477, United Steelworkers*, 798 F. Supp. 2d 701, 704 (D. Md. 2011) (in context of prohibition on use of employer money to support candidate, court held that use of employer's copiers, computers, and e-mail system violated Section 401(g)); *Donovan* v. *Local Union 70, Int'l Bhd. Of Teamsters*, 661 F.2d 1199, 1202 (9th Cir. 1981) ("'Moneys' as used within § 401(g), has been interpreted as anything of value, whether the expenditure be direct or indirect.").[23]

ii. Section 501

Relatedly, the IIO alleges that Aloise violated his fiduciary duty as a union officer to provide fair elections. Section 501 of the LMRDA, entitled, "Fiduciary responsibilities of officers of labor organizations," describes, among other things, the duties of union officers. *See* 29 U.S.C. § 501(a). Specifically, the statute provides,

> The officers . . . of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person . . . to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or on behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him

[23] Charge Three also contains an allegation that Aloise improperly used union resources (e.g., e-mail, lobbyists) to promote Alvarado by trying to pressure Pimentel's campaign manager to quit. (*See* Charge Rpt. at 89-93).

> in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

Id. The IIO contends that the duties of union officers contained in Section 501 extends not just to their proper handling of union finances, but should be construed broadly to cover their general responsibilities to the union. *See Sabolsky* v. *Budzanoski*, 457 F.2d 1245, 1250-51 (3d Cir. 1972) (citing cases in support of broad construction of Section 501 in light of legislative history); *Semancik* v. *United Mine Workers*, 466 F.2d 144, 155 (3d Cir. 1972) ("Union officers. . . have a fiduciary duty under Section 501 of the LMRDA . . . to insure the political rights of all members of their organization."); *United States v. IBT [Carey]*, 247 F.3d 370, 397 (2d Cir. 2001) ("Union democracy . . . is premised on fair elections. To that end, union officials . . . have a duty to ensure the integrity of that process and to fulfill their obligations to union members by adhering to the highest standard of governance."). Despite the IIO's citation to the broad language of *Carey* described immediately above, the Second Circuit has taken a more restrictive review of the obligations Section 501 imposes on union officers. *See Dunlop-McCullen* v. *Pascarella*, No. 97 Civ. 0195 (PKL)(DFE), 2002 WL 31521012, at *15 (S.D.N.Y. Nov. 13, 2002) ("It is well settled in the Second Circuit that the § 501 fiduciary duty applies only 'to the money and property of the union and that it is not a catch-all provision under which union officials can be sued on any ground of misconduct . . . .'") (quoting *Gurton* v. *Arons*, 339 F.2d 371, 375 (2d Cir. 1964)). Nonetheless, because I find that Aloise violated Section 401 by using union resources to support Alvarado's campaign, I need not reach the issue of whether this conduct falls within Section 501.

The IIO also contends that Aloise breached his fiduciary duty under Section 501 of the LMRDA by failing to take steps to put an end to Alvarado's continued disregard for union leadership's orders to make recommended changes to Local 601's sabbatical leave policy. "As a fiduciary, an IBT officer enjoys the trust of the general membership. In exchange for this privilege,

each officer is bound to serve the membership's interest." *United States v. IBT ("Ross")*, 826 F. Supp. 749, 756 (S.D.N.Y.), *aff'd*, 22 F.3d 1091 (Table) (2d Cir. 1994) (internal quotation marks omitted). In order to serve the Union, its officers cannot be passive or exhibit willful ignorance. *United States v. IBT ("Sansone")*, 792 F. Supp. 1346, 1354 (S.D.N.Y. 1992), *aff'd*, 981 F.2d 1362 (2d Cir. 1992). In other words, "IBT officers cannot avoid responsibility 'by shutting their eyes to allegations' that their fellow IBT members engage in corrupt or improper activity." *United States* v. *IBT ("Hahs")*, 652 F. Supp. 2d 447, 452 (S.D.N.Y. 2009) (quoting *United States* v. *IBT ("Coli")*, 803 F. Supp. 748, 755 (S.D.N.Y. 1992)).

iii. Section 101(a)(5)

Charge Three also contains allegations that Aloise violated the right to a fair hearing that members are guaranteed under Section 101(a)(5) of the LMRDA, 29 U.S.C. § 401(a)(5), and the IBT's related constitutional promise pursuant to Article XIX, Section 1(a). In particular, the IIO maintains that Aloise improperly: (i) appointed an Alvarado supporter to sit on a disciplinary panel that heard charges that Alvarado's opponent, Pimentel, filed against Alvarado in October 2013; (ii) participated in the vote to affirm the disciplinary panel's decision; and (iii) participated in the election protest decision of Joint Council 7 based on Pimentel's and Reyes's protests of Alvarado's victory.

Article XIX, Section 1(a) of the IBT Constitution states, in relevant part,

> "[i]n no event shall any involved officer or member serve on a hearing panel, participate in the selection of a substitute member of a hearing panel, or participate in the decision making process of the trial body."

IBT Const., Art. XIX, §1(a). Section 101(a)(5) of the LMRDA Bill of Rights, entitled "Safeguards against improper disciplinary action," states that,

> No member of any labor organization may be fined, suspended expelled or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been . . . afforded a full and fair hearing.

29 U.S.C. § 411(a)(5). The due process guarantee encompassed by Section 101(a)(5) includes the right to a hearing before an unbiased panel. *See Knight* v. *Int'l Longshoremen's Ass'n.*, 457 F.3d 331, 342 (3d Cir. 2006) (citing *Falcone* v. *Dantinne*, 420 F.2d 1157, 1166 (3d Cir. 1969)). In keeping with Section 101(a)(5)'s due process guarantee, courts have generally found that "[a] tribunal of the political opponents of those on trial offends our most basic notions of fairness." *See Semancik* v. *United Mine Workers of America District* #5, 466 F.2d 144, 157 (3d Cir. 1972) (holding that trial board containing supporters of victor in union election could not try supporters of losing faction for acts related to election). Additionally, "prejudgment by a single decision-maker in a tribunal of limited size is sufficient to taint the proceedings and constitute a denial of the right to a full and fair hearing under the LMRDA." *Goodman* v. *Laborers' Intern. Union of North America*, 742 F.2d 780, 784 (3d Cir. 1984); *see also Falcone*, 420 F.2d at 1167 (finding violation of due process under LMRDA where one of three members of panel hearing disciplinary charge had prejudged case).

iv. Section 101(a)(2)

The IIO further charges that Aloise violated members' rights to free speech and to sue under the LMRDA. In particular, the IIO maintains that Aloise's threat to take disciplinary action against Pimentel for allegedly taking Alvarado's photograph at a Joint Council hearing violated Pimentel's free speech rights under Section 411(a)(2) of the LMRDA. Section 411(a)(2) states,

> Every member of any labor organization shall have the right . . . to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C. § 411(a)(2). The right to free speech under the LMRDA, however, is not unlimited. Consistent with the purpose of the LMRDA to promote union democracy, the LMRDA's protections focus on issues of union policies and issues that touch on concerns of the broader membership. *See Kazolias*, 806 F.3d at 52 (affirming dismissal of retaliation claims under LMRDA for redress of personal grievances, as opposed to broader policy concerns for union membership). That is to say, "the more the speech relates to matters of significant interest to the membership as a whole, and the more it seeks to influence union policies or actions with respect to such issues, the more such speech is likely to come within the scope of Section 411(a)(2)." *Id*. ("this court has interpreted [Section 101(a)(2)] to protect speech that concerns union governance and union affairs") (citing *Maddalone* v. *Local 17, United Bd. Of Carpenters & Joiners of Am.*, 152 F.3d 178, 183 (2d Cir. 1998)).

v. Section 101(a)(4)

With regard to the right to sue under the LMRDA, Title 29, United States Code, Section 411(a)(4) (also referred to as Section 101(a)(4)), the IIO claims that Aloise violated Pimentel's rights when he, Aloise, took steps to retaliate against a lawyer, Kenneth Absalom, representing Pimentel in a lawsuit against an Alvarado supporter. In pertinent part, Section 101(a)(4) provides that "[no] labor organization shall limit the right of any member thereof to institute an action in any court . . . irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding . . . ." 29 U.S.C. § 411(a)(4). "The right-to-sue provision was designed to give union members the tools to insure the effective and fair operation of their union as a representative institution." *Int'l Union, Union Auto., Aerospace and Agr. Implement Workers of Am.* v. *Nat'l Right to Work Legal Def. and Ed. Found. Inc.*, 590 F.2d 1139, 1149 (D.C. Cir. 1978).

2. Discussion

a. Aloise Used Union Resources to Support Alvarado

Aloise's repeated use of Union resources in support of Alvarado's 2013 re-election campaign brought reproach upon the IBT. Aloise primarily used his IBT e-mail account, computer, and letterhead to engage in campaign activities to further Alvarado's efforts. He sent multiple e-mails to Alvarado attaching draft campaign leaflets that he had created on the IBT's computer system (*see* Exs. 206, 207, 211, 212, 213, 312, 322, 323). In the very same e-mails, Aloise provided advice on how and where to use the campaign leaflets. (*See id.*). The cost of the e-mails or draft leaflets to the union may be negligible, but the law mandates no minimum threshold before a violation can be found when union resources are used to support a candidate. *See Solis*, 789 F. Supp. 2d at 704. Further, it is of no moment that the e-mails Aloise sent to Alvarado and her campaign team represented "internal campaign communications" which did not lead to the distribution of the leaflets Aloise created to members. The e-mails and leaflets Aloise created over a union computer and e-mail system represented campaign activity using union resources in support of Alvarado's re-election efforts. *See* 29 CFR 452.76 ("officers . . . may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationary, etc. to assist them in such campaigning.").

In *Solis*, the court found that e-mails sent on an employer's system to employees "to ask them to hand out campaign literature," sufficed to violate to Section 401(g). *See* 789 F. Supp. 2d at 704. Nothing in the *Solis* opinion indicates that the offending use of the employer's resources, including fax machines and copiers (in addition to the e-mail system) required that the products be distributed to potential voters. *See id*. Indeed, the e-mails soliciting assistance which were found to be offensive in *Solis* were just the sort of internal campaign communications that Aloise argues

could not run afoul of Section 401(g). *Id.*[24] The IBT's own Code of Conduct prohibits "the use of International Union funds and resources to support or oppose candidates for internal union office," and notes "as a result, we must take particular care not to use International Union funds, assets, time or resources to engage in internal political activity." (Ex. 192 at 14-15). Aloise, a veteran IBT leader, took no such care.

Perhaps the more offensive conduct was Aloise's use of IBT and Joint Council 7 letterhead in the heat of the election season to praise Alvarado and to attack Pimentel and his supporters. First, there is the October 17th letter Aloise sent to Alvarado. (*See* Ex. 351; Tr. at 225-26). The letter was a gift to Alvarado to use as a campaign tool. Alvarado asked for it and Aloise gave it to her. (Ex. 350). In it, Aloise praises Alvarado's leadership and highlights her invaluable contributions to the organizing efforts in the Central Valley, all on IBT letterhead and signed as "International Vice President." (*Id.*). At least in this instance Aloise admitted that he should not have drafted the letter. (*See* Tr. at 226).

Second, on October 9, 2013, Aloise used Joint Council 7 letterhead, a Joint Council 7 employee, and union funds to send a letter (by certified and regular mail) to Pimentel and Salas. (Ex. 257). Aloise claims that he sent the letter because he had been told by Alvarado and Provost that Pimentel and/or Salas had photographed her at the October 8th Joint Council hearing. In his letter, he threatened Pimentel and Salas with discipline "if any pictures of anyone in attendance at the [Oct. 8th] hearing should" be made public. (*Id.*). He contends he used the letter to make a genuine attempt to enforce the IBT Constitution's ban on disruptive conduct during union

[24] Aloise's use of a DOL Statement of Reasons letter, dated April 17, 2015, does not change my opinion that the law does not require distribution of campaign literature for a violation of Section 401(g) to be found. In the letter, the DOL first found that the alleged offending e-mail "did not promote the candidacy of any person in the election," even though it criticized the complainant. At that point, the need for any further analysis of the e-mail was unnecessary.

meetings. (Tr. at 227). I am not persuaded by Aloise's *post hoc* attempt to justify the threat letter. Simply taking a photograph is hardly disruptive conduct. In fact, there is no Joint Council rule that "absolutely prohibits the taking of pictures during its hearings." (Ex. 257). This is a rule Aloise made up to give his letter the veneer of legitimacy. He well knew that he could not prohibit Pimentel and Salas from using photographs of Alvarado in their campaign literature, so he threatened to discipline them for violating a rule that did not exist.[25]

Aloise also improperly used IBT resources in an effort to harm Pimentel's campaign – to the benefit of Alvarado – when he employed a Joint Council political director and Teamster lobbyist in an effort to punish the man he believed to be Pimentel's campaign manager, Joe Romero. Aloise targeted Romero for no other reason than he (Aloise) believed that Romero may have been working for Pimentel. He utilized a union resource, Barry Broad, a lobbyist employed by the IBT, to threaten a state senator if she employed Romero. (Ex. 263 ("I take this extremely personal and [the state senator] should know that she will have some DOL issues over this that can draft her into it if she is paying him."); 264). There is no plausible explanation for Aloise's actions here except that he was trying to advance Alvarado's re-election campaign. Nor can Aloise mitigate his conduct vis-à-vis Romero by claiming that he relied on counsel, Bonsall, in taking this course of action. Bonsall's initial e-mail did not offer legal advice, it offered a strategy for undermining Pimentel's campaign through an attack on Romero. (*See* Ex. 236 ("it is quite conceivable that if pushed hard enough by his current employers, Romero might feel obligated to sing about who is behind the Pimentel and Reyes slates . . . and give [Alvarado] all sorts of valuable information at a very critical time in the campaign").

[25] I need not address whether or not Aloise's letter violated members' free speech rights under Section 101(a)(2) because it is sufficient to find that he violated Section 401(g)'s ban on the use of union funds to promote a candidate for office.

Similarly, Aloise took steps to discredit Kenneth Absalom, an attorney who represented Pimentel in a lawsuit against an Alvarado supporter, in the November 5th letter he sent to local leaders within Joint Council 7. Aloise's contention that his November 5, 2013 letter, distributed a day before the Local 601 nominations meetings, was motivated by reasons other than just Absalom's representation of one of Alvarado's opponents is belied by Aloise's November 5th e-mail to David Rosenfeld. In the e-mail, Aloise made plain that Absalom was a target because of his relationship to the insurgent candidates who were trying to unseat Alvarado:

> "This guy is definitely tied into Lucio Reyes and Hailstone who have formed this unholy alliance to remove Ashley from 601 and Adam and take things back over. This will happen over my dead body."

(Ex. 247). The November 5th letter itself draws the reader's attention to the fact that Aloise's concern is Absalom's representation of a client who sued "a Teamster who supports the reelection of Ashley Alvarado . . . ." (Ex. 239). Aloise's references to Absalom's prior efforts to sue "duly elected officials" does not convince me that it was those earlier incidents that led Aloise to draft the letter. At least one of the prior lawsuits involved conduct in 2007 that had been resolved in 2009.

Here, Aloise used his position in the Joint Council – and union resources, namely Joint Council letterhead – to support Alvarado's candidacy by attacking an attorney representing Pimentel in an action against an Alvarado supporter. This conduct by Aloise was a way of publicizing his ability to punish Alvarado's opponents. If Aloise was genuinely concerned about Absalom's support for individuals filing lawsuits against union members, he need not say anything more than that. Instead, he made the election the focal point of the letter. In this, he went a step too far. At a minimum, the use of Joint Council letterhead was in violation of the LMRDA's prohibition on using union resources to promote a candidate under Section 401(g). Whether

Aloise's efforts chilled a member's exercise of rights under the IBT Constitution or the LMRDA (*e.g.*, the right to sue) is not clear on this record. His conduct was nevertheless reproachful. It was the act of a bully using the office of the Joint Council President to ensure the success of his chosen candidate.

b. Aloise's Involvement in the Hearing Panel and Election Protest

i. The LMRDA Guarantee of a Fair Hearing

The IIO contends that Aloise violated the LMRDA guaranteed fair hearing right of opponents of Alvarado by personally appointing a hearing panel that heard a disciplinary complaint against Alvarado, participating in the vote to affirm the panel's decision on the disciplinary complaint, and participating in the Joint Council's consideration of an election protest following Alvarado's 2013 victory. Relatedly, the IIO maintains that Aloise's conduct contravenes Article XIX, Section 1(a) of the IBT Constitution, which prohibits an "involved" officer from serving on a panel, selecting a replacement for the panel, or participating in the decision making of a trial body. *See* IBT Const., Art. XIX, § 1(a). Aloise counters that the IIO misreads the "involved" standard from the IBT Constitution and the guarantee in the LMRDA.

Aloise's selection of Rosas for the hearing panel, his own participation in the vote to affirm the panel, and his involvement in the Joint Council consideration of the election protests each violates the fair hearing guarantee of the LMRDA. *See Knight* v. *Int'l Longshoremen's Ass'n.*, 457 F.3d 331, 342 (3d Cir. 2006) (Section 101(a)(5) due process guarantee includes right to a hearing before an unbiased panel) (citing *Falcone* v. *Dantinne*, 420 F.2d 1157, 1166 (3d Cir. 1969)). Aloise was well aware that Rosas was an Alvarado partisan. He and Rosas had engaged in multiple communications regarding their mutual support for Alvarado, including e-mails containing campaign strategies for Alvarado in the months preceding Aloise's placement of Rosas on the panel. For example, in August 2013, Aloise included Rosas on his e-mails providing advice

to Alvarado on countering leaflets that the opposition was distributing. (Exs. 207, 311, 312). On August 20, 2013, Aloise sent an e-mail to Rosas with an invitation to a February 2014 event that included Alvarado as a speaker with the title of "Secretary-Treasurer of Local 601." (Ex. 314). In his e-mail forwarding the invitation, Aloise wrote to Rosas, "Guess we better make sure she wins, or this could be embarrassing for her . . . ." (*Id.*). When Pimentel re-filed his charges against Alvarado in September, Aloise took advantage of the opportunity to assist Alvarado by appointing Rosas to the hearing panel. Although it was never established what Aloise and Rosas discussed in response to Aloise's cryptic message when he forwarded the re-filed charges to Rosas, ("[k]eep this to yourself, but let's talk about it" (Ex. 313)), it is reasonable to conclude that Aloise advised Rosas that he would be appointing Roses to the panel. By placing even one Alvarado supporter on the panel of three Aloise ran afoul of the LMRDA. *See Goodman* v. *Laborers' Int'l Union of North Am.*, 742 F.2d 780, 784 (3d Cir. 1984) ("prejudgment by a single decision-maker in a tribunal of limited size is sufficient to taint the proceedings and constitute denial of the right to a full and fair hearing under the LMRDA"); *see also Falcone*, 420 F.2d at 1167 (finding violation of due process under LMRDA where one of three members of panel hearing disciplinary charge had prejudged case).

Aloise himself was incapable of giving Alvarado's opponents a fair shake. "Over my dead body" was where Aloise drew the line during the campaign. (Ex. 201). There was no way that he would have an open mind when it came to considering charges against Alvarado during the campaign or a challenge to the election results. *Semancik* v. *United Mine Workers of Am. Dist. #5*, 466 F.2d 144, 157 (3d Cir. 1972) (holding that trial board containing supporters of victor in union election could not try supporters of losing faction for acts related to election). Aloise's appointment of Rosas to the disciplinary hearing panel, his consideration of the panel's decision

and his involvement in affirming the election protest decision for the Joint Council executive board violated the letter and spirit of Section 105(a)(5).

ii. The IBT Constitutional Prohibition

On the other hand, I do not find that Aloise violated the IBT Constitution's prohibition against "involved" officers sitting in judgment of others. This standard is not the same as the due process standard under the LMRDA described above. To be "involved" under the Constitution requires the "involved" officers to have participated in the conduct that forms the basis of the charges under consideration. *See United States* v. *IBT*, 951 F. Supp. 1113, 1129 (S.D.N.Y. 1997). Nothing in the record before me sufficiently demonstrates that either Aloise or Rosas played any role in the alleged mismanagement of Local 601. *See* supra n. 11. Similarly, the allegations in the election protest are devoid of any links to Aloise or Rosas. *See* supra n. 15. Accordingly, they were not "involved" as the term is used under the IBT Constitution and this claim is unfounded.

c. Aloise's Role in Alvarado's Failure to Modify the Local's Sabbatical Policy

I find that the IIO failed to prove by a preponderance that Aloise violated Section 501 by breaching his fiduciary duty to the IBT in relation to Alvarado's defiance of the IBT directives to modify Local 601's sabbatical policy. Alvarado should have followed the auditor's recommendation and the commands of IBT leadership in a timely manner. It is quite another thing to say, however, that Aloise failed to meet his fiduciary duty to the union by not putting an end to her obstinacy. Further, I am not persuaded that Aloise took any actions to intervene on Alvarado's behalf with General Secretary-Treasurer Hall.

* * *

In sum, Aloise's conduct demonstrates a pattern of disregard for the rules that were established to safeguard the democratic process in union elections.[26] Aloise was not just "aggressive[ ]," to use his counsel's words, in his support for Alvarado, he was dismissive of any limitations on his power as a union officer. In doing so, he brought reproach upon the union.

[26] Aloise's claim that the results of the DOL investigations that were conducted in the aftermath of the 2013 Local 601 election somehow vindicate Aloise is unconvincing. No matter the motivation of Alvarado's unsuccessful opponents, they made no allegations to the DOL in the record regarding Aloise's actions in the campaign. (*See* RA Exs. PPP and QQQ). According to the DOL Statement of Reasons, the investigation covered allegations of (i) the partiality of election tellers and their conduct; (ii) improper restrictions placed on election tally observers; and (iii) the timing of the election. (*See* RA EX. QQQ). The conduct that makes up the bulk of the charged conduct here could not have been known by anyone in the opposition camps. Thus, to say that the DOL investigation of challenges that did not contain claims regarding Aloise have any bearing on the instant matter is misplaced.

V. CONCLUSION

As detailed above, I find that the evidence supports the Charges against Aloise, and that Aloise brought reproach upon the union. To the extent that I have not addressed every argument advanced by Aloise, I have considered each and every one and they do not alter my conclusions. The parties are invited to submit submissions regarding the appropriate discipline for Aloise. Each party's submission shall be no longer than fifteen (15) pages. The IIO shall submit its memorandum to me no later than two weeks from the date of receipt of this opinion. Aloise shall have two weeks from the IIO's submission date to file his papers.

Barbara S. Jones

Hon. Barbara S. Jones (ret.)
Independent Review Officer