

INDEPENDENT REVIEW BOARD
444 North Capitol Street, NW, Suite 528
Washington, DC 20001
(202) 434-8080
Facsimile (202) 434-8084
Corruption Hotline (800) CALL IRB

Chief Investigator:

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

Administrator:
John J. Cronin, Jr.

July 15, 2014

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

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

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

James P. Hoffa, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Re: Proposed Charges Against Local 682
Member Timothy G. Ryan

Dear Mr. Hoffa:

Enclosed are the Independent Review Board's (IRB) report and accompanying exhibits concerning Local 682 Member Timothy G. Ryan. This report is forwarded to you for appropriate action under Section G, paragraphs (d) and (e) of the March 14, 1989 Consent Order entered in United States v. IBT, 88 Civ. 4486 (S.D.N.Y.).

Upon review of the report, if you deem it appropriate, charges under Article XIX of the IBT Constitution should be filed. You have ninety days within which to file the charges, hold a hearing and forward a final written report to the IRB. Pursuant to paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Copies of hearing transcripts should be furnished to the IRB and to the Chief Investigator.

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

If you decide to reject the IRB's recommendation, you must provide a written explanation with the specific reasons for failing to accept. Within seven days of receipt of this letter, please inform the IRB of the actions planned.

Very truly yours,

Members of the
Independent Review Board

By:


John J. Cronin, Jr.
Administrator

Enclosures

cc: Members of the General Executive Board, w/Exhibits
Charles M. Carberry, Esq., w/Exhibits
Bradley T. Raymond, Esq., w/Exhibits
Tara M. La Morte, AUSA, w/Exhibits
Michael A. Evans, Esq., w/Exhibits
Timothy G. Ryan, w/Exhibits

TO: James P. Hoffa, IBT General President
FROM: Independent Review Board Members
RE: Proposed Charges against Local 682 Member Timothy G. Ryan
Date: July 15, 2014

I. RECOMMENDATION

The Independent Review Board ("IRB") recommends that charges be filed against Timothy G. Ryan ("Ryan"), a former Local 525 Business Agent and IBT member, for bringing reproach upon the IBT by: A) Receiving things of value from an employer, in violation of 29 U.S.C. § 186; B) Failing to cooperate with the IRB by refusing to answer certain questions during his IRB sworn examination on May 22, 2014; C) Engaging in nepotism and favoritism in the manipulation of the Local 525 Referral rules to steer work to family and friends over eligible unemployed members in breach of his fiduciary duties; and D) Violating the Local 525 By-Laws and the IBT Constitution by failing to conduct a secret ballot for a contract ratification he was attempting to secure to deliver concessions to an employer¹.

II. JURISDICTION

Pursuant to Article XIX, Section 14 (c) of the IBT Constitution, this disciplinary matter is within the jurisdiction of the General

¹ Violations of 29 U.S.C. § 186 are acts of racketeering as defined in 18 U.S.C. § 1961 (a). As such, it was conduct all members are enjoined from engaging in under the Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.). (Ex. 1)

President. Paragraph G of the March 14, 1989 Consent Decree in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) and Paragraph I(6) of the court-approved Rules and Procedures for Operation of the Independent Review Board ("IRB Rules") (Ex. 2) require that within 90 days of the IRB's referral of a matter to an IBT entity, that entity must file with the IRB written findings setting forth the specific action taken and the reasons for that action. Pursuant to Paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB.

III. INVESTIGATIVE FINDINGS

Ryan became an IBT member in 1978, joining Local 682 in St. Louis, Missouri. (Ex.3; Ex. 4, at 6). His IBT membership was intermittent, and he worked for some years as a Business Agent for a Laborer's local. (Ex. 5; Ex. 4, at 7, 8).

In March of 2009, Ryan transferred his IBT membership from Local 657 to Local 525, in Alton, Illinois, when he was hired as an assistant business agent. The Local pursuant to a contract had a work referral system for unemployed members. Tom Pelot, the then Principal Officer and Secretary Treasurer of Local 525 managed the Local's referral system when Ryan began employment. He assigned those duties exclusively to Ryan in 2010. Pelot also instructed Ryan that keeping accurate records of who was referred, when they were referred and why they were referred, was important. (Ex. 6 at 1; Ex. 4 at 11-14)

Ryan was also appointed on August 12, 2011, to serve as a Trustee of Local 525. Ryan was elected a Trustee in September, 2011, On July 3, 2012, Pelot terminated Ryan's employment at the Local, but he

remained a Trustee. (Ex. 7) Ryan resigned as Trustee, effective January 31, 2013. (Ex.8)

Local 682, in St. Louis, Missouri hired Ryan as a Business Agent on February 4, 2013. (Ex. 49) He transferred his membership to that local. On June 3, 2014, Ryan resigned his position there. (Ex. 9)

IV. Ryan's Receipt of Things of Value from an Employer Violated 29 U.S.C. § 186 and Brought Repeach Upon The IBT

A. Ryan Assisted an Employer In Its Attempt to Secure a Contract With Concessionary Terms

Stutz Excavating, Inc., was a contractor within the jurisdiction of Local 525, and a signatory to the Articles of Construction Agreement between the Associated General Contractors of Illinois and the Illinois Conference of Teamsters, (the "AGC agreement"). (Ex. 10; Ex. 12 at 55) Local 525 was part of the Illinois Conference of Teamsters. Stutz employed Local 525 members. In 2012, Ryan was the Local 525 Business Agent representing its members at Stutz. (Ex. 22)

On January 27, 2012, Ryan met with John and Chris Stutz, owners of Stutz, to discuss Stutz' request for a separate hauling agreement for work that was not construction related. According to Ryan's notes of that meeting, Stutz also expressed an interest in lowering its health insurance and pension contributions under the proposed new agreement. (Ex. 11) Ryan informed Pelot of the employer's request, Pelot, the Local's Principal Officer, told him that "there was no way [the Local] could do that without the approval of the Illinois Conference of Teamsters because they're the ones who negotiates the AGC contract." (Ex. 12, at 56) Stutz Excavating did not make an application for such a waiver to the Illinois Joint Council of

Teamsters. (Ex. 12, at 59).

In June of 2012, Pelot discovered, inadvertently, that Ryan had ignored his instruction, and had negotiated a contract with a new entity, "Stutz Trucking and Recycling, Inc."² ("STR") While Ryan was on vacation, Pelot entered Ryan's office for a needed document. He discovered a "white paper" contract purportedly between Local 525 and STR.³ Christopher D. Stutz, President, signed it for STR; Ryan signed for the Local. The contract had a blank line for the principal officer's signature. The By-Laws required all Local contracts to be signed by the Principal Officer. (Ex. 14, at 8, Article 10(L)(2)) When Pelot discovered it in Ryan's office the contract had a post-it note. Ryan had written the word "hold" on the note. (Ex. 12 at 62-63)

On Ryan's return, Pelot confronted him about the unauthorized agreement with STR. Ryan's defended his actions, using essentially the same language the principals of Stutz had used when requesting the hauling contract. His goal, he said, was to help Stutz compete on an even playing field with other, non-AGC signatory competitors. (Ex. 12, at 63-66)

The current AGC contract was with Stutz Excavating, Inc. Local 525's Principal Officer estimated that the projected annual cost savings Stutz Excavating would have had operating with its ten employees under the STR contract rather than under the AGC contract would have been between \$400,000.00 and \$500,000.00. (Ex. 12, at 108, 109) The difference between the AGC agreement and the one Ryan had signed was a reduction in wages from \$30.23 per hour to \$18.25. The STR contract also eliminated health insurance and pension benefits contributions for the members. The STR contract

² According to records of the Secretary of State for the State of Illinois, "Stutz Trucking and Recycling, Inc." was incorporated on June 4, 2012, with the same business address as Stutz Excavating, Inc. Christopher D. Stutz is identified as its President. (Ex.13)

³ A "white paper" contract, as opposed to a contract such as the AGC contract, which is printed in small, 3.5 by 5.5 inch booklets, is a contract printed on standard 8.5 by 11 inch white sheets of paper.

addendum included a \$50.00 per week payment to reimburse any employee obtaining health insurance. (Ex. 47)

The new entity, STR, would use Stutz Excavating's physical location, phone number and mailing address, Stutz Excavating's equipment and existing Stutz Excavating employees without hiring new workers on a separate payroll, indicated that STR was an alter-ego, created for the purpose of circumventing the AGC contract. (Ex. 12, at 82, 83).

In response to a request in August, 2012 by Pelot for a list of employees of Stutz Trucking and Recycling, Stutz sent a list that was essentially made of the current employees of Stutz Excavating, complete with their "starting dates". These starting dates were identical to those of the employees of Stutz Excavating. In many cases, these dates were years before the creation of Stutz Trucking and Recycling. (Ex. 15; Ex.12, at 84-86).

Ryan violated the Local's by-laws and the IBT Constitution by attempting to secure for the employer the contract with the concessions it wanted, without a secret contract ratification vote by the members employed at Stutz. Ryan and the company claimed the employees had approved the contract in a voice vote (Ex. 4, at 80; Ex. 16) The members testified that there was no secret ballot of members to ratify the STR contract, (Ex. 17, at 19; Ex. 18, at 21, 23; Ex. 19, at 13, 17; Ex. 20, at 19) and that it was Ryan who asked for a voice vote. Ryan admitted there was no secret ballot. (Ex. 4, at 80, 85). Ryan claimed he held a voice vote and then he recorded the results individually for the members present. In fact, Ryan appears to have falsified a document purporting to be a list of members' signatures and their vote on the contract. He changed what had been described as a petition, circulated by Ryan among the Local 525 member employees at Stutz Excavating in an effort to get his job back after he was terminated, into a document memorializing a "ratification" vote by falsifying its stated date and time, and adding a column of alleged yes and no votes from members in the margin on

the left side of the page. (Ex. 21)

Bryce Carson was a Local 525 member who worked for Stutz Excavating. Ryan asked him to sign a blank document. He said he thought he was signing it "for a job", but did not recall the precise context of Ryan's request. When he did sign it, there was no date or time on it, nor was there a column of yes or no votes on the left margin. The vote on the contract ratification was not secret. (Ex. 17, at 19, 20, 22-25) At his deposition, he identified the document Ryan had him sign, and his signature on it. The added columns of "yes" and "no" votes were not on it when he signed it. (Ex. 17, at 20, 22-25; Ex. 21)

Robert Rawson was a Local 525 member employed by Stutz Excavating. (Ex. 18, at 6, 7) He was never asked to vote by a secret ballot on the STR contract. (Ex. 18, at 21). When Rawson signed the document, the date that Ryan claimed the vote was taken and the yes or no vote columns on the left side of the page were not on it. He was not sure why he was asked to sign the document. He signed a blank document on Ryan's request. (Ex. 18, at 16-19, 22)

Brett Wessel was a Local 525 member employed at Stutz.⁴ Wessel identified Ryan's contract ratification memorialization document as the document that Ryan had circulated among the members at the Stutz shop after Ryan had been terminated at Local 525. (Ex. 20 at 19-23; Ex. 21) He understood it was a petition for the restoration of Ryan's job. At the time Wessel signed the paper, there were no markings in the left margin, no date or other information other than the names of those who had signed it before he had. (Ex.20, at 22, 23)

Ryan denied that he described the document as a petition to have his job restored. Ryan admitted that he added the "yes and no columns" on the

⁴ Wessel left Stutz Excavating as an employee and Local 525 member approximately 2 years ago, due to the decreased wages he received under the disputed "hauling" contract. (Ex. 20, at 7, 9-11).

left margin after the document had been signed by the members on it. He claimed it reflected the result of a voice vote. (Ex. 4, at 85)

Starting in the Spring of 2012, when Ryan was still their Business Agent, the Stutz Excavating employees began to receive pay checks consistent with the rates of pay under the lower, STR hauling contract, for the same work for which they had received previously the AGC pay scale. (Ex. 17, at 28-29; Ex. 18, at 13; Ex. 20, at 24) There was no change in the nature of the work. However, they now received lower pay and no pension contributions were made on their behalf. When Local 525 member and Stutz employee Wessel pointed out to Ryan that, despite Ryan's assurances to the contrary made over the course of "a couple" of shop meetings, that the lower wage rate would not affect him, it did affect him. He was receiving less for the same types of work, using the same equipment. Ryan told Wessel to "Hang in there, and maybe [Ryan] would get to the bottom of it." (Ex. 20, at 15-16).

While a Local 525 officer and Business Agent, Ryan attempted to persuade another local to take conduct beneficial to Stutz. On June 20, 2012, Ryan, in his Local 525 car, arrived unannounced with Chris Stutz and John Stutz, at Teamster local 50, in Belleville, Illinois. Ryan stated he was there to "represent" Stutz in a discussion about a Local 50 requirement that Stutz sign a contract with their local. (Ex. 22) Marc Archer, the Local 50 Recording Secretary and a Business Representative, was present⁵. Earlier that day, a Local 50 Business Representative, had "carded", i.e., checked for union membership and a dues receipt, a driver working for Stutz in Local 50's geographical jurisdiction. Prior to that time, there had been an unwritten agreement and understanding among the various Teamster locals in the vicinity of southern Illinois and St. Louis, Missouri, that periodic crossings by local members working in the jurisdictions of sister locals would be

⁵ Archer has been a Teamster since 1978, having worked for a beer distributor in Belleville, Illinois for 32 years. He became a Trustee at Local 50 in 2011, and, in late May, 2011, became Recording Secretary and Business Representative. (Ex. 23, at 5)

acceptable. (Ex. 23, at p. 6-7) However, earlier that summer, Local 50 business representative had heard that Ryan was attempting to "strongarm" Local 50 signatory employers into signing contracts with Local 525. (Ex. 23, at 7, 11) The Local 50 employees asked Ryan, "What are you doing here?" Ryan replied, "Well, I'm here. I'm representing these gentlemen." Archer replied, "Oh really? You're the business agent from Local 525 and you're representing these people [the Stutz owners], who are coming in here looking for a contract?" to which Ryan replied "Yeah, that right. That's correct." (Ex. 23, at 12, 13)

The Local 50 President and Principal Officer, Scott Alexander, was not in the office. He was notified by phone as to what was happening. After speaking to Ryan, Alexander directed that he leave the Local's building or the police would be called. (Ex. 23, at 13-15).

At his sworn examination, Ryan claimed that he was at Local 50, "To acknowledge to the Local that the company was signed to our AGC Agreement which is the Southern Illinois agreement. Took in his Local and several others." He was there representing "Stutz' employees." (Ex. 4, at 107-108) He was unable to explain how his presence would accomplish any meaningful representation for the Local 525 Stutz members. (Ex. 4, at 110)

In early 2013, STR and Ryan, who was still a Local 525 Trustee, were continuing to lobby for the validation and enforcement of the STR agreement. On January 18, 2013, Ryan, along with John Stutz, executed Affidavits which accompanied a document entitled "Employee Ratification of the Material Hauling Agreement Between Local 525 and Stutz Trucking and Recycling Services". [the "Ratification Document"]. (Ex. 16) The affidavits and the Ratification Document were submitted to Local 525 in an effort to explain how the members approved the STR agreement. The Ratification Document was signed by some Local 525 members working at Stutz. It stated that that the members had waived their right to conduct a secret vote, and ratified the contract by

voice vote. Both the Ryan and Stutz affidavits describe a time when Ryan reported to Stutz that they [Stutz] "had their agreement". (Ex. 16; Ex. 24; Ex. 25) Ryan's affidavit did not claim the members waived the secret vote. (Ex. 24)

The Ratification Document had the signatures of seven purported employees of STR who signed the document on January 18, and 21, 2013. Among these were Bryce Carlson, David Thomae and Robert Rawson. They testified as to the intimidating tactics the employer used to cause them to sign the Ratification Document.

Carson testified that he had been present in January, 2013 at the Stutz shop when lawyers for Stutz required that the Ratification Document, which they had prepared, be signed in this inherently coercive atmosphere, as the lawyers watched. Carson did not fully read the document. All the drivers present were fearful of the consequence of not signing the document. (Ex. 17, at 27)

David Thomae testified that he also was present in January, 2013 when the Stutz owners and their attorneys presented the Ratification Document for his signature. He testified that he briefly glanced at its contents, but because of the presence of the Stutz attorneys, he did not wish to appear to be reading it closely. He also noted that no other drivers took the time to read the document fully. There was a belief among the men that there might be ramifications for not signing. He was never given the opportunity to vote in secret on the STR agreement. (Ex. 19, at 19, 20)

Ryan's lobbying efforts on behalf of the Stutz' interests continued after he left Local 525 and was a Business Agent at Local 682, which was not a signatory to the AGC agreement. At a Teamster sponsored conference in Florida in February 2013, Ryan, then a representative of Local 682, approached Terrence Hancock, Vice President of Joint Council 25, and requested that the Stutz hauling agreement be approved. Joint Council 25 took

over the responsibilities of the Illinois Council of Teamsters, which had been dissolved. (Ex. 26) A subsequent letter from an STR attorney to Hancock recounted Ryan's approach to Hancock, on the company's behalf. Ryan was bcc'd on the letter. (Ex. 27)

B. Ryan, While a Trustee Took Things Of Value From a Teamster Employer

David Thomae, a Local 525 member, worked at Stutz Excavating. (Ex. 19, at 6) While Ryan was his Business Agent, Thomae worked on a Stutz Excavating work project to pave Ryan's driveway. Stutz paid Thomae under the AGC contract for his time. There were other Stutz employees at the Ryan worksite the day Thomae worked. (Ex. 19, at 10-11) In addition, Bryce Carson, a Stutz employee, testified that he had done excavation work on a Saturday for Stutz at Ryan's house. (Ex. 17, at 18-19) Wessel, a Stutz employee, testified that he had driven Stutz equipment to Ryan's home to be used for work on a weekend. Both he and Carson said several of the Stutzes, the company's management, were at the Ryan work site. (Ex. 20, at 13-14).

At his IRB sworn examination, Ryan initially denied that Stutz had done any work at his home. He said he never paid for any work because he claimed the company had never done any work at his home. (Ex. 4, at 102)

Ryan eventually admitted that Chris Stutz had helped him remove a concrete pad, with the same piece of Stutz equipment that Wessel described. (Ex. 4, at 106-107) But Ryan asserted that no other work was done at his home, and no union members were involved. Given the testimony of the members, Ryan's admission he never paid for any work and Ryan's lack of credibility displayed throughout this report, the evidence showed Ryan received a thing of value from Stutz.

In addition to the employer performing free work on Ryan's home, Ryan

received other items of value from Stutz. Mike Hamilton, a Local 525 member, grew up with the Stutz family as neighbors and school classmates. He was familiar with a Stutz cousin, Steve Stutz, who operated Stutz Service, a car repair and dealership in Alton, Illinois. (Ex. 28; Ex. 40) Hamilton attended the Local 525 membership meetings between early July of 2012, and January 31, 2013, while Ryan was a Local 525 Trustee. Hamilton observed Ryan driving a red car to those meetings. It was a car that Hamilton had previously seen on the Stutz Service lot. When Ryan was driving it, it had a "dealer" license plate and a sticker on the rear of the car with "Stutz Service" on it. In a conversation with Ryan at that time, Ryan told Hamilton that he had picked up the car "up at Steve's", who Hamilton understood to be Steve Stutz. (Ex. 40)

Three Local 525 members employed by Stutz Excavating, also reported that they knew Ryan used cars Stutz provided to him. Brett Wessel observed Ryan driving a Lincoln Town Car with a license plate which included the word "STUTZ", within a month after Ryan was terminated as business agent, but while Ryan was a Trustee. He had, on prior occasions, observed that Lincoln Town Car on the Stutz property. He knew that either the Stutz company, or one of the Stutz family members owned it. Wessel observed Ryan driving that same Lincoln Town car later in 2012. He also observed Ryan, in 2012, arriving at the Stutz shop driving a red car that had a dealer emblem or sticker on its rear that said "Stutz Service", which he knew a Stutz family cousin, Steve Stutz, owned. (Ex. 29) Carson, also testified that he had seen Ryan driving a car that was Stutz-owned shortly after Ryan had lost his job as Business Agent for the local. (Ex. 17, at 30) Ryan was still a trustee during this period; resigning January 31, 2013.

In his December 21, 2012, Chapter 13 Bankruptcy petition, Ryan declared ownership in only one car, a Chevrolet Impala. A Lexis/Nexis

report for vehicle registrations for T. Ryan, done on February 6, 2014, did not indicate that Ryan registered a Lincoln automobile in his name, or that of his wife, Francesca between 2010 and 2014. (Ex. 30)

Local 525's Principal Officer testified that he knew of Ryan's use of cars arranged by Stutz, during the period when Ryan continued to serve as a Trustee of Local 525. Within days of his termination, Ryan appeared at Pelot's home at 7:30 AM to ask for his job back. Pelot observed that Ryan was driving a red car, different from the one Pelot knew Ryan owned. Pelot observed Ryan, who remained a Local 525 Trustee through January 31, 2013, arrive at the July 18, 2012 Executive Board meeting in the same red car. (Ex.6, at 3; Ex. 12, at 78-80)

When asked at his sworn examination about receiving cars from Stutz, Ryan invoked his Fifth Amendment privilege in refusing to answer the questions. As a result, in light of his invocation of his Fifth Amendment right and the members' testimony, an inference should be drawn against Ryan from refusing to answer those questions that he used the cars the employer provided, and he knew it was improper to do so. See U.S. v. LiButti, 107 F.3d 110 (2d Cir., 1997). (Ex. 4, at 153-154)

V. **Timothy Ryan's Failure to Cooperate with the IRB**

Ryan's IRB sworn examination was taken in St. Louis, Missouri on May 22, 2014⁶. Ryan was represented by counsel. (Ex. 4) During the examination, Ryan asserted his Fifth Amendment privilege against self-incrimination, refusing to answer questions three times.

⁶ On May 9, 2014, by U. S. Express mail, notices of sworn examination were sent to Ryan at his then office address at Local 682, and to his home address, found in Local 525's records. (Ex. 31)

(Ex. 4, at Pgs. 153-154):

Q: Were you driving vehicles that were provided to you by Stutz?

A: Upon advice from my counsel, I invoke my Fifth [sic] right against self-incrimination pursuant to the Missouri and United States Constitution, sir.

Q: Were you driving a red vehicle make and model unknown that was provided to you by Stutz?

MR. EVANS: Invoke

A: Upon advice of counsel, I invoke my Fifth right against self-incrimination -

MR. EVANS: Fifth Amendment right.

A: -- Fifth Amendment right.

Q: (By. Mr. Healy) And in July of 2013, were you driving a Lincoln vehicle that was - that was provided to you by someone from Stutz?

A: One again, sir, I - upon advice of counsel, would like to invoke my Fifth Amendment right against self-incrimination pursuant to Missouri and United States Constitutions.

(Ex. 4, at 153-154)

Ryan's refusal to answer questions was an unreasonable failure to cooperate with the IRB. It obstructed the IRB in its investigation into whether he had received things of value from an employer in violation of the Consent Order.

The court-approved Rules and Procedures for Operation of the Independent Review Board for the International Brotherhood of Teamsters empower the Chief Investigator,

To take and require sworn statements or sworn in-person examinations of any officer, member, employee, representative, or agent of the IBT, provided that the IRB has given the person to be examined at least ten (10) days advance notice in writing and also provided that the person to be examined has the right to be represented by an IBT member or legal counsel Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate fully with the IRB.

(IRB Rules, Paragraph H (3) (c)). (Ex. 2)

Additionally, Article XIX, Section 14 (i) of the IBT Constitution

provides:

All officers, members, employees, and representatives of the International Union and its affiliated bodies shall cooperate fully with the Independent Review Board in the course of any investigation or proceeding undertaken by it. Unreasonable failure to cooperate with the Review Board shall be deemed to be conduct which brings reproach upon the Union, and which is thereby within the Review Board's investigatory and decisional authority.

(Ex. 32)

It is well-settled that the failure to cooperate with the IRB is grounds for disciplining IBT members. United States v. Int'l Bhd. Of Teamsters ["Michael E Doe"], IRB Decision dated February 10, 2011; In Re: Donny Robles, Local 714 Executive Board decision dated September 11, 2006. (Exs. 33, 34)

In prior cases under the Consent Decree, charges have been upheld against union members who asserted their Fifth Amendment privilege and refused to answer questions during their sworn examinations. United States v. IBT [Calagna], 1991 U.S. Dist. LEXIS 11256 (August 14, 1991); United States v. IBT [Doyle], 88 Civ. 4486 (S.D.N.Y. August 16, 2004); Joint Council 16 Decision regarding Vincent Feola, dated November 17, 1998 (refusal to answer on Fifth Amendment grounds two questions relating to company and individuals under indictment was grounds for permanent bar); Local 211 Executive Board decision regarding Mark Houmis dated November 22, 2000; See, United States v. IBT [Hickey], 945 F. Supp. 96 (S.D.N.Y. 1996). (Exs. 35-39)

The IRB and its Chief Investigator are not state actors.

United States v. IBT [Simpson], 931 F. Supp. 1074, 1107-1109 (S.D.N.Y. 1996) aff'd, 120 F. 3d 341 (2d Cir. 1997) In rejecting an IBT member's application for a stay of a sworn examination on Fifth Amendment grounds until the resolution of an indictment pending against the member, District Court Judge David N. Edelstein stated;

[b]ecause the actions of the IRB and its Investigations Officer do not constitute state action, the Fifth Amendment privilege against self-incrimination is inapplicable to Hickey as a defense against appearing before the Investigations Officer. Moreover, should Hickey elect to invoke the Fifth Amendment during his sworn examination before the Investigations Officer, this invocation will expose him to charges of bringing reproach upon the union for obstructing the IRB's and the Investigations Officer's investigation, and endanger his status as a member of the IBT.

United States v. IBT [Hickey], 945 F. Supp. at 99. (Ex. 39)

All IBT members are enjoined from accepting money or other things of value from any employer or any agent of an employer, in violation of applicable law and from committing acts of racketeering. (Ex. 1) The questions Ryan failed to answer related to such activity.

VI. Ryan's Manipulation of the Referral Rules To Favor Family and Friends and Injure Members

A. The AGC Contract and the Local 525 Referral System

The Associated General Contractors of Illinois Articles of Construction Agreement⁷ (the "AGC Contract") (Ex. 10) was a collective

⁷ During the relevant period of time, the AGC contract was renewed, to encompass the period from May 1, 2012 through April 30, 2014.

bargaining agreement negotiated between construction industry employers and the Illinois Conference of Teamsters. This agreement bound locals in the Illinois Conference, including Local 525⁸. As provided under the AGC Contract, Local 525 operated a referral system for out-of-work members. (Ex. 42, at 19-20; Ex. 10, at 9-20) The terms of the AGC Contract required employer signatories to use the Local to hire Local 525 members. (Ex. 42, at 20; Ex. 10) The Local was the exclusive source of referrals to the employers for employees covered under the AGC Contract. (Ex. 42, at 20; Ex. 10.) In 2010, Ryan was on the Negotiating Committees for the Illinois Conference of Teamsters for both the May 1, 2010 through July 31, 2011 and May 1, 2012 through April 30, 2014 AGC contracts. (Ex. 10, at 66; Ex. 4 at 54, 68-69)

Article 4 of the AGC Contract provided Rules and Regulations for the operation of Local referral offices. (Ex. 10, at 15.) Under these Rules, Local 525 was required to maintain a single list of applicants for regular employment. (Ex. 10, at 15-16.) Applicants for regular employment were to place their names on the registration list. The applicants needed to be unemployed to do so. (Ex. 10, at 16.) The Local was to place applicants on the list in order of date and time it received their applications. (Ex. 10, at 16.) The AGC Contract's Rules required Local referral officers to refer applicants to jobs from the top of the list according to the applicant's qualifications and competence for an open position. (Ex. 10, at 16.)

⁸ In September, 2012, the Illinois Conference was dissolved and its responsibilities and obligations were assumed by Joint Council 25. (Ex. 26)

An exception to this first in-first out system could be made when an employer requested an applicant by name. (Ex. 10, at 16.) Under the referral rules, employers were able to give the referral officer a list of employees who had previously worked for the company during the past 36 months. If a requested person met the criteria for referral, including previous employment, the Local was to refer that individual to the employer. (Ex. 10, at 11; Ex. 42, at 48)

An applicant who took a job which lasted five or more days for one employer was to be stricken from the referral list, and remain off the list until he re-registered. (Ex. 10, at 16.) When requested by applicants, referral officers were required to notify the applicants as to their standing on the referral list. (Ex. 10, at 16.)

B. Ryan's Manipulation of the Referral System

Ryan was solely responsible for the operation of the Local's referral hall from approximately 2010, until the end of his employment in July 2012. (Ex. 42, at 18-19) Ryan assumed responsibility for the referral hall from Pelot. (Ex. 42, at 18) Ryan was required to follow the AGC Contract in operating Local 525's referral system. (Ex. 42, at 19, 20)

Consistent with the AGC Contract, Local 525 maintained a referral list. (Ex. 10; Ex. 42, at 30) To be placed on the list, out-of-work members completed an application at the Local 525 hall. (Ex. 10, at 16; Ex. 42, at 31; Ex. 46.) The application required members to fill out two or three pieces of paper showing their credentials, including their name, contact information,

qualifications, endorsements, experience, and employment history for the previous four years. (Ex. 42, at 31; Ex. 46) Applicants were also required to provide a copy of their commercial driver's license and a copy of their DOT medical card.⁹ (Ex. 42, at 31; Ex. 46) To be placed on the list and be eligible for referral, an individual needed to have completed the requisite application. (Ex. 42, at 49)

C. Ryan's Failure to Maintain Accurate Records

Ryan admitted the referral list he kept was not always accurate. (Ex. 42, at 39-40, 67-69, 128) To supplement this incomplete list, Ryan did not maintain handwritten lists or marked-up typed lists reflecting who was available for work. (Ex. 42, at 60-61) Instead he claimed, "most of what I had was in my head." (Ex. 42, at 60) As a result, at any given moment, Ryan did not know who was unemployed and on the list. (Ex. 42, at 61) From the lack of maintenance of accurate required records, an inference can be drawn that Ryan was attempting to conceal his manipulation of the referrals, as shown below.

Despite the requirement that the referral officer maintain a single list of applications for regular employment (Ex. 10, at 15-16), Ryan did not enter all members who completed applications into the referral list during the time he operated the referral system. (Ex. 42, at 37) Ryan was responsible for updating the information for the referral list in the computer. (Ex. 42, at 19, 38) He failed to regularly do so. (Ex. 42, at 35, 39) Ryan claimed he placed

⁹ A DOT medical card is a certificate issued after the license holder is examined by a medical examiner in accordance with the Federal Motor Carrier Safety Regulations, 49 C.F.R. 391.41-391.49, for requirements such as corrective lenses, hearing aids, etc. (Ex. 48)

completed applications on top of his computer. He only added people to the referral list on his computer when the stack of applicants was large enough "to where it got in [his] way and it made a difference in the list, as far as the amount of people that were ready to go to work." (Ex. 42, at 36) If the printed outdated list did not have anyone qualified for a position, Ryan allegedly would review a stack of applications to see if anyone in the stack was available. (Ex. 42, at 34-37, 60-61) Ryan understood his obligation that the list "needed to be updated." (Ex. 42, at 35-36).

Ryan also failed to record referrals he made. Among those he failed to record were those he made of ineligible Local 525 members. For example, as discussed below, Donald Jones's referral to Illinois Excavating in February and his brother Mike Ryan's referrals to Illini Excavation & Reclamation, Inc. in January 2012 (Ex. 42, at 65-67) and to Geeding Construction Inc. in February 2012. These referrals were improper and not properly documented. (Ex. 42, at 65-67) At an NLRB deposition, Ryan refused to explain why he did not enter these referrals into the computer. (Ex. 42, at 67) At his IRB sworn examination, he claimed that he only did so, "whenever [he] had the time." (Ex. 4, at 42) Failure to keep mandatory records allowed him to conceal the extent to which he was manipulating the referral system by referring ineligible relatives and friends and not abiding by the rules.

Ryan testified that he did not make handwritten lists or mark up typed lists to reflect who was available for work. (Ex. 42, at 60-62) However, Ryan claimed he "would think" that there were referral lists

with his handwriting after March 2012, but none were located. (Ex. 42, at 64) Ryan claimed that "most of the time" he made notes of who was referred out on a legal pad (Ex. 42, at 34) But he also stated that "most of the time I would do it right on the list itself." (Ex. 42, at 34) No documents of this description were in Local 525's records. In addition, Ryan did not know when he created the referral lists the Local provided to the NLRB. (Ex. 42, at 68-69) He admitted these lists were not necessarily contemporaneous, and might have been created in response to the NLRB's investigation, although it was not indicated on the lists. (Ex. 42, at 66-67)

In October, 2012, Ryan stated under oath that he referred people in order of the referral list, according to skill and license requirements. (Ex. 42, at 31, 34) He asserted he would attempt to contact a member who had a position on the list by phone once before contacting the next person on the list. (Ex. 42, at 33-34) According to Ryan, those at the top of the list only lost their spot if they were referred out for five days or more of work, found employment elsewhere, or were deceased. (Ex. 42, at 32) Ryan claimed he did not recall ever having to move someone to the bottom of the list for turning down employment. (Ex. 42, at p. 32-33) If an employer asked for a member by name, Ryan testified, consistent with the referral rules, that he would send the requested member to the employer if they had worked for that employer within the past three years. (Ex. 42, at 34, 104-105) If Ryan found a member soliciting an employer to request him by name, he was "discouraged by it because others are waiting to go to work," but how Ryan handled the issue was dependent upon how

busy he was at that particular time. (Ex. 42, at 24-25) The evidence completely contradicted Ryan's sworn claims he followed the procedures.

D. Out of Order Referrals

Ryan admitted at his IRB sworn examination in 2014 that how he operated the Local 525 referral system did not comply with the rules. He "[s]ent people to work out of line". (Ex. 4, at 15, 17) Ryan referred a number of individuals to employers ahead of others entitled to be referred. In some instances the individuals Ryan referred were not on the referral list. For example, Ryan referred his brother, his sister, a retired Local 682 member, and his uncle to construction projects when they had no applications on file. (Ex. 42, at 83-84); (Ex.4, at 40-41, 43-46) He referred Shelly Barnett, a Local 50 member, to Kvaerner North American Construction Inc. though her application was incomplete. (Ex.4, at 32-33; Ex. 42 at 91-93) He referred individuals that he unilaterally designated as "foremen" or "stewards" as part of his scheme to provide friends referrals ahead of others who should have been referred to work under the Rules based on their placement on the list. (Ex. 4, at 30-32)

Below is a list of some of Ryan's out of order referrals:

<u>Date</u>	<u>Referred Individual</u>	<u>Employer</u>
January 20, 2012	Mike Ryan	Illini Excavation & Reclamation, Inc.
February 28, 2012	Don Jones	Illini Excavation & Reclamation, Inc.
March 26, 2012	Radene King	Illini Excavation & Reclamation, Inc.
March 27, 2012	Don Jones	Illinois Valley Paving Co.
April 4, 2012	Tracy Wallace	Kvaerner North American Construction Inc.
April 4, 2012	Shelly Barnett	Kvaerner North American Construction Inc.
April 4, 2012	Robert Ramshaw	Kvaerner North American Construction Inc.
April 30, 2012	Oscar Bettorf	G.R.P. Mechanical Company, Inc.
May 22, 2012	Mike Nobbe	Illinois Valley Paving Co.
June 5, 2012	Shelly Barnett	Illini Excavation & Reclamation, Inc.
July 5, 2012	Frank Mehlic	G.R.P. Mechanical Company, Inc.

E. Improper Referrals

1. Mike Ryan

Ryan's brother Mike Ryan was a member of Local 525, who worked construction under the AGC Contract. T. Ryan on several occasions violated the referral rules to send his brother to work that other members were entitled under the Rules to be referred to before him. These included assignments at Illini Excavation & Reclamation from January 20, 2012 to February 1, 2012, Geeding from February 20, 2012 to May 1, 2012, Illini Excavation from May 2, 2012 to May 7, 2012 and May 30-31, 2012, and D.W. Mertzke that started on June 4, 2012. (Ex. 42, at 73)

In 2012, after T. Ryan negotiated a resolution to a grievance he filed regarding Illini Excavation's alleged failure to hire Teamsters, he referred his brother to Illini Excavation over others he was obligated to refer. (Ex. 42, at 78-81) According to Ryan, he, AGC head Frank Kazenske, and Illini Excavation owner Christine St. Pierre "sat down and talked lengthily" to work out the grievance instead of "going through the procedure." (Ex. 42, at 78-79) Ryan claimed the company indicated that they were so dissatisfied with Local 525 members in the past that they asked if they could have someone he sent to work for them that would "do the work, that would join in with the other trades and work more as a composite crew instead of specifically just sitting behind the wheel." (Ex. 42, at 80) Ryan, instead of insisting on adherence to the contract for the benefit of the members he represented, sent his brother, who was not on the referral list, as someone he thought "would fit that mark." (Ex. 42, at 80-81, 83)

His brother's previous job ended the day before T. Ryan sent him to work at Illini Excavation. M. Ryan did not have an application on file at that time, and was not on the list. (Ex. 42, at 83-84) Obviously, there were then unemployed members on the list. In making the referral, Ryan did not consult the list to see if there were anyone else who would fit the job. (Ex. 42, at 81) Further exposing the falsity of Ryan's claim, Illini Excavation had not made any complaints about unsatisfactory work regarding at least ten members who were ahead of Mike Ryan on the referral list. (Ex. 42, at 81-83)

It was a violation of the AGC Contract procedures to send out employees to jobs who were not on the referral list. (Ex. 42, at 84; Ex. 10, at 9-20) It was highly improbable both that his brother would have been filled out an application after his job with Geeding ended on May 1, 2012 and before he started at Illini Excavation on May 2, 2012 and that the Local would have lost that application. (Ex. 42, at 83-85) When asked about the likelihood that M. Ryan would have filed an application, Ryan stated that he would "seriously doubt" that his brother had filed an application on May 2, 2012. (Ex. 42, at 83-84) Yet, Ryan sent his brother to work on that day, over members who had a right to be referred.

Local 525 records showed that Mike Ryan worked for Geeding from February 20, through May 1. Under the referral rules after the applicant worked five days or more for one employer the Union was to strike the member's name from the list and it would remain off the list until the applicant re-registered. (Ex. 10, at 16) If Mike Ryan had re-applied he would have had to report to the union hall and

submit his paperwork on the same day that he reported to work (May 2) at Illini Excavation.

There was an application in the Local's records from M. Ryan to be on the referral list, dated May 1, 2012. (Ex. 43) That application was not in the file on May, 1. T. Ryan initially asserted at his sworn NLRB deposition that neither he nor his brother had ever backdated any applications for M. Ryan to appear on the referral list. (Ex. 42, at 140-141) When confronted with the application, Ryan admitted it was evident Mike Ryan's May 1, 2012 application was not completed by that date, as the application included employment history with Illini Excavation from May 30, 2012 to June 1. (Ex. 42, at 140-141; Ex. 43) The knowing falsification of a Local record indicated Ryan's intent to conceal his manipulation, knowing it was wrong.

In addition, another indication of the application's falsity is that Jeannie Champion, the Local's secretary, as a matter of practice wrote the time an application was received in the upper right hand corner of the applicant's registration card. (Ex. 42, at 141; Exs. 41, 44) M. Ryan's May 1, 2012 registration card did not contain a handwritten time in the upper right hand corner, nor anywhere else. (Ex. 41.)

2. Mike Ryan's Referral to DW Mertzke

Ryan solicited an employer to make a specific request for his brother. Ryan had a pattern of asking for favors from employers, as his relations with Stutz showed. (see above, pps. 3-13) At his IRB sworn examination Ryan admitted that he requested Jody Mertzke, an

owner of D.W. Mertzke, to sign a letter he had drafted for her requesting his brother for work, "To make sure that I had my rear end covered". Ryan knew at the time he secured the favor of the false letter from an employer that he had made an improper referral of his brother. (Ex. 4, at 22-23)

3. Shelly Barnett

Shelly Barnett was a Local 50 member whom Ryan referred to work over eligible unemployed Local 525 members when she was not eligible. Ryan told the NLRB that he referred her to Kvaerner because the company wanted a female to drive a bus. (Ex. 42, at 91-93) Barnett was not requested by name. (Ex. 42, at 93) She was number 37 on the list at the time of the referral, and had a Class B license. (Ex. 42, at 92) Showing Ryan's explanation was false, there were other women with Class B licenses who were above Barnett on the referral list. (Ex. 42, at 94-96) Ryan claimed that he called each of the women ahead of her but none were available, though he could not recall why some of them were unavailable. (Ex. 42, at 94-96) The Local had no records showing calls to the other members had been made and their reasons given for not accepting work. Ryan had been required to keep such records. (Ex. 10)

When Ryan sent Barnett to Kvaerner, she was ineligible under the rules because she did not have a DOT medical card listed in her application. Ryan admitted he did not check, as required, her application before he referred her to Kvaerner. (Ex. 42, at 130-131) He did not know if she had subsequently obtained a current or updated

DOT medical card. (Ex. 42, at 129-130) Besides the women he bypassed there were also other members above Bennett on the list who were available at that time, whom he also bypassed on the list.

F. Ryan's Manipulation Through Bogus Stewards Designations

To jump favored individuals over eligible members on the referral list, Ryan had a practice of referring individuals that he unilaterally designated as "foremen" and "stewards" before those who were above them on the referral list. (Ex. 42, at 46-47) These were designations Ryan created with no relation to any job qualification. Ryan claimed he referred his designated stewards and foremen, sometimes for one-man projects, for the purported "purpose of protecting our work." (Ex. 42, at 45-46) Ryan did so knowing that there was no referral Rule that permitted him to use this excuse to bypass his obligation to follow the list. (Ex. 42, at 45, 120-122; Ex. 10, 9-20) Indeed, there is no category in the referral Rules or the Local's wage schedule for a foreman. (Ex. 42, at 120; Ex. 10)

Ryan conceded that there was no rule allowing him to designate particular members to be stewards and to leap them over other members with priority for referrals on the list. (Ex. 42, at 46-47, 122-123; Ex. 10, at 9-20; Ex. 4, at 31) Ryan never observed his predecessor Pelot sending out stewards at all. (Ex. 42, at 96-97) Ryan testified that he "just did it from my own." (Ex. 42, at 96) Ryan decided who "qualified for a steward in [his] eyes." (Ex. 42, at 54) This excuse allowed Ryan to make completely subjective decisions as to who worked

as opposed to applying the objective standard he was required to under the rules. The members that Ryan allegedly referred as stewards did not complete stewards' reports and were not required to do so. (Ex. 42, at 97) Ryan did not notify the employer that any individual he referred was sent as a steward. (Ex. 42, at 51-52) Similarly, other union employees on those jobs would not have known that individuals Ryan sent were to act as their stewards, since Ryan did not tell them. (Ex. 42, at 97) It was a sham rationale Ryan invoked to cover up his rewarding those he favored above those members entitled to the work under the rules.

Ryan also claimed, contradicting himself, that he was taught to send members to be stewards before others higher on the list by Jim Caffrey, a former Local 525 business agent. (Ex. 42, at 122) As Ryan conceded, it was Pelot, and not Caffrey, who had held the referral officer position when Ryan joined the local and before Ryan was designated. (Ex. 42, at 122) Ryan also stated that he believed there was a rule that allowed him to send stewards out of order—even though he never saw such a rule—because "that's the way it used to be done" (Ex. 42, at 123-124) There was no such rule, and no corroboration for the claim of past practice during the time Ryan was at the local.

1. R.J. Ramshaw

Ryan referred R.J. Ramshaw to Kvaerner in April 2012. At the time, there were other members on the list who should have been referred before Ramshaw. Ryan claimed he did it because Ramshaw would act as steward at the employer. (Ex. 42, at 47, 57-60) To Ryan's

knowledge, Ramshaw, who had never worked at Kvaerner, had never served as a steward on any job. (Ex. 42, at 54-55) There were other drivers ahead of Ramshaw on the referral list who had previously worked at Kvaerner. (Ex. 42, at 56-57) Additionally, Ryan admitted that "that could be" that there were other people above Ramshaw on the referral list who had the same qualifications as Ramshaw, who had experience as stewards. (Ex. 42, at 55) Nevertheless, Ryan violated his obligations by referring Ramshaw.

Ryan said his decision was based on Ramshaw's "years of service and his knowledge of our work." (Ex. 42, at 55) That explanation highlights the falsity of Ryan's preferred "steward" basis for selection. Ramshaw had only driven out of Local 525 for approximately a year before Ryan referred him to Kvaerner. (Ex. 42, at 56-57). Several of the members ahead of Ramshaw on the list were long-term Local 525 members qualified to drive. (Ex. 42, at 57-58) Ryan claimed he sent Ramshaw ahead of these members "simply because [Ryan] wanted [Ramshaw] to perform the steward's duties, that's all it was." (Ex. 42, at 58) Ryan admitted, however, that it was his personal relationship with Ramshaw and his father, rather than other qualifications, that caused him to send him to Kvaerner. (Ex. 42, at 57-58) Ryan acknowledged that without those personal relationships he would not have jumped Ramshaw over those members eligible to be referred before him. (Ex. 42, at 58) Ryan violated his duties to the members to favor a friend.

Indeed, Ramshaw should not have been on the referral list at all. Ramshaw did not have a DOT medical card included on his

application, a requirement for referral. (Ex. 42, at 131-132) Ryan did not check Ramshaw's application before he referred him to Kvaerner. (Ex. 42, at 130-132) Furthermore, Ramshaw should have been removed from the referral list after working for Kvaerner for 190 hours. Ryan did not do that, and favored his friend with further improper referrals. For example, Ryan referred Ramshaw to Illini Excavation in June 2012 ahead of members who were properly on the list. (Ex. 42, at 130)

In Ryan's records of the improper Ramshaw referral to Kvaerner, Ryan entered a different false reason. The Local records reflected that Ramshaw was sent over those with priority on the list because of a company request. (Ex. 42, at 92-93) That was both false, and an invalid reason, because Ramshaw had never previously worked for Kvaerner. To be eligible for an employer's request, the member must have worked for the employer in the last 36 months. . (Ex. 42, at 93; Ex. 10 at 11) Ryan admitted he falsified the explanation in the records, as the employer did not request Ramshaw by name. (Ex. 42, at 93)

2. Donald Jones

Ryan referred Donald Jones to Illinois Valley Paving in March 2012 ahead of eligible unemployed members on the referral list. (Ex. 42, at 47, 59-60, 108-109) Jones was ineligible for the referral because he had not finished working for Illini Excavation for a period of at least five days before Ryan referred him. (Ex. 42, at 119; Ex.

10, at 9-20) Ryan's proffered reason for violating the rules and depriving eligible members of work was that Jones could act as a steward.

In addition, Ryan, in explicit violation of the rules, sent Jones to Illinois Valley Paving even though the company had specifically requested Tom Meuth. (Ex. 42, at 109, 119-120) This was a valid employer request as Meuth had worked for them within the last 36 months and he was not working. Ryan falsely told Illinois Valley that Meuth was working elsewhere. (Ex. 42, at 109-110) Ryan never called Meuth to determine if he was working. He did not talk to Meuth. He did not otherwise attempt to determine if Meuth was working. (Ex. 42, at 111) Rather, Ryan said he concluded Meuth was working because he had seen Meuth driving a truck for Campbell. (Ex. 42, at 109-110) Ryan did not remember when he had seen this. He admitted it could have been months before Illinois Valley's request. (Ex. 42, at 110) Indeed, if Ryan had checked an up-to-date list as required, he would have determined Meuth was not working. Ryan's March 15, 2012 computer-printed list reflected that Meuth completed applications on January 26 and March 7, 2012, representing that he was out of work as of those dates. (Ex. 42, at 113; Ex. 10, at 9-20) Accordingly, when Illinois Valley called on March 8 or 9 to request Meuth, Ryan should have referred him. (Ex. 42, at 113-115)

Illinois Valley Paving again asked for Tom Meuth in April 2012. (Ex. 42, at 125-126, 133) Ryan again denied its request, telling the employer that Meuth was unavailable. (Ex. 42, at 126) Meuth had an