TO: James P. Hoffa, General President

FROM: Joseph E. diGenova, Independent Investigations Officer

DATE: November 17, 2016

RE: Recommended Charge against William C. Smith, III

I. RECOMMENDATION

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order ("Order"), the Independent Investigations Officer ("IIO") recommends to the General President that a charge be filed against IBT member and employee, William C. Smith, III ("Smith"), Executive Assistant to the General President, for accepting a thing of value from an employer of IBT members in violation of federal law, 29 USC §186(b), of the permanent injunction in *United States v. International Brotherhood of Teamsters*, and of the IBT Constitution, Article XIX, Sections 7(b)(2), (11) and (13). In January 2013, during contract negotiations between a local and an IBT employer in which International Vice President Rome Aloise ("Aloise") was participating, he solicited the IBT employer to obtain admissions for Smith and his companions to an exclusive non-public Super Bowl party in New Orleans. Smith knew Aloise requested the IBT employer to obtain the admissions for him. Smith received and used the admissions that the IBT employer obtained for him. These party admissions were things of value worth, at least, $6,000. Smith violated 29 U.S.C. §186(b), which forbade an IBT employee from soliciting and receiving a thing of value from an IBT employer, and committed an act of racketeering in violation of the permanent injunction in the Consent Order. He also violated Article II, Section 2(a) and Article XIX, Sections 7(b)(2), (11) and (13) of the IBT Constitution.

II. JURISDICTION

Pursuant to Paragraph 32 of the Order, the IIO designates this matter as in the jurisdiction of the General President and the IIO refers it to him for his action. (Ex. 1 at 17) Paragraph 32 of the Order requires that within 90 days of the IIO's referral to him, the General President must file with the Independent Review Officer ("IRO") written findings setting forth the specific action taken and the reason for such action. (Ex. 1 at 17) Failure to meet this legal obligation may be found to be an act taken to hinder the work of the IRO in violation of the permanent injunction. (Ex. 1 at 3)

III. INVESTIGATIVE FINDINGS

A. William C. Smith, III

During the commission of the offense, Smith was the Executive Assistant to the General President. (Ex. 2 at 7-8; Exs. 6, 7, 9, 20, 27) He has held that position since 2010. (Ex. 2 at 7-8) Smith's duties as Executive Assistant to the General President included serving as the chief of staff, interviewing prospective employees, recommending the termination of employees and negotiating national contracts at the General President's request. (Ex. 2 at 29-32) He was also principal officer of Local 891 in Jackson, MS and Secretary-Treasurer of Joint Council 87. (Ex. 2 at 7-12; Exs. 7, 30, 31) He has been an IBT member since approximately 1969. (Ex. 2 at 8) The total of his salaries in 2015 from all IBT entities was $237,372. (Exs. 6, 30-31)[1]

B. Smith Prompted Aloise To Solicit Things of Value From an IBT Employer for Smith Which Smith Received in Violation of Federal Law, the Injunction and the IBT Constitution

During 2013, while an International Vice President, Aloise illegally requested a Teamster employer to provide Smith with things of value. (Exs. 9, 20) Aloise requested the employer to

[1] The IBT paid him $179,392, the Local $45,380 and the Joint Council $12,600. (Exs. 6, 30-31)

secure six admissions to an exclusive non-public Playboy Super Bowl party in New Orleans for Smith who wanted to attend it. (Exs. 8, 11, 9, 20) Through the employer's efforts, Smith received the admissions and attended with his guests. (Exs. 27, 11; Ex. 2 at 100, 138-139) Both Smith's aiding and abetting Aloise's solicitation and Smith's knowing receipt of a thing of value from an IBT employer were in violation of 29 U.S.C. §186 (b), 18 U.S.C. §2.[2] Smith committed an act of racketeering, 18 U.S.C. § 1961(1), that violated the permanent injunction in Paragraph E(10) of the Consent Order in *United States v. IBT*. (Ex. 17 at 6) He also violated Article XIX, Sections 7(b)(2), (11) and (13) of the IBT Constitution.[3]

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[2] 29 U.S.C. §186(a) and (b) provides in pertinent part:

(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

* * *

(b)

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

18 U.S.C. §2 provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, in punishable as a principal.

[3] Article XIX, Section 7(b)(11) of the IBT Constitution prohibits officers and members from "[c]omitting any act of racketeering activity as defined by applicable law." (Ex. 5)

Article XIX, Section 7(b)(13) of the IBT Constitution and the IBT's Code of Conduct, unlike the law, do not prohibit IBT officers from making the requests; they only prohibit successful solicitations. Compare, Article XIX, Section 7(b)(13) of the IBT Constitution (Ex. 5) and the IBT Code of Conduct (Ex. 28 at 10) with 29 U.S.C.

In response to Smith's request to him, on January 30, 2013, two days before the event, Aloise solicited from an IBT employer tickets for admission for Smith to an exclusive non-public party during Super Bowl weekend in New Orleans. (Ex. 2 at 114; Exs. 20, 9) At the time, Aloise, at the company's request, was involved in the negotiation of a contract for another Local whose bargaining position the employer sought Aloise's aid to undercut. (Exs. 8, 9, 12, 13, 14, 20) Aloise's solicitation to the employer was made at Smith's prompting. (Exs. 8, 13, 15; Ex. 2 at 114-116) In response to Aloise's request, the employer arranged for the admissions of Smith, his wife and friends to the exclusive event. (Exs. 8, 9, 15, 16) Smith knew Aloise was soliciting these valuable admissions through high ranking executives from the IBT employer on his behalf. (Exs. 9, 15) Aloise made the request to the IBT employer because he was the Teamster official with responsibilities for the liquor industry. (Ex. 2 at 112-113) The admissions to the party were worth, at least, $6,000. (Ex. 4 at 9, 15-16; Exs. 66, 67, 68, 77) Smith's receipt of the admissions was an act of racketeering all IBT members were enjoined from committing. (Ex. 17 at 6)

C. Admissions to the 2013 Playboy Super Bowl Party

The IBT General President James P. Hoffa ("Hoffa") received from the NFL Players' Association free tickets to the 2013 Super Bowl to be held in New Orleans on February 3, 2013.

(continued…)

§186(b) (quoted above). Article XIX, Section 7(b)(13) of the IBT Constitution prohibits "accepting money or other things of value from any employer or any agent of an employer, in violation of applicable law**."** (Ex. 5) The IBT's 2007 Code of Conduct provided the following:

> International Union policy prohibits officers, employees and representatives from accepting any gift or thing of value from any employer, employer representative, service provider, vendor or potential vendor in violation of applicable law or in circumstances that would create a conflict of interest or the appearance of undue influence. We must avoid any gift or situation that violates the law or creates the appearance that decisions concerning the expenditures of International Union funds or other International Union decisions are subject to any improper influence.

(Ex. 28 at 10)

(Ex. 2 at 90-92; Ex. 32) Hoffa gave two of these tickets to his Executive Assistant Smith on January 21 or 22. (Ex. 2 at 91, 93, 95-96) Smith depended on Aloise to secure entry for him to Super Bowl parties. (Ex. 2 at 106-109, 111-113; Ex. 46) By at least January 30, Smith told Aloise that one of the parties he wanted to attend was a party Crown Royal sponsored. (Ex. 2 at 114-115; Exs. 9, 13)[4] Aloise, who was the IBT official with the most liquor industry contacts, told Smith he would try to get him tickets for that party. (Ex. 2 at 88-89, 114-116; Exs. 9, 13)[5]

The IBT represented more than 2,000 employees at Southern Wine and Spirits ("SWS"), the nation's largest liquor distributor. (Ex. 18) Aloise was the lead Teamster officer on SWS matters within the union. (Exs. 11, 18) Aloise was also a Local 853 business representative for its members who were SWS sales employees. (Ex. 19 at 98)

In late January 2013, at the company's request, Aloise became involved in the contract negotiations between SWS and Local 792 in Minnesota whose principal officer was Larry Yoswa ("Yoswa"). (Exs. 12, 20, 21) The company alerted Aloise that it believed one of its executives was about to reach an agreement with the Minnesota Local that would cost the company more than if Aloise were the union negotiator. (Ex. 22) On January 14, 2013, the company's outside labor lawyer explained to Aloise that an SWS executive was going to "throw more money at them [the Minnesota Local] to get this done," but SWS' Executive Vice President and Chief Administrative Officer agreed with the lawyer that they had to "beg [Aloise] to get reinvolved and develop a real strategy." (Exs. 22, 23)

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[4] The sponsors of the Playboy Super Bowl party included Crown Royal (Diageo, Inc.), Aquahydrate, Mini Cooper and Tabasco (McIlhenny, Co.). (Ex. 10; Ex. 4 at 8)

[5] Smith considered going to a party a beer company was sponsoring. (Ex. 2 at 112-113) Aloise instructed him that if he wanted to attend that party, he should contact the IBT's Brewery Division Director. (Ex. 2 at 112-113, 115-116)

On January 30, 2013, Aloise and Yoswa met in Chicago with the SWS representatives regarding the Local 792 contract. (Exs. 20, 24, 29) In an email that day to Wayne Chaplin, ("Chaplin"), the President and CEO of SWS, Stuart Korshak ("Korshak"), an attorney representing SWS in those negotiations, described Aloise's actions on the company's behalf:

> Bill and I have been meeting at our Chicago office with Rome Aloise and the Minnesota Teamster leader Larry Yoswa today over the contract Yoswa and his members rejected unanimously last fall when SWS made its first proposal. Yoswa is weak and follows his members instead of leading them and I doubt he would or could ever agree to a fair contract with SWS by himself.. Rome has lead the negotiations for the Minnesota all day and caucused with Yoswa several times when he was balking at a rationale 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?

(Exs. 20, 33, 76; Ex. 19 at 88) Korshak forwarded to Aloise this email in which he passed through to the employer Aloise's request for the party admissions. (Ex. 20) At that time, the management lawyer, who had brought in Aloise, believed as a result of Aloise's efforts on its behalf, the company would get a good deal later that night. (Ex. 20)

The next day in an email to SWS Executive Vice President Lee Haber, that Korshak also forwarded to Aloise, Korshak further detailed Aloise's efforts on the company's behalf at the contract negotiations with Local 792 on January 30, as follows:

> Rome was terrific yesterday. . . . We told 792 that we won't get out of line with Johnson and couldn't care less what JJ Taylor is paying because they are in a different industry and that we don't care what Wirtz is paying because it is a bit player in liquor. We told him we wouldn't be his stalking course and lock into something rationale and long term now and then have Johnson take him apart again and have SWS be the high cost player and locked it high in Minnesota. He wanted to walk out on us all through the days but Rome wouldn't let him and finally forced him to take what we offered over the weekend for the first year, make it good for 14 instead of

> 12 months so we get 2 months behind Johnsons expiration date, and accept less of a bonus than the additional money we were prepared to give before the meeting as our final bottom line. He also committed publically this time in front of Rome to recommend this deal and get it done. . . . You should get Dale's take off the record as to the role Rome played and what would have happened with Local 792 if you hadn't stopped what was going on and asked me to get Rome back in the middle and controlling this. . . .

(Ex. 20)

Thankful to Aloise for causing the Local executive to accept a contract for less than the employer had been prepared to pay, the company secured the admissions for Smith that Aloise requested from it. SWS wanted to reward Aloise for his assistance in keeping a troublesome local official in line with the company's expectations and to stay in the good graces of Hoffa's team. (Exs. 20, 34, 11) Aloise's party admissions request was made to the company through the lawyer he was allegedly negotiating against in connection with the Local's contract. (Exs. 20, 46) The deal had not been finalized and member approval still needed to be secured for the contract proposal. (Exs. 20, 35, 36) Aloise's solicitation of the party admissions from the IBT employer violated the criminal statute. (Exs. 8, 36) Indisputably, a union official's receiving something of value from an employer of its members as a reward for controlling a union subordinate that the employer found difficult to negotiate with, violated 29 U.S.C. §186(b) and the IBT Constitution. (Ex. 33) *United States v. Cervone*, 907 F.2d 332, 344-345 (2d Cir. 1990).

In response to Korshak's presenting him with Aloise's request for the admissions for Smith, SWS President Chaplin asked for the name of the event for which Aloise wanted the tickets and who was running it. (Ex. 20) Korshak subsequently sent Aloise an email at 10:42 p.m. on January 30 with a description of the "Playboy Super Bowl Party presented by Crown

Royal" to be held on February 1, 2013, and asked "Is this it?" (Exs. 83, 37) Aloise responded that was probably the party. (Ex. 37)[6]

On January 30, 2013, the same day that Aloise's request on Smith's behalf was presented to the company's CEO, Smith, in his position as the Executive Assistant to IBT General President Hoffa, emailed Aloise that IBT permission had been granted for Aloise's requested trip at IBT expense to Paris to attend a labor conference an employer sponsored. (Exs. 20, 33, 38, 39; Ex. 40 at 13) Aloise responded to Smith's email that day, "Working on your tickets to the Liquor party. In your name-right????" (Ex. 13)[7] Aloise's reply evidenced that Smith's ticket request had been made earlier to Aloise. That day Smith acknowledged that the tickets should be in his name. (Ex. 13)[8] It was a violation of the law for these high ranking IBT officers to be soliciting a thing of value from an IBT employer. 29 U.S.C. §186(b). Smith in causing Aloise to do it was as liable as Aloise. 18 U.S.C. §2.

In a January 30, 2013, email from Korshak to SWS CEO Chaplin, the lawyer stressed again the assistance Aloise had provided the company in the January 30 contract negotiations. (Exs. 20, 33) The next day, Korshak informed Chaplin that the party, "must be the Playboy Crown Royal event (description below). Rome would like to get one of Hoffa's key guys 6 passes or tickets to this event. His name is WC Smith. I told Rome you would try to help." (Exs. 11, 20) On behalf of Chaplin, on January 31, another SWS employee, Executive Assistant

[6] Aloise also forwarded Korshak's "Is this it?" email to RANGER1999@aol.com, stating, "This must be the one." (Ex. 41) Aloise used this email address for Richard Leebove, a consultant to the IBT. (Ex. 2 at 76; Exs. 52-54)

[7] Smith is also the President of Local 891 in Jackson, Mississippi and Secretary-Treasurer of Joint Council 87 that covers Mississippi, Tennessee and Locals 402 and 612 in Alabama. (Exs. 30, 31) SWS employs workers in Mississippi that Smith's Local had not organized. (Exs. 60-61, 73)

[8] Smith replied to Aloise's question about whether the tickets should be in his name by writing, "Yes not Tod." (Ex. 13) Smith testified that he was referring to Todd Thompson. (Ex. 2 at 131) Thompson is the Special Assistant to the IBT General President. (Ex. 2 at 64; Exs. 78-79) Smith reimbursed Thompson for Smith's hotel in New Orleans for Super Bowl weekend. (Ex. 2 at 97-98)

Jeanette Jean-Baptiste, asked Mark Hubler ("Hubler"), the President of Diageo of North America ("Diageo"), for help getting the six tickets the SWS CEO wanted. (Exs. 11, 42, 85)[9] Recognizing the value of what was being requested, the SWS employee noted, "Happy to pay" in the email to Hubler. (Ex. 11) Hubler asked Chaplin under whose name the tickets should be left and how many tickets were needed. (Ex. 11) Chaplin, the SWS CEO**,** responded, "6 for WC smith. Thanks for your help." (Exs. 11, 33) In a second January 31, 2013, email to SWS CEO Chaplin, Korshak informed him, "I told him [Aloise] that 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." (Exs. 14, 33)

The day before the party, SWS CEO Chaplin secured the six admissions for Smith that Aloise requested SWS provide for Smith. (Exs. 9, 67) Confirming that Smith knew the IBT employer was the source of the things of value he was receiving, on January 31, 2013, Aloise informed Smith, "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. . . .." (Ex. 9)[10] Smith responded, "You're the Best….. Thanks" (Ex. 15)[11] Smith knew SWS was a Teamster employer. (Ex. 2 at 88; Ex. 69) After Aloise forwarded to Korshak

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[9] Diageo was the owner of Crown Royal. (Ex. 43) SWS was a distributor of Crown Royal among other Diageo brands. (Ex. 44) Aloise's request was to SWS, a Teamster employer. SWS obtained for Aloise the admissions through Diageo and arranged for delivery to Aloise's nominee. Smith argued that Diageo was not a Teamster employer and therefore he had no liability for the request to a Teamster employer for a thing of value and no liability for the Teamster employer's arrangement of delivery of the tickets to Smith through a non-union employer. (Ex. 69) As discussed below, contrary to Smith's claim, it was akin to Aloise requesting the employer for a bracelet from Tiffany's and the employer arranging for Tiffany's to deliver it to his designee. The violative acts were a union official's request for a thing of value to the employer of members he represented and a union official's receipt of that item the IBT employer secured on his behalf. Diageo only assisted SWS in supplying Smith his admissions in response to the IBT employer's request to it. Unlike SWS, it had no independent reason to curry favor with Aloise or Smith.

[10] SWS is a privately owned company. (Ex. 73)

[11] Smith informed Aloise that the following individuals would be using the tickets to the party: WC and Nancy Smith, Bill and Andrea Caldwell and Ben and Lynn Nelson. (Ex. 46)

the names of the six in Smith's party, the SWS President forwarded those names to Hubler at Diageo who responded, "Got it… plan on the names being on the list … at the door." (Ex. 46) Korshak forwarded that email from the SWS President to Aloise who then forwarded it to Smith at both his Teamster and personal email addresses. (Ex. 2 at 19-20; Ex. 46) This was additional evidence Smith knew SWS, an IBT employer, had arranged for his admissions. Without SWS's intervention and effort to secure the valuable admissions for him, Smith would not have obtained them. From the party on February 2, 2013 at 1:16 a.m., Smith sent Aloise a message, "Wish you and Deb were here . . . . . the scenery divine . . . . . are you a 49ers fan?" (Ex. 27)[12]

On February 4, 2013, International Vice President Aloise sent an email to Local 792 principal officer Yoswa ordering him to keep Aloise posted on the members' vote on the SWS contract. (Ex. 47) On Saturday, February 9, Yoswa notified Aloise the members had ratified the contract that day. (Exs. 12, 89) Aloise then forwarded Yoswa's message to Korshak, SWS' lawyer, who had brought him into the negotiations to assist SWS in securing a less costly contract and who acted as Aloise's conduit to SWS to secure Smith's six admissions to the party. (Exs. 48, 9, 15) In another email that day, Aloise separately informed SWS CEO and President Wayne Chaplin ". . . the Minnesota agreement ratified this morning by a strong vote." (Exs. 62, 33) In response, CEO Chaplin thanked Aloise ". . . for the help in Minnesota . . ." (Exs. 62, 33) By his union email later that day, Aloise thanked the SWS CEO and President for the admissions to the Super Bowl Party he had obtained pursuant to Aloise's request, emphasizing that they had been for an IBT official close to Hoffa. (Ex. 16) Aloise stated, "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."

[12] Deb was Aloise's wife. (Ex. 19 at 84; Ex. 2 at 103)

(Ex. 16)[13] Aloise recognized the IBT employer was the source of the admissions for Smith which was why he thanked the SWS official rather than Diageo.

Amanda Civitello ("Civitello") was the Playboy employee in charge of organizing the 2013 party and supervising its execution. (Ex. 4 at 7) She testified that admissions to it were limited to a selected group. (Ex. 4 at 9) Admission was only available if a name was placed on one of the sponsor's lists. (Ex. 4 at 9, 16-17) Security was tight. (Ex. 4 at 37-38; Exs. 11, 46) As a sponsor, the liquor company Diageo had 60 admissions. (Ex. 59 at 2; Ex. 87) Smith at SWS's intervention received six of those. (Ex. 46) SWS was a major liquor distributor. (Ex. 2 at 88-89; Ex. 18) The admissions list showed Smith with six admissions through Diageo. (Ex. 63 at 1)

Playboy sold at least 111 tickets to the party to a New York City ticket broker, National Event Company ("NECO"). (Exs. 68, 77, 87, 88; Ex. 4 at 15-16) According to NECO records, the cost of the tickets were between $1,000 and $1,275. (Exs. 77, 88) Playboy also sold tables at the party to NECO. (Exs. 68, 77, 87, 88) NECO paid Playboy a total of $166,560 for these tickets and tables. (Exs. 68, 77, 87, 88)[14] The purchasers' names were given to Playboy to be on an admission list. (Ex. 4 at 16-17; Ex. 63) Playboy also sold tickets to McIlhenny Tabasco, a sponsor, and to another company for $1,000 a ticket. (Exs. 66, 67) Over the years, the Playboy party was one of the most exclusive of the pre-Super Bowl parties. (Ex. 4 at 38; Ex. 10) The party began at 11 p.m. and lasted until about 3 a.m.. (Ex. 4 at 10-11; Exs. 10, 51, 59, 64) Throughout the event, there was free liquor and other beverages and food available to the guests.

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[13] The CEO and President's father, Harvey Chaplin, was the company Chairman. (Ex. 49)

[14] According to a February 2, 2013 email from NECO to Playboy, NECO purchased 130 tickets to the party for $121,560 and also purchased two tables. (Ex. 68) Based upon this email, each ticket was $935. (Ex. 68) According to this email, the total cost for the tickets and tables was $166,560. (Ex. 68) As discussed below, Playboy sold other tickets for $1,000 each. (Exs. 66, 67)

(Ex. 4 at 9, 11, 25, 27; Ex. 82) There was live music. (Ex. 4 at 9; Exs. 10, 82) The food was prepared under the supervision of a well known chef. (Ex. 4 at 9, 27) The party cost approximately $813,000. (Exs. 70, 87) That figure did not include the cost of liquor and beer. (Exs. 59, 70) Diageo supplied to the party the full range of liquor and beer it sold. (Ex. 4 at 9, 18; Exs. 59, 65)[15]

The 2013 Playboy Super Bowl Party was described on the website NOLA.com|The Times-Picayune as an invitation-only "exclusive party" which featured celebrities. (Ex. 10) NOLA.com|The Times-Picayune posted pictures on its website of some of the celebrities attending. (Ex. 51) It was not a public event. (Ex. 4 at 9) Smith and his group were only placed on the list of guests after SWS requested Diageo to give Smith and his companions admission to the party. (Ex. 46)

Smith, who wanted to attend, could not have obtained the tickets for free on his own. Aloise obtained the tickets through requesting them from SWS. Both Aloise and Smith knew it was a Teamster employer who had obtained the admissions for Smith. (Ex. 15) The employer's intervention in obtaining Smith his admissions was as valuable as the admissions it secured for Smith. The IBT official's requested employer intercession occurred at the highest level of SWS executives. (Exs. 46, 23, 33, 49) Aloise's union position dealing with the large liquor distributor gave him leverage to obtain the tickets through the IBT employer. (Ex. 2 at 88-89, 100-101, 106, 112-114, 116)

Smith argued to the IIO that the admissions were of no value. (Ex. 2 at 135; Ex. 69) That was factually untrue. McIlhenny Co. Tabasco, a party sponsor, paid $1,000 each for three

[15] Besides Crown Royal, Diageo's brands included Johnnie Walker Scotch, Smirnoff Vodka, Tanqueray Gin, Captain Morgan's Rum, Don Julio Tequila, and the full line of Guinness beers and ales. (Ex. 65)

tickets beyond its allowance of tickets. (Exs. 66, 67)[16] Furthermore, an Australian company paid Playboy $22,000 for 22 tickets. (Ex. 67) The tickets were valued at $1,000 each. (Ex. 67) In addition, as described above, a New York ticket broker paid $166,560 for tickets and tables at the party for between $935 and $1,275 a ticket. (Exs. 68, 77, 87, 88)[17] In a secondary market, tickets for this party were offered for sale at $1,600 per person. (Ex. 55) SWS's offer to pay Diageo for the tickets also showed the SWS employee recognized what SWS was obtaining for Smith was valuable. (Ex. 11)

After he read Aloise's email regarding securing the tickets, Smith claimed that when he landed in Mississippi on January 31, he spoke to Aloise by telephone. (Ex. 2 at 133-135)[18] Smith testified in that call he asked Aloise if the tickets had value. (Ex. 2 at 135**)** Aloise allegedly said no. (Ex. 2 at 135) That Smith made the inquiry, if he actually made it, showed Smith knew there was an issue as to whether he was receiving a thing of value from an IBT employer. Considering the event and what he knew about it, Smith had to know the admissions likely had value. In a less than a one minute call, he made a deliberately limited inquiry to Aloise which was designed to elicit a denial. (Ex. 2 at 135; Ex. 58; Ex. 19 at 9) Essentially, he asked Aloise to deny he committed a crime on Smith's behalf. It was no surprise to Smith that Aloise denied it. Despite Aloise's obvious interest in not admitting criminal conduct, Smith, with no discussion as to how admissions to a private lavish exclusive party with free liquor, food and live music could have no value to an attendee, accepted Aloise's unsurprising, crime-

[16] The contract between Playboy and Tabasco provided that Tabasco would receive 10 tickets to the party. (Ex. 64)

[17] According to NECO and Playboy records, either 111 or 130 tickets were sold by Playboy to NECO. (Exs. 68, 77) These tickets were valued at between $935 and $1,275 each. (Exs. 68, 77)

[18] On January 31, 2013, Smith flew from Washington, DC to Jackson, Mississippi. (Ex. 80) He then drove from Jackson to New Orleans with his wife. (Ex. 2 at 134)

denying, self-serving response to his perfunctory inquiry. This call with its single question was evidence of Smith's consciously avoiding knowledge that the admissions had value. His alleged inquiry to Aloise was not a good faith effort to determine why admissions he was receiving through the intervention of the highest executive level of an IBT employer to an exclusive event not open to the public with free food, entertainment, and drink were not things of value. *See*, *United States v. IBT [Sansone]*, 981 F.2d 1362, 1368-1370 (2d Cir. 1992); *United States v. IBT [Ligurotis]*, 814 F. Supp. 1165, 1178 (S.D.N.Y. 1993)

In any event, that this conversation did not occur was much more probable. The phone records indicated there were two calls on January 31 between Smith and Aloise. (Exs. 56-58, 86) The records indicated that they exchanged two calls that were one minute or less and, as described below, appear to have been voice messages. (Exs. 56-58, 86) The telephone records showed no other calls. (Exs. 56-58, 86) The first call was made by Aloise to Smith at 8:19 p.m. CST and lasted one minute. (Ex. 56)[19] According to Smith's phone records, he was on another call at that time. (Exs. 57-58) From the records, it appears Aloise's call to Smith may have gone directly to Smith's voicemail because it did not appear on Smith's telephone records. (Ex. 57-58) According to Smith's phone records subpoenaed from the telephone company, the second call, from Smith to Aloise at 8:54 pm CST, lasted 51 seconds. (Ex. 58)[20] It is unlikely this call connected since it did not appear on Aloise's telephone records. (Exs. 56, 86) Moreover, any

[19] According to Aloise's subpoenaed telephone records, this call was at 6:19 p.m. Pacific Standard Time ("PST"). (Exs. 56, 86) Central Standard Time ("CST"), where Smith was at the time, is two hours later than PST. (Ex. 2 at 128; Ex. 80) This call was at 8:19 p.m. CST.

[20] Smith's phone records subpoenaed from the telephone company were in Coordinated Universal Time ("UTC"). (Ex. 58) UTC is six hours later than Central Standard Time. (Exs. 58, 84) Smith's subpoenaed phone records reflected that Smith's call to Aloise was on February 1, 2013 at 2:54 a.m. UTC. (Ex. 58) This was 8:54 p.m. CST. In response to an IIO examination notice, the IBT provided a listing of Smith's phone calls. (Ex. 57) The IBT's listing showed this call was at 20:53 on January 31, 2013. (Ex. 57) The list of Smith's telephone calls the IBT provided showed the duration of this call was 2 minutes. (Ex. 57) In any event, this call was not reflected on Aloise's subpoenaed phone records. (Exs. 56, 86)

analysis of why the admissions to a lavish party did not have value could not have been reasonably discussed between the two in a less than one minute conversation.

Moreover, Smith was not a credible witness. His description as an attending guest of his experience at the party was totally contradicted both by the testimony of the party's planner and contemporaneous documents. The planner, unlike Smith, had no motive to lie. For example, Smith claimed under oath the only liquor available at the party was maple flavored Crown Royal and one beer brand. (Ex. 2 at 137, 141) The party planner recounted that a full range of drinks were available to the guests through Diageo, a major liquor company that controlled many brands. (Ex. 4 at 9, 19; Ex. 65) Indeed, Diageo's contract as sponsor obligated it to provide "the full Diageo portfolio of products (beer, wine and spirits)". (Ex. 59) This would have included Scotch whiskey, other whiskey, gin, vodka, tequila and beer. (Ex. 65; Ex. 4 at 19) In addition, Smith claimed he could not recall any food at the party. (Ex. 2 at 137-138, 143) The planner testified that there was abundant food available throughout the night. (Ex. 4 at 9, 11, 25, 27; Ex. 64) Moreover, Smith claimed he purchased water at the party. (Ex. 69; Ex. 2 at 142) Beverages were free to attendees. (Ex 4 at 9) Playboy records detailing the sources of revenue it received in connection with the party had no listings for receipts from sales at the party. (Ex. 70) It was another Smith lie. Given Smith's false description of the party in his testimony, his alleged conversation with Aloise about value is an additional lie.

In contrast to the sad experience he presented in his testimony, Smith contemporaneously sent Aloise an email from the party indicating his pleasure, "Wish you and Deb were here. . . . .the scenery divine. . ." (Ex. 27) On February 9, a week after the party, Aloise, when thanking the IBT employer for obtaining Smith's admissions, also confirmed that Smith enjoyed the party.

(Ex. 50) In thanking the SWS President, Aloise, re-emphasized to that national IBT employer, "Hoffa's Ex Asst and his friends loved it." (Exs. 50, 33)

That SWS had to obtain the admissions for Smith from a third party does not change that Smith received a thing of value through the efforts of SWS, the IBT employer, which Aloise during contract negotiations solicited to obtain them. Diageo was only acting at the behest of the Teamster employer; SWS was attempting to fulfill Aloise's request to it. SWS arranged for delivery of the thing of value to Aloise's nominees. It was no different than if Smith asked Aloise to request SWS for a fur coat from a non-IBT furrier to be delivered to Smith, Aloise's designee. Smith knew that SWS, the IBT employer, obtained the admissions for him.

This was no routine request to the company. Aloise had the company's lawyer he was negotiating against present his request to the IBT employer. (Exs. 9, 46) *See*, *United States v. DeBrouse*, 652 F.2d 383, 387 (4th Cir. 1981) (using company personnel outside normal process but involved in union negotiations evidenced Teamster officer's request was not a routine business one). The SWS CEO handled the securing of the tickets for Aloise. (Ex. 20)

IV. ANALYSIS

A union official's receipt of a thing of value from an employer of the members he represents is a criminal act violating 29 U.S.C. §186. It is also an act of racketeering. 18 U.S.C. §1961(1). As such, Smith was explicitly enjoined from committing such an act. (Ex. 17) Smith's request to Aloise resulted in Aloise's request to SWS during contract negotiations through the company's lawyer he was negotiating against to provide valuable party admissions for Smith on short notice to the 2013 private Playboy Super Bowl party. (Ex. 8) These party admissions were not available free to the public. They were things of value as both Playboy's and the broker's records and the Playboy party organizer's testimony established. (Ex. 4 at 21-

22; Exs. 66, 67, 68, 77) Smith knew Aloise solicited the admission from SWS on his behalf. (Exs. 9, 15) Smith accepted these things of value the IBT employer obtained for him. Smith violated the Taft-Hartley statute, the injunction in the Consent Order in *United States v. IBT*, and the IBT Constitution. (Ex. 17 at 6-7; Ex. 5) Under the statute, only Smith's union position and his knowledge that he received a thing of value from an IBT employer need to be proven for it to be violated. *United States v. Phillips*, 19 F.3d 1565, 1581-82 (11th Cir. 1994) *cert. denied sub nom*, *USX Corp. v. United States*, 514 U.S. 1003 (1995). All those elements were present here.

Under the case law, "[v]alue is usually set by the desire to have the 'thing' and depends upon the individual and the circumstances." *United States v. Roth*, 333 F.2d 450, 453 (2d Cir. 1964). The Sixth Circuit explained that the prohibition against requesting a thing of value under the statute was not limited to requesting money. "Truly, of all the things in this world widely regarded as valuable, money and the like comprise only a small percentage." *United States v. Douglas*, 634 F.3d 852, 858 (6th Cir. 2011). In that case, union representatives requested an employer whose members the union represented to provide particular jobs for third parties. These were not no show jobs and were not being created at the union officers' request. The union officers requested they be given outside the contract. Those jobs were found to be things of value. Indeed, the court found the value of a job was undeniable. *Id.* at 858; *Cf. United States v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986) ("thing of value" under federal criminal conflict of interest statute includes promise of future employment).

The six admissions to the exclusive Playboy Super Bowl party for Smith and his guests were things of value.[21] These 2013 admissions were for an exclusive Super Bowl party not

[21] Smith claimed he only used four admissions. (Ex. 2 at 138) These were for him, his wife, Mr. Caldwell and his wife. (Ex. 2 at 136-137) Aloise said he was getting Smith six. (Ex. 2 at 128; Ex. 9) In no email in reply, did Smith inform Aloise he did not want that many. In any event, whether four or six, these admissions were things of value.

available to the public. It was a one-time event. The admissions needed to be obtained within two days of Aloise's request. (Exs. 37, 11, 14, 9) Playboy sold party admissions to a sponsor and others for $1,000 per admission. (Exs. 66-68, 77) The value of the admissions was beyond dispute. Smith received admissions for six people for free. Corroborating this value were reports that in the secondary market an admission was selling for $1,600. (Ex 55) Indeed, in both 2012 and 2014, the prior and subsequent years, the tickets to Playboy Super Bowl parties also had significant value. (Exs. 10 and 71)

To gain admission, Smith requested the assistance of Aloise, an International Vice President, involved in active negotiations with a liquor distributor who employed IBT members across the nation. Aloise made the request through that company's labor lawyer with whom he was negotiating another Local's contract. (Ex. 20) The employer had requested Aloise to become involved so he could help it pay less for the contract than if it were negotiating only with the Local. (Ex. 20) To meet Aloise's request to the IBT employer, the CEO of SWS became involved. (Exs. 20, 9, 46) Smith knew this. (Ex. 15) Aloise stressed the company's involvement to Smith. (Ex. 9) The company's lawyer conveyed to the IBT employer Aloise's request for its assistance in obtaining things of value for Smith. (Exs. 50, 20) To spur the IBT employer to obtain the admissions, the company lawyer emphasized to the SWS executives the tickets that Aloise requested were for an IBT official close to the General President. (Exs. 20, 11, 14) The IBT represented over 2,000 of SWS's employees nationwide. (Ex. 18) The employer being the country's largest liquor distributor was able to get the admissions from Diageo, a liquor supplier, which was a sponsor of the party. (Ex. 59) Smith and Aloise had no ability to obtain them for free without the IBT employer's intervention. To secure the admissions to the party for Smith, the employer recognizing their value, offered to purchase them from Diageo. (Ex. 11)

Evidencing the source for Smith obtaining the admissions, Aloise's thank you note for the party admissions was sent to the IBT employer and not to Diageo. (Ex. 50) Aloise and Smith both knew SWS obtained the valuable admissions for Smith. (Exs. 9, 15, 50) Aloise stressed in his thank you note to the IBT employer that, "Hoffa's Ex Asst" was now grateful to it for what it had done for him. (Ex. 50)[22]

Smith argued that because Diageo, a non-IBT employer, controlled the admissions, he did not receive a thing of value from an employer. (Ex. 69) The argument is without merit. SWS, the IBT employer, secured the six free admissions for Smith. (Ex. 46) Smith and Aloise could not do that on their own. Diageo, a liquor supplier, was fulfilling the request of the nation's largest liquor distributor. (Exs. 18, 46, 59, 73) It had no motivation, unlike SWS, to meet the requests of Smith and Aloise for the $6,000 worth of free admissions. Only the IBT employer had a reason to ingratiate itself with the two high ranking IBT employees who made the request to it. This is not a situation like *United States v. Cody*, 722 F.2d 1052 (2d Cir. 1983). In that case, the court found that a gift from a non-IBT employer to an IBT Local officer was not prohibited under 29 U.S.C. § 186, when it was made by the non-union company for its own reasons and not as a pass through for an IBT employer. *Id.* at 1057-59. Unlike in this matter, the non-union employer in Cody was not supplying the thing of value to the Local official at the union employer's behest. Here, prodded by Aloise, the union employer went and secured the admissions for Smith. Whether measured by the value of the admissions or the equal value of SWS's intervention in securing them, Smith received a thing of value from an employer. Indeed, SWS in causing Diageo to give something of value to SWS's employee representative could be liable as a principal for causing the giving of things of value to Smith. 18 U.S.C. §2(b).

[22] Neither Smith nor Aloise emailed a thank you note to any executive at Diageo evidencing they knew well these items of value were obtained for Smith through the IBT employer.

Smith's description of his claimed sad time at the party is both not relevant and does not match the other substantial evidence about the party, including the party organizer's description of the actual event, contemporaneous press accounts, the video of the party, Smith's message from the party to Aloise and Aloise's statement to the employer about Smith's enjoyment. (Ex. 4 at 32; Exs. 27, 50, 51, 82)[23] Moreover, Smith's claims of a bad time do not alter the value of the admissions he sought and received. Smith's false statements concerning the event when under investigation evidenced his consciousness of his guilt that in receiving a thing of value from an employer he acted wrongfully. *E.g.*, *Seeman v. United States*, 96 F. 2d 732, 733-734 (5th Cir. 1938) (well settled law that false statements are evidence of consciousness of guilt); *United States v. Whiteagle*, 759 F.3d 734, 757-58 (7th Cir. 2014).

The Second Circuit noted in discussing 29 U.S.C. §186(b):

> 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. Congress wished to outlaw tampering with the loyalty of union officials by forbidding the delivery to any such official of that which might turn the edge of his allegiance. Recognizing that favors may be conferred in many ways under many circumstances, Congress gave the broadest possible scope to the statute by adding to the word 'money' the words 'or other thing of value.'

United States v. Roth, supra, 333 F.2d at 453 (citations and internal quotations omitted).

Smith represented all Teamsters. He was the Executive Assistant to the IBT General President. He knew the employer Aloise solicited on his behalf employed Teamster members. (Ex. 2 at 88-89; Ex. 69) Section 29 U.S.C. §186(a) and (b) serves as a conflict of interest statute that

[23] In a submission to the IIO, Smith's attorney wrote, "Smith, his wife, and two family friends attended for approximately one hour, during which time they ate no food, drank several bottles of water purchased by Smith and contributed $100 to a fundraiser for Armed Forces personnel serving abroad." (Ex. 69) The claim that Smith had to purchase water was contradicted by the party planner who testified that there was a water sponsor for the party, Aquahydrate, and free water was plentifully available at the party. (Ex. 4 at 8, 30-31; Ex. 81)

Congress passed to eliminate practices that have the potential for corrupting labor unions and union officials. *United States v. Phillips*, supra, 19 F.3d at 1574; *United States v. Browne*, 505 F.3d 1229, 1248 (11th Cir. 2007).

Smith also claimed he had no corrupt intent when he had Aloise solicit and receive the things of value from the IBT employer. (Ex. 2 at 135; Ex. 69) Even if he did not, its absence was not relevant to whether he violated the statute. *United States v. Ricciardi*, 357 F. 2d 91, 99-100 (2d Cir. 1966), *cert denied*, 384 U.S. 942 (1966); *United States v. IBT [Perrucci]*, 965 F. Supp. 493, 499 (S.D.N.Y. 1997) The statute required that the union official act willfully. Because Smith had knowledge of what he was doing, Smith acted willfully under the statute. 29 U.S.C. §186(d)(2); E.g., *United States v. Phillips*, supra, 19 F.3d at 1579. The "willfully" in the statute only required a finding of general intent. That is, Smith acted knowing what he was doing and not by mistake or accident. He knew the thing of value he received came through Aloise's solicitation of an IBT employer to get Smith what he wanted. Here Smith knew he was a union representative, knew SWS employed IBT members he represented and knew he was receiving through the IBT employer a thing of value. No more is needed to find he committed the forbidden criminal act. *United States v. Phillips*, supra, 19 F.3d at 1582. That admission to an exclusive private party with free liquor, food and entertainment was a thing of value was apparent on its face. The objective evidence is overwhelming. Smith deliberately, according to his description of his claimed phone call with Aloise, closed his eyes to knowledge of the value of the admissions. In making only his limited inquiry designed to elicit a denial from Aloise, he deliberately ignored the surrounding indicia of value and accepted Aloise's perfunctory self-serving denial the admissions had no value. This conscious avoidance of knowledge showed

Smith knew the admissions had value. *See, United States v. Fofanah*, 765 F.3d 141, 144-145 (2d Cir. 2014) *cert. denied*, 2015 U.S. LEXIS 1387 (U.S. Feb. 23, 2015).

Whether as principal or aider and abettor, Smith violated the statute and the permanent injunction against committing an act of racketeering. In discussing the federal aiding and abetting statute, 18 U.S.C. §2, in *Rosemond v. United States*, 134 S.Ct. 1240, 1245 (2014), the Supreme Court stated that, "a person may be responsible for a crime he has not personally carried out if he helps another to complete its commission." The court found that a person is liable under §2 for aiding and abetting a crime if "he (1) takes an affirmative act in furtherance of that offense, (2) with the intent of facilitating the offense's commission." *Id.* at 1245. Liability exists for any person who facilitates any part of a criminal venture. As the Supreme Court explained in *Rosemond*, "In proscribing aiding and abetting, Congress used language that 'comprehends all assistance rendered by words, acts, encouragement, support, or presence' even if that aid relates to only one (or some) of a crime's phases or elements." *Id.* at 1246-47 (citation omitted). Smith could not shield himself from liability because he requested Aloise to assume the role of directly soliciting the employer on Smith's behalf. In making the request for Aloise to secure the tickets and in receiving the fruits of Aloise's solicitation of the IBT employer which Smith knew was the source for his Playboy party admissions, he had taken steps to complete the crime. *Id.* at 1245. As the Supreme Court explained, the intent requirement for aiding and abetting was "satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense." *Id.* at 1248-1249.

The Court found, "for purposes of aiding and abetting law, a person who actively participates in a criminal scheme knowing its extent and character intends that scheme's commission." *Id.* at 1249. Here, Smith, an employee representative, (a) knew Aloise had made

the request on Smith's behalf to the highest executives at the IBT employer and (b) received the admissions which he knew were things of value the employer had obtained for him. The claim Smith somehow could insulate himself from his participation and knowledge of SWS securing the things of value for him through his using Aloise as his cat's paw to make the request is without merit. *E.g.*, *United States v. Daly*, 842 F. 2d 1380, 1389-1390 (2d Cir. 1988) (business agent who received a payment from an employer that a third party arranged be delivered to him was guilty as principal; the third party who solicited the payment from the employer and passed it to business agent was guilty of aiding and abetting). Under any theory, Smith, either as a principal or an aider and abettor, violated the statute prohibiting an employee representative from receiving a thing of value from an employer who employed his union's members.

V. BURDEN OF PROOF

The standard of proof for establishing the charge against Smith is a preponderance of evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Paragraph C ("to determine whether the proposed … charges …found in the Independent Investigations Officer's Investigative report, are supported by a preponderance of reliable evidence.") (Ex. 74 at 7); the Final Agreement and Order, at Paragraph 35 (Ex. 1 at 18-19); *United States v. IBT [Simpson]*, 931 F. Supp. 1074, 1089 (S.D.N.Y 1996), aff'd, 120 F.3d 341 (2d Cir. 1997). In addition, Article XIX, Section 1(e) of the IBT Constitution provides that internal union disciplinary charges must be proven by a preponderance of the evidence. (Ex. 75)

VI. PROPOSED CHARGE

Based upon the foregoing, it is recommended that Smith be charged as follows:

Charge

While Executive Assistant to the IBT General President, Secretary-Treasurer of Joint Council 87 and the principal officer of Local 891, you brought reproach upon the IBT, violated the Taft Hartley Act, 29 U.S.C. §186(b), and 18 U.S.C. §2, engaged in an act of racketeering and violated the injunction in *United States v. IBT*, 88 Civ. 4486 (S.D.N.Y.) by soliciting and receiving things of value from an IBT employer in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(2), (11) and (13) of the IBT Constitution, *to wit*:

As described in the above report, in 2013, while employed as Executive Assistant to the General President, as Secretary-Treasurer of Joint Council 87 and as principal officer of Local 891, you caused another Teamster Official to solicit things of value from an IBT employer on your behalf and you knowingly received those things of value from that employer, Southern Wine and Spirits. These things of value were six admissions to an exclusive Playboy Super Bowl party in New Orleans for you, your wife and friends of your choosing.