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SENT VIA FIRST CLASS MAIL AND E-MAIL

June 23, 2017

James P. Hoffa
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Re: Charges Against William C. Smith, III

Dear General President Hoffa:

Pursuant to Paragraph 33 of the Final Agreement and Order (the "Final Order"), approved on February 17, 2015, in *United States v. International Brotherhood of Teamsters, et al.*, 88 Civ. 4486 (LAP), I write to notify you of my determination that the IBT's decision on the charge against William C. Smith, III is inadequate under the circumstances. My reasons for this finding are described in detail below. Please respond in writing within twenty days of receipt of this letter as to what, if any, additional actions the IBT has or will take to correct the defects that I have identified. (*See* Final Order at ¶ 33).

Background

On November 18, 2016, the Independent Investigations Officer (IIO) issued a report recommending to the General President that a charge be filed against William C. Smith, III, the Executive Assistant to the General President, Secretary Treasurer of Joint Council 87, and the principal officer of Local 891. The IIO's proposed charge against Mr. Smith alleged that he brought reproach upon the IBT; violated the Taft Hartley Act, Title 29, United States Code, Section 186(b) and Title 18, United States Code, Section 2; engaged in an act of racketeering, as defined in Title 18, United States Code, Section 1961; and violated the injunction in *United States v. IBT*; all in violation of Article II, Section 2(a) and Article XIX, Sections 7(b)(2), (11) and (13) of the IBT Constitution. The IIO's allegations of wrongdoing center around Smith's request for and receipt of admissions to a pre-Super Bowl party in New Orleans sponsored in part by Playboy and Diageo (the "Super Bowl Party"), in early 2013, that Rome Aloise, an IBT Vice President, arranged through his contacts at Southern Wine and Spirits ("SWS"), an IBT employer.

General President Hoffa adopted and filed the recommended charge on November 30, 2016. On March 21, 2017, an IBT panel comprised of Greg Nowak, President of Local 1038 and Joint Council

43; Marvin Kropp, Secretary Treasurer of Local 618 and President of Joint Council 13; and Tony Andrews, Secretary Treasurer of Local 305 and President of Joint Council 37 (the "IBT Panel"), presided over Smith's hearing. Smith was present at the hearing and represented by counsel, J. Bruce Maffeo, Esq. The charge was presented by Roland Acevedo on behalf of the IBT. Following the hearing, the parties each submitted post-hearing briefs. The IBT Panel concluded that the preponderance of the reliable evidence did not support the charge against Smith and recommended that the charge be dismissed (the "Report and Recommendation" or "Report and Rec."). By letter dated May 17, 2017, General President Hoffa adopted the IBT Panel's conclusions in the Report and Recommendation as well as the recommendation to dismiss the charge.

Defects in the IBT Decision

As noted above, I have determined that the IBT's decision to dismiss the charge against Smith is inadequate under the circumstances. To make my decision, I reviewed the IIO's charge report and associated exhibits, including the transcripts of Smith's depositions; the IBT Panel hearing transcript and associated exhibits; the parties' post-hearing submissions; the IBT Panel's Report and Recommendation; and a memorandum from the IIO concerning its position on the Panel's Report and Recommendation. The defects in the IBT decision that require remediation are as follows:

1. The decision appears to fail to adequately consider and take into account the proper legal standard for sustaining a disciplinary charge. The "Analysis" section of the Report and Recommendation starts out with a recitation of the standard of proof for establishing criminal liability – proof beyond a reasonable doubt – that simply does not apply here. (*See* Report and Recommendation at 6). Although the allegations involve a criminal statute, this is not a criminal proceeding. Disciplinary charges must be sustained by a preponderance of the evidence, which the IBT Panel properly cites to at the conclusion of its opinion (*see id.* at 11). (IBT Constitution Art. XIX, § 1(e) ("In order to be sustained, the charges must be supported by a preponderance of the reliable evidence . . . ."). "Preponderance" is defined by the Second Circuit as "the facts asserted by the plaintiff are more probably true than false." *Nissho-Iwai Co., Ltd.* v. *M/T Stolt Lion,* 719 F.2d 34, 38 (2d Cir. 1983). *See also Fischl v. Armitage,* 128 F.3d 50, 55 (2d Cir. 1997) ("'To establish a fact by a preponderance of the evidence means to prove that the fact is more likely true than not true.'") (quoting 4 L. Sand et al., *Modern Federal Jury Instructions* ¶ 73.01); *Duke Laboratories, Inc.* v. *United States,* 222 F. Supp. 400, 406 (D. Conn. 1963) ("To establish by a preponderance of the evidence means very simply to prove that something is more likely so than not so."). Therefore, the standard for upholding the charge against Smith should be considered in that light.

2. The decision fails to adequately consider and take into account that on January 31, 2013, Smith knew that the six admissions to the Super Bowl Party that Aloise procured for him were obtained through an IBT employer, SWS. (*See* Report and Rec. at 4-5, 11).[1] The applicable statute (29 U.S.C. § 186(b)) and IBT Constitutional provision (Art. XIX, Sec. 7(b)(13)) prohibit not just the solicitation of a thing of value from an IBT employer, but also the receipt of a thing of value from an IBT employer. Section 186(b) makes it "unlawful

[1] *See* Ex. 9; Ex. 2 at 88; Ex. 3 at 215; Hearing Transcript at 52; 79 (admitting knowledge at time of e-mail, Jan. 31, 2013, that SWS was an IBT employer involved in securing the party passes for him).

for an officer of a labor organization to receive or accept anything of value from someone who employs members of that labor organization." *United States v. Cody*, 722 F.2d 1052, 1057 (2d Cir. 1983); 29 U.S.C. § 186(b) ("[i]t shall be unlawful for any person to request . . . or accept . . . any payment . . . or thing of value"). Similarly, Article XIX, Section 7(b)(13) prohibits "[a]ccepting money or other things of value from any employer or any agent of an employer, in violation of applicable law." IBT Const. Art. XIX, § 7(b)(13). Thus, whether or not Smith requested that Aloise obtain Super Bowl party admissions from an IBT employer is not dispositive, nor is it a "fundamental problem with the charge." (*See* Report and Rec. at 6). Plus, once Smith learned that the Super Bowl Party admissions came from an IBT employer, he did not decline the admissions. Rather, in seeming acknowledgment that the admissions for the Super Bowl Party were obtained from an IBT employer, Smith allegedly asked Aloise if the admissions had any monetary value. (*See id*. at 5).[2] The Panel gives short shrift to Smith's acknowledgment that he knew that SWS was responsible for procuring the admissions. Instead, the Panel excuses Smith's conduct based on a lack of focus on how and through whom Aloise obtained the admissions because he was busy traveling from Washington, D.C. to New Orleans, via Mississippi. (*See id*. at 7).

3. The decision fails to adequately consider and take into account that promotional items, such as free admissions to a party, can be a "thing of value" under Section 186 and the IBT Constitution. A "thing of value" can have both an objective and subjective connotation. *See United States* v. *Roth*, 333 F.2d 450, 453 (2d Cir. 1964) ("Value is usually set by the desire to have the 'thing' and depends upon the individual and the circumstances."); *United States v. IBT (Perrucci)*, 965 F. Supp. 493 (S.D.N.Y. 1997) (finding alleged "worthless" boat to be "thing of value" in light of recipient's conduct evidencing value he placed in boat). This follows from courts' consistent broad reading of the term under bribery and associated statutes. *See United States* v. *Williams*, 705 F.2d 603, 605 (2d Cir. 1983) ("The phrase 'anything of value' in bribery and related statutes has consistently been given a broad meaning to carry out the congressional purpose of punishing misuses of public office."). Here, the evidence points to the Super Bowl Party admissions having both subjective and objective value. From a subjective standpoint, Smith's contention that he did not believe that the admissions had any value is belied by Smith's desire to go to the Party; that is to say, Smith's demonstrated interest in the admissions – through his efforts to procure the admissions and to assist Aloise in the same – imbued them with value under the law. In addition, Aloise's comment to Smith (assuming it was made) that the Party admissions had no value because they were part of a product promotion, (*see* Report and Rec. at 7), at best answers the question of whether Smith believed that the admissions were associated with a particular dollar value. It does not, nor did it, eliminate the possibility that the admissions were valuable to Smith. Similarly, it cannot be disputed that SWS was aware of the value of the admissions to Smith.

   Moreover, that Smith stayed at the Party for only an hour and fifteen minutes and did not enjoy himself does not have any impact on the analysis of whether the admissions were a "thing of value." Such *post hoc* analysis is irrelevant. *See Perrucci*¸ 965 F. Supp. At 500 (upholding IRB's rejection of argument that *post hoc* analysis showed boat, the alleged "thing of value," was financial disaster for recipient). Further, from an objective standpoint,

[2] *See* Ex. 2 at 134-35; Ex. 3 at 26-28; Hearing Transcript at 56-57.

there was ample evidence before the IBT Panel to establish that the Super Bowl Party admissions had objective value despite the promotional nature of the event. (*See* Report and Rec. at 8 ("Evidence developed by the IIO years after the event that Playboy sold party admissions to a party sponsor or to others at $1,000 per admission suggests that admission to the event may have had value."); Exhibit 4 (Civitello Depo.) at 8-9, 13, 14-15, 18, 29; Ex. 66-68; Ex. 77).

Pursuant to Paragraph 33 of the Final Order, you have twenty days to submit in writing any additional actions the IBT has or will take to correct the above-described defects. I look forward to your response.

Sincerely,

/s/ Barbara S. Jones

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

cc: Bradley Raymond, Esq.
Joseph diGenova, Esq.
Charles Carberry, Esq.