

RULES GOVERNING THE AUTHORITIES

OF

**INDEPENDENT DISCIPLINARY OFFICERS AND THE
CONDUCT OF HEARINGS**

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A. INTRODUCTION

These Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings (hereinafter "Disciplinary Rules") outline the authorities of the Independent Disciplinary Officers and the procedure in conducting hearings by the Independent Review Officer on disciplinary matters concerning IBT members facing disciplinary charges and IBT entities subject to trusteeship. The authority for implementing the Disciplinary Rules is provided by the Final Agreement and Order in 88 Civ. 4486 ("Final Agreement and Order"). In addition, these Disciplinary Rules may be modified or construed by the Independent Review Officer to ensure a just result in every matter.

B. AUTHORITIES OF THE INDEPENDENT DISCIPLINARY OFFICERS

1. The Independent Investigations Officer is authorized to investigate any allegations of corruption in the IBT, including, but not limited to: bribery; extortion; embezzlement; use of threats of force or violence against members to interfere with or extort their rights under the IBT Constitution or their union democracy rights under applicable law, including their rights to assemble, express their views, vote, seek election to office, support the candidates of their choice, and participate in the affairs of the IBT;

acceptance of money or other things of value from any employer or agent of an employer, in violation of applicable law; any act of racketeering activity, as defined in applicable law; aiding and abetting any act of racketeering, including the extortion of IBT members' union democracy rights as defined by applicable law; any allegations of domination, control, or influence over any IBT affiliate, officer, member, employee, or representative by any organized crime family or any other criminal group; any allegations of knowing association with a member of La Cosa Nostra or any other person enjoined from participating in Union affairs; conduct that in the Independent Disciplinary Officer's view brings reproach upon the Union; any failure by an IBT entity to pursue and/or decide in a lawful, responsible, and timely manner a matter that has been referred to it pursuant to the Final Order; and any failure to cooperate fully with the Independent Disciplinary Officers in any investigation of the foregoing.

2. The Independent Investigation Officer's investigatory authority shall include, but not be limited to, the authority:

a. To cause the audit or examination of the books of the IBT or any affiliated IBT body at any time to the extent that the Independent Investigations Officer may determine necessary.

b. 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 Independent Disciplinary Officers have 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 of the person's choosing during the course of said examination. Failure to appear for a duly-noticed in-person examination shall be deemed a failure to cooperate fully with the Independent Disciplinary Officers.

c. During ~~the Transition Period~~ his or her first five-year term of office, as defined in the Final Order, to take, upon notice and application to the United States District Court for the Southern District of New York, which shall include affidavit(s) in support thereof, the sworn statements, ~~or~~ sworn in-person examinations, or documents/records of persons or entities not covered in the foregoing subparagraph (b).

3. The Independent Disciplinary Officers' investigatory authority shall include, but not be limited to, the authority:

a. To receive, no less than one week prior to any meeting of the GEB, the agenda for the meeting, and to attend meetings or portions of meetings of the GEB that relate in any way to the rights, duties, or activities of the Independent Disciplinary Officers.

b. To attend meetings of any affiliated body of the International Union.

c. To consult with and receive information from one

another and the Independent Election Supervisor appointed pursuant to the Final Order.

4. The Independent Review Officer's investigatory authority shall include, but not be limited to, the authority to:

a. Refer matters to the Independent Investigations Officer for investigation in accordance with these Rules.

b. In exercising the powers and authorities bestowed by paragraph 33 of the Final Order, direct the Independent Investigations Officer to make use of any of the investigatory powers set forth herein and the authorities set forth in paragraph 30 of the Final Order.

c. Examine and review actions taken by the appropriate IBT entity to implement the Independent Review Officer's decisions made pursuant to paragraph 35 of the Final Order. In so doing, the Independent Review Officer may direct the Independent Investigations Officer to make use of any of the investigatory powers set forth herein and the authorities set forth in paragraph 30 of the Final Order to ensure that the appropriate IBT entity properly implements the Independent Review Officer's decisions. Failure to timely take all action necessary to implement the Independent Review Officer's decision shall be deemed a failure to cooperate fully with the Independent Review Officer.

5. Pursuant to paragraph 30 of the Final Order, the

Independent Disciplinary Officers shall be apprised of and have the authority to review any disciplinary or trusteeship decision of the General President, GEB, or IBT, and the Independent Review Officer shall have the right to affirm, modify, or reverse any such decision. The Independent Review Officer's affirmance, modification, or reversal of any such decision shall be in writing and shall be final and binding.

a. If the Independent Review Officer so directs, the Independent Investigations Officer may make use of any of the investigatory powers set forth herein and the authorities set forth in paragraph 30 of the Final Order to ensure that the General President, GEB, or IBT properly informs the Independent Disciplinary Officers of any disciplinary or trusteeship decision.

b. Failure to inform the Independent Disciplinary Officers of any such disciplinary or trusteeship decision, or to enforce any decision of the Independent Review Officer affirming, modifying, or reversing any such disciplinary or trusteeship decision shall be deemed a failure to cooperate fully with the Independent Disciplinary Officers.

6. The Independent Investigations Officer may establish a toll-free telephone service for purposes of receiving reports of corruption involving the IBT and its affiliates.

7. The Independent Disciplinary Officers shall have the authority to inform the General President and the GEB, the IBT and/or any IBT affiliates and membership,

of the identities of persons or entities who are or have been the subject of disciplinary action by the Independent Review Officer, and/or who are or have been identified as members or associates of La Cosa Nostra or any other organized crime group, for purposes of informing the members, officers, employees, agents and representatives of the IBT and its affiliates that association with or employment of these persons or entities may be cause for investigative or disciplinary action.

C. PURPOSE OF HEARING

A fair and impartial hearing shall be conducted before the Independent Review Officer. The purpose of the hearing shall be to determine whether the proposed findings, charges, or recommendations regarding discipline or trusteeship found in the Independent Investigations Officer's Investigative Report are supported by a preponderance of reliable evidence.

D. CONTENTS OF NOTICE

1. The Independent Review Officer shall determine the date, time and place of the hearing, and shall serve a Hearing Notice of such on the person charged, or the IBT affiliate subject to trusteeship, the Independent Investigations Officer, and any other person or entity deemed to have an interest in the proceeding. The person charged or the IBT affiliate subject to trusteeship, shall be given a reasonable time, in no event less than ten (10) days, to prepare for the hearing.

2. In addition to including the date, time and place of

the hearing, the Hearing Notice shall include a copy of the Independent Investigations Officer's Investigative Report and a copy of these Hearing Rules .

E. SERVICE OF NOTICE

1. If the person charged, or the IBT affiliate subject to trusteeship, is represented by counsel, the Hearing Notice shall be served on such counsel by first-class mail, postage prepaid.

2. If the person charged, or the IBT affiliate subject to trusteeship, is not represented by counsel, then the Hearing Notice shall be served by registered or certified mail, return receipt requested, in accordance with the following procedure.

a. In the case of an individual, the registered or certified mailing, return receipt requested, shall be made to the individual's last known home address. If that mailing is refused, the Hearing Notice shall be served by first class mail, postage prepaid, to the individual's last known home address. The modes of mail service may be made simultaneously. If a last address is not known, the Hearing Notice shall be mailed by first class mail, postage prepaid, to the principal office, as listed in the IBT's Roster, of the Local Union of which that individual is a member. If that individual is not currently a member of a Local Union, the Hearing Notice shall be mailed by first class mail, postage prepaid, to the principal office, as listed in the IBT's Roster, of the last Local Union of which that individual was a member.

b. In the case of an IBT affiliate, the registered

or certified mailing, return receipt requested, shall be made to that affiliate's principal office as listed in the IBT's Roster. If the registered or certified mailing is refused, the Hearing Notice shall be served by first class mail, postage prepaid, to that affiliate's principal office as listed in the IBT's Roster. The modes of mail service may be made simultaneously.

3. Nothing herein shall preclude personal service of the Hearing Notice. In the case of an individual, personal service may be made by delivering a copy of the Hearing Notice to the individual, or by leaving a copy thereof at the individual's home with some person of suitable age and discretion then residing therein. In the case of an IBT, personal service may be made by delivering the Hearing Notice to any member of the entity's Executive Board.

E. REPRESENTATION

The person charged or the IBT affiliate subject to trusteeship shall have the right to be represented at the hearing by counsel or by an IBT member in good standing.

F. HEARING ATTENDANCE

The failure of a charged party or an IBT affiliate subject to trusteeship to attend a hearing shall constitute a waiver of the right to attend and the Independent Review Officer may conduct the hearing in the absence of the charged party or IBT entity. Notwithstanding a failure of a charged party or IBT affiliate to attend a hearing, the Independent Review Officer may permit the charged party or IBT entity to submit a written memorandum either pre- or post-hearing.

G. OPEN HEARING

Subject to space limitations and the interest of conducting an orderly hearing, hearings shall be open to IBT members in good standing.

H. HEARING PROCEDURE

The hearings shall be conducted pursuant to these Hearing Rules and rules and procedures generally applicable to labor arbitration hearing.

I. TRANSCRIPT OF PROCEEDINGS

The person charged or the IBT affiliate subject to trusteeship shall have the option of having a court stenographer present at the hearing at their own expense and in such an event, a copy of the transcript shall be provided to the Independent Review Officer and the Independent Investigations Officer. If the person charged or the IBT affiliate subject to trusteeship elects not to have a court stenographer present at the hearing, they shall so notify the Independent Investigations Officer at least five days prior to the hearing date.

J. OPENING/CLOSING STATEMENTS

Opening and closing statements will generally not be permitted as a matter of course. However, the Independent Review Officer may permit the parties to make brief opening and closing remarks, if the he or she deems such to be helpful.

K. ORDER OF PRESENTATION

The Independent Investigations Officer shall first present his or her evidence, explaining the relevance of each item as it is introduced. The Independent Investigations Officer shall then, if he or she chooses, conduct direct examination of witnesses, if any. Cross-examination and re-direct examination of the Independent Investigations Officer's witnesses shall be allowed. After the Independent Investigations Officer presents his or her evidence and witnesses, the charged person or the IBT affiliate subject to trusteeship may present his, her or its evidence and conduct direct examination of witnesses. Cross-examination and re-direct examination of such witnesses shall be allowed. Before testifying, every witness shall be required to declare that he or she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

L. EVIDENTIARY OBJECTIONS AND ADMISSIBILITY OF EVIDENCE

Evidentiary objections, regardless of grounds, may be made during the hearing and may be addressed by the Independent Review Officer at that time. However, such objections are not waived if they are not made during the hearing, and all objections can be made in the post-hearing submissions. In any event, all evidence and testimony offered at the hearing may be accepted, by the Independent Review Officer, to be weighed post-hearing in light of the hearing testimony and post-hearing submissions.

M. GOVERNMENT OBJECTION

If, during the course of a hearing, counsel to a law enforcement witness exercises a law enforcement, or similar, privilege, that portion of the witness' testimony which has not been objected to, if any, shall be taken to be weighed post-hearing, in light of the hearing and post-hearing submissions.

N. POST-HEARING SUBMISSIONS

1. Content of Submissions

a. The Independent Investigations Officer shall submit a post-hearing memorandum addressing the merits of the charges, evidentiary issues, and other matters. The charged person or the IBT affiliate subject to trusteeship shall submit a response memorandum also addressing the merits, evidentiary issues, and other matters. Thereafter, the Independent Investigations Officer may submit a reply to the issues and arguments raised in the response filed by the charged person or the IBT affiliate subject to trusteeship.

b. When an individual is charged, a schedule of any and all benefits to which that individual is entitled, including the payment of that individual's legal fees by any IBT-affiliated entity in connection with the charged matter, shall be submitted to the Independent Investigations Officer and the Independent Review Officer at, or prior to, the hearing. This submission shall be used for the purpose of determining the sanctions upon employee benefits, including health, welfare and pension benefits, to be imposed in the event a decision issues that is adverse to the individual charged. In his post-hearing memorandum, the Independent Investigations Officer shall

state his or her position on the issue of alienating such benefits. In accordance with the briefing schedule that is set, the charged person(s) shall include a response on this issue in the post-hearing response memorandum.

c. The Independent Review Officer may request further submissions from the charged person, the IBT affiliate subject to trusteeship, or the Independent Investigations Officer on any issue he or she considers appropriate.

2. Schedule of Submissions

Subject to the Independent Review Officer setting a different schedule, post-hearing memoranda shall be submitted in accordance with the following schedule:

- Within fourteen (14) days after receipt of the hearing transcript, the Independent Investigations Officer shall deliver his or her post-hearing memorandum to the Independent Review Officer and to the charged person or the IBT affiliate subject to trusteeship.

- Within ten (10) days after receipt of the Independent Investigations Officer's memorandum, the charged person, or the IBT affiliate subject to trusteeship, shall deliver an answering memorandum to the Independent Review Officer and to the Independent Investigations Officer.

- Within five (5) days after receipt of the answering memorandum, the Independent Investigations Officer shall deliver his reply memorandum to the Independent Review Officer and to the charged person, or the IBT affiliate subject to trusteeship.

O. INDEPENDENT REVIEW OFFICER'S DECISION

1. After receipt of the post-hearing submissions, the

Independent Review Officer shall issue a written decision, with copies to be sent to the charged person or the IBT affiliate subject to trusteeship, to the Independent Review Officer and to the IBT General President, each member of the IBT General Executive Board, and all affected parties, including the appropriate IBT entity designated by the Independent Review Officer with enforcement responsibility.

2. If the proposed finding(s), charge(s), or recommendation(s) contained in the Investigative Report are sustained, the Independent Review Officer shall have the authority to impose disciplinary measures or conditions of trusteeship authorized by the IBT Constitution, the Final Order and applicable law.

3. The appropriate IBT entity designated by the Independent Review Officer with enforcement responsibility, the IBT General President, and the IBT General Executive Board, shall immediately take all action necessary to implement the decision of the Independent Review Officer, consistent with the IBT Constitution and applicable federal law.

4. Decisions of the Independent Review Officer shall be final and binding.