In the Matter of W. C. SMITH, III	Before the INDEPENDENT REVIEW OFFICER

OPINION OF THE INDEPENDENT REVIEW OFFICER

January 23, 2018

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I. INTRODUCTION

On November 10, 2016, the Independent Investigations Officer ("IIO") issued his investigative report (the "Charge Report") on W. C. Smith, III to the International Brotherhood of Teamsters ("IBT") General Executive Board ("GEB") recommending that a single charge be filed against Smith (the "Charge"). [1]

The Charge alleges that Smith brought reproach upon the IBT, violated the Taft Hartley Act, Title 29, United States Code, Section 186(b), and the federal aiding and abetting statute, Title 18, United States Code, Section 2, engaged in acts of racketeering, and violated the injunction in paragraph E(10) of the Consent Order, 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. In particular, the IIO alleged that, in 2013, while employed as the Executive Assistant to the IBT General President, the Secretary-Treasurer of Joint Council 87, and the Principal Officer of Local 891, Smith caused another Teamster official to solicit things of value from an IBT employer, Southern Wine and Spirits ("SWS"), on his behalf and he knowingly received those things of value from that employer. The alleged things of value were six admissions to an exclusive Playboy Super Bowl party in New Orleans, Louisiana (hereinafter, the "Super Bowl Party" or the "Party") for Smith, his wife, and four friends of his choosing.

II. PROCEDURAL HISTORY

Shortly after the Charge Report was issued in November 2016, General President James P. Hoffa (hereinafter, the "General President") adopted and filed the Charge against Smith. The General President noticed an IBT panel hearing, which was held on March 21, 2017. (IDO-3).

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

Following the hearing, in a Report and Recommendation, the IBT hearing panel (the "Panel") concluded that the preponderance of the reliable evidence did not support the Charge and recommended that the Charge be dismissed. (*Id.*). On May 17, 2017, the General President adopted the Panel's conclusion. (*Id.*). On June 23, 2017, I notified the General President that I found the IBT's decision to dismiss the charge to be inadequate. (IDO-4). The IBT remanded the matter to the Panel for reconsideration in light of my inadequacy determination. (IDO-5). In a supplemental decision, the Panel upheld its earlier decision to recommend dismissal of the Charge. (IDO-7). The General President again adopted the Panel's recommendation. (*Id.*). On August 22, 2017, I advised the General President that the IBT's supplemental decision was inadequate and ordered that a *de novo* hearing be held on November 8, 2017. (IDO-8).

The *de novo* hearing was held on November 8, 2017, at the Holiday Inn Arlington at Ballston, in Arlington, Virginia. Smith testified as the sole witness called by the IIO's investigator, Celia Zahner, who conducted the hearing for the IIO. Counsel for Smith, J. Bruce Maffeo, also questioned Smith. (November 8, 2017 Hearing Transcript ("Hearing Tr." or "Tr.")). Smith's testimony was followed by five character witness who testified on his behalf: John Murphy, an IBT Vice President At-Large (Tr. at 64);[2] Thomas Schatz, an Investigator for the IBT Legal Department (Tr. at 75); William Davidson, who works for an employer group that hears grievances for the IBT (Tr. at 81); Cynthia Rosenthal, a retired Federal Bureau of Investigation Special Agent and practicing attorney (Tr. 102); and Robert Mele, President of Local 988 and Joint Council No. 58 (Tr. at 110). Denis Taylor, Principal Officer of Local 355 and Joint Council No. 62, testified

[2] Mr. Murphy also holds the following positions: Director of the Teamsters Rail Conference, Special Assistant to the General President for Special Projects, Principal Officer/Secretary-Treasurer of Local 122. (*Id.*).

as a fact witness on behalf of Smith regarding his attendance at the Super Bowl in New Orleans. (Tr. at 97).[3]

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

III. FINDINGS OF FACT

A. Smith's Background

W. C. Smith, III became a member of the IBT in 1969, immediately after graduating from high school, when he was employed as a casaul freight employee with Gordon Transports. (Ex. 2 at 8-9; 43).[4] In his early days, Smith was an organizer for the Southern Conference of Teamsters. (*Id*. at 38). From around 1978 until 1987, Smith was an International representative. (*Id*. at 37). In 1992, Smith was elected Principal Officer of Local 891, in Jackson, Mississippi, and has remained in that position to this day. (*Id*. at 7-9). He has been the Secretary-Treasurer of Joint Council No. 87, which covers Mississippi, Alabama, Tennessee, Arkansas, and New Orleans, since March 1996. (*Id*. at 7-8; 11-12). Smith also serves as the Executive Assistant to the General President of the IBT, a position he has held since 2010. (*Id*. at 7-8). In his role as Executive Assistant, Smith described himself as the "chief of staff, coordinating in [Hoffa's] absence with negotiations, division directors, [and] general business of the operation of the IBT." (Ex. 2 at 29). He is also responsible for conducting interviews of IBT job applicants and works with the IBT's human resources department to manage internal employee concerns. (*Id*. at 30).

Since around 2007, Smith has served as the Chairman of the James R. Hoffa Memorial Scholarship Fund (the "Scholarship Fund" or "Fund"). (Tr. at 12-13). The Scholarship Fund

[3] Mr. Taylor also serves as an International Trustee. (*Id*.).
[4] Exhibits submitted by the IIO and subsequently admitted into evidence will be referred to as "Ex.".

conducts an annual golf event to raise money for scholarships for the children of Teamsters. (*Id*. at 50). In the years since Smith became the head of the Fund, it has increased its fundraising numbers and the resultant number of recipients of scholarships. (*Id*. at 51).

Smith has also served as a trustee or assistant trustee on approximately eight trusteeships for various locals. (Tr. at 46). In his capacity as trustee, Smith has been tasked with overseeing locals suffering from various forms of mismanagement. (*Id*. at 52-54). For example, Smith was the trustee for a local that was involved in an insurance scam and bad faith negotiations with employers. (Tr. at 52). Another local required the intervention of a trustee because a motorcycle gang was moving drugs through the local. (*Id*. at 52-53). Finally, Smith's greatest challenge as a trustee was Local 988 in Houston, Texas, which was rife with corruption, including bid-rigging and kickbacks. (*Id*. at 53-54). When Smith got to the Local, the immediate past president of the Local had been sent to prison, with his successor soon to follow. (*Id*. at 54). Smith spent over three years at 988 turning it around. (*Id*.).

B. The Super Bowl Party Admissions

In late January 2013, General President Hoffa gave Smith two tickets to the upcoming Super Bowl in New Orleans. (Ex. 2 at 91-92, 95). The NFL Players Association had given Hoffa the tickets but he could not attend the game. (*Id*. at 91). After receiving the tickets from Hoffa, Smith and Rome Aloise, an International Representative At-Large, President of Joint Council No. 7, and Principal Officer/Secretary-Treasurer of Local 853, discussed socializing with their wives at the Super Bowl. (*Id*. at 100-05). Aloise, who is based in the Bay Area of California, was going to try to attend the game which was to involve the San Francisco 49ers. (*Id*. at 102). In particular, the two men discussed going to parties, including some to which Aloise expected to be invited. (*Id*. at 107-13). A few days later, after Smith confirmed with Aloise that his wife (Smith's) was interested in spending time with Aloise and his wife, Aloise asked Smith to look into what parties

the couples could attend together. (*Id*. at 106). Smith and his wife researched parties on the internet. (*Id*. at 107). Smith reported back to Aloise that he preferred to attend the NFL Commissioner's party and the NFL Players Association party. (*Id*.). He also informed Aloise about a party that Playboy and others, including a liquor company, would be hosting (i.e., the Super Bowl Party). (*Id*. at 108). The Tuesday or Wednesday before the Super Bowl, Aloise advised Smith that he would not be going to the game. (*Id*. at 110). In addition, Aloise told Smith that he could not get Smith into either of the NFL pre-Super Bowl parties that Smith had wanted to attend. (*Id*. at 111-12). Aloise, however, said that he would try to get Smith admissions to liquor industry parties, such as the Bud Light Concert. (*Id*. at 112; Ex. 13). By January 31, 2013, just a few days before the Super Bowl, Aloise was still working on identifying the liquor industry party Smith had earlier suggested and obtaining access for Smith. (Ex. 9).

At the same time that Aloise was trying to fulfill Smith's request for access to a liquor industry party at the Super Bowl, Aloise was helping IBT Local 792, located in Minneapolis, Minnesota, in contract negotiations with Southern Wine and Spirits ("SWS"), a large nationwide liquor distributor and significant Teamsters employer. (Exs. 12, 20, 21). Local 792 had rejected a previous contract proposal from SWS in October 2012. (Ex. 22). At the request of SWS, on January 30th, Aloise joined Local 792's principal officer, Lawrence ("Larry") Yoswa, to negotiate on behalf of the union. (*Id*.). Aloise spent January 30th hammering out a deal with SWS for the Local. (Exs. 20, 24, 29). Simultaneously, he was working through SWS's outside counsel, Stuart Korshak, to procure admissions to the Super Bowl Party for Smith. In an e-mail dated January 30, 2013, Korshak wrote to the President and CEO of SWS, Wayne Chaplin, and described the day's negotiations with Local 792. (Exs. 20, 33). In addition to praising Aloise for his contribution to the negotiations, Korshak passed along Aloise's solicitation of assistance in procuring access to a

liquor industry party at the Super Bowl for Smith. (*Id.*). The e-mail from Korshak to Chaplin, which Korshak forwarded to Aloise the same day, states,

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

(*Id.*). Chaplin did not know the name of the liquor industry party, so he asked Korshak for more information. (*Id.*). Korshak sought assistance from Aloise to identify the party, which Korshak suggested could be the Playboy Party Presented by Crown Royal (the "Super Bowl Party" or "Party"). (Exs. 83; 37). It was ultimately determined that the Playboy Party was the one that Smith wanted to attend. (Tr. at 188; Exs. 87, 89, 90).

The next day, January 31, 2013, in an e-mail, Korshak identified the party for Chaplin and reiterated that Aloise "would like to get one of Hoffa's key guys 6 passes or tickets to [the Super Bowl Party]. His name is WC Smith. I told [Aloise] you would try to help." (Ex. 11). Diageo, the producer of Crown Royal, was a sponsor of the Party. (Ex. 43). SWS is a distributor of Diageo products. (Ex. 44). A SWS employee forwarded Korshak's e-mail to Chaplin to Mark Hubler of Diageo seeking assistance. (*Id.* ("See below, can you help me with this? Happy to pay. Thanks.")). Shortly thereafter, Hubler confirmed that he could provide access to the Party for six people under Smith's name but that he needed the name of all of Smith's guests, per Playboy's rules. (*Id.*). Korshak forwarded the e-mails with Hubler to Aloise. (*Id.*). Korshak also forwarded an e-mail to Aloise between him (Korshak), Chaplin and others at SWS, in which Korshak advised Chaplin, "I told [Aloise] you are working on getting Hoffa's guy the passes for tomorrow night's Super Bowl Party in New Orleans. He said to thank you." (Ex. 14).

By the evening of January 31, 2013, Aloise was assured that he had obtained access to the Super Bowl Party for Smith. (Ex. 11). In an e-mail to Smith, Aloise advised Smith of such and highlighted the role that SWS played in procuring the admissions to the Party from Diageo. (Ex. 9). Aloise wrote,

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

(*Id*.). Smith replied, "Your [sic] the best . . . . . Thanks." (Ex. 15). Smith received this e-mail around the time he was connecting through the Atlanta airport on his way from Washington, D.C. back home to Jackson, Mississippi as part of his trip to New Orleans to attend the Super Bowl. (Tr. at 23-25; Ex. 2 at 133-35). After arriving at the airport in Jackson, Smith drove home, swapped suitcases, and got into his wife's car to make the approximately three-hour drive to New Orleans. (Ex. 2 at 134). At some point after receiving the confirmation e-mail from Aloise (*i.e.*, Ex. 15), Smith communicated with Aloise to ask him what he should do with the extra four admissions to the Party because Smith had planned to attend the Party with only his wife. (Ex. 2 at 135; Ex. 3 at 27-28). Smith recalls Aloise told him that he could give the Party admissions to whoever he wanted. (*Id*.).[5] Smith also believes that he asked Aloise if the admissions had value. (*Id*.) To which Aloise responded that the admissions did not have any value because they were promotional. (*Id*.; *see also* Ex. 90 at 56).

During the afternoon of February 1, 2013, the day of the Party, Aloise forwarded an e-mail chain to Smith to confirm that the Admissions were indeed available. (Ex. 46 ("Read all the way

[5] There is a disagreement between the parties regarding whether or not this call between Smith and Aloise actually happened. The IIO maintains that no such conversation took place and has cellular telephone records to support his claim that although there were calls back and forth between Smith and Aloise on the evening of the 31st, they were not completed calls. (*See* Exs. 58, 93, 96, 97). Meaning, Smith and Aloise did not speak directly to each other that night. It is possible, however, that the conversation was conducted over dueling voicemails. Having observed Smith on the witness stand at the *de novo* hearing, I found him to be credible although he was not specifically challenged him on this issue. As described below, the conversation, if it happened, would not exonerate him.

down. You should be set. Any problems call the person on the bottom of the email string. Have fun!!")). The e-mail chain includes e-mails between Chaplin of SWS and Hubler of Diageo. (*Id.*). In one e-mail in the chain, Hubler offered Chaplin the assistance and phone number of Diageo's "GM of TX/LA" in the event that there were any issues with Smith's access to the Party, to which Chaplin responded, "Mark thanks for your help very much appreciated." (*Id.*).

The Super Bowl Party was a private, invite-only event hosted by Playboy and sponsored by Diageo and others. (Exs. 4 at 9-10; 59 at 2). According to a Playboy representative, the company spent approximately $400,000 to $500,000 to produce the event. (Ex. 4 at 12). And sponsors, like Diageo (through Crown Royal), paid a sponsorship fee, which allowed them both naming rights and a set number of admissions to the Party. (Ex. 4 at 8, 12-13). Admissions to the Party could be obtained primarily through the sponsors. (Ex. 4 at 16-17). In addition, Playboy sold admissions, both individual tickets and tables, to a ticket broker that could sell them on the secondary market. (Exs. 68; 77; 4 at 15-16). The ticket broker, National Event Co. ("NECO"), paid approximately $1,000 per admission for 100 admissions. (Ex. 4 at 15-16). McIlhenny Tabasco, one of the Party's sponsors, also paid $1,000 per admission for those admissions above the amount allotted to it through its sponsorship. (Ex. 66).

Smith, his wife, and two of his friends attended the Party on the night of February 1, 2013. About a week later, Aloise wrote to Chaplin to thank him (and his father, the SWS Chairman) for getting the Admissions for Smith. (Ex. 16 ("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.")).

IV. LEGAL CONCLUSIONS

A. Standard of Proof

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

B. Smith Accepted Things of Value from an IBT Employer

1. The Law

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

To establish a violation of Section 186, the preponderance of the reliable evidence must show that: (1) Smith was an officer of a labor organization; (2) Smith directly or indirectly requested, demanded, received, accepted, or agreed to accept, delivery of a thing of value; (3) the employer who was requested to deliver or who did deliver the thing of value employed individuals who were members of a labor organization of which Smith was an officer; (4) the employer was in an industry affecting interstate commerce; and (5) Smith acted knowingly and willfully. *See*, 2-51, Modern Federal Jury Instruction – Criminal, § 51.02 (Matthew Bender). As a general intent crime, to establish willfulness under Section 186, the IIO need only prove that Smith intended to do the act in question and intended the reasonable and probable consequences of that act. *See United States* v. *Georgopoulo*s, 149 F.3d 169, 172 (2d Cir. 1998); *United States* v. *Francis*, 164 F.3d 120, 121–22 (2d Cir. 1999) ("In the case of general-intent crimes, the government need prove only that the defendant intended to do the act in question and intended the reasonable and probable consequences of that act. The government would not need to prove that the defendant intended to violate the law or bring about some specific result.") (citations omitted). Moreover, there is no need to demonstrate that Smith acted with a corrupt purpose to find a violation of the statute. *See United States.* v. *IBT (Perrucci)*, 965 F. Supp. 493, 499 (S.D.N.Y. 1997) (citing *United States* v. *Ricciardi,* 357 F.2d 91, 99 (2d Cir.), *cert. denied*, 384 U.S. 942 (1966)); *United States* v. *Pecora*, 484 F.2d 1289, 1294 (3d Cir. 1973) (rejecting need to demonstrate corrupt purpose for violation of Section 186(b)).

A violation of Section 186 is also a listed act of racketeering under Title 18, United States Code, § 1961(1), which equates to a violation of Article XIX, Section 7(b)(11) of the IBT Constitution and paragraph E(10) of the Consent Order. *See* 18 U.S.C. § 1961(1)(C) (defining "racketeering activity" as "any act which is indictable under" Title 29, United States Code, Section

186); IBT Const., Art. XIX, § 7(b)(11) (defining basis for charge against a member as "[c]ommitting any act of racketeering activity as defined by applicable law."); Consent Order, ¶ E(10) (permanently enjoining IBT members from committing acts of racketeering). Article XIX, Section 7(b)(2) of the IBT Constitution prohibits violations of the oath of loyalty to the Local Union and the IBT. *See* IBT Const., Art. XIX, § 7(b)(2). Finally, the IBT Constitution requires each member to conduct himself in such a way as to avoid bringing reproach upon the Union. *See* IBT Const., Art. II, § 2(a).

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

An individual's desire for an object or intangible item, such as a service or employment, can suffice. *See, e.g.*, *Roth*, 333 F.2d at 453; *United States* v. *Douglas*, 634 F.3d 852, 858 (6th Cir. 2011) (finding jobs are "things of value" under Section 186). Put another way, whether someone can be improperly influenced is not measured by whether the offered thing has a particular monetary value so long as it is an object of desire. *See Schwartz*, 785 F.2d at 680.

2. Discussion

Smith's receipt of the Super Bowl Party Admissions is a violation of Section 186(b) and the Article XIX, Section 7(b)(13) of the IBT Constitution. Smith did not just accept an invitation to a free party through a Teamster colleague, he accepted admissions to an exclusive event that he was not otherwise able to obtain without the intervention and assistance of a Teamster employer (SWS). The subjective value of the Admissions, which is sufficient for establishing the value element of a Section 186 violation, cannot be debated. *See Roth*, 333 F.2d at 453 ("Value is usually set by the desire to have the 'thing' and depends upon the individual and the circumstances."). Smith wanted to go to the Party. He made that evident to Aloise through their discussions and e-mail correspondence. (*See* Tr. 36-37; Ex. 2 at 106-08; Ex. 15). He researched party options and provided the results to Aloise to facilitate Aloise's effort to procure access for Smith. (Ex. 2 at 107).

Smith did not make an innocent mistake in accepting the Admissions. Smith knewthat a Teamster employer was involved in the procurement of the Admissions. (Tr. at 25). If there was no Teamster employer involved in the process there would have been no need for Smith to ask Aloise if the Admissions had any value. (*See* Ex. 90 at 56 ("You know, I was raised and trained that way in the union, that you find out if they have value. If they do, you either pay or you don't go.")). He also had ample time before the Party to consider the source of the Admissions.

Accordingly, I am upholding the Charge against Smith for violating Section 186(b) and Article XIX, Section 7(b)(13) of the IBT Constitution by accepting a thing of value from a Teamsters employer.[6]

V. DISCIPLINE

As I noted in my disciplinary decision in the Rome Aloise Matter, neither 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), nor the Rules provide explicit guidance on how to make a decision regarding the proper discipline for a member or officer against whom charges are upheld. Therefore, I find it sensible to consider the criteria provided in Section 3553(a) of Title 18, and its mandate that a court "shall impose a sentence sufficient, but not greater than necessary" to comply with the purposes of sentencing. 18 U.S.C. § 3553(a). Section 3553(a) sets forth the relevant facts a judge must consider in making a sentencing decision. Where appropriate, I too will be guided by Section 3553(a). In particular, I will consider "the nature and circumstances of the offense and the history and characteristics of" Aloise; the need for the discipline imposed to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"; the need for the punishment to deter future violations; the kinds of penalties available; and the need to avoid unwarranted disparities amongst offenders with similar characteristics and who committed similar offenses. *Id*.

A. Smith's Background and Contribution to the IBT

As described above Smith appears to have led an exemplary multi-decade career in the IBT. His leadership positions are impressive examples of the respect he has developed amongst

[6] I do not find that the IIO has established by a preponderance that Smith caused another, namely Aloise, to solicit a thing of value from an IBT employer because there was a paucity of evidence that Smith knew that Aloise was going to ask a Teamster employer for party access or admissions.

the rank and file members within his Local and Joint Council. The numerous trusteeship positions to which he has been appointed speak to his reputation for honesty and integrity. And the results of his work turning around troubled Locals – notably Local 988 in Houston – further boost the case for his high character.

The testimony of his character witnesses puts a finer point on what he has accomplished. For example, Robert Mele, the President of Local 988 and Joint Council 58, testified to the work that Smith did to improve Local 988 from its nadir as a den of corruption. (Tr. 112-19). Mele testified that he stayed with the union following the ouster of the Local's past two presidents because of the positive changes implemented by Smith as the trustee. (*Id*. at 115-19). Smith's no-nonsense, compliance-oriented approach made the Local an organization Mele deemed worthy of his commitment. (*Id.*). Smith's efforts with Local 988 also impressed then-FBI special agent Cynthia Rosenthal. Her interactions with Smith helped her shed the strong skepticism of the Teamsters that was ingrained in her from her FBI training. (*Id*. at 106). In her words,

> "as soon as I met [Smith] and started dealing with him, I realized how honest and aboveboard he was, and it quickly became a relationship where I knew I could trust him, and if he said he was going to do something, he did it, upright and forthright."

(*Id*.). Smith was scrupulous when it came to avoiding even the appearance of a conflict of interest (as he should have been). For example, Smith refused to share a meal with Rosenthal or socialize with her until after his official dealings with her were complete. (Tr. at 107). Another former law enforcement official, Thomas Schatz, who currently serves as an investigator for the IBT's Legal Department, echoed Rosenthal's sentiments based on his work on trusteeships with Smith. Schatz testified that that Smith is "honest and straightforward, he's reliable . . . ." (Tr. at 75-79).

B. Nature and Seriousness of the Offense

Smith's own description of the relevant conduct supports a finding that he knew he was receiving admissions to the Party thanks to the efforts of a Teamster employer. (Tr. at 25). This

is serious conduct that the LMRA and IBT Constitution specifically prohibit because of its potential to create conflicts of interest and erode the independence of union officers. The evidence regarding the circumstances of Smith's receipt of the Admissions, however, at least somewhat mitigates the gravity the offense. Smith became aware of SWS's involvement in the acquisition of the Admissions only because of e-mails from Aloise sent during Smith's circuitous trip from Washington, D.C. to New Orleans, via Jackson, Mississippi. And, Smith was never made aware of Aloise's contemporaneous negotiations with SWS. Which is to say, the troubling context in which Aloise asked for help getting the Admissions from SWS was not squarely before Smith when he made the decision to accept them.

C. The Need for the Punishment to Deter Future Wrongdoers

Smith's conduct requires punishment because it highlights what can happen when leadership fails to follow its own dictates. Even one misstep for someone with his level of experience and in the high positions he holds sends the wrong signal to rank and file members and cannot be condoned.

D. The Kinds of Punishment Available

The IBT Constitution provides a list for individual members and officers who are found guilty of charges that includes "reprimands, fines, suspensions, expulsions, revocations, denial to hold any office permanently or for a fixed period, or commands to do or perform, or refrain from doing or performing, specified acts." IBT Const., Art. XIX, Sec. 10(a). At the most severe end of spectrum is a permanent bar from the union, including the permanent revocation from office, which would also result in an associational ban.

E. The Consistency of the Punishment with Previous Punishments for Similar Conduct

Smith's conduct falls squarely within the ambit of the law prohibiting the receipt of things of value from union employers, but there are no prior cases quite like it. This case lacks the hallmarks of prior Section 186 cases involving mafia ties (*e.g.*, Jackson, Tripoli) or quid pro quo arrangements (*e.g.*, Lanza, Georgopoulos) that made the charged parties appropriate candidates for severe penalties. I do not find that Smith's conduct is sufficiently similar to that of Mario Perrucci, an IBT Vice President and Secretary-Treasurer of Local 177, to warrant a commensurate sanction. Perrucci was found to have violated Section 186 for accepting a gratuity from a union employer in the form of a discounted price for a boat and Title 18, United States Code, § 1954, for accepting free tax services from the Local's accountant and free Yankees tickets from the Local's attorney for over a decade. *See United States* v. *IBT [Perrucci]*, 965 F. Supp. 493, 495-96 (S.D.N.Y. 1997). The IRB sanctioned Perrucci with (i) a permanent ban from holding any positions as an officer within the IBT or any of its affiliates or obtaining employment, consulting or other work with the IBT or any IBT-affiliated entity, and (ii) a ten-year suspension of his membership; all of which was upheld by the District Court. *Id*. at 502. Smith's conduct was a one-off event that did not involve him making a deal directly with a union employer or receiving tens of thousands of dollars of free services and baseball tickets from union vendors. Smith's sanction, as described below, is commensurate with his conduct, an apparent aberration in an otherwise laudable IBT career.

VI. CONCLUSION

In light of my determination that Smith violated Title 29, United States Code, Section 186(b) and Article XIX, Section 7(b)(13) of the IBT Constitution by accepting things of value from a Teamsters employer, and the considerations detailed above, I hereby order that:

1. For one year after the date of this decision, Smith shall be suspended without pay from his position as the Executive Assistant to the General President of the IBT.

2. For one year after the date of this decision, Smith shall be prohibited from serving in any capacity on the James R. Hoffa Memorial Scholarship Fund, including as the Chairperson.

3. Smith shall be permanently prohibited from serving as a trustee for any trusteeships imposed on any IBT local.

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