

**RESPONDENT ROBERT A. HOGAN'S STATEMENT  
OF OBJECTIONS TO THE INDEPENDENT REVIEW  
BOARD'S ASSERTION OF JURISDICTION**

**Introduction**

On August 30, 2007, this Independent Review Board ("IRB") referred a report to the General President James Hoffa recommending that charges be filed against Robert A. Hogan ("Bob Hogan"), Local 714's principal officer. The IRB charged that Bob Hogan breached his "fiduciary obligations" as an officer when in November 2003, he hired Robert Riley, a life-long friend of William T. Hogan, Jr. ("Bill Hogan"), as the Local's organizing director, thereby creating a "dangerous situation;" thereafter willfully turned a blind eye to frequent contacts between Riley and Bill Hogan; and failed to take action against Riley after Bob Hogan learned of the contacts in late October or early November 2005. The IRB concluded that the claimed infractions constituted breaches of fiduciary obligations to the Local because Bob Hogan had placed the interests of family and friends above those of the Local and its members, who are required to comply with the terms of the Consent Decree. The IRB expressly invoked Paragraph G(e) of the Consent Decree and Paragraph I(6) of the IRB Rules in making the referral.

The charges were heard before a panel designated by the General President on November 28, 2007, in Chicago, Illinois. On December 11, 2007, the General President issued his decision, adopting the recommendation of the panel, in which he sustained the charges in part. Specifically, the General President found in Bob Hogan's favor that he did not breach any obligations to the membership by hiring Riley or not subjecting his activities to unusual scrutiny, and that Bob Hogan did not willfully turn a blind eye to prohibited contacts that occurred between Riley and Bill Hogan. The General President found against

Bob Hogan on the allegation that he failed to take action against Riley after learning of the contact between Riley and Bill Hogan in November 2005. Applying a “just cause” standard, taking into account the seriousness of the offense, Bob Hogan’s unblemished record of service and the “somewhat murky standards” addressing the circumstances in which Bob Hogan found himself, the General President ordered that Bob Hogan be suspended from office for a period of six months. Bob Hogan began serving the suspension on December 13, 2007.

On January 23, 2008, this IRB sent a letter to the General President setting out its reasons in finding that the General President’s actions were inadequate. In its letter, the IRB disagreed with the General President’s finding that Bob Hogan’s wrongful conduct was limited to not taking action in the face of actual knowledge of Riley’s contacts with Bill Hogan, and it referred to something it terms Bob Hogan’s “studied inaction.” The IRB also disagreed with the General President’s reliance on principles of progressive discipline and it criticized him for not taking into account the fact that Bob Hogan awarded Riley a “discretionary bonus” after learning that Riley had repeatedly lied to him and to James Hogan regarding contacts with Bill Hogan.

On January 30, 2008, the General President sent notice to the IRB of his decision to stand on the six-month suspension. He explained in his letter to the IRB that he found the IRB’s imputation to Bob Hogan of actual knowledge of the contacts between Riley and Bill Hogan, prior to November 2005, was entirely unsupported by substantial evidence in the record and he referred to some of the IRB’s inferences as inappropriately “dark.” Thereafter, the IRB scheduled this matter for hearing in Schaumburg, Illinois, on April 2, 2008.

We challenge the IRB’s asserting jurisdiction over this matter under G(e) of the Consent Decree. These charges stem from the IRB’s assumption of the role of an

ombudsman and general “reformer” of the IBT and its affiliates even in matters having no bearing on union democracy and carrying no hint of corruption or the influences of organized crime. Here, the IRB is acting well outside and beyond any authority given to the IRB in the Consent Decree, under any reasonable and legitimate reading of the document. The IRB’s claim of power cannot be reconciled with the rights of the members under Titles I and IV of the Labor Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. §401, et seq., to elect their leaders and to determine the structures and policies that will govern their organization. We submit that it is time for the parties and the courts to at long last reconcile the investigatory and disciplinary systems of the Consent Decree with the rights of the multitude of innocent third parties, the many members, officers and employees of the locals who are so seriously impacted by actions of the IRB and to restore to such members their rights to vote, to fully participate in union affairs and to be governed by individuals who are responsive to their wishes and answerable to them through fair elections.

### **Objections To IRB Asserting Jurisdiction**

This IRB was created by and its authority derives entirely from Part G of the Consent Decree, entered by the court on March 14, 1989, in the matter of *United States v. International Brotherhood of Teamsters*, 88 cv 4486. The decree has been in force ever since despite having been overwhelmingly rejected by the delegates to the 1991 International Convention. The court found that the terms of the Consent Decree, including the creation of the offices of Independent Administrator and Election Officer, and the Independent Review Board were proper exercises of the authority of the General Executive Board, whose members were all named as defendants in the action, to delegate the General Executive Board’s investigatory and disciplinary authorities to an oversight body. *United States v. IBT*,

905 F.2d 610, 622 (2d Cir. 1990); *United States v. IBT*, 931 F.2d 177 (2d Cir. 1991). The decree is found to serve a compelling interest in eliminating the influence of organized crime within the governing structure of the International, *United States v. IBT*, 3 F.3d 634, 638 (2d Cir. 1993)(J. Van Graafeiland concurring); *United States v. IBT*, 764 F. Supp. 797, 801 (SD NY 1991); *United States v. IBT*, 728 F. Supp. 924, 925 (D.N.Y. 1989)("The ultimate aim of the Consent Decree is to rid the IBT of the hideous influence of organized crime, and produce freely elected IBT officials").

The IRB is granted the same investigatory powers as those of the General President and General Secretary Treasurer. However, it was never envisioned that the IRB would use its investigatory authority in a plenary fashion. Rather, as the district court said in *United States v. IBT*, 803 F. Supp. 806, 809 (SD NY 1992):

"The IRB is vested with the same investigatory authority as enjoyed by the General President and the General Secretary-Treasurer under the IBT Constitution and applicable law. . . The IRB must use this authority to investigate, inter alia, (1) 'any allegations of corruption,' (2) 'any allegations of domination or control or influence of any [part of the] IBT . . . by La Cosa Nostra or any other organized crime group,' and (3) 'any failure to cooperate fully with the [IRB].'"

The district court recognized that the IRB was not designed to serve as a surrogate or parallel governing body within the IBT. *United States v. IBT*, 803 F. Supp. at 814 ("The independent review board is not designed to run day-to-day operations of the IBT. Those areas are left to the IBT. The independent review board has a more focused purpose. The purpose is to eradicate corruption from the IBT"). The Court of Appeals has echoed the notion of a definite dividing line between the functions of the IRB and the various governing bodies within the IBT. *United States v. IBT*, 954 F.2d 801, 810 (2<sup>nd</sup> Cir. 1993), cert. den'd, 112 S. Ct. 2993 (1992)("collective bargaining agreements and the Consent Decree address different problems and serve different purposes. The former governs the daily relations

between particular employers and their employees, while the latter is an attempt to rebuild the infrastructure of an entire national labor organization").

In *United States v. IBT*, 2003 U.S. Dist. LEXIS 14508 (SD NY 2003)(Application No. 102 "Hogan and Passo"), aff'd. 2004 U.S. App. LEXIS 20052 (2<sup>nd</sup> Cir. 2004), the court seems to have recognized a much broader IRB disciplinary authority than was suggested in the court's earlier decisions. Specifically, the court stated:

"The IRB's authority to interpret the IBT Constitution and discipline IBT members is now beyond serious dispute. See *United States v. IBT* ('IRB Rules'), 998 F.2d 1101 (2d Cir. 1993); *United States v. IBT* ('Friedman & Hughes'), 905 F.2d 610, 613 (2d Cir. 1990). The Consent Decree expressly confers upon the IRB the same disciplinary authority that the IBT Constitution confers upon the General President and the General Secretary-Treasurer. See Consent Decree P G.12(b). Since the IBT Constitution authorizes the IBT General President 'to interpret and apply' the IBT Constitution and 'to decide all questions of law thereunder,' see IBT Const. Art. VI, Sec. 2(a), the IRB's disciplinary authority 'necessarily includes the final authority to decide what constitutes an offense subject to discipline under the IBT Constitution.' *Friedman & Hughes*, 905 F.2d at 619 (describing Independent Administrator's authority). Recognizing this, the IRB Rules expressly authorize the IRB to investigate 'conduct that in the IRB's view brings reproach upon the Union.' IRB Rules, 803 F. Supp. at 802 (emphasis added), aff'd as modified, 998 F.2d 1102 (2d Cir. 1993). The IRB's conclusion that Hogan and Passo's misconduct brought reproach upon the union is a reasonable interpretation of the constitutional standard and, therefore, well within its designated authority.

"Contrary to Hogan and Passo's argument, the scope of the Consent Decree is not limited to matters involving organized crime or to violations of specific federal criminal laws. See *United States v. IBT* ('Bastian & Weisenburger'), 175 F.3d 1009, 1999 WL 97236, at \*2 (2d Cir. 1999) (IBT Consent Decree not limited 'to matters involving organized crime or to matters arising under federal labor laws'). Rather, it is clear that 'conduct that is not itself criminal can constitute a violation of the IBT Constitution.'" *United States v. IBT* ('Ross'), 826 F. Supp. 749, 758 n.3 (S.D.N.Y. 1993) (quoting *United States v. IBT* ('Ligurotis'), 814 F. Supp. 1165, 1182-83 (S.D.N.Y. 1993)), aff'd mem., 22 F.3d 1091 (2d Cir. 1994). 'In fact, a great number of grounds for discipline in the IBT Constitution are not criminal violations, including the failure to cooperate with internal IBT investigations, knowingly associating with members of organized crime, violating a Local Bylaw and disrupting Union meetings.' *Ligurotis*, 814 F. Supp. at 1183. Thus, an IBT member may be disciplined for conduct that brings reproach upon the union regardless of whether the misconduct charged would also violate a criminal statute. See *United States v. IBT* ('Reardon'), 803 F. Supp. 734, 738 (S.D.N.Y. 1992) ('The flaw with these arguments is that Reardon is not objecting here to a conviction under [the LMRDA] in a criminal action. Rather, he is objecting to the Independent Administrator's findings that he

violated [the IBT Constitution] in an internal disciplinary proceeding.'). *United States v. IBT* ('Parise'), 777 F. Supp. 1133, 1138 (S.D.N.Y. 1991) (rejecting disciplined member's argument that 'his actions were not 'corrupt,' and that his suspension is therefore inappropriate because the misdemeanor to which he pleaded guilty is not an offense for which he can be barred from union office under [the LMRDA].'), aff'd, 970 F.2d 1132 (2d Cir. 1992). Accordingly, the IRB had jurisdiction to discipline Hogan and Passo regardless of whether their conduct violates the specific federal criminal statutes identified in the Consent Decree." (*United States v. IBT*, 2003 U.S. Dist. LEXIS 14508, at pp. 34-38)

We submit that this analysis is based on a fundamentally flawed view of the Consent Decree that equates the powers of the IRB with those of the court appointed officers created under Part F of the Decree, most notably the Independent Administrator. Indeed, nearly all of the cases cited in the above passage involved challenges to the Independent Administrator's authority. Our research traces the error to the Court of Appeals decision in *United States v. IBT* ("Mireles & Roa"), 315 F.3d 97, 99 (2<sup>nd</sup> Cir. 2002), in which the court drew upon the court's decision in *United States v. IBT* ("Friedman & Hughes"), 905 F.2d 610 (2<sup>nd</sup> Cir. 1990) in finding that the IRB possessed final authority to interpret and apply the IBT Constitution, including determining what constitutes a violation of its terms.

The Consent Decree is in essence a contract. Its terms "must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it." *United States v. IBT*, 998 F.2d 1101, 1106 (2d Cir. 1993). "The IRB may neither create functions not in the decree nor ignore those that are." *United States v. IBT*, 998 F.2d at 1107. The IRB must not "expand or contract the agreement of the parties as set forth in the consent decree." *United States v. IBT*, 803 F. Supp. 761, 777 (SDNY 1992)(quoting, *Berger v. Heckler*, 771 F.2d 1556, 1568 (2d Cir. 1985)). The Consent Decree provides in Paragraph G(b) that the IRB "shall exercise such *investigatory authority*" as the General President. Recognizing the limited purposes for which the IRB was conceived, the court stated, in

*United States v. IBT*, 803 F. Supp. 806, 809 (SD NY 1992), aff'd., 12 F.3d 360, 367 (2<sup>nd</sup> Cir. 1993):

‘The Consent Decree also sets forth the IRB's investigatory and disciplinary powers, and a process for acting on the results of its investigations. The IRB is vested with the same investigatory authority as enjoyed by the General President and the General Secretary-Treasurer under the IBT Constitution and applicable law. . . The IRB must use this authority to investigate, inter alia, (1) ‘any allegations of corruption,’ (2) ‘any allegations of domination or control or influence of any [part of the] IBT . . . by La Cosa Nostra or any other organized crime group,’ and (3) ‘any failure to cooperate fully with the Independent Review Board . . .’

The office of the Independent Administrator (“IA”), created along with other court-appointed officers in Part F of the Consent Decree, operated entirely outside the governing structure of the IBT, indeed above it. Significantly, the Consent Decree expressly provided the Independent Administrator, in Paragraph F(12)(A), with the “same rights and powers as the IBT’s General President and/or **General Executive Board** under the IBT’s Constitution (including Articles VI and XIX thereof) and Title 29 of the United States Code to discharge those duties which relate to: disciplining corrupt or dishonest officers, agents, employees or members of the IBT or any of its affiliated entities (such as IBT Locals, Joint Councils and Area Conferences), and appointing temporary trustees to run the affairs of such affiliated entities.” The Independent Administrator was envisioned to be a more proactive body than the IRB. It did not refer disciplinary matters to the IBT for action, as the IRB is required to do but, instead, acted nearly independent of the IBT governing bodies. The Independent Administrator, together with the Investigations Officer, possessed express powers to review and veto decisions of the elected officers in virtually every area of union governance, including budgets and expenditures, hiring and appointments of union officials, and negotiation of service contracts. Moreover, the Independent Administrator’s hiring authority

under Paragraph F(12)(G) extended to the employment of “accountants, consultants, experts, investigators or any other personnel necessary to assist in the proper exercise of [his] duties.”

Part G of the Consent Decree, the IRB’s enabling provisions, suggests a more circumscribed role for the IRB to play in union affairs than was intended for the Independent Administrator. To begin, Paragraph G(a) authorizes the IRB to:

“... hire a sufficient staff of investigators and attorneys to investigate adequately (1) any allegations of corruption, including bribery, embezzlement, extortion, loan sharking, violation of 29 U.S.C. §530 of the Landrum Griffin Act, Taft-Hartley Criminal violations of Hobbs Act Violations, or (2) any allegations of domination or control or influence of any IBT affiliate, member or representative by La Cosa Nostra or any other organized crime entity or group, or (3) any failure to cooperate with the Independent Review IRB in any investigation for the foregoing.”

The next paragraph, G(b), provides:

“The Independent Review Board shall exercise such investigatory authority as the General President and General Secretary-Treasurer are presently authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law.”

It is indeed instructive that in contrast to the powers granted to the Independent Administrator, the IRB is granted “investigatory” powers similar to the General President but is not granted in Paragraph G(b) an authority to discipline members similar to that of the General Executive Board. After all, under Article XIX, Section 6 of the IBT Constitution, ultimate authority over matters of discipline rests with the General Executive Board, and not the General President. We submit that the IRB’s authority to review the disciplinary decisions of the elected officers of the IBT, specifically under Paragraph G(e), must be read in the context of the foregoing related provisions. More important, the IRB’s authority must be read in light of the fact that, unlike the court appointed officers whose service terminated in short order, the IRB’s existence is open ended, if not permanent.

The IRB needs to appreciate that its own existence is somewhat in conflict with its stated purpose of restoring the IBT to democratic control and absolutely in conflict with Title IV of Landrum-Griffin, 29 U.S.C. §481, et seq. Specifically, Section 401(a) Landrum-Griffin requires that the “officers” of the IBT be elected not less than once every five years<sup>1</sup>. Section 101(a)(1) of the LMRDA provides that “every member of a labor organization shall have equal rights and privileges” with respect to nominating candidates, voting, attending membership meetings, and to participating in the deliberative process. 29 U.S.C. § 411(a)(1). We are not aware of any exception to either of these provisions that would permit a sitting executive board to amend their constitution and create a permanent unelected oversight body like the IRB that the court described in *Hogan*. We are also unable to find any decisions in this case where the courts have discussed the voting requirements of Title I or Title IV or otherwise sought to reconcile the IRB’s role as a general reformer with the notion of true union democracy. That reconciliation is necessary if the process is to have any legitimacy.

Regarding Congress’ intent in enacting the LMRDA, the Supreme Court noted, in *Steelworkers v. Usery*, 429 U.S. 305, 308; 97 S. Ct. 611, 615; 50 L. Ed. 2d 502, 508 (1977):

“Congress chose the goal of ‘free and democratic’ union elections as a preventive measure ‘to curb the possibility of abuse by benevolent as well as malevolent entrenched leadership.’”(citations omitted). Moreover, the goal of Congress in enacting the LMRDA’s voting provisions was not simply to protect union members’ rights to participate in elections. Rather, “[t]he goal was to ‘protect the rights of rank-and-file members to participate fully in the operation of their union through processes of democratic self-government, and, through the election process, to keep the union leadership responsive to the membership.’” (*Steelworkers v. Usery*, 429 U.S. at 308)(citations omitted).

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<sup>1</sup> Section 102 Landrum-Griffin defines “officers” as including, “any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.” 29 U.S.C.

We do not question here the motives of the IRB, or the courts, or the honest beliefs of the individuals who serve thereon that their endeavors are in the best interest of the membership. At the same time, we will not ignore that the IRB is not in any way answerable to the members and cannot claim their mandate to any degree. Most important, the actions and powers of the IRB are forever beyond the reach of the members to alter. The members are stuck with the IRB, whether they want it or not, and they are prohibited from allowing individuals into their ranks whom the IRB has deemed should be barred.

Historically, the IRB has been justified by reference to a compelling interest in eliminating the influence of organized crime within the governing structure of the International, *United States v. IBT*, 3 F.3d at 638. The further that the IRB ventures from this limited end into areas of general reform, eliminating from the ranks of the IBT persons whose conduct “brings reproach” upon the IBT or, as here, imposing on elected officers its own broad notions as an officer’s fiduciary obligations to the members, the more the IRB’s justification wanes. We note the following statement from the Second Circuit in *Gurton v. Arons*, 339 F.2d 371, 375 (2d Cir. 1964)

“The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union’s affairs than the elected officials is wholly without foundation. Most unions are honestly and efficiently administered and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of the unions or their members or to the cause of labor-management relations.”

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§402(n). The term “officers” is determined not by constitutional designation but by reference to the powers actually exercised by the particular office. See, *Wirtz v. National Maritime Union*, 399 F.2d 544 (2<sup>nd</sup> Cir. 1968).

The members would be better served by limiting the IRB to the objects that justified its creation, eliminating racketeering activities within the IBT and the undemocratic practices that allowed such activities to go on.

Our purpose here is not to question the IRB's decision permanently barring Bill Hogan from the IBT. Nor is it our goal to rehabilitate him herein. However, we question the soundness of the court's determination that the associational ban of E(10) can legitimately apply to Bill Hogan's ouster. Bill Hogan, after all, is not associated with organized crime and his conduct cannot be classified in any sense as racketeering. We find regrettable the IRB's obsessive pursuit of the matter since, and the virtual blood bath that has followed. Bernstein and Kikes were long-term elected officers of their locals, beloved by their members. Riley was a dedicated and capable organizer who helped to bring thousands of new members into Local 714 as it sought to recover from losses it suffered as a result of the 1996 trusteeship and the failing producer economy. Their individual ousters from the IBT will not serve any legitimate purpose under the Consent Decree. Instead, the actions against them appear aimed at only one end, ensuring obedience with the IRB's orders. This end is not in itself legitimate. The IRB is to serve the members, not the other way around.

The current action against Bob Hogan goes a step beyond the IRB's actions against Bernstein and the others. In fact, the IRB here suggests a substantial expansion of the court-created rule that IBT officers have a fiduciary obligation to investigate allegations of corruption and criminal associations in their ranks, see *United States v. IBT (Sansone)*, 981 F.2d 1362 (2d Cir. 1992), to encompass an obligation to investigate potential violations of the IRB's disciplinary orders generally. In pursuing the charges, the IRB has offered scant explanation as to how Bob Hogan's alleged infractions of this new-found aspect of his fiduciary obligations actually endangered the interests of the several thousand members who

have supported him over the years and repeatedly returned him to his seat as their principal officer. Nor has the IRB explained how punishing him beyond the six-month suspension he has already received will help to build union democracy and eliminate the influences of organized crime within Local 714 or the IBT.

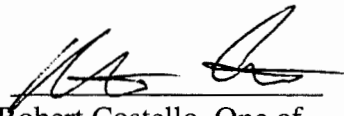
We raise the jurisdictional issue here because the court held that objection to the IRB's asserting jurisdiction in any matters must be raised to the IRB in the first instance, *United States v. IBT ("Sombrotto")*, 2003 U.S. Dist. LEXIS 1457 (SD NY 2003). We understand that the IRB will now have to change course from its assumed role as union reformer. We believe that the court recognizes that the IRB has authority to do so. Moreover, it is appropriate to do so here. In *Lewis v. Tuscan Dairy Farms*, 907 F. Supp. 740, 746 (SDNY 1995), the court stated, "To the extent the law of the case doctrine exists in federal court, it sets a prudential and not a mandatory rule, *Higgins v. California Prune & Apricot Grower, Inc.*, 3 F.2d 896, 898 (2d Cir. 1924) (L. Hand, J.) ('the 'law of the case' doctrine does not rigidly bind a court to its former decisions'), and does not prevent a court from correcting its own mistakes." It is important to keep in mind that the Consent Decree is in effect a structural injunction. The Consent Decree was entered into in order to settle claims of racketeering and organized crime activities brought against, among others, eighteen individuals who in 1989 comprised the General Executive Board, under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1962 ("RICO"). Under RICO's remedial provisions, the court is obliged to make "due provision for the rights of innocent persons." The Consent Decree is a structural injunction involving a highly complex organization and affecting more than one million innocent persons. It is by its terms permanent. The parties and the courts must be prepared to change course as needed to ensure an actual and orderly transition to true democracy, now nearly twenty years in the making.

We are reminded of the words of Justice Felix Frankfurter: "Wisdom too often never comes, and so one ought not to reject it merely because it comes late. Since I now realize that I should have joined the dissenters in the *Merchants Nat. Bank of Boston* case, 320 U. S. 256, I shall not compound error by pushing that decision still farther." *Henslee v. Union Planters Bank Planters Bank*, 335 U.S. 595, 600 (1949)(dissenting opinion). The legitimacy of this process depends on your heeding these words.

### CONCLUSION

For all these reasons, we submit that the IRB should withdraw its finding that the General President's actions against Bob Hogan were inadequate and terminate these proceedings without delay.

Respectfully Submitted,  
Robert A. Hogan

By:   
Robert Costello, One of  
His Counsel

Robert Costello  
Sacks, Goreczny, Maslanka & Costello, P.C.  
100 W. Monroe St., Ste. 804  
Chicago, IL 60603  
(312) 641-2424