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REPLY TO: Milford

February 20, 2007

Kenneth Conboy
Latham & Watkins, LLP
885 Third Avenue
New York, NY 10022-4834

RE: *Hoffa campaign debt*

Dear Judge Conboy:

Hoffa 2006 has incurred a total debt to campaign vendors of $110,396.81, according to a debt statement it filed January 26, 2007 (for ease of reference, the debt statement is attached to this submission). The campaign's accountant reports that the campaign has some $26,000 available to retire this debt. As such, the campaign currently lacks the funds necessary to pay the bills it incurred. It has applied to Election Appeals Master for permission to settle the debt for less than the amount it owes.

Hoffa 2006 has characterized its application as an "appeal." This label mis-characterizes the procedural posture of the case. The Election Supervisor has yet to issue a decision on specific facts that may be appealed to the Election Appeals Master for review; he has not done so because the campaign has failed to present him with specific facts on which a decision can be made. Without such specific facts, the Election Appeals Master is at the same disadvantage as the Election Supervisor. Where the Election Supervisor has not been informed of the basis for any proposed debt settlement, the Election Appeals Master does not have the necessary factual record as developed before the Election Supervisor on which to conduct appellate review. This is not a minor point. As set forth below, the Hoffa campaign has the burden under the *Rules* to explain the basis for any debt settlement. This burden imposes an obligation to present specific facts on which the Election Supervisor may make a decision. Here, the campaign has circumvented that process and taken an "appeal" of a "decision" to the Appeals Master. The result is that the hearing on the appeal is reduced to speculation about hypothetical facts. For this reason, the Election Supervisor respectfully suggests that the "appeal" be dismissed and that the Hoffa campaign, if it seeks to discount or write off its debt, provide the basis for any such debt settlement to the Election Supervisor for determination under the *Rules*.

What is known from the appellate papers and a telephone conversation between David Hoffa and the undersigned is as follows. Hoffa 2006 owes money to three campaign vendors. One of the vendors, Financial Innovations, Inc., supplied goods to the campaign. Hoffa 2006 has indicated that it

intends to pay its debt of nearly $70,000 to Financial Innovations in full. The other two vendors, Ambrosino, Muir & Hansen (AMH) and RL Communications, provided services to the campaign. Hoffa 2006's February 6 appeal letter states that it seeks to discount or write off these debts. However, David Hoffa has stated to the undersigned that, because of RL Communications' current status as an IBT vendor, the campaign intends to pay the full amount of its debt of $9,074.11 to RL. Accordingly, Hoffa 2006 apparently seeks to discount or write off only its debt of $31,494.65 to AMH, a direct-mail firm.

In justification of its request, Hoffa 2006 makes two assertions. It declares that it has already paid AMH nearly $800,000; as such, the write-off of its remaining debt to that vendor would constitute a discount of less than 4% of the entire amount it incurred for services with the firm, a discount it asserts is reasonable under the circumstances. Second, the campaign asserts that most members of the Hoffa 2006 slate have contributed the maximum permissible amount to the campaign and therefore may not permissibly contribute more to settle the debt; for this reason, the campaign asserts it lacks the wherewithal to pay the debt in full. The campaign's first assertion requires a legal analysis; the second, factual.

On the first assertion, a discount granted by AMH uniquely to Hoffa 2006 *prima facie* would constitute a prohibited contribution by an employer. AMH is an employer within the meaning of Definition 17 of the *Rules*. As stated by Article XI, Section 1(b)(2), "[n]o employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate." The subrule further declares that "[n]o candidate may accept or use any such contribution." Given that the Hoffa campaign contracted with AMH to provide campaign services and has paid for services at that rate during the campaign, any after-the-fact discount would constitute a prohibited contribution by an employer to the campaign of the victorious candidate for General President and his slate.

The Hoffa campaign, however, points to Article XI, Section 1(b)(11) and the Election Supervisor's December 6, 2006 advisory that incorporates this *Rules* provision as justification for writing off the AMH debt. The subrule reads in its entirety as follows:

> (11) If a candidate or candidate's campaign incurs a debt by loan, extension of credit, deferred payment terms, contingency fee arrangement or the like and fails to pay the debt, the debt shall be deemed a contribution made by the creditor to the candidate or candidate's campaign, unless the creditor has made a commercially reasonable attempt to collect the debt. Whether or not a debt is settled, the candidate or the candidate's campaign, as the case may be, shall file a debt statement with the Election Supervisor in his/her/its final Campaign Contribution and Expenditure Report, described in Section 2 of this Article. The statement must indicate the amount initially owed, the date the debt was incurred, the amount paid, the terms of the debt settlement, if any, and the basis for any reduction. The candidate or the candidate's campaign shall attach to the statement copies of all contracts or written agreements concerning the debt and all such documents concerning the provision of goods or services for which the debt was incurred, all bills

> therefor, all checks for payment of the bill and/or debt and all receipts evidencing payment of any and all parts of the debt.

While this provision contemplates that campaign debt may under some circumstances be "settled," it does not state expressly that any such settlement be at a discount, as Hoffa 2006 seeks. But were discounted settlements permitted, the following excerpt from *Garcia* 2006 ESD 193 (April 20, 2006), would apply:

> Discounts on goods or services do not constitute campaign contributions so long as they are not established specifically for use by campaigns or independent committees in the 2005-2006 IBT Election and are "available to the customers of the supplier." *Rules*, Definitions, § 5(c). Our *Advisory on Campaign Contributions, Expenditures and Disclosure* (January 2006), elaborates on this point as follows:
>
> > The first requirement is met if the practice of vendors providing customer discounts on goods/services is a common or accepted practice of the vendor or within the relevant industry. The second requirement is met if such a discount is offered to all customers and not just to a specific campaign or independent committee. The type of discount and its terms must be available to all similarly situated customers of the vendor and not be specifically created for the individual purchaser.
>
> The purchase of discounted goods/services by an IBT member from a vendor does not constitute a campaign contribution by the vendor if the terms of the purchase are commercially reasonable. *Gilmartin*, 95 EAM 45 (December 18, 1995). In situations where there is more than one producer of an item, the commercially reasonable price is set by the market. Whether the vendor offers similar terms to other purchasers of his product is also relevant. *Gilberg*, P284 (September 20, 1991), *aff'd*, 91 EAM 194 (October 2, 1991). In the case of a unique product produced by a single producer with a limited customer base, the determination will depend on whether all of the costs of production and distribution, as well as reasonable profit, were covered by the sale price. *Carter*, P457 (April 26, 1996).

Applying this principle here, Hoffa 2006 purchased direct-mail services from AMH in volume. The price negotiated at arms-length may have included a volume discount which would not violate the *Rules* if it were of the type extended by the firm to purchasers of similar volume of services. Typically, any such volume discount is bargained for up-front; it is not negotiated after all services have been provided and the commercial relationship has ended. Were Hoffa 2006 to negotiate an after-the-fact discount or write-off of its remaining obligation to AMH, it would have to establish that AMH grants such after-the-fact discounts to similarly situated purchasers under circumstances similar to those presented here.

Absent such evidence of after-the-fact discounts granted by AMH to other purchasers of its services, the *Rules* would treat a discount granted uniquely to the Hoffa campaign as a prohibited employer contribution. Hoffa 2006 could not accept a unique discount now any more than it could

have accepted such a unique discount when the campaign was active. In addition to Jim Hoffa, AMH's website lists among its clients the IBT. *See* http://amhmail.com/amh-client.html. If AMH is an IBT vendor as the firm's website asserts, a discount granted to the Hoffa campaign imposes the need for further analysis as to whether AMH is in a position to recoup the discount through an ongoing relationship with the IBT.

Whether a discount or write-off by AMH is permissible under the *Rules* also requires assessment of the second assertion the Hoffa campaign makes, that most of its slate members have contributed the maximum amount permitted by the *Rules*. Cursory examination shows this assertion is false. Article XI, Section 1(b)(12)(B) caps contributions from candidates for International office at $10,000. The following table lists the contributions each Hoffa slate member has made as of the most recent CCER filing of January 2007 and the amount each still may make without exceeding the maximum contribution limit:

CANDIDATE	Contributions	Maximum permitted contributions	Amount candidate may still permissibly contribute
JOHN COLI	$0.00	$10,000.00	$10,000.00
CARROLL HAYNES	$0.00	$10,000.00	$10,000.00
AL HOBART	$0.00	$10,000.00	$10,000.00
FRED GEGARE	$5.00	$10,000.00	$9,995.00
JOHN MURPHY	$20.00	$10,000.00	$9,980.00
GEORGE TEDESCHI	$50.00	$10,000.00	$9,950.00
THOMAS KEEGEL	$60.00	$10,000.00	$9,940.00
TOMMY FRASER	$90.00	$10,000.00	$9,910.00
FRANKLIN GALLEGOS	$300.00	$10,000.00	$9,700.00
WALTER LYTLE	$370.00	$10,000.00	$9,630.00
TYSON JOHNSON	$528.00	$10,000.00	$9,472.00
ROBERT BOUVIER	$870.00	$10,000.00	$9,130.00
JAMES SANTANGELO	$1,020.00	$10,000.00	$8,980.00
FREDDIE SIMPSON	$1,270.51	$10,000.00	$8,729.49
FREDRICK POTTER, JR.	$2,000.00	$10,000.00	$8,000.00
CHERYL JOHNSON	$2,000.00	$10,000.00	$8,000.00
GIACOMO CIPRIANI	$2,500.00	$10,000.00	$7,500.00
KEN HALL	$3,030.00	$10,000.00	$6,970.00
RANDY CAMMACK	$3,433.96	$10,000.00	$6,566.04
JAMES HOFFA	$3,500.00	$10,000.00	$6,500.00
PATRICK FLYNN	$3,830.05	$10,000.00	$6,169.95
FRANCIS GILLEN	$7,020.00	$10,000.00	$2,980.00
DANIEL KANE, SR.	$8,328.69	$10,000.00	$1,671.31
FERLINE BUIE	$8,875.00	$10,000.00	$1,125.00
DONALD MCGILL	$9,999.40	$10,000.00	$0.60
KENNETH WOOD	$10,000.00	$10,000.00	$0.00

HENRY PERRY, JR.	$10,000.00	$10,000.00	$0.00
GORDON SWEETON	$10,000.00	$10,000.00	$0.00
CHARLES MACK III	$10,000.00	$10,000.00	$0.00

As this table illustrates, five slate members have reached the maximum contribution limit (for purposes of this analysis, we regard candidate McGill as having reached the maximum). Of the twenty-four slate members who have contributed less than the maximum amount, fourteen have contributed less than $2,000, the maximum contribution limit for members who are not candidates for International office. Of these fourteen, three have contributed nothing at all, another five have contributed less than $100, and four more have contributed less than $1,000. The total deficit of the Hoffa campaign (debt as reported on the campaign debt statement less cash on hand, as estimated by the campaign's accountant) could be satisfied if the nineteen Hoffa slate members who have contributed less than $3,500 raised their contributions to that amount.

Contrary to the campaign's assertion that most slate members have contributed the maximum amount, the facts demonstrate that the debt could be fully satisfied by contributions by slate members. Under debtor-creditor law, the slate is a voluntary unincorporated association. The slate members, therefore, are jointly and severally liable for the slate's debt, subject to the maximum contribution limit the *Rules* impose. Accordingly, were AMH to bring suit for the unpaid debt, it could name as defendants not only the campaign organization but the slate members as well. Were such suit successfully prosecuted and judgment obtained, we are confident it could be satisfied by garnishment of wages paid these officers by the IBT. The campaign has not presented evidence or argument as to why slate members cannot satisfy the campaign's debt themselves.

Of course, the campaign remains at liberty to raise funds to satisfy the debt from IBT members who have not exceeded the applicable $2,000 maximum contribution limit. The campaign has not presented evidence or argument as to why the campaign cannot satisfy its debt in this manner.

While many facts remain unknown because of the Hoffa campaign's failure to satisfy its burden of stating the basis for any debt settlement, the known facts demonstrate that the campaign has the wherewithal to satisfy the debt simply by passing the hat among slate members and/or its constituency. That it has not done so suggests that it is seeks permission to write off its debt to AMH merely because it wants to do so, not because it has no alternative to it.

Accordingly, the Election Supervisor respectfully requests that the appeal be dismissed as procedurally improper and that the Hoffa campaign, should it seek approval of a debt settlement, present to the Election Supervisor the evidence necessary to satisfy its burden therefor under the *Rules*.

Very truly yours,

Jeffrey J. Ellison

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