

TEAMSTER REFORMERS: THEIR UNION, THEIR JOBS, THEIR MOVEMENT

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The year 1976 was significant in the history of the International Brotherhood of Teamsters (IBT). It was the year after Jimmy Hoffa's disappearance, and the hold organized crime had over what was then the nation's largest union was at its peak.¹

It was also the founding year of Teamsters for a Democratic Union (TDU), an organization of rank and file activists dedicated to cleaning up their union and making it more democratic and responsive to its members. Since then, TDU has become one of the most important and most sustained rank and file movements ever to emerge from the ranks of labor.

The group's tenacious and often courageous presence in the Teamsters union has brought the IBT closer than most unions to something rarely seen in organized labor: a two-party democracy.² TDU has also been a persistent voice inside the union pressing for more aggressive approaches to organizing, bargaining, and contract enforcement.

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¹ President's Commission on Organized Crime, *The Edge: Organized Crime, Business, and Labor Unions* (1986); Dan E. Moldea, *The Hoffa Wars: Teamsters, Rebels, Politicians and the Mob* (1978). For the credible death bed confessions of the mob hit man and Hoffa associate who claims to have murdered Hoffa, see Charles Brandt, *I Heard You Paint Houses: Frank "The Irishman" Sheeran and the Inside Story of the Mafia, the Teamsters, and the Last Ride of Jimmy Hoffa* (2004). For comprehensive histories of corruption and racketeering in the Teamsters, see, David Witwer, *Corruption and Reform in the Teamsters Union* (2003); and Stier, Anderson & Malone, LLC, *The Teamsters: Perception and Reality - An Investigative Study of Organized Crime Influence In the Union* (2002) (prepared for the IBT by Edwin H. Stier and his staff two years before Stier resigned as the head of the IBT's anticorruption program. See, *infra*, text accompanying notes 15-16).

² Cf. Clyde W. Summers, "Democracy in a One-Party State: Perspectives from Landrum-Griffin," 43 *Md. L. Rev.* 93 (1984).

This article is about Teamsters for a Democratic Union and the group's impact on several fronts: 1) inside the IBT, fighting for democratic reforms and an end to corruption; 2) on the job, promoting better contracts, more secure pensions, job safety, and a stronger union; and 3) in the labor movement, embodying the belief that any genuine resurgence by organized labor would likely rise from the bottom up, through a mobilized and democratically empowered rank and file.³ It is written by a longtime friend of the organization.

INSIDE THE IBT

TDU grew out of Teamsters for a Decent Contract (TDC), a coalition of Teamster reformers and dissidents organized around the negotiations over the 1976 National Master Freight Agreement (NMFA).

The pressure generated by TDC led to the IBT's decision to call the first national strike in the union's history. A few months later came the IBT's first election of national officers after the disappearance of Jimmy Hoffa. TDC, which was about to become Teamsters for a Democratic Union, was represented among the delegates to the 1976 IBT convention by Pete Camarata, a courageous Detroit Teamster who spoke out forcefully against the corrupt administration of General President Frank Fitzsimmons, an entrenched incumbent in bed with organized crime.⁴

Joining TDU at the 1976 IBT Convention was another group of Teamster reformers: PROD, or the Professional Driver's Council for Safety and Health. Founded with the assistance of Ralph Nader in 1971, and headed by public interest lawyer Arthur L. Fox, PROD's initial focus was on truck safety and winning whistleblower protection for drivers. PROD soon recognized that the corrupt and autocratic IBT, which did not even have a safety and health department at the time, was more of an obstacle than an ally in its campaign for truck safety.

A PROD analysis of the NMFA helped inform TDC's contract campaign in 1975, and at the IBT's 1976 Las Vegas convention, PROD released a penetrating expose of greed and incompetence within the IBT, and of the near total absence of democracy

³ See, e.g., Mike Parker & Martha Gruelle, *Democracy Is Power: Rebuilding Unions from the Bottom Up* (Labor Notes 1999).

⁴ For the story of TDU's founding and early years, see Dan La Botz, *Rank and File Rebellion: Teamsters for a Democratic Union* (1990); Samuel R. Friedman, *Teamster Rank and File: Power, Bureaucracy, and Rebellion at Work and in a Union 209-43* (1982). For TDU's own account of its history, see the four part series, "TDU History: How the Reform Movement Has Changed the Teamsters Union," *Convoy Dispatch*, March 2004 at 3; April 2004 at 9; May/June 2004 at 11; July, 2004 at 11.

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inside the union.⁵ During the convention, Fitzsimmons told his members that the reformers could "Go to hell," and outside the Las Vegas convention hall, Pete Camarata was rewarded for his efforts with a vicious beating.

In 1979, after several years of parallel efforts to reform the IBT, PROD and TDU merged under TDU's banner.⁶ The merger combined TDU's greater experience in organizing the rank and file with PROD's more legalistic approach, which included litigating test cases, lobbying Congress, and petitioning federal agencies for stronger truck safety and union democracy regulations and better enforcement of the ones already on the books.⁷

⁵ PROD, *Teamsters Democracy and Financial Responsibility* (Arthur L. Fox and John Sikorski, eds. 1976). The PROD report's chapter exposing the multiple high salaries drawn by many IBT officials was the model for TDU's "\$100,000 Club," its annual report in the TDU newspaper on the highest paid Teamster officials. Some of PROD's proposals for amending the IBT constitution became fundamental planks of TDU's reform platform.

⁶ Two more groups merged into TDU at this time, FASH, the Fraternal Order of Steel Haulers, and UPSurge, the reform group among UPS workers. La Botz, *supra* note 4 at 169.

⁷ The legal battles related to the reformers' efforts, both before and after the merger, have spawned dozens of important cases in a variety of areas, especially protection from retaliatory discharge and enforcement of the union democracy guarantees written into the "Bill of Rights of Members of Labor Organizations" and other portions of the *Labor-Management Reporting and Disclosure Act of 1959*, 29 U.S.C. §§ 401-531. Not all of these cases were victories, of course, but some of the losses helped make the case for reforms later implemented in other ways, such as through the RICO consent decree.

Here is just a small sampling of these cases: *Banyard v. NLRB*, 505 F.2d 342 (D.C. Cir. 1974) (whistleblower protection for refusing to drive truck in violation of state weight limits); *Pawlak v. Greenawalt*, 628 F.2d 826 (3d Cir. 1980), *cert. denied*, 449 U.S. 1083 (1981) (protection against discipline for suing the union); *Brink v. DaLesio*, 667 F.2d 420 (4th Cir. 1981) (civil remedies for union corruption and breach of fiduciary duties); *Helton v. NLRB*, 656 F.2d 883 (D.C. Cir. 1981) (access to union's workplace bulletin boards); *PROD v. Bureau of Motor Carrier Safety*, 706 F.2d 1216 (D.C. Cir. 1983) (unsuccessful attempt to compel rulemaking on hours of service); *Bliss v. Holmes*, 721 F.2d 156 (6th Cir. 1983) (injunction requiring local to remedy unlawful campaigning by incumbent in official newspaper, by including challenger's campaign literature in pre-election issue); *Early v. Eastern Transfer*, 699 F.2d 552 (1st Cir. 1983) (unsuccessful challenge to joint grievance committee result on duty of fair representation grounds); and, *Taylor v. NLRB*, 786 F.2d 1516 (11th Cir. 1986), *cert. denied* 493 U.S. 891 (1989) (no NLRB deferral to joint grievance committee award in case where driver refused to drive unsafe truck).

Also, *Grant v. Chicago Truck Drivers Union*, 806 F.2d 114 (7th Cir. 1986) (no right to union meetings under LMRDA); *Carothers v. Presser*, 818 F.2d 926 (D.C. Cir. 1987) (no access to union mailing list before contract vote); *TDU v. Secretary, U.S. Department of Labor*, 810 F.2d 301 (D.C. Cir. 1987) (unsuccessful challenge to IBT's pre-consent decree procedures for electing International officers); *Theodus v. McLaughlin*, 852 F.2d 1380 (D.C. Cir. 1988) (unsuccessful challenge to IBT's procedures for electing International officers); *Thomas v. United Parcel Service*, 890 F.2d 909 (7th Cir. 1989) (summary judgment for defendants reversed where union representatives on joint grievance panel were allegedly motivated by plaintiff's dissident status in the union); *Walker v. Consolidated Freightways*, 930 F.2d 376 (4th Cir.), *cert.*

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For decades, TDU has organized around the ten principles contained in its Rank & File Bill of Rights, reprinted in each issue of *Convoy Dispatch*, the TDU newspaper. Every Teamster, according to TDU, should have rights to: 1) democratic local union bylaws, providing for elected, not appointed, business agents and shop stewards; 2) direct elections of the IBT's president and International officers, rather than elections by convention delegates; 3) a fair grievance procedure; 4) preservation of working conditions; 5) safety and health on the job; 6) an eight-hour day and five-day week, without mandatory overtime; 7) a decent pension; 8) an end to multiple salaries for union officials; 9) equality among Teamsters; and 10) an end to race, sex and other forms of discrimination.

Local by local, and issue by issue, TDU has built a network of activists throughout the union. Much of its strength has been in such core Teamster crafts as truck driving and warehouse work, but TDU has also found strong support and provided great assistance to such disparate Teamsters as airline flight attendants, brewery workers, cannery workers and meat packers. In some locals, TDU members organize around efforts to amend the local bylaws; in others, reformers run slates of candidates for union office. In some areas, poor or corrupt administration of pension funds are the target of TDU's efforts, and everywhere, TDU pressures for more effective union representation at the bargaining table and at grievance hearings.

TDU has waged frequent national campaigns over major contracts like the NMFA and UPS. And at countless convention workshops, regional meetings and through its

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denied, 502 U.S. 1004 (1991) (union breached duty of fair representation by agreeing to changes in contract without ratification vote); *U.S. v. Int'l Bhd of Teamsters*, 968 F.2d 1506 (2d Cir. 1992) (protecting TDU's contributors list from mandatory disclosure pursuant to election rules promulgated under the RICO consent decree); *Williams v. Molpus*, 171 F.3d 360 (6th Cir. 1999) (breach of fair representation where union sacrificed seniority interests of unit to protect job of officer's son); *United Parcel Service v. NLRB*, 228 F.3d 772 (6th Cir. 2000) (right to distribute TDU literature in non-work areas of the workplace); *Wade v. Teamsters Local 247*, 527 F. Supp. 1169 (E.D. Mich. 1981) (local required to hold union meetings); and *Bauman v. Presser*, 117 L.R.R.M (BNA) 2393 (D.D.C. 1984) ("quickie" contract votes before opportunity for discussion and debate violate the act).

Also, *Meek v. IBT*, 681 F. Supp. 1014 (E.D.N.Y. 1988) (enjoining the submission to members of tentative labor agreement negotiated while union excluded members' elected negotiating committee representatives from the bargaining table); *Carothers v. McCarthy*, 705 F. Supp. 687 (D.D.C. 1989) (right of access to information about contract proposal, but no violation when union prevented voting on resolutions about the proposal); *Stone v. Vitale*, 134 L.R.R.M. (BNA) 2061 (E.D. Mich. 1989) (enjoining lame duck local officers from making "extraordinary expenditures" of union funds without prior approval of officers-elect); *Patrick v. McCarthy*, 743 F. Supp. 894 (D.D.C. 1990) (access to information about contract proposal before vote); *Hicks v. Teamsters Local 283*, 150 L.R.R.M. (BNA) 2083 (E.D. Mich. 1994) (preliminary injunction against "quickie" contract ratification vote); *Teamsters Local 2000 v. Hoffa*, 284 F. Supp.2d 684 (E.D. Mich. 2003) (unsuccessful challenge to trusteeship imposed by the IBT); and *Yeager v. Teamsters Local 20*, 6 Ohio St. 3d 369, 453 N.E.2d 666 (1983) (defense of defamation action).

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publications, TDU has made a priority of training its members to do everything from chairing meetings or presenting grievances to running for union office or wielding legal rights on the job and in the union.⁸

Until 1989, TDU's efforts to transform the union on the national level faced two enormous obstacles: first, organized crime's continued stranglehold on the union; and, second, a union constitution that made it impossible for the members to vote-in new leadership.

The reason was that all regional and national Teamster leaders were chosen at union conventions or regional meetings. Most of the delegates at those conventions were either already part of the corrupt IBT hierarchy or vulnerable to pressure from that hierarchy. While TDU slates defeated corrupt or ineffective incumbents in dozens of Teamster locals, and TDU members made themselves heard on many shop floors and in numerous contract campaigns, no reform slate of candidates at any IBT convention ever came close to posing a serious threat to the old guard's continued domination.

All that began to change in March 1989, when federal prosecutors obtained sweeping changes in the union through a consent decree settling a civil RICO case originally seeking a court imposed trusteeship over the entire IBT.⁹

The result was a fundamental reorganization of the IBT's governing structure and electoral process. The IBT's constitution was rewritten to provide for direct election of the union's top officers by the members in fair elections conducted by court appointed election officers. Two more "court officers" were appointed to oversee the union's operations, with the powers to investigate and remove corrupt officers, to impose intra-union trusteeships over corrupt affiliates, and to cut the union's ties to organized crime. Two years later, Ron Carey, the president of a large New York UPS local and the head

⁸ E.g., *The STAA Handbook: How to Use the Surface Transportation Assistance Act (STAA) to Enforce Truck Safety and Protect Your Job* (2000); *Teamster Rank & File Guide to Enforcing the UPS National Contract* (2000); *Running for Local Union Office* (1999) (all published by TDU's educational arm, the Teamsters Rank and File Education and Legal Defense Foundation).

⁹ Order, *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D.N.Y. Mar. 13, 1989). See James B. Jacobs and Ellen Peters, "Labor Racketeering: The Mafia and the Unions," 30 *Crime & Justice* 229-81(2003); Michael H. Belzer and Richard Hurd, "Government Oversight, Union Democracy, and Labor Racketeering: Lessons from the Teamsters Experience," 20 *J. Labor Res.* 34 (1999); Michael J. Goldberg, "Cleaning Labor's House: Institutional Reform Litigation in the Labor Movement," 1989 *Duke L.J.* 903, 994-1001. RICO is the *Racketeer Influenced and Corrupt Organizations Act*, 18 U.S.C. §§ 1961-1968.

of a TDU-backed reform slate, was elected general president of the IBT over a badly splintered old guard.¹⁰

TDU played a central role in these events in several respects. First, before the RICO settlement was reached, TDU helped federal prosecutors build their case by documenting many instances of violence and intimidation against union reformers. TDU also went to great lengths to persuade the government's lawyers that a total takeover of the IBT by the government would be a counterproductive remedy, and that rewriting the IBT constitution to give the members a chance to clean up the union for themselves was an approach more likely to succeed. Indeed, TDU played a critical behind-the-scenes role in helping to shape the specifics of the consent decree.¹¹

Finally, TDU's network of thousands of Teamster activists throughout the country formed a ready-made campaign organization for the Carey slate, although Carey himself was never a TDU member. Without TDU's mobilization of the rank and file to take advantage of the democratic structures created by the RICO consent decree, it is unlikely that the Carey campaign could have reached enough members to prevail in the election.

Unlike earlier dissident caucuses after winning major electoral victories, like the Miners for Democracy in the United Mine Workers of America,¹² TDU did not disband when the Carey slate was elected, thinking its mission had been accomplished. Instead, TDU maintained an independent role. It was an ally of the Carey administration, and many TDU members served in that administration, but TDU was not afraid to criticize Carey when appropriate. TDU's leaders anticipated the intense pressure Carey would face, not only from Teamster employers, but also from many entrenched, mid-level Teamster officials whose bloated salaries and corrupt and autocratic ways were threatened by the changes Carey was trying to introduce.

TDU determined to serve as a countervailing force, keeping Carey's feet to the fire of reform inside the union.

¹⁰ See Kenneth C. Crowe, *Collision: How the Rank and File Took Back the Teamsters* (1993).

¹¹ The *Wall Street Journal* reported that "the terms of the settlement were greatly influenced by the concerns and platform of . . . Teamsters for a Democratic Union." "Racketeering Suit Is Settled By Teamsters -- Union Agrees to Reforms Such as Direct Elections And Court Review Board," *Wall St. J.*, Mar. 14, 1989 at 1. TDU has also played an important role in helping to shape the election rules promulgated by the court appointed election officers under the consent decree.

¹² See Paul F. Clark, *The Miner's Fight for Democracy: Arnold Miller and the Reform of the United Mine Workers* 34-35 (1981).

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After a slow start, the Carey administration made significant gains, both in reforming the union and at the bargaining table.¹³ The IBT's 1997 victory over UPS was one of the labor movement's greatest wins during a very lean period.¹⁴ Unfortunately, facing a well funded old guard reunited behind Jimmy Hoffa's son, James P. Hoffa, in the 1996 Teamsters election, Carey failed to stop an illegal fundraising scheme cooked up by his campaign staff, which resulted in his reelection being overturned and his permanent removal from office.

The illegal activities of Carey's reelection campaign were a significant setback to reform in the IBT and a major embarrassment to TDU.

Nevertheless, TDU regrouped and in the subsequent rerun election provided the backbone for the reform campaign headed by Tom Leedham, the secretary-treasurer of Local 206 in Oregon and an IBT vice president and the head of the IBT's warehouse division during Carey's administration. Outspent by a huge margin and waging an uphill battle to overcome Hoffa's name recognition, the Leedham slate nevertheless managed to win close to 40 percent of the vote. Three years later, Leedham's TDU backed slate lost to Hoffa again, facing the even longer odds against unseating a Hoffa who was then an incumbent with a 10-to-1 disparity in campaign funds.

Today, James P. Hoffa remains ensconced as the IBT's general president, but TDU remains an important critic and watchdog, and an effective voice for the Teamster rank and file. Hoffa desperately wants the government to declare victory over organized crime in the IBT and to end the RICO consent decree before the next IBT election, scheduled for 2006. To achieve that goal, Hoffa created with great fanfare Project RISE (Respect, Integrity, Strength and Ethics) as the union's internal anticorruption program.

To head the project, Hoffa hired attorney Edwin H. Stier, a former federal prosecutor, who had been the trustee appointed by the court to clean up Tony Provenzano's mob dominated Teamsters Local 560 in New Jersey, in the first civil RICO trusteeship case involving a union.¹⁵

¹³ Significant gains were also made in rooting out criminal elements from the union. There, much of the credit goes to the investigation, enforcement and oversight powers given to the court appointed administrator, investigations officer, and independent review board created pursuant to the RICO consent decree. See, *Chart of Charges Recommended by Investigations Officer to Independent Administrator; Chart of Charges Recommended by Independent Review Board to International Brotherhood of Teamsters; List of Trusteeships Recommended by Independent Review Board to International Brotherhood of Teamsters*, all prepared by the Office of the Chief Investigator under the consent decree, Charles M. Carberry, Oct. 21, 2004 (copies on file with the author).

¹⁴ See David Moberg, "The UPS Strike: Lessons for Labor," *Working USA*, Sept.-Oct. 1997, at 11.

¹⁵ See Goldberg, *supra* note 9 at 965-74.

In the spring 2004, however, this public relations ploy backfired for Hoffa when Stier and his staff of investigators and lawyers resigned on the grounds that Hoffa had "backed away from the Teamsters' anti-corruption plan in the face of pressure from self-interested individuals," some with ties to organized crime.¹⁶

In the next Teamsters election, Hoffa will undoubtedly run a well funded re-election campaign, exploiting all the advantages of incumbency¹⁷ and using whatever means necessary to secure a victory.

TDU members still face threats of retaliation, and in Teamster locals where reformers have won electoral victories, Hoffa has sometimes resorted to politically motivated intra-union trusteeships in order to weaken or remove his opposition.¹⁸ TDU's numbers inside the union remain relatively small, but their influence is substantial. TDU's presence brings the IBT closer to a two-party democracy than any other American union. The continued viability of that two party state, however, and the reformers' prospects for recapturing the union's top offices will to a significant degree depend on the Justice Department's and the court's willingness to keep the safeguards of the RICO consent decree in place.

Either way, TDU's long experience inside the union suggests it is durable enough to survive and continue working toward its goal of a mobilized and informed rank and file that makes the IBT not only a more democratic union, but a stronger one as well.

ON THE JOB

Health and safety on the job, and truck safety in particular, have been central concerns of Teamster reformers since the early days of PROD. PROD and TDU lawyers litigated several important cases before the National Labor Relations Board and the

¹⁶ Letter from Edwin H. Stier to IBT General Secretary Treasurer C. Thomas Keegel, April 28, 2004 (copy on file with the author). *See generally*, "Antigrift Team Quits Program with Teamsters," *N.Y. Times*, April 30, 2004.

¹⁷ *See Summers, supra* note 3; Edgar James, "Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections," 13 *Harv. Civ. Rts-Civ. Lib. L. Rev.* 247 (1978).

¹⁸ The victims of these retaliatory trusteeships include Local 293 in Cleveland; Local 556 in Washington state; Local 639 in Washington, D.C.; Local 938 in Ontario, Canada; and Local 2000, the 11,000 member flight attendants' local. Hoffa's heavy-handed tactics toward Local 2000 eventually led its members, over the opposition of TDU, to decertify the IBT as their bargaining agent and switch their allegiance to an independent union.

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courts in efforts to establish whistleblower protection for drivers who refuse to drive unsafe or overweight trucks, or to drive when they are dangerously fatigued or ill.¹⁹

Those lawyers and TDU's rank and file lobbyists can rightfully claim substantial credit for the 1982 passage of the whistleblower protections contained in Section 405 of the *Surface Transportation Assistance Act*.²⁰ Other safety related issues on which PROD and TDU were active included truck length and weight limitations and drivers' hours of service rules.

Throughout its history, beginning with TDC in 1975, TDU has waged contract campaigns intended to pressure the IBT into a more aggressive approach to bargaining. One of its earliest and most important successes was its 1983 campaign to defeat a special "relief rider" to the National Master Freight Agreement that would have cut wages by up to 35 percent and established two-tier wages under the NMFA for the first time.

Business Week described the outcome as "A real slap in the face for [IBT President] Jackie Presser," and TDU's headline was, "Members: 94,086, Presser: 13,082."²¹ The vote was significant not only because it successfully, and, so far, permanently kept a two-tiered wage structure out of the NMFA. It also demonstrated TDU's ability to organize and mobilize the Teamster rank and file on a far greater scale than previously contemplated. As a result, TDU moved its goal of direct member elections of the IBT's top officers to the center of its organizing agenda.

Around the same time, TDU successfully challenged the mid-term imposition of a urine drug-testing program under the car haulers' contract and forced improvements in the NMFA's drug testing provisions. Through TDU's efforts, serious procedural deficiencies in early drug testing programs were exposed,²² which helped lead to federal

¹⁹ See, e.g., some of the cases listed in note 7, *supra*.

²⁰ 49 U.S.C. § 31105 (1994). See "TDU Wins New Law, Truck Safety Victory," *Convoy Dispatch*, Jan. 1983, at 1.

²¹ "A Real Slap in the Face for Jackie Presser," *Business Week*, Oct. 3, 1983, at 43; *Convoy Dispatch*, Oct. 1983, at 1.

²² See, e.g., *Proficiency Standards for Drug Testing Laboratories, Hearings Before Subcomm. of House Comm. on Government Operations, 100th Cong. 1st Sess. 126* (June 11, 1987) (statement of attorney Barbara Harvey on behalf of TDU).

drug testing guidelines promulgated eventually by the U.S. Department of Transportation.²³

TDU's contract campaigns often raised important questions of voting rights, because the IBT constitution (not federal labor law) provides for contract ratification votes by the rank and file. Sometimes, TDU had to sue even to get a ratification vote; and when votes were held, questions often arose about what if any information the union had to provide the members about the contract proposals, intimidation of voters, and other irregularities.

Even when the reformers could persuade a majority, however, there was a catch. In 1987, for example, a majority voted against a proposed UPS contract, but the contract was deemed ratified because of a union rule requiring a two-thirds vote to defeat contract proposals. TDU's call for "majority rule" was finally adopted the following year by an IBT general executive board whose members were already jockeying for position as the possibility of direct membership elections of IBT officers appeared on the horizon.²⁴

Major sources of difficulty for TDU activists over the years have been the grievance procedures in many Teamster contracts that utilize joint union-management grievance committees, rather than neutral arbitrators, to resolve grievances. TDU's concern is that these joint committees make it "easy for union officials so inclined to violate their duty of fair representation by "horsetrading" grievances or seeing to it that unpopular or dissident members lose their grievances."²⁵

Because TDU activists tend to push for more militant approaches to bargaining and contract enforcement than the union's incumbent leaders, they can be thorns in the sides of not only management, but union officials as well, who may also see them as potential challengers in future union elections. With a wink and a nod, union and management

²³ Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. §§ 40.1-40.413 (2004).

²⁴ Although the government's civil RICO case against the IBT was not filed until 1988, and the consent decree was not entered until 1989, the key precedent had already been set in the Local 560 case, *U.S. v. Local 560, Int'l Bhd of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984), *aff'd* 780 F.2d 267 (3d Cir. 1985), *cert. denied*, 476 U.S. 1140 (1986), and the President's Commission on Organized Crime was calling for "an increased use of the . . . civil provisions of the RICO statute as a means to strike at the legitimate economic base of organized crime . . ." President's Commission, *supra* n.1.

²⁵ Michael J. Goldberg, "The Duty of Fair Representation: What the Courts Do in Fact," 34 *Buffalo L. Rev.* 89, 126-27 (1985). See generally Clyde W. Summers, "Teamster Joint Grievance Committees: Grievance Disposal Without Adjudication," *National Academy of Arbitrators, Proceedings of the 37th Annual Meeting* 130 (1984).

members of Teamster joint grievance committees can easily and subtly conspire to reject even the most meritorious of grievances when they are brought by the wrong people.²⁶

Over the years, TDU has consistently pressed the IBT to be more aggressive in organizing workers at nonunion companies like Overnite and in harnessing the power of a mobilized rank and file to be more effective at the bargaining table and, if necessary, on the picket line. The IBT's experience during the TDU-influenced reform administration of Ron Carey -- in contrast to the union's performance under Frank Fitzsimmons, Jackie Presser and others of their ilk before the Carey administration, and under James P. Hoffa in the years since -- provides valuable insight into what the IBT would look like if it took to heart TDU's goals and tactics.²⁷

Under Carey, for example, the IBT was making headway organizing Overnite terminals around the country, and it understood the need for caution in calling any strikes before a sufficient number of Overnite employees voted for the union. Also under Carey, as indicated earlier, the union achieved a major victory in the UPS strike of 1997. When Hoffa came in, however, he changed tactics at Overnite and made little effort to utilize a rank and file oriented approach. Instead, he called a disastrous strike that was not only lost, but also led to the union's decertification in many of the terminals so painstakingly organized during the Carey years.

Teamster pension funds are another area where TDU has worked hard for reform over the years. For example, until its clean up during the early 1980's pursuant to a series of consent decrees obtained by the U.S. Department of Labor under the *Employee Retirement Income Security Act*,²⁸ the giant Teamsters Central States, Southeast and Southwest areas pension funds for many years operated as "the mob's bank," leading to losses estimated at \$385 million, in 1970's dollars, due to loans repaid at below-market interest rates or never repaid at all.²⁹

²⁶ For a description of one incident, typical of many others, see Robert Bruno, *Reforming the Chicago Teamsters: The Story of Local 705*, at 36 (2003).

²⁷ For an in depth study of the democratic transformation of one particularly large and corrupt Teamsters local -- a transformation in which TDU activists played some of the leading roles -- see Bruno, *supra* note 26.

²⁸ See Goldberg, *supra* note 9 at 943-46.

²⁹ Steven Brill, *The Teamsters* 201, 255 (1978).

Pension fund abuses are particularly pernicious forms of labor racketeering because the effects on plan participants may not be felt for years. Unfortunately, the chickens are now coming home to roost in the Central States, as thousands of Teamsters who entered the trucking industry in the 1960's and '70's face retirements with reduced benefits and substantially tightened eligibility criteria.³⁰ TDU's responses to pension fund abuses in the many Teamster pension funds have ranged from litigation challenging denials of benefits, to pressure on union officials to bargain for better pension terms, to campaigns to hold union fund trustees more accountable for their actions, both legally and politically.

WHAT NEXT?

As a result of TDU's tireless efforts and the reforms brought about by the RICO consent decree, the IBT is a substantially cleaner and more democratic union now than it was in the dark days of Frank Fitzsimmons, Jackie Presser and their partners (literally) in crime.

However, despite claims to the contrary from James Hoffa, significant pockets of corruption and mob influence still plague the union. As Edwin Stier made clear when he resigned as the head of Project RISE, the IBT's anticorruption showpiece, there are grave doubts about Hoffa's commitment to continuing the clean up, particularly when the offenders are his own political allies in the union.

Stier's letter of resignation states his conclusion that "organized crime again threatens the union" and that Hoffa's response to Project RISE's investigation of continued mob influence over the union in Chicago was one of "active resistance" – not to the criminal elements and mob ties, but to the investigation itself.³¹

³⁰ See "Teamsters Find Pensions At Risk," *NY Times*, Nov. 15, 2004, at 1. Although poor advice from the fund's investment advisors was a major factor discussed in the *Times* article, even marginally competent fund managers would be tending a much more solvent pension fund if they had been able to invest the additional hundreds of millions of dollars of principal that had been lost to the mob decades earlier.

³¹ Letter of April 28, 2004, *supra* note 16, at 5-6. See "City Teamsters Linked to Chain of Corruption: Quashed Probe Uncovers Charges," *Chicago Tribune*, Oct. 17, 2004. In addition to the organized crime problems in Chicago, Stier's letter also discussed his investigation into a corruption case in Local 988 in Houston "the magnitude of which dwarfs any in recent years," and Hoffa's refusal to do anything about the situation until forced to by the Independent Review Board created by the consent decree. Letter of April 28, *supra*, at 4. As Stier explained, "Jim Hoffa has . . . permitted anti-corruption investigations to be undermined to a degree that honest Teamsters who came forward with information believing that the union would protect them now feel abandoned. They are convinced that once again those who have influence in the general president's office have immunity." *Id.*

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Regardless of whether Hoffa is acting, or failing to act, out of incompetence, conflicts of interest, misplaced loyalties, personal gain, or fear that he will end up murdered like his father, the fact remains that the democratic reforms achieved in the IBT over the past 15 years are still very fragile. Hoffa's hostility to TDU is palpable, and he has not hesitated to use intra-union trusteeships and other abuses of power to undermine or eliminate reform minded opponents, even to the point of driving to decertification an 11,000 member local that was a stronghold of support for the TDU endorsed candidacies of Ron Carey and Tom Leedham.³²

In the coming months and years, Hoffa will undoubtedly renew his push to have the consent decree terminated and all outside supervision of the IBT abandoned. Before that happens, federal prosecutors should, at a minimum, insist on a commitment from the union, enforceable in court, that 1) the IBT will never abandon direct membership elections of the union's top officers and return to the old practice of electing its officers at union conventions, and 2) future elections will continue to be supervised by outside election officers, as under the consent decree, who are independent of the union's incumbent leadership, whether it be headed by James Hoffa or anyone else. The elections should continue to be governed by comprehensive election rules promulgated by these independent election officers.

The need for independent supervision of IBT elections is evident from the election rules proposed for the last IBT election by the incumbent Hoffa administration. Those proposed rules, which were rejected, fortunately, by an arbitrator at the urging of the Justice Department, would have reduced the number of "battle pages" in the Teamster magazine – the space set aside in the magazine in the months leading up to the election for all the candidates to communicate directly with the union's membership.

In a union with 1.4 million members spread throughout all 50 states, Puerto Rico and Canada, waging a national campaign is a daunting and very expensive proposition, and cutting back on the magazine's "battle pages" would substantially benefit incumbents at the expense of less well known challengers.

The Hoffa administration's proposed 2001 election rules would also have raised the caps on campaign contributions from individual members, again at the expense of challengers who tend to draw less support from highly paid Teamster officials and staffers who would be tempted, or pressured, into contributing the maximum amounts permitted to the incumbent's campaign.

³² See note 18 *supra*, and the accompanying text.

Finally, and most significant, Hoffa's proposed rules would have banned TDU from playing an active role in the campaign by endorsing and contributing support to particular candidates.³³

It is also important that the IBT be barred from changing certain other aspects of the election process as it has developed under the consent decree. For example, it now takes the support of 5 percent of the delegates to an IBT convention to nominate candidates for national office. If that required threshold of support were raised to 10 percent, or even higher, the members' right to vote could be weakened to the point where no challengers could be nominated.³⁴

CONCLUSION

Over the course of its nearly 30 year existence, TDU has been a model and a beacon for reformers and rank and file activists in many other unions. It has also played an important role in breathing new life into the 14 million member AFL-CIO, since it was the IBT under Ron Carey, who was elected with substantial help from TDU, that provided the critical votes to elect, in 1995, an insurgent slate led by John Sweeney in the first contested election of the federation's officers in nearly 100 years.³⁵

Out of TDU's ranks have emerged a new generation of experienced, battle-tested union activists, including such prominent female or minority leaders as Bob Hasegawa, former secretary treasurer of Local 174 in Seattle, Wash., and now a member of the state legislature; Diana Kilmury, the IBT's first female International vice president, who served in the Carey administration; Maria Martinez, the secretary-treasurer of Local 556 in Pasco, Wash.; and Sandy Pope, the president of Local 805 in New York.

There are many reasons for TDU's unprecedented success and longevity as a reform caucus in a major American union. Most important is the extraordinary tenacity, commitment, and political and tactical genius of TDU's leaders, particularly Ken Paff, one of the group's founders and its longtime principal officer, with the title "organizer."

³³ Telephone interview with TDU organizer Ken Paff, Nov. 24, 2004.

³⁴ Reformers have been much more successful winning the votes of the rank and file than winning the votes of convention delegates, who may be vulnerable to pressure from the incumbent International officers. When Carey won the IBT's presidency in 1991 in a three-way race with 45 percent of the vote, he had been nominated by only 15 percent of the delegates to the IBT convention. Similarly, when Tom Leedham won 36 percent of the votes in the 2001 election, he had been nominated with the support of only 8 percent of the convention delegates. *Id.*

³⁵ See Michael J. Goldberg, "An Overview and Assessment of the Law Regulating Internal Union Affairs," 21 *J. Labor Res.* 15 (2000).

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Another is the good fortune TDU has had in obtaining the services of a small, but dedicated, group of lawyers willing to take on TDU's legal work, usually on a *pro bono* basis for little if any compensation. Among the most important of these lawyers have been PROD's founder, Arthur Fox, who remains a key member of the "union democracy bar," Paul Alan Levy of the Public Citizen Litigation Group, and Detroit labor lawyer Barbara Harvey.³⁶

Another key to TDU's success is the assistance the teamster reform movement has received over the years from the Association for Union Democracy (AUD) and especially from the AUD's Teamsters Election Project in the period leading up to the 1991 IBT elections. Just as TDU is the reform caucus within the Teamsters union, the AUD is in effect the reform caucus within the labor movement at large. More accurately, the Association for Union Democracy functions as a civil liberties union for reformers in many different unions.³⁷ Particularly during the early years of the RICO consent decree, the AUD played an important role, sometimes as an *amicus curiae*, sometimes in less formal educational or watchdog capacities, in shaping the ground rules for the very first rank and file elections of the IBT's top officers and monitoring the enforcement of those rules.

This brings up a final reason for TDU's success: the opening created by the RICO consent decree obtained by federal prosecutors in their war against organized crime. Of course, it is equally true that the government's crime fighting agenda benefited enormously from the presence of TDU. As indicated earlier, TDU helped shape the very nature of the remedy embodied in the consent decree and provided the national network of Teamster reformers that was necessary to make the new and improved IBT a substantially more democratic union, not just on paper, but in actuality. That is a good thing not only for the Teamsters union, the labor movement and the government's fight against organized crime. It may even be a good thing for Teamster employers, who would face fewer nonunion competitors like Overnite if the more aggressive approach to organizing championed by TDU once again becomes the norm in the IBT.

³⁶ I served as TDU's general counsel in the period immediately following the merger of PROD and TDU. As someone known and trusted by both sides before the merger, when there were some unpleasant turf battles between the two groups, I was able to help smooth over the rough edges of the merger as well as provide legal services and a Washington presence to the Detroit based organization. Many more lawyers have worked with TDU over the years, including, among others, Ellis Boal in Detroit (author of TDU's *Teamster Rank & File Legal Rights Handbook* (1978, rev. ed. 1984)), Paul Boas in Pittsburgh, Dan Clifton in New York, Julie Fosbinder in Washington, Tom Geoghegan in Chicago, Betty Grdina in Washington, Susan Jennik in New York, David Mark in Seattle, Louie Nikolaidis (a former Teamster and TDU member) in New York, Robin Potter in Chicago, Leon Rosenblatt in Hartford, and Ann Thompson in Detroit.

³⁷ For a history and analysis of the union democracy movement by one of the AUD's founders and its longtime executive director, see Herman Benson, *Rebels, Reformers, and Racketeers: How Insurgents Transformed the Labor Movement* (2005).