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June 9, 2014

Hon. Loretta A. Preska
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *United States v. Int'l Bhd. of Teamsters*, No. 88 Civ. 4486 (LAP)

Dear Chief Judge Preska:

On behalf of *amicus curiae* Teamsters for a Democratic Union, I write to state TDU's opposition to the IBT's request for a pre-motion conference not limited to determining the nature and likely length of the hearing on the merits and its scheduling. Docket #4355. This case was filed and settled by Consent Decree, in the public interest. We respectfully submit that all proceedings on the IBT's request to terminate this very important Consent Decree, vitally affecting the welfare of about 1.3 million people, its current membership, should be held on the record.

If this matter is heard on the motion that the IBT intends to file, TDU will ask permission to participate in the proceedings, as an *amicus* party. This Court granted TDU's motion for *amicus curiae* status in 2005, Docket #s 3895 (motion), 3897 (order). In 2005 and 2010, TDU moved to amend the Election Rules in a continuing effort to enhance informed voting. These motions were substantially granted.

We submit that the motion ignores a factual record that militates strongly against granting it, fails to frame the right issues under the law, and takes a position that is not supported by precedent and does not warrant the relief requested under Rule 60(b)(5). The "changed circumstances" claimed by the IBT are that it has held five direct elections under the Consent Decree, rid itself of violence against union dissidents "long ago," and "eradicated the violations charged in the original complaint." It claims that "[a]ny present-day misconduct is limited to sporadic transgressions like those found in many large organizations."

None of the three grounds for relief under Rule 60(b)(5) warrant relief. The rule's first of three grounds for vacating a judgment requires that the "changed circumstances" must arise under the judgment, rather than the complaint. But the IBT relies solely on only one of the Consent Decree's two goals, citing only the

complaint: the purging of organized crime from the Union. Even here, the IBT limits its assertion that such crime has been purged to the International Union; it makes no representations about the state of affairs within local unions. Thus, even on this score, the IBT's assertion of success encompasses only one portion of one of two Consent Decree goals.

The Consent Decree grants equal status to its other goal: the achievement *and maintenance* of a democratic union: "[U]nion defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members *and* without unlawful outside influence; …." Consent Decree, at p.2 (emphasis added). Indeed, the basic premise for the Consent Decree's remedial scheme is the conviction – shared by Congress when it created the LMRDA and its Union Members' Bill of Rights – that a democratic union can be relied upon to throw out mobsters and crooks. The Consent Decree's goals will be achieved when organized crime has been entirely eradicated and when democratic governance can be relied upon to be perpetuated voluntarily by the IBT following termination of the Consent Decree. Until the IBT becomes a democratic institution while still under the Consent Decree, it is not ready to make credible commitments to post-termination voluntary compliance.

At a hearing on the merits of the forthcoming motion, TDU will show that the IBT is not yet a democratic union. TDU will show, at a hearing, that Mr. Hoffa's determination, as expressed formally from the podium of IBT conventions under his presidency, is to *eliminate* contested elections entirely, as "disloyalty" to the Union. TDU will show that, without protections firmly in place against such action, Mr. Hoffa would promptly take the steps necessary to dismantle the constitutional amendments required by the Consent Decree to ensure contested elections.

A strongly established tradition of democratic governance needs time to achieve the stability to survive the political ambitions of powerful individuals, as we have seen demonstrated in recent years of great tragedy in the Middle East and Africa. The IBT has made progress, but it is not yet a stable and reliable democracy.

The second prong of Rule 60(b)(5) is inapplicable; there is only one Consent Decree. By its terms, it empowers the parties to file a *joint* motion for dismissal, and only "[u]pon satisfactory completion and implementation" of its terms and conditions. Consent Decree, at p.2. The IBT's motion violates the Consent Decree's terms.

The third prong allows a consent decree to be vacated if prospective application "is no longer equitable." On this prong, the IBT has not and cannot even make an argument for terminating the Consent Decree. This is because the terms of the Consent Decree are themselves the route to equity, fairness, and the rule of law within the Union. Maintenance of the Consent Decree is the surest way to ensure

IBT compliance with public policy as expressed in the federal labor laws, specifically, the LMRDA, and the Consent Decree.

Termination of the Consent Decree without persuasive evidence that that IBT may be relied upon voluntarily to *initiate* such actions as may be needed to maintain a genuine commitment to democratic self-governance would be seriously premature, jeopardizing all of the work and resources expended over the past 25 years. To the best of TDU's knowledge, the IBT's record of voluntary disciplinary actions under James P. Hoffa against political allies shows that all or nearly all such actions were taken *only* after the initiation of IRB investigations, and often not until the investigation amassed sufficient evidence to prompt the IRB's administrator to inform Mr. Hoffa that if he failed to take "voluntary" action, the IRB would initiate action. In many such cases, Mr. Hoffa took no action, even after receiving such notice, compelling the IRB to initiate full due process hearings, at the expense of Teamster members. Mr. Hoffa may be able to show that he has never *refused to comply* with an IRB finding of guilt following a full IRB due process hearing. This is a modest accomplishment, indeed.

In sum, the Hoffa administration's record shows the absence of evidence of truly self-initiated politically painful disciplinary actions by the incumbents; affirmative evidence of this administration's consistent hostility to democratic self-governance; and a record of political retaliation against the political opposition within the Union, for the purpose of exterminating it, rather than living with it as one of the fundamental facts of life in a democracy. On a record such as this one, there is no basis for a reasonable expectation that this administration will start doing what needs to be done to maintain democratic governance. Therefore, there is no basis for granting such a motion, even if it did not violate the terms of the Consent Decree, as a unilateral motion, made prematurely.

TDU will reserve other arguments in opposition to the anticipated motion for filing as a responsive brief.

Respectfully submitted,

s/ Barbara M. Harvey
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CERTIFICATE OF SERVICE

Barbara Harvey, counsel for *amicus curiae* Teamsters for a Democratic Union, certify that on June 9, 2014, a copy of the foregoing document was filed electronically and served by mail to anyone unable to accept electronic filing. Notice of electronic filing will be sent to email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing, as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

s/ Barbara M. Harvey

Dated: June 9, 2014