



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

June 9, 2014

By ECF

The Honorable Loretta A. Preska
Chief United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

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

Dear Chief Judge Preska:

We write on behalf of the United States in response to the June 4, 2014, letter of the International Brotherhood of Teamsters (the "Teamsters" or "Union"). As discussed below, the Government opposes the Teamsters' motion for wholesale termination of the 1989 Consent Decree as unwarranted and irresponsible. The Government recognizes that the Consent Decree has brought about positive change toward meeting the parties' objectives in entering into its terms, namely ridding the Teamsters of organized crime and corruption and establishing a culture of democracy for the benefit of Union members.¹ Despite this progress, however, corrupt and undemocratic practices persist at all levels of the Union, and the objectives of the Decree have not yet been achieved.

Accordingly, in response to any motion to terminate the Decree, the Government seeks permission to cross-move for entry of a modified consent decree based on the record currently before the Court, which, among other things, would facilitate an orderly scaling back of the Government's oversight of the Teamsters' disciplinary and electoral functions as warranted over time, while ensuring that critical safeguards remain in place, rather than an abrupt and premature termination.² In the alternative, depending in part on the factual record that the Teamsters

¹ This Court has repeatedly recognized these objectives and has interpreted the Decree to give them effect. *See, e.g., United States v. Int'l Bhd. of Teamsters*, 88 Civ. 4486 (LAP), 2002 WL 654128, at *1 (S.D.N.Y. Apr. 18, 2002); *United States v. Int'l Bhd. of Teamsters*, 72 F. Supp. 2d 257, 262 (S.D.N.Y. 1999); *United States v. Int'l Bhd. of Teamsters*, 147 F.R.D. 24, 27 (S.D.N.Y. 1992).

² As the Union notes in its June 4 letter, the parties attempted to resolve their differences without the need for further litigation. Without going into the substance of those negotiations, the Government maintains that there are modifications to the Consent Decree that would reflect the Union's progress and, if warranted by continued progress, in the context of a negotiated resolution, provide for a diminishing role of the Government over time without undermining the Consent Decree's objectives. However, the parties were not able to reach a resolution before the Teamsters' request to the Court for a pre-motion conference.

present in support of their motion, the Government will seek leave to conduct discovery to provide the Court with a more complete record of the Teamsters' recent acts to demonstrate that the Consent Decree's goals have not yet been achieved, and that the Teamsters' motion is unwarranted.

The Supreme Court has set forth a two-part test to modify or vacate a consent decree. *See Calderon v. Wambua*, 74 Civ. 4868 (LAP), 2012 WL 1075840, at *3 (S.D.N.Y. Mar. 28, 2012) (citing *Rufo v. Inmates of Suffolk Cnty Jail*, 502 U.S. 367, 381 (1992), and *Horne v. Flores*, 557 U.S. 433, 447 (2009)); *see also United States v. Int'l Bhd. of Teamsters*, 88 Civ. 4486 (LAP), 2001 WL 422833, at *3 (S.D.N.Y. Apr. 24, 2001). First, the party seeking to modify or terminate a consent decree must "establish[] that a significant change in circumstances warrants revision of the decree," which it may do by showing that "(1) changed factual conditions make compliance with the decree substantially more onerous;" (2) "a decree proves to be unworkable because of unforeseen obstacles"; or (3) "enforcement of the decree without modification would be detrimental to the public interest." *Rufo*, 502 U.S. at 383-84. If the first prong is satisfied, courts are to "consider whether the proposed modification is suitably tailored to the changed circumstance." *Id.* at 383.

Nothing in the Teamsters' June 4 letter suggests that it can satisfy either prong of the *Rufo* two-part test. The Union does not argue that there are changed factual circumstances to demonstrate that it has fulfilled the Consent Decree's objectives. Rather, the Union contends that the Consent Decree should be terminated because Union officials are no longer engaged in as wide a pattern of the serious offenses described in the Government's original civil RICO complaint. Much of the success that the Teamsters now trumpet, however, is unquestionably a function of having to abide by the Consent Decree under the oversight of the Government, the Independent Review Board ("IRB"), and an Election Supervisor. In any event, whether the Government could prove the same set of allegations set forth in its complaint is not the standard by which the Court should determine whether the Decree should be terminated under Rule 60(b).

Moreover, regardless of whether the Teamsters' disciplinary record has improved, misconduct over recent years is far from "sporadic" and has involved serious wrongdoing committed by high-ranking officers. To cite one example, Bradley Slawson Sr., the principal officer of Local 120, and his son Bradley Slawson Jr., the Local's President, were found by the Chief Investigator throughout 2007-2012 to be systematically looting Local 120 through various schemes, which resulted in discipline for, among other things, embezzlement. Notably, Slawson Sr. was an International Vice-President during a portion of the time period in which the misconduct occurred.³ The Slawsons' egregious wrongdoing, which went undetected or was otherwise ignored by the Union, led to a trusteeship over Local 120 upon the recommendation of the Chief Investigator. In addition, International Vice-Presidents, Representatives, and Organizers have all been disciplined in recent past years for various types of misconduct

³ The Teamsters' representation that since 2004 no charges have been filed against an International officer pertaining to what they view as "connected to those that motivated the original lawsuit" is highly misleading. For example, while Slawson Sr. was not an International officer at the time he was charged, the conduct at issue occurred while he was serving as an International officer. Nor do the Teamsters account for charges filed against International employees appointed by the General President.

including providing false testimony to the IRB, and/or associating with non-organized crime prohibited persons under the Consent Decree.⁴

Indeed, there is substantial reason to question the Teamsters' commitment to detecting corruption and deterring it through meaningful, fair, and effective discipline without the presence of an independent mechanism like the IRB. For example, the Chief Investigator's Trusteeship report of September 2010 regarding Local 82 showed that John Perry, the Local's principal officer who had also been appointed by the General President as the International Director of the Teamsters' Trade Show Division, other officers, and a group of ex-felons they used to intimidate members, worked the Local's work-referral system to favor family members and friends (including recently released felons) over union members. Among other things, they used an ex-felon to control certain job referrals, notwithstanding that the ex-felon was statutorily barred from serving as a union agent; colluded with non-union employers; refused to enforce certain contract provisions to benefit family and friends; and manipulated the vote on several collective bargaining agreements by controlling who was allowed to vote. Indeed, in September 2012, Perry and other Local members were indicted under RICO (for using the Local as a criminal enterprise), and charged with, *inter alia*, extortion. Not only was the Union either unaware or indifferent to Local 82 until the Chief Investigator's report, but the Teamsters' imposition of discipline upon the multiple bad actors running the Local was deemed inadequate by the IRB.

Similarly, even with the oversight of the Government and an Election Supervisor, the Teamsters' International officer elections continue to suffer from serious misconduct committed by members at all levels of the union, including at the behest of Teamsters leaders. *See, e.g., In re Gegare*, 2011 ESD 73 (Jan. 20, 2011), *aff'd in part and rev'd in part*, 10 EAM 3 (Feb. 16, 2011), *on remand*, 2011 ESD 165 (Hoffa campaign attempted to preclude potential candidates from running for office by offering Union jobs and other benefits); *In re Bales*, 2011 ESD 281 (June 28, 2011) (International Vice-President and Local retaliated against union member for criticizing Vice-President's leadership by imposing improper discipline); *See also, e.g., In re Zuckerman*, 2010 ESD 62 (Dec. 28, 2010), *aff'd*, 10 EAM 10 (Jan. 18, 2011) (intimidation of candidates by surveillance); *In re Sandy Pope*, 2011 ESD 309 (Aug. 5, 2011) (retaliation-motivated violence at Convention).

In sum, the Teamsters cannot meet their burden merely by arguing that the number and severity of infractions has declined. As explained in *United States v. District Council of Carpenters*, 571 F. Supp. 2d 555 (S.D.N.Y. 2008) ("Carpenters"), in determining whether to terminate a decree, "the question isn't whether the landscape has changed, it's whether the principal objectives of the Consent Decree have been fully achieved," and whether the Court is "assured that the Union will be able to police itself without Court and government supervision and without the Consent Decree's protections." *Id.* at 561, 568. Here, the Teamsters cannot demonstrate that they have sufficient willingness or ability to effectively police internal corruption or maintain a culture of democracy.

⁴ The Teamsters' reporting of the number and nature of disciplinary charges is inaccurate. Even using its construct of counting charges connected to those that motivated the original lawsuit, approximately 61 such charges – not 33 – were filed between 2004 and 2013. Moreover, the Chief Investigator's records show that 110 members were disciplined in this time period.

We thank the Court for its attention to this matter.

Respectfully,

PREET BHARARA
United States Attorney
Southern District of New York

By: /s/ Tara LaMorte
TARA M. La MORTE
JAIMIE L. NAWADAY
Assistant United States Attorneys
Telephone: (212) 637-2746/2528
Facsimile: (212) 637-2730