

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>-against-<br><br>INTERNATIONAL BROTHERHOOD OF<br>TEAMSTERS, et al.,<br><br>Defendants. |
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FINAL AGREEMENT AND ORDER  
88 Civ. 4486 (LAP)

WHEREAS, on June 28, 1988, the United States of America (the “Government”) commenced this action seeking relief against the International Brotherhood of Teamsters (the “IBT” or “Union”) and others pursuant to the civil remedies provisions of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1964;

WHEREAS, on March 14, 1989, this Court approved a consent order that resolved the Government’s claims against the IBT defendants;

WHEREAS, the March 14, 1989 consent order has been clarified by agreement of the Parties and modified, both by agreement of the Parties and by Court order, as reflected in the document attached as Exhibit A to this order (the “Consent Decree”);

WHEREAS, the Government and the IBT (the “Parties”) entered into the Consent Decree with the objectives of ridding the IBT of any criminal element or organized crime and corruption and establishing a culture of democracy to maintain the Union for the sole benefit of its members;

WHEREAS, to achieve those objectives, the Consent Decree enjoined certain activity and instituted institutional reforms of the IBT’s disciplinary and electoral processes;

WHEREAS, the Parties agree that implementation of the disciplinary and electoral provisions of the Consent Decree has resulted in significant and positive change in the culture and processes of the IBT, and that there has been substantial progress towards achieving the objectives of the Consent Decree;

WHEREAS, the Parties agree that there has been significant success in eliminating corruption from within the IBT and in conducting free, open and democratic elections for its International Officers and Convention Delegates;

WHEREAS, the Parties recognize that, while substantial progress has been made under the Consent Decree, the threat posed to the IBT by organized crime and other corrupting influences, while substantially diminished, persists;

WHEREAS, the Parties acknowledge that, given the nature of the threat posed to the IBT by organized crime and other corrupting influences, continued vigilance is necessary to ensure that the objectives of the Consent Decree are achieved;

WHEREAS, by entering into this Final Agreement and Order (the "Final Order"), the Parties re-commit themselves to the original objectives of the Consent Decree, which remain the objectives of this Final Order;

WHEREAS, in addition to those objectives, the objectives of this Final Order are to reduce and ultimately eliminate the Government's role in the affairs of the IBT, except as otherwise expressly provided in this Final Order, while, at the same time, preserving the gains achieved by the Consent Decree; continuing to foster and promote democracy in the IBT through independent supervision of IBT elections; continuing the fight against criminal elements, organized crime, and corruption that threaten the IBT today; and preventing the re-emergence of

those elements of those criminal elements, organized crime and corruption that have been eliminated from the IBT;

WHEREAS, the parties agree that these objectives can best be achieved by implementation of this Final Order; and

WHEREAS, it is imperative that the IBT be maintained democratically, with integrity, for the sole benefit of its members, and without unlawful outside influence;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Government and the IBT, as follows:

### **PERMANENT INJUNCTIONS**

1. All permanent injunctions entered in this action shall survive the dismissal of this action and shall continue to be fully viable and effective.

2. All current and future members, officers, agents, representatives, employees, and persons holding positions of trust in the IBT and any of its constituent entities (collectively the “IBT” or “Union”) are permanently enjoined from:

- (A) committing any act of racketeering activity, as defined in 18 U.S.C. § 1961;
- (B) knowingly associating with any member or associate of any Organized Crime Family of La Cosa Nostra or any other criminal group;
- (C) knowingly associating with any person enjoined from participating in union affairs;
- (D) obstructing, or otherwise interfering, directly or indirectly, with the work of any person appointed to effectuate the terms of this Final Order; and
- (E) knowingly permitting any member or associate of any criminal group, or any person otherwise enjoined from participating in union affairs, to exercise any control or influence, directly or indirectly, in any way or degree, in the affairs of the IBT or any of its constituent entities.

As used in this Final Order, the term “constituent entities” shall include all existing and future Joint Councils, Local Unions, and other IBT entities subordinate to the IBT General Executive Board.

3. For purposes of this Final Order (and for purposes of any disciplinary action taken by the IBT pursuant to the IBT Constitution), the phrase “knowingly associate” shall have the same meaning under this Final Order as under the Consent Decree, as construed by the United States Court of Appeals for the Second Circuit and this Court.

4. For purposes of this Final Order (and for purposes of any disciplinary action taken by the IBT pursuant to the IBT Constitution), the phrase “otherwise enjoined from participating in union affairs” shall have the same meaning under this Final Order as under the Consent Decree, as construed by the United States Court of Appeals for the Second Circuit and this Court, and shall include any person who was permanently barred, who was permanently expelled, who permanently resigned, or who was otherwise permanently removed from membership in the IBT pursuant to, following, or in response to disciplinary charges instituted or recommended under the procedures enacted under the Consent Decree or under this Final Order and shall include, among others and in particular, all persons identified on the list attached to this Final Order as Exhibit B.

5. All persons who were enjoined from participating in union affairs under the Consent Decree, including all persons identified on Exhibit B to this Final Order, and all persons who are permanently enjoined from participating in union affairs under the mechanisms established by this Final Order, are permanently enjoined from knowingly associating with any member or employee of the IBT or any of its constituent entities.

## **JURISDICTION AND ENFORCEMENT**

6. This Court shall retain exclusive jurisdiction to enter any lawful and appropriate order to deter, discover, determine, sanction, and remedy any violation of this Final Order. The Government shall have the authority to apply to this Court, upon notice to the IBT, for such process and such equitable orders and sanctions as are lawful and appropriate to deter, discover, determine, sanction, or remedy any violation of this Final Order. This Final Order shall bind all current and future members, officers, agents, representatives, and employees of the IBT and its constituent entities to the same extent and to the same degree as the Consent Decree bound such entities and individuals.

## **ALL WRITS INJUNCTION**

7. Pursuant to 28 U.S.C. § 1651, the IBT and its constituent entities, and all members, officers, representatives, agents and employees of the IBT or any such IBT constituent entity, are permanently enjoined from filing or taking any legal action that implicates the Consent Decree or this Final Order in any court or forum in any jurisdiction other than this Court. Upon discovering that an action that implicates the Consent Decree or this Final Order has been filed in any forum other than this Court, the IBT shall promptly give notice to the United States Attorney for the Southern District of New York (the “United States Attorney”).

## **TRANSITION PERIOD**

8. The Parties agree that, during the period (i) beginning on the effective date of this Final Order, and (ii) ending on the date five years following the effective date of this Final Order, (the “Transition Period”), the Government will relinquish its role in the affairs of the IBT, except as otherwise expressly provided in this Final Order, including its right under the Consent Decree and the IBT Constitution to elect Department of Labor Supervision of IBT elections and

its right to require the maintenance of the Independent Review Board (“IRB”), in exchange for the IBT’s commitment, as set forth in this Final Order, to establish and maintain effective and independent supervision of IBT International Union Officer and Convention Delegate elections and an effective and independent disciplinary mechanism.

9. During the Transition Period, the Government may apply to the Court, on notice to the IBT, for further equitable relief, including relief from its commitments and obligations under this Final Order and re-establishment of all obligations under the Consent Decree. On such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, and without satisfying the standards and burdens set forth in Paragraph 48 of this Final Order or in Rule 60(b) of the Federal Rules of Civil Procedure, that the IBT has violated or has failed to satisfy its obligations under this Final Order promptly and in good faith, knowingly tolerated any violation of the injunctive provisions of this Final Order, or otherwise undermined or frustrated the terms and objectives of this Final Order.

## **INTERNATIONAL ELECTIONS**

### **A. STRUCTURAL ELECTORAL REFORM**

10. The Parties agree that the IBT will permanently retain the structural electoral reforms of the Consent Decree relating to the International Union Delegate and Officer Election, including without limitation, the one-Teamster, one vote, direct elections of IBT International Officers which were adopted by the IBT at the 2001 IBT Convention. Accordingly, the structural electoral reforms established by the Consent Decree, as set forth in Paragraph 12(D)(i)-(ix) of the Consent Decree, as amended, shall remain permanently in full force and effect. Moreover, for the election of International Officers that will be conducted during the Transition Period, the IBT shall not modify, amend, or eliminate any provision of the IBT Constitution that

concerns the elections of convention delegates and International officers and trustees - including any provision of Article III; Article IV; Article VI, Section 8; or Article IX, Section 7, of the 2011 IBT Constitution - without the written consent of the United States Attorney. After the Transition Period, the IBT shall not modify amend, or eliminate any provision of the IBT Constitution that concerns the elections of convention delegates and International officers and trustees - including any provision of Article III; Article IV; Article VI, Section 8; or Article IX, Section 7, of the 2011 IBT Constitution - without first providing written notice to the United States Attorney. In addition, two weeks prior to each IBT Convention, the IBT must provide notice to the United States Attorney of any proposed amendments to the IBT Constitution concerning the election of convention delegates and/or International Officers and Trustees. In the event the delegates to an IBT Convention adopt any proposed amendments to the IBT Constitution, the IBT shall notify the Government of any such amendments, and the Government may apply to the Court for an order nullifying any such amendments. On any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, that the proposed amendment(s) will prevent the election system from continuing to function or will cause it to function ineffectively or without adequate independence; or that the amendment(s) will deprive members of their reasonable opportunity to nominate candidates, hold office, vote for and otherwise support candidates of their choice.

11. The 5% nomination threshold for International Officers and Trustees, which was adopted at the 2001 Convention, shall be maintained for the International Officer elections in 2016 and 2021. With respect to any International Officer election following the 2021 election, any change by the democratically elected delegates or membership to the nomination threshold shall be subject to the Government's right to apply to the Court to nullify any such change. On

any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, that the proposed change(s) to the nominating threshold will prevent the election system from continuing to function or will cause it to function ineffectively or without adequate independence; or that the amendment(s) will deprive members of their reasonable opportunity to nominate candidates, hold office, vote for and otherwise support candidates of their choice.

**B. INDEPENDENT ELECTION SUPERVISION**

12. The Parties agree that every IBT International election occurring after the effective date of this Final Order shall be supervised by an Independent Election Supervisor appointed by the IBT in accordance with Article III, Section 5(a)(2), of the 2011 IBT Constitution, and in accordance with this Final Order. The Election Supervisor shall be empowered to employ such staff and other assistants as she/he deems appropriate.

13. The IBT shall establish and maintain standards sufficient to ensure that the Independent Election Supervisor appointed to supervise IBT International Officer elections after the effective date of this Final Order shall be experienced, effective, and completely independent of the IBT, and free from any actual or apparent conflict of interest. No individual may be appointed to the office of Independent Election Supervisor absent a reputation for honesty, integrity, impartiality, and independence. Barring exceptional circumstances, no individual may be appointed to the office of Independent Election Supervisor without substantial experience with union elections (desirable qualifications include knowledge of and experience with the mechanisms and procedures used in large scale elections, Title IV of the Labor Management Reporting and Disclosure Act and the IBT data systems) or law enforcement investigations, and a commitment to transparency in the election process. To the extent the Independent Election Supervisor lacks substantial experience with either union elections or law enforcement

investigations, his or her staff shall include a person or persons with such experience. No individual serving as the Independent Election Supervisor or any member of his or her staff may be a candidate for any delegate position or International office. No individual serving as the Independent Election Supervisor or any member of his or her staff may be affiliated with any candidate for any delegate position or International office. No individual serving as the Independent Election Supervisor or any member of his or her staff may be a member of the IBT, a present or former paid or non-paid appointee of any IBT entity, or an individual who has been an employee, representative, or agent of any IBT entity within the previous ten-year period, except as provided in paragraph 14.

14. Neither the IBT nor any of its constituent entities may employ or retain any individual who has served as an Independent Election Supervisor for a period lasting at least five years after certification of the election in which the individual served as the Independent Election Supervisor. This provision shall not, however, preclude the appointment of an individual who has served as the Independent Election Supervisor to supervise subsequent Local Union or International Union elections.

15. During the Transition Period, no individual may serve as the Independent Election Supervisor without the consent of the United States Attorney. After the Transition Period, the IBT may appoint an individual to serve as the Independent Election Supervisor without the consent of the United States Attorney, provided that the IBT provides notice to the United States Attorney within seven (7) days of any such appointment and that the Independent Election Supervisor satisfies all of the conditions, criteria, and qualifications for experience and independence set forth in the IBT Constitution and this Final Order. The United States Attorney may, however, challenge such an appointment upon showing, by a preponderance of the

evidence, that the Independent Election Supervisor does not satisfy all of the conditions, criteria, and qualifications for experience and independence set forth in the IBT Constitution and this Final Order.

### **C. ELECTION RULES**

16. The Parties agree that every IBT International Officer election occurring after the effective date of this Final Order shall be conducted pursuant to rules and procedures designed to ensure a fair, free, and democratic election (the “Election Rules”). These rules and procedures shall permanently ensure that each election will be conducted by secret ballot and that every member shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline or improper interference or reprisal of any kind by the Union or any member thereof. Notwithstanding any provision in paragraphs 17, 19, 20, and 21 regarding the adoption and modification of the Election Rules, the IBT shall not adopt or modify any Election Rules that have the purpose or effect of interfering with a member’s right to vote by secret ballot for the candidate or candidates of his choice, without being subject to penalty, discipline or improper interference or reprisal of any kind by the Union or any member thereof.

17. The IBT General Executive Board (the “GEB”) shall have the authority to adopt Election Rules to govern the election of Local Union delegates to any International Union Convention at which candidates for International Union office are nominated, and for the election of International Union officers. The Election Rules shall provide for the appointment by the GEB of an Independent Election Supervisor, who shall conduct and supervise such elections of delegates to the International Convention, the nomination of candidates for International office at the Convention, and the election of International officers.

18. Authority to interpret and enforce the Election Rules shall rest at all times both during and following the effective date of this Final Order, both during and after the Transition Period, exclusively with the Independent Election Supervisor duly appointed pursuant to the IBT Constitution and this Final Order, who shall endeavor at all times to consult with all interested parties, including the IBT, before interpreting or enforcing the Rules. In addition, the Election Supervisor shall also have authority to recommend Election Rules to the GEB for consideration.

19. During the Transition Period, and except as otherwise provided by this Final Order, the Election Rules adopted by the GEB shall not differ in any material way from the rules that governed the 2011 International Union and Delegate Election (the “2011 Election Rules”), as supplemented and amended, which were agreed upon by the Government and the IBT and approved by the Court. During the Transition Period, the Independent Election Supervisor may propose material amendments or changes to the 2011 Election Rules, but such material amendments or changes may be made only with the written consent of the Government and the IBT. In addition, during the Transition Period, the Independent Election Supervisor may, after consulting with all interested parties, including the IBT, make non-material changes to the 2011 Rules as necessary to tailor the rules to the new election cycle. For the International Officer elections commencing with the election in 2016, the Election Rules shall be amended, following notice and comment in accordance with the procedures followed for the 2006 and 2011 elections, to provide for a mailing funded by the Union in a single package of campaign materials from all nominated candidates to the current names and addresses that are on file for members in good standing. The mailing will occur in lieu of one issue of the IBT Magazine not less than one week prior to the date scheduled by the Election Office for the mailing of ballots. This amendment shall require that the mailing afford each nominated candidate a reasonable opportunity, equal to

that of any other candidate for the same office, to communicate his or her views to the membership. In addition, for the International Officer elections commencing with the election of 2016, the Election Rules shall be amended, following notice and comment in accordance with the procedures followed for the 2006 and 2011 elections, to provide reasonable measures for the IBT's accommodation of reasonable requests from candidates to communicate electronically with the membership. Such measures may include the steps set forth in Exhibit C to this Final Order. All Election Rules amendments made pursuant to this paragraph shall be made in accordance with paragraphs 16-21 of this Final Order.

20. After the Transition Period, the GEB shall promulgate Election Rules for succeeding election cycles which are substantially the same as those which governed the previous IBT elections but may make non-material changes as necessary to tailor the rules to a new election cycle. In promulgating Election Rules for elections conducted after the Transition Period, the GEB may also make material modifications to the provisions of the Election Rules used for preceding elections, provided that the changes are fully consistent with federal law, the IBT Constitution, and this Final Order, and provided that the Government is notified in writing of the changes prior to their implementation and provided that they are approved by the Independent Election Supervisor. Prior to submitting any proposed material modification to the Independent Election Supervisor, the GEB shall notify the IBT membership of the proposed change by posting the proposed modification on the homepage of the IBT's website, and provide IBT members with thirty (30) days to submit comments on the proposed modification. The Independent Election Supervisor may reject the modifications only if he or she determines, after consulting with all interested parties including the IBT, that the changes will prevent the election system from continuing to function or will cause it to function ineffectively or without adequate

independence; or that the amendment(s) will deprive members of their reasonable opportunity to nominate candidates, hold office, vote for and otherwise support candidates of their choice.

21. After the Transition Period, the IBT shall provide notice to the Government in advance of any material change it proposes to make to the Election Rules. Such notice shall be sufficiently in advance of the proposed effective date of the material change to afford the Government a reasonable time within which to apply to the Court for the relief set forth in this paragraph. With respect to any proposed changes to the Election Rules with which it disagrees, the Government may apply to the Court, on notice to the IBT, for an order disapproving the proposed change(s). On any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, that the proposed change will prevent the election system from continuing to function or will cause it to function ineffectively or without adequate independence; or that the amendment(s) will deprive members of their reasonable opportunity to nominate candidates, hold office, vote for and otherwise support candidates of their choice.

#### **D. ELECTION REPORTS**

22. Following certification of the results of each IBT election conducted after the effective date of this Final Order, the IBT shall solicit and make available to the membership a report by the Independent Election Supervisor, which shall report in detail on the results of the election (including the statistics reflecting voter turnout and the number of contested delegate elections), assess the successes and shortcomings of the election process, determine any positive and negative trends in comparison to prior election cycles, and recommend changes to the election rules to address any negative trends and enhance the democratic process. During and after the Transition Period, the IBT shall provide a copy of the Independent Election Supervisor's

report to the Government. During and after the Transition Period, the Independent Election Supervisor shall have the right to communicate with the membership concerning the IBT international election, including, for example, posting the election rules, any decisions on disputed matters, election results and logistical information.

**E. ELECTION ACCESS ORDER**

23. During the Transition Period, the presumptive right of access to employer property as set forth in the 2011 Election Rules shall be adopted, upon application of either party, as an order of this Court and fully enforceable by the Parties as against third parties to the extent permissible under the All Writs Act.

**UNION DISCIPLINE**

**A. INDEPENDENT DISCIPLINARY SYSTEM**

24. The IRB shall continue to operate for a period of one year following the effective date of this Final Order.

25. Following this one-year period, the IBT shall establish and permanently maintain an effective and independent disciplinary enforcement mechanism with ultimate authority to discipline IBT members and require compliance by the IBT with its Constitution and rules (the “independent disciplinary system”), to replace the IRB, as described herein. The independent disciplinary mechanism established by the IBT shall consist of one Independent Investigations Officer and one Independent Review Officer (collectively, the “IBT Disciplinary Officers”).

26. The IBT shall establish minimum qualifications for service as an IBT Disciplinary Officer, which qualifications shall be designed to ensure that each IBT Disciplinary Officer is experienced, effective, and completely independent of the IBT, and free from any actual or apparent conflict of interest. No individual may serve as an IBT Disciplinary Officer absent a

reputation for honesty, integrity, impartiality, and independence, and unless he or she is an attorney with substantial prior experience with enforcing labor laws or with governmental investigations, or has substantial prior experience as a federal or state judge. Current and former members and employees and agents of the IBT and its constituent entities shall be ineligible for appointment as IBT Disciplinary Officers.

27. The term of office of each IBT Disciplinary Officer shall be five years from the date of appointment, with the first appointments occurring one year following the effective date of this Final Order. At that time, the IRB will transfer pending disciplinary matters to the independent disciplinary mechanism, and/or refer pending disciplinary matters to appropriate law enforcement agencies. The IRB has sole discretion to determine which, if any, pending disciplinary matters and associated documents it will transfer to the independent disciplinary mechanism and/or refer to appropriate law enforcement agencies. Upon completing transfer or referral of any pending disciplinary matters it elects to transfer or refer, the authority of the IRB shall terminate. IBT Disciplinary Officers may not be removed from office during their terms absent good cause. If the IBT seeks to remove an IBT Disciplinary Officer for cause, it shall promptly provide notice to the United States Attorney of its intent to effect removal and the reason(s) therefore.

28. During the Transition Period, the IBT Disciplinary Officers shall be selected jointly by the United States and the IBT. The Court will retain authority to approve the Parties' joint selection, and/or resolve any disputes between the Parties concerning the selection. At the end of the five-year terms of the IBT Disciplinary Officers appointed during the Transition Period, the IBT General President may appoint an individual to serve as an IBT Disciplinary Officer without the consent of the United States Attorney, provided that the individual satisfies

all of the conditions, criteria, and qualifications for experience and independence set forth in the IBT Constitution and this Final Order, and further provided that the IBT provides advance notice to the United States Attorney of the individual the IBT has proposed to serve as an IBT Disciplinary Officer. Such notice shall be sufficiently in advance of the effective date of the IBT Disciplinary Officer's appointment to afford the Government a reasonable time to apply to the Court for an order disapproving the appointment on the ground that the individual fails to satisfy all of the conditions, criteria, and qualifications for experience and independence set forth in the IBT Constitution and this Final Order.

29. Each of the IBT Disciplinary Officers shall be empowered to employ such staff and other assistants as she/he deems appropriate, including, but not limited to, attorneys and individuals who are experienced in law enforcement investigations. All such staff shall be completely independent of the IBT.

30. The IBT Disciplinary Officers shall exercise such investigative and disciplinary authority as previously exercised by the IRB, as set forth in the Consent Decree and the rules and procedures governing the Independent Disciplinary Officers and their authorities (the "Disciplinary Rules") attached as Exhibit D to this Final Order, as well as the authority that the General President, General Secretary-Treasurer, and General Executive Board are authorized and empowered to exercise pursuant to the IBT Constitution, as well as any and all applicable provisions of law, including, without limitation, the authority to recommend disciplinary charges against IBT members, to review decisions by the Union with respect to recommended charges, to impose discipline, to review trusteeships imposed by the IBT over affiliates and to recommend trusteeships to be imposed by the IBT over affiliates, to review disciplinary decisions issued by the IBT General Executive Board and to review the IBT's audit records for affiliates and to

conduct their own audits of IBT entities. The Independent Investigations Officer shall also issue an annual report to the IBT and the United States Attorney addressing the functioning of the disciplinary system, the IBT's compliance with this Final Agreement and Order and any other matters he or she considers appropriate. During the first five-year term of office of the Independent Investigations Officer, as set forth in paragraph 27, consistent with the practice of the IRB, the Independent Investigations Officer shall be authorized to request that the Court issue subpoenas.

31. Upon completion of an investigation, and in the event the Independent Investigations Officer concludes that actions by the IBT or an affiliated body are warranted, the Independent Investigations Officer shall prepare a written investigation report detailing proposed charges and recommendations, concerning the discipline of IBT officers, members, employees, agents, and representatives, or concerning recommendations that any IBT affiliated body be placed in trusteeship.

32. In the event that the Independent Investigations Officer determines that discipline or a trusteeship should be imposed upon any member or constituent entity, the written report shall be referred to an appropriate Union entity for review, investigation or action within the authority of that entity. The Independent Investigations Officer may designate any such matter as an original jurisdiction case for the General President to review. Copies of all written referrals shall be sent to the General President and General Executive Board and, during the Transition Period, to the United States Attorney. The Union entity to which the matter has been referred shall promptly take whatever action is appropriate in the circumstances and shall, within ninety (90) days of the referral, make written findings setting forth the specific action taken and the reasons for that action. The Independent Review Officer may grant an extension of this ninety

(90) day period upon request for good cause. In the event that the Union entity files disciplinary charges based upon the referral, the Union shall act as the charging party. Appeals from actions taken by Union entities subordinate to the GEB may be filed with the Independent Review Officer.

33. The Independent Review Officer shall have authority to review IBT disciplinary decisions in matters referred by the Independent Investigations Officer. If the Independent Review Officer determines that the Union entity to which the matter has been referred has not pursued the matter in a lawful, responsible or timely manner, or that a decision is inadequate in the circumstances, the appropriate Union entity shall be notified and shall, within twenty (20) days set forth in writing any additional actions it has taken or will take to correct the defects set forth in the Independent Review Officer's notice. The Union entity shall, in addition, specify a timetable for such additional actions to be completed.

34. If the Independent Review Officer concludes that the Union entity has not responded or that the additional actions it has taken or will take are inadequate to remedy the defects previously identified, the Independent Review Officer shall convene a de novo hearing on the matter, giving adequate prior notice to all affected parties.

35. Hearings resulting from Independent Investigations Officer referrals before a Union entity shall be conducted under rules and procedures consistent with the requirements of Article XIX of the IBT Constitution and applicable law, except that the charged parties shall have the right to be represented by legal counsel, or by a fellow member of the Union, at their option. The Independent Review Officer shall issue a written decision with respect to any matter on which a hearing has been conducted before him/her. Hearings conducted before the Independent Review Officer shall be governed by the Disciplinary Rules, attached hereto as

Exhibit D. Decisions of the Independent Review Officer are final and binding and shall not be subject to further review under the IBT Constitution or to judicial review by this Court, provided, however, that nothing in this Final Order shall limit the right of any person or entity adversely affected to seek judicial review of union discipline to the extent such review is available under the Labor-Management Reporting and Disclosure Act of 1959 (“LMRDA”). In any such action, the Independent Disciplinary Officers are authorized, but are not required to, file papers in support of the decision of the Independent Review Officer. The appropriate IBT entity shall take all action which is necessary to implement the Independent Review Officer’s decision, consistent with the IBT Constitution and applicable federal laws.

36. Any proposed settlement of a charge referred by the Independent Investigations Officer, between the individual or Union entity charged and the IBT, is subject to approval by the Independent Review Officer. The Independent Investigations Officer, the individual or Union entity charged, and the IBT shall have the right to be heard by the Independent Review Officer in connection with his decision whether to approve a proposed settlement.

37. The IBT shall provide to the United States Attorney copies of all written reports issued by the Independent Investigations Officer throughout his or her first five-year term of office, and all decisions issued by the Independent Review Officer throughout his or her first five-year term of office. Any person or entity seeking judicial review of union discipline that is imposed, recommended or approved by the IRB, or by the IBT Disciplinary Officers during their first respective five-year terms of office, must file a petition with this Court. The IBT shall promptly provide notice to the United States Attorney of any lawsuit by any person or entity that challenges or seeks review of union discipline imposed, recommended or approved by the IRB, or by the IBT Disciplinary Officers during their first respective five-year terms of office.

38. During the Transition Period, the IBT may not make material changes to the independent disciplinary mechanism, or amend any provision of Article XIX of the IBT Constitution, absent the written consent of the United States Attorney or the approval of this Court. After the Transition Period, upon advance written notice to the Government, the IBT may make material changes to the independent disciplinary mechanism or amend Article XIX of the Constitution without the consent of the United States Attorney or the approval of this Court provided, however, that Government may apply to the Court, on notice to the IBT, for an order disapproving the material change or amendment. On any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, that the change or amendment is inconsistent with the terms and objectives of this Final Order or otherwise threatens to undermine the independence or effectiveness of the disciplinary mechanism. A change in the disciplinary mechanism shall presumptively undermine the independence and effectiveness of the disciplinary mechanism, and therefore be impermissible, if it results in a mechanism that is: (a) not staffed by persons completely independent of the IBT; (b) without ultimate and unfettered authority to investigate and sanction IBT members or its constituent entities for violations of the IBT Constitution and the permanent injunctive provisions of this Final Order, or (c) without ultimate and unfettered authority to investigate and compel compliance by the IBT with its Constitution and rules.

**C. DISCIPLINARY RULES**

39. The rules and procedures governing the IBT Disciplinary Officers and their authorities (“Disciplinary Rules”) are attached to this Final Order as Exhibit D.

40. During the Transition Period, the IBT make not make any material change to the Disciplinary Rules absent the written consent of the United States Attorney. After the Transition

Period, upon advance written notice to the Government, the IBT may make material changes to the Disciplinary Rules without the consent or approval of the United States Attorney, provided, however, that the Government may apply to the Court, on notice to the IBT, for an order disapproving any material change to the Disciplinary Rules. On any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence that the change is inconsistent with the terms and objectives of this Final Order or otherwise threatens to undermine the independence or effectiveness of the independent disciplinary mechanism.

**D. DISCIPLINARY REPORTS**

41. The Independent Review Officer shall be responsible for preparing and distributing to the membership annual reports of the work of the IBT Disciplinary Officers, which reports shall include detailed descriptions of the disciplinary, trusteeship, compliance, and other actions taken by the IBT Disciplinary Officers during the preceding year, including a summary of the number and types charges referred by the Independent Investigations Officer, the disposition of those charges, and an analysis of those dispositions as compared with the dispositions of similar charges in previous years.

42. During and after the Transition Period, the IBT shall promptly provide copies of the annual disciplinary reports to the Government.

## **ADEQUATE FUNDING AND INDEMNIFICATION**

43. The IBT shall pay all costs and expenses of, and provide suitable office space outside the premises of the IBT for, the Independent Election Supervisor, the IBT Disciplinary Officers, and their respective staffs. The IBT shall work cooperatively with the officers appointed pursuant to this Final Order to establish a budget for each office that is reasonable and adequate to ensure the effectiveness and independence of each officer. Any dispute regarding the adequacy of funding or other resources of all officers appointed by the IBT pursuant to this Final Order shall be resolved by the Independent Review Officer or, if such dispute cannot be resolved by such Independent Review Officer, by this Court.

44. The IBT shall purchase a policy of insurance in an appropriate amount to protect the Independent Election Supervisor, the IBT Disciplinary Officers, and any persons acting on their behalf from personal liability for any of their actions on behalf of the IBT, the Independent Election Supervisor, or the IBT Disciplinary Officers. If such insurance is not available, or if the IBT so elects, the IBT shall indemnify the Independent Election Supervisor, the IBT Disciplinary Officers, and persons acting on their behalf from any liability (or costs incurred to defend against the imposition of liability) for conduct taken pursuant to this Final Order. That indemnification shall not apply to conduct not taken pursuant to this Final Order. In addition, the Independent Election Supervisor, the Independent Disciplinary Officers, and any persons designated or hired by them to act on their behalf shall enjoy whatever exemptions from personal liability may exist under the law for court officers.

## **INTERNAL AUDIT AND FINANCIAL CONTROLS**

45. The IBT's obligations under the Stipulation and Order entered December 28, 2001, concerning enhancements to the internal financial controls of the IBT are incorporated by

reference into this Final Order. The IBT shall maintain the enhancements to its internal financial controls implemented pursuant to the December 28, 2001 Stipulation and Order, and may modify such controls only with the approval of the independent accounting professional appointed pursuant to Article VIII, section 1, of the IBT Constitution. During the Transition Period, the IBT may not amend Article VIII, Section 1, of the IBT Constitution absent the written consent of the United States Attorney.

#### **SUSPENSION OF INDICTED OFFICERS AND APPOINTEES**

46. In the event any officer, agent, appointee, representative, or employee of the IBT or any of its constituent entities is criminally charged in any federal or state court with any act of racketeering, as that term is defined in 18 U.S.C. § 1961, or any felony relating to the conduct of the affairs of any labor organization or employee benefit or pension plan, the IBT General President, with the approval of the General Executive Board, or the General Executive Board acting on its own initiative, upon being informed about such charge, may immediately place the accused individual on temporary leave of absence without pay, may preclude such individual from holding any paid or non-paid position with the IBT or any of its constituent entities, and shall refer the matter to the Independent Investigations Officer for investigation and such other actions as he or she deems appropriate consistent with this Final Order. If the IBT does not place an individual charged with an offense described above on a temporary leave of absence without pay or preclude the individual from holding any paid or non-paid position with the IBT or any of its constituent entities, the IBT shall submit a report to the United States Attorney explaining its reasons.

## **IMPLEMENTATION OF THIS FINAL ORDER**

47. The IBT agrees to take all actions to ensure its ability to lawfully comply with its obligations and commitments under this Final Order. The IBT shall not adopt any procedure, resolution, constitutional amendment, code of conduct, or other internal rule that is inconsistent with, or has the purpose or effect of undermining, the terms or objectives of this Final Order.

## **FURTHER EQUITABLE RELIEF**

48. Except as otherwise expressly provided in this Final Order, the Government shall have no further role in the affairs of the IBT after the Transition Period, provided, however, that the Government may apply to the Court, on notice to the IBT, for an order seeking further equitable relief against the IBT. On any such application, the Government shall bear the burden of establishing, by a preponderance of the evidence, that: (a) the IBT has violated or failed to fully and effectively implement the terms of this Final Order; (b) the IBT's independent disciplinary mechanism has ceased to function or is functioning ineffectively or without adequate independence; (c) the IBT's electoral system has ceased to function or is functioning ineffectively or without adequate independence; or (d) there exists systemic corruption or organized crime influence in the IBT. Any of the preceding showings by the Government (i.e., (a) through (d)) shall automatically constitute evidence of an unforeseen obstacle to the objectives of this Final Order and a significant change in the facts upon which this Final Order was entered, and alone shall justify and warrant revision of this Final Order. Upon such a showing, the Court may modify this Final Order or award such equitable relief as the Court deems lawful and appropriate to bring the IBT into compliance with its obligations under this Final Order or to achieve the disciplinary and electoral objectives of this Final Order. A decision

by the Court on such an application may be appealed to the United States Court of Appeals for the Second Circuit.

#### **CONTINUED VIABILITY OF CONSENT DECREE PRECEDENT**

49. All matters of construction and interpretation of the Consent Decree, Election Rules, and obligations imposed upon members under the IBT Constitution shall continue to be governed by the decisional law established in this action by the Independent Administrator, the IRB, the Election Officers, the Election Administrator, the Election Appeals Masters, this Court, and the United States Court of Appeals for the Second Circuit. The IBT shall continue to make precedents established during the Consent Decree, and thereafter, available to the IBT membership through the IBT website or other means designed to afford similar access to the membership.

#### **LIMITATIONS**

50. Nothing in this Final Order shall: (a) prevent the United States or any of its agencies or individual agents from investigating the IBT or any person having any relation to this matter; or (b) prevent the United States from instituting a civil or criminal action against any person or entity in the future and, in doing so, relying on any evidence or materials utilized in preparation for this action, or re-alleging any of the allegations made in this action.

51. Nothing in this Final Order shall affect the validity or operation of any existing decrees or orders entered against the IBT or any of its entities in any action outside the Southern District of New York, including, without limitation, any decrees or orders entered in United States v. Local 282 of the IBT, CV-94-2919 (E.D.N.Y.); United States v. Local 295 et al., CV-90-970 (E.D.N.Y.); United States v. Private Sanitation Industry Ass'n et al. (IBT Local 813), CV89-1848 (E.D.N.Y.); United States v. Local 560, 82 Civ. 689 (D.N.J.); United States v. Bonanno

Organized Crime Family et al., Civ. No. 87-2974 (E.D.N.Y); and United States v. Vincent Gigante et al., Civ. No. 88-4396 (D.N.J.).

### **NOTICE**

52. Whenever this Final Order obligates the IBT to give notice to the United States Attorney, such notice shall be in writing and sent to the United States Attorney's Office, Southern District of New York, 86 Chambers Street, 3rd Floor, New York, New York, 10007, attention: Chief, Civil Division, with an indication that the matter concerns United States v. IBT, 88 Civ. 4486 (LAP).

53. The IBT shall provide notice to the membership of the entry of this Final Order by publishing a copy of this Final Order (including all exhibits) on the IBT's website and printing the text of this Order (including Exhibit B only), in the next issue of the Teamster Magazine published after entry of this Final Order.

54. Contemporaneous with any appointment by the IBT of an Independent Election Supervisor or an IBT Disciplinary Officer in accordance with this Final Order, the IBT shall announce such appointment in the Teamster Magazine and on the home page of the IBT website. The announcement of such appointments shall provide sufficient information about the appointee to demonstrate that the appointee meets the qualifications for experience and independence set forth in the IBT Constitution and this Final Order.

### **1989 CONSENT DECREE**

55. Upon the effective date of this Final Order, and except as provided in this Final Order, this Final Order shall supersede and replace the 1989 Consent Decree.

### **EFFECTIVE DATE**

56. The effective date of this Final Order shall be the date on which it is signed by the

Court, and thereupon, this action shall be dismissed, subject to the provisions of this Final Order.