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AND AFFILIATED PARTNERSHIPS

November 3, 2016

Hon. Loretta A. Preska
U.S. District Court for the Southern District of New York
500 Pearl St.
New York, NY 10007-1312

Re: *United States of America v. IBT, et al.*, No. 88 Civ. 4486 (LAP)

Dear Judge Preska:

The International Brotherhood of Teamsters (“IBT”) requests a pre-motion conference and advises the Court that it intends to file a motion, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and consistent with this Court’s supervisory power under the Final Agreement and Order, Dkt. 4414, and the All Writs Act, 28 U.S.C. §1651, for a protective order enjoining the Independent Investigations Officer (“IIO”) from interfering with the IBT’s ongoing election through a baseless charge of obstruction against the IBT’s General Secretary-Treasurer, Ken Hall. Mr. Hall has had no involvement whatsoever in the production process of the garden-variety discovery dispute among counsel that underlies the incendiary charge. Ballots for the IBT general election were mailed on October 6 and are due on November 14.

The IIO’s surprise attack interferes with the ongoing election, jeopardizes the working relationship between the IIO and IBT, and renders farcical the independent disciplinary mechanism of the Final Order. The IIO himself, in a July 20 meeting with IBT officials, stated that **“we will make absolutely certain that nothing that we do can even be slightly construed as interfering with the electoral process.** We, as a result of our role, we understand that this process that is about to occur in November is sacrosanct in terms of union membership.” With his October Surprise action against Mr. Hall, the IIO has not only reneged on these promises, but also laid bare a deliberate attempt to undermine the IBT and the integrity of its elections.

That attempt rests on the slenderest of reeds: approximately 50 emails (out of tens of thousands produced) whose dispute was never joined. At the July 20 meeting, the IIO reiterated his written instructions of April 12 and stated that a responsive production would be a rolling and iterative process: “my hope is that by Labor Day we’ll be in a good place; we’ll have been able to do our own audits of audits, we will be able to see what you produced during that process, we’ll have conversations, we can try to figure out what we need, be more specific if it’s possible to do without compromising the investigation. It should not be a problem.”

The IBT completed its rolling production on September 9, and ... nothing. The IIO did not call, did not write, and certainly did not have any conversations with the IBT about the production—until October 31, when he issued the charge of obstruction against GST Hall, purely as a salutary hostage because Mr. Hall had no involvement whatsoever in the ongoing document production. Such conduct is illegitimate, unfair, and beneath the good offices of the IIO and the Final Order under which we all operate.¹

¹ The IBT understands the government to be submitting its own letter addressing issues relating to the Final Order. The parties conferred on a potential streamlining of letters but were unable to reach a resolution. Should the Court set a consolidated schedule in lieu of the default rule governing responses/replies, the IBT will follow that schedule.

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The present impasse traces to a simple source: two patently overbroad requests for documents. On March 4 and 11, 2016, the IIO requested that the IBT produce *all* emails for *three* years from or to four high-ranking IBT officials. The IBT objected to the requests as overbroad and burdensome, and the parties corresponded throughout March and April. In letters dated March 30 and April 12, the IIO permitted the IBT to produce documents on a rolling basis and to withhold certain documents with a log that would permit the IIO to identify additional documents he wanted. *See, e.g.*, Ex. 1 (April 12 letter). Accordingly, through June, the IBT produced almost 20,000 documents (76,000 pages) and detailed logs of withheld documents.

In response to that production, and despite his earlier instructions, the IIO declared the IBT and its officers “not in compliance” with the Final Order, and reiterated his demand for *all* documents encompassed by his limitless requests, this time by July 26. The IBT protested the IIO’s contradictory instructions and requested to confer with the IIO. The IIO agreed to a meeting but, for reasons unknown, canceled the meeting until the IBT had “complied fully with its obligations.” A few days later, after being advised that the IBT intended to seek relief from this Court, the IIO reversed course again and agreed to meet with the IBT on July 20.

The July 20 meeting principally covered two subjects. First, the IBT expressed concerns that actions by the IIO would interfere with the upcoming IBT general election. These concerns were prompted by the IIO’s silence and escalation in the discovery dispute, as well as by other actions by the IIO. In response, the IIO repeatedly renounced conduct that would affect the election. For example:

- **diGenova:** “Let me tell you something. **We don’t want to get involved in the election at all.** ... This will not happen again, because first of all you’ve asked that it not happen again, and since you said that it can have a profound effect on the election, it’s not going to happen.”
- **Dinh:** “Part of my concern regarding the electoral process is that ... a threat of a charge of noncooperation or violation in this kind of environment is akin to threatening to indict Hillary Clinton. Because it can be spun badly, it has been used badly, because we are in a political season, and that is one of the fact you know from the spike of cases. That is a common political refrain. That somebody is being charged, or someone is not cooperating, that we’re going back to the Teamsters in the 1980s and the like. ... I only ask for your consideration ... that to use that threat of non-violation, especially in writing, carefully, because it will be used.” **diGenova:** “**You don’t have to worry about that**, the truth is, I don’t have any concern about that whatsoever. ... So we’re in full agreement on that.”
- **Dinh:** “I just don’t want us to be ... accused of noncooperation or violation of the final order, for the same electoral sensitivities that you’ll appreciate.” **diGenova:** “[B]elieve me, we are on due notice, **we will be subtracted from this process, we will be so invisible that union members are going to think that we are not around anymore....** [B]elieve me, I agree with you 100 percent; I think it would look bad, and I think that it’s unnecessary.”
- **diGenova:** “The bottom line is, **we will make absolutely certain that nothing that we do can even be slightly construed as interfering with the electoral process.**”²

² Upon request from the Court, the IBT will submit a full transcript of the July 20 meeting under seal.

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Second, the parties attempted to resolve the underlying document dispute. To that end, the IIO gave the follow instructions:

- “**You can have as much time as you need.** ... Forget the deadline. ... The deadline is gone.”
- “**Whatever I can do to make it easier for you to comply ... I will do.**”
- “You guys do whatever you have to do to figure out how to produce what’s required ... produce privilege logs, explain why things are being held in vast categories for individuals ... and then what we will do is at that point, **we will get together and discuss it with you.**”
- “Just continue to produce, on a rolling basis[.] ... [M]y hope is that **by Labor Day ... we will be able to see what you produced during that process, we’ll have conversations, we can try to figure out what we need[.]** ... It should not be a problem.”

Following the IIO’s instructions, by September 9 the IBT produced 52,857 documents (comprising 141,938 pages) and privilege logs for withheld documents. The cover letters for those productions explained the justification for any withheld documents and offered to confer with the IIO or his staff to produce any documents the IIO further demanded.

The IBT heard nothing for two months as the IBT general elections were contested. Ballots were sent to all IBT members on October 6, with a return deadline of November 14.

Then, on October 31, in the middle of the voting period, the IIO dropped its bombshell: It charged GST Ken Hall, heretofore absent from the dispute save being the recipient of the IIO’s unilateral demands, with “bringing reproach upon the IBT and violating its and his legal obligations” by “obstruct[ing] and otherwise interfer[ing] with work of the IIO,” to wit, “fail[ing] to provide the IIO with all the IBT documents the IIO informed Hall that he had deemed necessary to examine.” Buried among the 42 pages of bluster, indignation, and assertions of absolute authority is a simple gripe that the IBT had not produced, by our count, roughly 50 emails. Upon receipt of the complete charging documents on November 2, IBT counsel called the IIO with an offer to comply to reverse the untoward charges and pretermite the imperative for judicial intervention. But almost simultaneously, the charging documents were leaked, triggering exactly the result that the IIO’s intentional act intended: a “vote against Hoffa-Hall corruption” campaign, which included urging those who had already voted to request a new ballot. *See, e.g.*, http://www.teamstersunited.org/feds_charge_ken_hall; Ex. 2.

* * *

Despite renouncing any action that could “even be slightly construed as interfering with the election process,” the IIO launched the nuclear missile—with precisely the anticipated electoral effect—of an obstruction charge against the General Secretary-Treasurer. And the basis of his action is only that the IBT followed his April 12 written and July 20 oral instructions. Conduct that the IIO previously blessed, he now condemns with his professed God-like powers.

We need your help, your Honor, to stop this nonsense, to resolve the underlying discovery dispute, and to forestall further damage to the IBT’s electoral integrity—and, more precisely, to the IIO and the Final Order under which the IIO operates—inflicted by the misguided actions of his office.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "V. Dinh", with a stylized flourish at the end.

Viet D. Dinh