

**OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: WILLIAM LOBGER,)	Protest Decision 2017 ESD 378
FRANK HALSTEAD,)	Issued: February 10, 2017
TIM SYLVESTER,)	OES Case Nos. P-410-110416-NA,
TEAMSTERS UNITED, and)	P-411-110416-NA, P-412-110416-NA,
TEAMSTERS for a)	P-419-120316-NA & P-420-120316-NA
DEMOCRATIC UNION,)	
)	
Protestors.)	
)	

William Lobger, member of Local Union 401, filed a pre-election protest in Case No. P-410-110416-NA on November 4, 2016, pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest requested that voting in the International officers election be canceled and a revote scheduled. Ballots were mailed October 6, 2016, and the tallying of ballots was scheduled to commence November 14, 2016. The stated rationale supporting the request for cancellation and revote was that “multiple allegations of wrongdoing” had just been brought against General Secretary-Treasurer Ken Hall, a candidate for re-election to that position on the Hoffa-Hall 2016 slate, and the membership would have too little time to request new ballots to change their votes based on this new information.

Frank Halstead, a member of Local Union 572, filed a pre-election protest in Case No. P-411-110416-NA on November 4, 2016 against the IBT, Ken Hall, Hoffa-Hall 2016, and Viet Dinh, an attorney for the IBT. The protest alleged that Hall impermissibly withheld documents subpoenaed by the Independent Investigations Officer in order to conceal from the membership evidence of corruption, theft of union funds, and breaches of fiduciary duty by candidates on the Hoffa-Hall 2016 slate, including James P. Hoffa, Ken Hall, Rome Aloise, John Murphy, and William Hamilton. Hall’s conduct was said to violate the *Rules*’ provision promoting an “informed” election. The protest further alleged that Hall was assisted in this impermissible withholding by the IBT and its counsel, which assistance constituted union and employer support for a candidate in violation of the *Rules*.

Tim Sylvester, member of Local Union 804 and candidate for election to the position of IBT General Secretary-Treasurer on the Teamsters United slate, filed a pre-election protest in Case No. P-412-110416-NA on November 4, 2016, naming the same respondents identified in the Halstead protest. Although filed pre-election, Sylvester requested that his protest be considered in a post-election context. The protest alleged that Hall’s impermissible withholding of documents subpoenaed by the Independent Investigations Officer had the “purpose and foreseeable effect ... to deprive IBT members of information that would cause members to vote against the Hoffa-Hall slate.”

Teamsters United, a slate of candidates for International office, filed a post-election protest in Case No. P-419-120316-NA on December 3, 2016 against Hoffa-Hall 2016, the IBT, and “numerous Teamster employers.” The protest alleged that “the Hoffa slate and the IBT deliberately delayed corruption investigations of Hoffa slate members Ken Hall and Rome Aloise, and refused to produce subpoenaed documents that would have been damaging to the Hoffa campaign’s re-election hopes, until after the election,” denying union members the right to an “informed” election. The protest also alleged that the

results of the election were affected by conduct that was the subject of other pre-election protests; this aspect of Teamsters United's protest is severed for separate decision.

Halstead and Teamsters for a Democratic Union, an independent committee under the *Rules*, filed a post-election protest in P-420-120316-NA on December 3, 2016. The protest recapitulated the allegations Halstead made in his pre-election protest in Case No. P-411-110416-NA filed November 4, 2016.

Election Supervisor representative Jeffrey Ellison investigated these protests. They were consolidated for decision.

Findings of Fact

Charges lodged by the Independent Investigations Officer with the IBT provide the common factual predicate for all five protests. This summary of the charges and their procedural posture is provided as background to this OES ruling. The merits of these charges are all pending adjudication.

A. The charge against Ken Hall.

On October 31, 2016, Joseph E. diGenova, Independent Investigations Officer, issued a report to IBT General President James Hoffa recommending that a charge be filed against General Secretary-Treasurer Ken Hall "for bringing reproach upon the IBT and violating its and his legal obligations by engaging in conduct that violated the permanent injunction" in *United States v. International Brotherhood of Teamsters*. The IIO's proposed charge alleged that "Hall obstructed and otherwise interfered with work of the IIO, a person appointed to effectuate the terms of the Order, as described in the below report."

diGenova previously served on the Independent Review Board (IRB), a three-member panel created by the 1989 Consent Decree to investigate, *inter alia*, allegations of corruption and allegations of organized crime influence, control, or domination of the union, its officers, employees and members. Under the Final Agreement and Order ("Final Order") entered by the United States District Court (S.D.N.Y.) on February 17, 2015, the IBT was required, one year after entry of the Final Order, to "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."¹ The independent disciplinary mechanism under the Final Order is comprised of an Independent Investigations Officer (IIO) and an Independent Review Officer (IRO). The IRB first established by the Consent Decree continued in place for the first year of the Final Order, pending creation of the IIO and IRO positions. diGenova was appointed to the position of IIO by agreement of the IBT and the United States Attorney, effective February 17, 2016, one year after the Final Order was entered.

As specified by the Final Order, the IIO and the IRO "shall exercise such investigative and disciplinary authority as previously exercised by the IRB," as set forth in the Consent Decree and the disciplinary rules appended to the Final Order. In addition, the IIO and the IRO possess –

¹ Final Order, ¶25.

– 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.²

The report IIO diGenova forwarded to General President Hoffa on October 31, 2016 stated that General Secretary-Treasurer Hall failed or refused over an extended period to produce IBT documents the IIO had requested pursuant to its investigative authority under the Final Order. Based on this conduct, diGenova recommended that the IBT charge Hall with bringing reproach on the IBT by obstructing or interfering with the IIO’s investigation.

The IIO report and supporting exhibits detailed that on March 4, 2016 the IIO sent General Secretary-Treasurer Hall a request for documents in the IBT’s possession to be produced for examination, specifically, emails of William C. Smith III and Nicole Brener-Schmitz for the period March 1, 2013 to date of service and, in addition, emails of Hall for two discrete periods in 2013 and 2014. Smith was at the time and is currently the executive assistant to General President Hoffa; Brener-Schmitz was at the time IBT political director and is presently no longer employed by the IBT. The request was directed to Hall in his official capacity as custodian of the IBT’s records. On March 11, 2016, diGenova sent Hall an additional request for documents to be produced for examination, namely, emails of IBT Benefits Department Director John Slatery for the period June 30, 2014 to the date of service. Production of the requested documents was required within ten days after service of each notice. Thus, production in response to the March 4 notice was due no later than March 14; that for the March 11 notice was due no later than March 21.

In response to these notices to produce, Viet Dinh, IBT retained counsel, sent separate letters dated March 23, 2016 to diGenova, asserting that the notices were “sweeping,” “open-ended,” “intrusive,” “burdensome,” and/or “unduly vexatious.” Dinh stated that production in response to “broad, limitless requests” such as the first notice would not be made “at this time,” absent “[f]urther particularity.” He wrote that production in response to the second notice would be limited to documents related to a specific third-party actuarial firm and would be made “in due course.” diGenova responded to Dinh’s letters of March 23 with separate letters dated March 30, 2016, rejecting Dinh’s objections, but setting a new deadline of April 8 for full compliance with each notice to produce. Dinh responded with respect to the March 4 notice to produce, continuing to object to the request as “overbroad and remarkably vexatious,” asserting that “the Independent Investigations Officer is perfectly capable of making particularized

² *Id.*, ¶30.

requests,” and offering to “reach a mutually satisfactory resolution regarding the March 4 request.” With respect to the March 11 request, Dinh wrote separately on April 5 reasserting his previous position that the request was “unacceptably open-ended” but stating that the IBT “is proceeding apace with efforts to locate and produce responsive documents.” He requested an extension of time to April 22, 2016 to respond. diGenova granted the request by letter dated April 7, 2016.

Following additional exchanges of correspondence between diGenova and Dinh in April 2016, Dinh produced some documents in response to the March 4 notice on April 22, 2016, withholding volumes of documents under non-specific titles such as “Privileged,” “IBT administration,” and “Policy strategy.” diGenova replied by letter dated April 29, 2016, objecting to the IBT’s “unilaterally withheld material covered by the requests” as well as to the format of the material produced. diGenova wrote again on May 6, 2016, setting May 13 as a new deadline for production of all requested materials, and warning that the IBT “will not be in compliance with its obligations under the Final Order” should it fail to comply. Under continuing protest that the IIO’s request was unreasonable, Dinh produced on May 13 some 2,696 documents that he said were a portion of Slatery’s emails the IIO requested. Dinh stated that the produced documents were those the IBT’s software identified as containing particular search terms. Of those, Dinh stated that documents he asserted were protected by attorney-client privilege or pertained to healthcare legislation and policy strategy were not produced. On May 20, 2016, Dinh produced an additional 2,591 documents from Slatery’s emails that were culled using particular search terms, again excluding documents that were said to be protected by attorney-client privilege or legislation and policy strategy.

diGenova responded to this production with a letter to Hall dated June 28, 2016 stating that the production in response to the notices was unacceptable. Specifically, the letter said with respect to the March 4 notice to produce that Hall had “shielded 67% of the documents from review” by failing to produce them. Concerning the March 11 notice to produce, the letter stated that “[r]ather than complying with its obligations under the Order and Rules, the IBT unilaterally chose search terms and produced a limited number of Slatery’s emails responsive to those selected terms.” diGenova stated that “you are to provide all documents you were required to produce by July 5.” Dinh responded to this letter on July 5, 2016, not by producing additional documents but by stating the totals produced thus far, noting an upcoming meeting of July 18, 2016 to discuss further production, and expressing appreciation for the IIO’s “forbearance.” diGenova responded to Dinh’s letter on July 13, 2016, disputing Dinh’s assertion that the IBT had permission to exclude categories of documents from its production and stating further as follows:

In a final accommodation to Mr. Hall and the IBT, all withheld documents, with the exception of those covered by a legal privilege and those of Mr. Hall’s emails previously identified as related to UPS negotiations, must be produced in un-redacted form by July 26. All documents withheld based upon a legally recognized privilege must be clearly described on a log including the basis for the privilege claim and the necessary information to assess the claim’s validity including the names of all who received it. Your previously produced documents did not identify redactions, although they appeared to have been made. All documents that were redacted must be produced in their entirety by July 26.

diGenova, Dinh, and others met on July 20, 2016 to discuss compliance with the requests to produce. In a follow-up letter, diGenova acknowledged “in light of the time demands of the recent IBT convention, it was reasonable to further extend the IBT’s deadline for production beyond July 26, 2016.” Accordingly, he set a new deadline for production of September 6, 2016.

The production the IBT made on September 2, 7, 9, and 14, 2016, combined with the production it made previously, withheld 17,334 emails it claimed were “unresponsive” to the notices to produce and a further 15,278 emails it claimed were privileged. The IIO responded to this withholding of requested documents by issuing its October 31, 2016 memorandum to General President Hoffa recommending a charge against Ken Hall, the custodian of records for the IBT, for bringing reproach on the IBT by obstructing and interfering with the IIO’s investigation. Specifically, the memorandum stated the IIO’s view that Hall’s failure to comply with the notices was “permeated with evidence of bad faith,” relied on “frivolous claims of unspecified privileges to shield documents from the IIO’s examination,” and constituted an “unjustified defiance of his legal obligations” under the Final Order to comply with the notices to produce.

Per its procedures, the IIO made its October 31 memorandum public, and Protests P-410-110416-NA, P-411-110416-NA, and P-412-110416-NA were filed.

The IBT responded to the recommended charge against Hall with a press statement and an application requesting the United States District Court for the Southern District of New York to enjoin the charge. In the press statement, an IBT spokesman said the IIO “has turned a garden variety discovery dispute into World War III in order to interfere with the ongoing Teamsters national election.” He stated further that “[t]here is no allegation of corruption against Mr. Hall but that as the custodian of records he did not produce roughly 50 emails out of tens of thousands that were turned over.”

In its request filed November 3, 2016 for a pre-motion conference to enjoin the charge, the IBT, represented by Dinh, argued that the IIO’s charge was politically motivated and in bad faith, that “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.’” Dinh concluded the IBT’s filing with this plea: “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.”

The Government refuted the IBT’s contention that the charge against Hall was intended to interfere with the election, writing the following:

First, the IIO’s actions in issuing the Hall charge are fully in accordance with the Final Order and how the IRB operated in the past under the Consent Decree, thus belying the Union’s claim that the IIO engaged in “a deliberate attempt to undermine the IBT and the integrity of its elections.” (IBT Ltr. at 1). As relevant here, the Final Order provides that upon concluding an investigation, the IIO must decide if Union action is necessary; if so, the IIO must prepare a written investigation report detailing proposed charges and recommendations, and refer that report to the appropriate Union entity. (Final Order ¶¶ 31-32; Declaration of Joseph E. diGenova dated November 7, 2016. (“diGenova Decl.”) ¶¶ 3, 4). That is precisely what occurred here. The IIO examined Hall’s conduct in responding to notices of examinations that the IIO issued in connection with ongoing investigations into high-level Union members (including Hall himself), and concluded that

Hall had acted willfully and deliberately with the intent to impede the IIO's work. Upon reaching that conclusion, the IIO prepared and issued a written report and charge recommendation recommending that the General President charge Hall with bringing reproach upon the Union and violating the Final Order's permanent injunction against obstructing the work of the IIO. (diGenova Decl. ¶¶ 5-7 & Ex. 1 (w/o attachments)).

The Government continued, submitting that the election and disciplinary processes under the Final Order, and the Consent Decree previously, are separate, and one does not wait for the other. Thus:

That the charges against Hall happened to ripen during an election season, such that the IIO issued his written charge report during that time, has no bearing on the legitimacy of the IIO's performance of his duties in this matter. The Final Order does not treat charges that ripen during an election season any differently than other charges, and does not provide that the issuance of charge reports should be delayed during an election season. Nor does the Final Order provide that written charge reports issued during an election season be kept concealed from members. (See Final Order ¶¶ 31-35; diGenova Decl. ¶¶ 7, 9).

On November 15, 2016, the Court denied the IBT's letter motion to enjoin the charge recommended against Hall, writing:

[T]he Court notes that the IIO has taken no action that contravenes the Final Order. The Final Order provides that upon conclusion of an investigation, the IIO must decide if the investigation warrants instituting an action. Final Order ¶¶ 31-32. If such is the case, as the Government notes, then "the IIO must prepare a written investigation report detailing proposed charges and recommendations, and refer that report to the appropriate Union entity." (Letter from Tara M. La Morte, Nov. 8, 2016, ECF No. 4356) (citing Final Order ¶¶ 31-32; Declaration of Joseph E. diGenova, Nov. 7, 2016 ¶¶ 3, 4.)

Here, the IIO conducted just such an investigation and determined that, in responding to the IIO's notices of examination, Ken Hall had acted willfully and deliberately to impede the IIO's investigation. (Letter from Tara M. La Morte, Nov. 8, 2016, ECF No. 4356.) When the IIO reached this determination, it issued a written report detailing the charges against Hall and recommending that the General President take action against him. (See *id.*) That the IIO issued the report in the middle of an election is irrelevant, and the IBT does not claim that the Final Order directs otherwise.

The Court also notes that the 2016 Election Rules do not impede or constrain the Independent Disciplinary Officers ("IDO") in the exercise of their powers pursuant to the Final Order. (See Letter from Richard W. Mark, Nov. 10, 2016, ECF No. 4541.) Furthermore, the Court of Appeals has instructed that the election and disciplinary processes are separate. *United States v. IBT (Carey)*, 156 F.3d 354, 361-62 (2d Cir. 1998). The IBT's request that the Court interfere with a disciplinary process duly instituted by the IIO on the basis that it coincides with a Union election is therefore without basis.

United States v. IBT, 88 Civ. 4486, Order (ECF No. 4548) 2-3 (S.D.N.Y. Nov. 15, 2016).

The same day the IBT filed its letter motion to enjoin the charge against Hall, November 3, 2016, the United States Attorney moved to enforce the Final Order, stating that “consistent with the authority exercised by the IRB under the Consent Decree, the IIO [under the Final Order] has the unfettered right to examine any and all records of the Union in his discretion.” The filing further argued: “Nor does anything in the Final Order suggest that the Union can unilaterally deem broad swaths of documents encompassed by the IIOs examination notices as ‘Non Responsive.’ Indeed, the exact opposite is true. In the context of addressing changes to the independent disciplinary mechanism during the Transition Period, the Final Order states that a mechanism ‘without ultimate and unfettered authority to investigate’ and discipline Union members or entities ‘shall presumptively undermine the independent and effectiveness of the disciplinary mechanism, and therefore be impermissible.’” The Government described “the IIO’s investigatory powers [as] undeniably broad. This is deliberately so. As the Final Order explicitly recognizes, a robust ability to investigate is the primary guarantee of an effective and independent disciplinary system.” The Government concluded that: “If the Union can stonewall the IIO’s investigation into its officials and employees, the IIO cannot be as independent as the Final Order requires; rather, he or she will only be as effective as the Union and those in power allow.”

After receiving the IBT’s response to the motion and the Government’s reply, the Court on December 27, 2016 granted the Government’s motion to enforce the Final Order and compel compliance with the notices to produce. The Court held that “the Final Order does not authorize the IBT to withhold the tens of thousands of emails at issue from the IIO,” reaffirming “the Final Order’s sweeping grant of authority to the IIO ... that the IBT may not *sua sponte* elect to withhold whatever documents it deems unresponsive to the IIO’s requests. ... [Further, t]he Court finds that the plain text of the Final Order authorizes the IIO to require the IBT to produce privileged documents when doing so is necessary to the performance of its investigation.” *United States v. IBT*, 88 Civ. 4486, Order (ECF No. 4568) 5 (S.D.N.Y. Dec. 27, 2016). The Court ordered the IBT to produce all documents requested in the March 4 and March 11 notices to produce within two weeks of the date of the Court’s order. On January 10, 2017, the IBT, by its General Counsel, provided assurance to the Court that the IBT had orders in place to preserve the documents that were the subject of the IIO’s requests, and that document holds “have continuously been in place since the document requests were received.” *United States v. IBT*, 88 Civ. 4486, Letter to Court (ECF No. 4569) 5 (S.D.N.Y. Jan. 10, 2017). No further applications relating to the request have been docketed with the court. It has been reported that the IBT produced documents to the IIO on January 10, 2017.

Under IIO rules, the charge against Hall must be heard by a panel of the GEB and a report issued by April 30, 2017.

B. The charges against Rome Aloise.

The proposed charge against Ken Hall was not the first charge recommended against a candidate for International office in the 2015-2016 International officer election. The IRB on February 10, 2016, a week before the implementation of the IDO system created by the Final Order, submitted a report to the IBT General Executive Board recommending charges be filed against Rome Aloise. These charges are still pending.

Rome Aloise is an IBT vice president at large. In addition, he is principal officer of Local Union 853 and president of Joint Council 7. On February 10, 2016, some four and one half months before the start of the IBT convention, the IRB issued a 122-page report, supported by 372 exhibits, detailing its

allegations against Aloise. The publicly available report concluded with the IRB's recommendation that Aloise face charges of bringing reproach upon the IBT in three particulars, *viz.*

- “In 2013, while an International Vice President, President of Joint Council 7 and principal officer of Local 853, you requested and received things of value from Southern Wine and Spirits, an employer of Teamster members with whom you were negotiating. As detailed above, these things of value were six admissions to a Playboy Super Bowl party for another Teamster official and his family and friends, a job for your cousin and the retention of your cousin in his job after the employer determined he was not performing as required. In addition, as described above, in February and March 2013, you requested a thing of value, a job for your cousin, from Gillig Corporation which employed Teamster members.”
- “In 2004 and subsequent years, while principal officer of Local 853, you entered into collusive, sham collective bargaining agreements with GrandFund. As described above, you allowed the employer to select the bargaining agent for his employees and caused Local 853 to commit an unfair labor practice in violation of 29 U.S.C. §158(b)(1)(A) by interfering with the employees' right to select their representative, 29 U.S.C. §157. As described above, in addition, you failed to follow IBT Constitutional and Local 853 Bylaw requirements regarding contract negotiations and ratifications. In addition, in 2012 you allowed an ineligible person to obtain and retain membership in Local 853 as detailed in the above report in violation of Article XIV, Section 3 of the IBT Constitution.”
- “In 2013, while an International Vice President, and principal officer of Joint Council 7 and Local 853, you engaged in a pattern of misconduct designed to prevent a fair officer election in Local 601, including using union resources to support a candidate and subvert her opponents and attempting to deny members' LMRDA rights to free speech, to sue and to fair hearings. In addition, you breached your fiduciary duties by ignoring, when known to you, your candidate's wrongdoing and also by failing to act to end her known defiance of the General Secretary's instructions as detailed in the above report. By failing to ensure the internal political rights of members to a fair election, you also breached your fiduciary duties under 29 U.S.C. §501(a). Your pattern of misconduct is described in the above report.”

The allegation that Aloise requested and received things of value from Teamster employers in violation of his obligations under the Taft-Hartley Act, the Consent Decree, and the IBT constitution is based on three separate incidents. First, the report detailed documentary and testimonial evidence that Aloise, the lead Teamster official on Southern Wine and Spirits (SWS) matters within the union, took an active role in collective bargaining negotiations between SWS and Minnesota Teamsters Local Union 792 that caused the local union official to accept a wage and benefit proposal that was less than what the employer was prepared to offer. Aloise became involved in the negotiations at the employer's request. An email Stuart Korshak, the employer's lawyer, sent to SWS's president on January 30, 2013, described Aloise's involvement in the negotiations that day as follows:

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Bill and I have been meeting at our Chicago office with Rome Aloise and the Minnesota Teamster leader Larry Yoswa today over the contract Yoswa and his members rejected unanimously last fall when SWS made its first proposal. Yoswa is weak and follows his members instead of leading them and I doubt he would or could ever agree to a fair contract with SWS by himself. Rome has lead [*sic*] the negotiations for the Minnesota all day and caucused with Yoswa several times when he was balking at a rationale [*sic*] deal. We will get a good deal done tonight. When you talk to Rome ... you should thank him for his assistance on Minnesota. It would have continued to be a mess without him. . . . Also, Rome wants to get six tickets for Hoffa's team to the liquor industry's party at the Super Bowl this weekend. Can SWS help?

The next day, the lawyer sent a follow-up email to the SWS president to report on the conclusion of the negotiations. Thus:

Rome was terrific yesterday ... We told 792 that we won't get out of line with [a competitor] and couldn't care less what [another competitor] is paying because they are in a different industry and that we don't care what [a third competitor] is paying because it is a bit player in liquor. We told [the local union official] we wouldn't be his stalking horse ... He wanted to walk out on us all through the days but Rome wouldn't let him and finally forced him to take what we offered over the weekend for the first year, make it good for 14 instead of 12 months so we get 2 months behind [a competitor's] expiration date, and accept less of a bonus than the additional money we were prepared to give before the meeting as our final bottom line. He also committed publically [*sic*] this time in front of Rome to recommend this deal and get it done You should get Dale's take off the record as to the role Rome played and what would have happened with Local 792 if you hadn't stopped what was going on and asked me to get Rome back in the middle and controlling this ...

The IRB report stated that Korshak, SWS's lawyer, followed up the same day to get the Super Bowl party tickets that Aloise had requested. Korshak emailed the SWS president about the Playboy Crown Royal event to be held February 1, 2013: "Rome would like to get one of Hoffa's key guys 6 passes or tickets to this event. His name is WC Smith. I told Rome you would try to help." The SWS president used his connections to obtain and provide the tickets Aloise requested for Smith and his party, at no charge to Smith and his party. On February 9, 2013, the Saturday following Super Bowl XLVII, SWS's president emailed Aloise his thanks "for the help in Minnesota." Aloise replied to the SWS president the same day, stating "I am remiss in not thanking you and your dad [the SWS chairman] for the passes to the Super Bowl party. Hoffa's Ex Asst and his friends loved it."

The IRB's report recommending its proposed charges against Aloise contended that Aloise as an employee representative violated the Taft Hartley Act by requesting a thing of value from an employer whose employees the union represented.

As the IRB report stated further, the Playboy Super Bowl party tickets was not the first instance where Aloise requested a thing of value from a Teamster employer. He also requested two employers to hire his cousin. When the cousin did not make it through the hiring process with the first employer, Aloise instructed the local union business agent with responsibility for that employer to retaliate against the employer. After some delay, the cousin was hired by the second employer but underperformed during the

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probationary period to the extent that the employer would have terminated the employee but for the fact that he was Aloise's cousin. At Aloise's urging, the employer retained the cousin, despite his substandard performance.

The IRB report also alleged that Aloise sought employment for his stepson from three different employers. Aloise abandoned these efforts when he learned the stepson had been charged criminally with assault and battery, robbery, and displaying a deadly weapon.

According to the IRB report, in each instance where Aloise requested that an employer hire his relative, he was engaged in collective bargaining with the employer at the same time. The IRB report contended that his requests for things of value from employers of the members he represented was a criminal violation of the Taft Hartley Act and racketeering.

The IRB report also alleged that Aloise brought reproach on the IBT by entering into a collusive arrangement with GrandFund, an employer that provides services to Taft Hartley benefit funds, that resulted in a sham collective bargaining agreement. Aloise allowed GrandFund's owner, Charles Bertucio, to become a member of Local Union 853 and receive health insurance benefits even though he, as the owner, was ineligible for either under the collective bargaining agreement. On February 11, 2016, the IRB by memo to General President Hoffa also recommended that Bertucio be charged with "knowingly engaging in a scheme to become and remain a member when he was not eligible," in violation of the IBT constitution.

The IRB report also alleged that Aloise brought reproach upon the IBT by engaging in a pervasive pattern of violative conduct in connection with Local Union 601's officers election by, among other things, using union resources to support his favored candidate, interfering with a member's protected LMRDA rights of free speech, fair hearing, and to sue in court, and appointing the hearing panel and sitting on an election protest involving the election in which his favored candidate competed.

The letter forwarding the IRB's recommended charges, report, and exhibits to the IBT's General Executive Board was presented pursuant to the procedure required by the Consent Decree. As the letter explained:

Upon review of the report, if you deem it appropriate, charges under Article XIX of the IBT Constitution should be filed. You have ninety days within which to file the charges, hold a hearing and forward a final written report to the IRB. Pursuant to paragraph I(9) of the IRB Rules, not meeting this deadline may be considered a failure to cooperate with the IRB. Copies of hearing transcripts should be furnished to the IRB and to the Chief Investigator.

If you decide to reject the IRB's recommendation, you must provide a written explanation with the specific reasons for failing to accept. Within seven days of receipt of this letter, please inform the IRB of the actions planned.

Per the terms of the forwarding letter and the Consent Decree, the GEB was to have concluded the hearing on the charges the IRB recommended against Aloise within ninety days of transmittal of the report and recommendation, or by May 10, 2016. Consistent with this obligation, the IBT on March 15, 2016 issued a notice of hearing for April 28, 2016. Some two weeks later, on March 31, 2016, the IBT made written

request to the IIO for an extension of time in which to complete the matter. This request was granted, extending the completion date from the original May 10, 2016 to July 17, 2016. The IBT thereafter, on April 7, 2016, set hearing before a panel of GEB members for June 6, 7, 14, and 15.

On May 18, 2016, counsel for Aloise requested an indefinite stay of proceedings on the charges after learning that the U.S. Department of Justice was conducting a criminal investigation into the same conduct that was the subject of the IRB report. Counsel argued that Article XIX, Section 7(a) of the IBT constitution, which states that “no member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal has been concluded,” justified the indefinite stay. The IBT, through its counsel Viet Dinh, agreed, writing IIO diGenova on May 24, 2016 the IBT “intends to request from the Independent Review Officer an extension for good cause of the disciplinary proceedings against Mr. Aloise. The IBT intends to seek an extension until the DOJ has closed its criminal investigation or, if a judicial proceeding is initiated, upon completion of that process. The IBT respectfully requests your non-opposition to this extension.” The IIO responded by letter May 26, 2016, denying the request for postponement for failure to show good cause. Dinh wrote IRO Civiletti on June 3, 2016 to announce the IBT’s decision to stay the Aloise hearing indefinitely. IRO Civiletti, through his chief of staff, responded in a letter to General President Hoffa on July 18, 2016, stating the following:

I hereby notify you of my determination that the Union has not pursued the disciplinary proceeding against Rome Aloise in a lawful, responsible, or timely manner; and that the Union’s decision, based on Mr. Aloise’s request, to stay for an indefinite period of time the date of the hearings on the charges against him, pending the resolution of any criminal investigation against him, is inadequate under the circumstances.

IRO Civiletti cited *United States v. International Brotherhood of Teamsters*, 247 F.3d 370 (2d Cir. 2001) (“*Carey and Hamilton Discipline*”), where the Court of Appeals held that a member under criminal investigation but not yet indicted was not entitled to a stay of his internal union hearing under Article XIX, Section 7(a) of the IBT constitution because he was not “facing criminal or civil trial” within the meaning of that provision. “Here,” the IRO wrote, “Mr. Aloise is in the same position as Hamilton was at the time of his scheduled hearing; he may be under investigation for potential violation of the criminal laws, but he is not under indictment and is not facing a criminal trial.” Accordingly, the IRO directed the Union to inform him within twenty days “that a prompt hearing on the charges against Mr. Aloise has been scheduled.” Absent such notice, the IRO declared he “will promptly schedule a de novo hearing on the charges against Mr. Aloise.”

On August 10, 2016, IRO Civiletti assumed jurisdiction of the Aloise hearing himself because the IBT did not set a hearing for Aloise per the terms of Civiletti’s July 18 letter. Civiletti set a *de novo* hearing on the charges against Aloise for October 11, 2016. This hearing was postponed first to November 30, 2016, and then indefinitely, owing to Civiletti’s retirement. On December 15, 2016, the Government and the IBT jointly nominated Barbara Jones, a former Judge of the United States District Court for the Southern District of New York, to the vacant IRO position. Her appointment was approved by Judge Preska on December 16, 2016. Hearing on the Aloise charges before IRO Jones is scheduled for March 14 through 16, 2017.

C. The charge against W.C. Smith.

The IRB's investigative report issued February 10, 2016 on Aloise published, among other things, evidence of the solicitation and receipt from an interested employer of Playboy Super Bowl party tickets to be used by W.C. Smith, the executive assistant to General President Hoffa. The party occurred February 1, 2013.

On November 17, 2016, four days after the counting of ballots in the International officers election began, IIO diGenova issued a 24-page report to Hoffa recommending a charge against Smith "for accepting a thing of value from an employer of IBT members in violation of federal law, 29 USC §186(b), of the permanent injunction in *United States v. International Brotherhood of Teamsters*, and of the IBT Constitution, Article XIX, Sections 7(b)(2), (11) and (13)." The report detailed the following:

In January 2013, during contract negotiations between a local and an IBT employer in which International Vice President Rome Aloise ("Aloise") was participating, he solicited the IBT employer to obtain admissions for Smith and his companions to an exclusive non-public Super Bowl party in New Orleans. Smith knew Aloise requested the IBT employer to obtain the admissions for him. Smith received and used the admissions that the IBT employer obtained for him. These party admissions were things of value worth, at least, \$6,000. Smith violated 29 U.S.C. §186(b), which forbade an IBT employee from soliciting and receiving a thing of value from an IBT employer, and committed an act of racketeering in violation of the permanent injunction in the Consent Order. He also violated Article II, Section 2(a) and Article XIX, Sections 7(b)(2), (11) and (13) of the IBT Constitution.

Much of the evidence the IIO relied on to support the charge against Smith was obtained in connection with the investigation of Aloise and was detailed in the February 10, 2016 IRB report recommending charges against Aloise. The IIO supplemented the investigative record for the charge against Smith by conducting his oral examination on July 14, 2016 and August 11, 2016. Thereafter, the report recommending the charge was issued on November 17, 2016. Under the IIO rules, the charge against Smith must be heard by a panel of the GEB and a report issued by May 19, 2017.

D. The charges against Nicole Brener-Schmitz.

On November 9, 2016, four days before the counting of ballots in the International officers election began, IIO diGenova issued a 72-page report to Hoffa recommending five charges against Nicole Brener-Schmitz for embezzlement and bringing reproach upon the IBT, *viz.*

- "between approximately January 2013 and June 2015, while an IBT employee, you embezzled at least \$11,495.43 from the IBT, by causing the IBT through false representations you made to pay for expenses incurred without a union purpose."
- "between January, 2013 and August, 2015, while an IBT employee, you brought reproach upon the IBT and violated Article II, Section 2(a) of the IBT Constitution when you submitted to the IBT at least 564 false receipts for charges you incurred on your IBT credit card. You also falsified expense reports you submitted. The union was required to maintain accurate records pursuant to 29 U.S.C. §§431, 436 and 439, and IBT policies. Your causing the IBT to fail to comply with its

record keeping obligations under federal law and your failure to follow IBT policies exposed the IBT to the risk of civil and criminal actions. 29 U.S.C. §§439, 440; 18 U.S.C. §2.”

- “on at least two separate occasions, in 2013 and 2015, you caused the IBT to extend interest free loans to you, each of which was over \$2,000, in violation of the IBT’s legal obligations under 29 U.S.C. §503, as described in the above report. Under 18 U.S.C. §2(b), you were as liable as the principal for these criminal acts.”
- “you brought reproach upon the IBT through defrauding it by submitting to it personal checks when you knew there were insufficient funds in your account to cover the checks you gave the IBT to pay it for your debts owed it for illegal loans. These were crimes with the IBT as your victim.”
- “you received \$4,000 in your personal bank account from the executive of an organization that received donations from the IBT PAC, D.R.I.V.E. As part of your duties, you were involved in having donations from D.R.I.V.E. made to this organization. You did not disclose your personal receipt of money from the donee organization’s executive to anyone at the IBT as required under its Code of Conduct and the law.”

The accompanying report and exhibits demonstrated that, over several years, Brener-Schmitz abused her IBT-issued credit card by charging personal expenses to it, ranging from personal utility expense to personal merchandise, personal services, and Uber rides for personal transportation. The report further detailed that Brener-Schmitz altered Uber receipts to mislead IBT auditors that the expenses were work-related. The report documented that, over years, the IBT was aware that Brener-Schmitz charged personal expenses to her IBT-issued credit card. Three times the IBT suspended her credit card privileges. At least as many times it required her to reimburse the IBT for personal expenses charged to the IBT card, and at least twice her checks to the IBT were returned for non-sufficient funds. Brener-Schmitz was terminated from employment with the IBT effective September 16, 2016, with continuation of salary and benefits through October 9, 2016. The separation agreement between Brener-Schmitz and the IBT provided that the parties “voluntarily and unconditionally release and forever discharge each other from any and all claims, causes of actions, suits, debts, charges, torts, ... claims for damages,” and the like. However, the agreement specified “this release is not intended, and shall not be construed, to preclude the bringing and processing of internal charges against Employee under Article XIX of the IBT Constitution, should they be recommended by the Independent Investigations Officer.”

E. Public disclosure of the investigations and recommended charges.

The IRB report recommending charges against Aloise was made public contemporaneous with its forwarding to General President Hoffa on February 10, 2016. Nearly immediately, protestors TDU and Teamsters United reported the charges and developed a campaign around them. Thus, in a post first made to TDU’s website on February 12, 2016 and updated February 26, 2016, TDU announced that “Rome Aloise, Hoffa’s Main Man in the West, Charged by IRB.” The article included the following:

The charges are wide-ranging and involve almost every conceivable labor crime, including:

- racketeering
- requesting things of value from employers during negotiations

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- taking employers gifts, including admissions to Playboy’s Super Bowl Party for Hoffa’s Executive assistant and his friends
- trying to leverage jobs for his relatives from employers, including UPS, Costco and others during labor negotiations
- negotiating a sham collective bargaining agreement
- using union resources to punish political opponents and prevent a fair Teamster election

On February 23, Hoffa filed the IRB-recommended charges against Aloise. A panel of the General Executive Board will hold a hearing. The timeline for them to hold a hearing and report their decision to the Disciplinary Officers is 90 days. Thus, by May, this matter should be in the hands of the Disciplinary Officers (the former IRB members) for review and a decision.

The charges are very likely to end Aloise’s career. We expect Hoffa to dump him from his slate, and soon Teamster officials in California, who have been kissing his ring, will fail to return his calls.

Teamsters United joined TDU in publicizing the charges on February 13, 2016, posting to its Facebook page, “Hoffa-Hall Slate VP sells out the members for Super Bowl tickets? A new low.” It accompanied this post with a photo depicting a group of men wearing suits and convulsed in laughter, with a caption, “Aloise will give us concessions if we give him 6 Super Bowl tickets.” A post on Teamsters United’s Facebook page on February 15, 2016, titled “Hoffa Running Mate Busted for Corruption,” read, “Rome Aloise, an International Vice President and the leader on the Hoffa-Hall Slate, has been charged with a litany of corruption which are detailed in a 122-page report by the Independent Review Board,” and linked to an article on TeamstersUnited.org. Publicity on the IRB charges against Aloise was continued by both TDU and Teamsters United through March, April, May, and up to the June 2016 IBT convention. The publicity included Facebook and website posts, distribution of campaign flyers, candidate speeches, and face-to-face campaigning in worksite parking lots.³

In addition, the charges against Aloise were publicized in the IRB’s report in *Teamster* magazine, the official periodical of the IBT mailed to every member in the United States. Thus, the April/May 2016 issue, mailed April 25, 2016, included a summary of the IRB’s charge report as the first listing under the

³ TDU continued publishing material on the Aloise charges after the convention. For example, a September 16, 2016 posting in the “News” section of TDU’s website headlined “Hoffa Faces Racketeering Probe as Teamster Election Approaches” reported that TDU had written a letter to the U.S. Attorney for the Southern District of New York calling for the action from the Department of Justice. The posting summarized the charges recommended in the IRB Aloise report. The referenced letter itself was published through a link in the news article. That letter summarized, *inter alia*, “public record” material discussing alleged misconduct of Bertucio, Smith and Brenner-Schmitz. See http://www.tdu.org/hoffa_faces_racketeering_probe_as_teamster_election_approaches, with link to September 12, 2016 letter from TDU Counsel to the Office of the United States Attorney (last visited on February 10, 2017).

heading “New Charges.”⁴ The summary identified Aloise as the target of the recommended charges and described the conduct involved as

requesting and receiving things of value from IBT employers in violation of 29 U.S.C. § 186(b) and Article XIX, Section 7(b)(2), (11), and (13) of the IBT Constitution. . . . [V]iolating Article XIX, Section 7(b)(1) and (2) and Article XIV, Section 3, of the IBT Constitution, violating Article IV, Section 6 of the Local 853 Bylaws and bringing reproach upon the IBT through allowing an ineligible person to obtain membership and entering into a sham contract with The GrandFund.

[B]ringing reproach upon the IBT through a pattern of misconduct designed to prevent a fair officer election in Local 601, including using union resources to support a candidate and subvert her opponents in violation of 29 U.S.C. § 481(g); attempting to deny members’ LMRDA rights to free speech, to sue, and to fair hearings; breaching his fiduciary duties under 29 U.S.C. § 501(a) by, among other things, failing to act to end a Local officer’s known failure to comply with instructions from the General Secretary-Treasurer’s office for political reasons in violation of Article II, Section 2(a) and Article XIX, Section 7(b)(1), (2) and (10) of the IBT Constitution.

The June/July 2016 issue of *Teamster*, mailed June 24, 2016, repeated the summary of charges and included the update that the IBT had issued notice of hearing for April 28, 2016 and subsequently requested an extension to complete the matter by July 17, 2016, an extension the IRO granted. No protest was filed alleging that the IBT or the GEB had delayed or was delaying the trial to protect the Hoffa-Hall 2016 slate of candidates from political consequences the Aloise hearing might bring.

In his acceptance speech at the IBT convention, delivered Friday, July 1, 2016, Teamsters United’s candidate for General President, Fred Zuckerman, referenced the corruption charges. Thus:

There’s a straight line that runs from corruption to benefit cuts and concessions. It’s got to stop. And that’s why I’m running for General President.

The corruption-concessions connection affects Teamsters in every industry, and it runs straight into Hoffa’s office. One of Hoffa’s top running mates, Rome Aloise, got caught taking gifts from employers. Costco, UPS, you name it. Rome had his hand out to everyone.

In contract negotiations with a liquor distributor Rome strong-armed local officers into dropping the members’ contract demands. In return, the bosses gave Rome tickets to the Playboy party at the Super Bowl for Hoffa’s chief of staff. You sell out the members, and you walk away with tickets to a Playboy party for Hoffa. That’s the corruption-concessions connection. Hoffa and Hall have seen the charges and evidence against Rome. Hoffa-Hall still takes Rome’s campaign money. They gave him a spot on their slate. I don’t want

⁴ The same issue included a description of the charge against Bertucio. A related charge, filed against Lisa Ramsay, a GrandFund employee who allegedly did not cooperate with the IRB’s investigation into the sham contract between GrandFund and Local Union 853, was also described in the same issue of *Teamster*.

Rome's dirty money or his support. I'm not here for sellouts who are here and in it for themselves. I'm here for the members.

A video of Candidate Zuckerman's acceptance speech was posted to the OES website (www.ibtvote.org) where it could be viewed, downloaded, or shared.⁵

The IRO's letter of July 18, 2016 rejecting the indefinite stay of Aloise's hearing was made public. TDU posted an article on its website the next day, July 19, 2016, quoting from the letter and reporting that Aloise's attorney had sought the indefinite stay.

F. Aloise's election as IBT vice president – West region.

Aloise was nominated at the IBT convention for the position of IBT vice president – West region. Six other candidates were also nominated for that position. The Hoffa-Hall 2016 nominees were Aloise, Ron Herrera, and Rick Middleton. Teamsters United placed in nomination Frank Halstead, Richard Galvan, and Benny Hernandez. A seventh candidate, Rick Hicks, was nominated without slate affiliation.

Under the *Rules*, a minimum tally of five percent of delegates voting was necessary to confirm each nomination to the rank-and-file ballot. For the West region, that threshold percentage was 22 votes. Four candidates – Hoffa-Hall 2016's Aloise (335 votes; 78.5%), Herrera (338; 79.2%), and Middleton (294; 68.9%), as well as the unaffiliated candidate Hicks (95; 22.2%) – surpassed that five percent, 22-vote threshold. None of the Teamsters United candidates achieved the minimum necessary: Halstead polled 19 votes (4.4%); Galvan, 18 (4.2%); and Hernandez, 16 (3.7%).

Unaffiliated candidate Hicks declined the nomination following the delegate vote. Accordingly, only the three Hoffa-Hall 2016 candidates were duly nominated to the rank-and-file ballot for the three West region positions available. As the number of duly nominated candidates who accepted their nominations did not exceed the number of positions available for election, the nominated candidates on the Hoffa-Hall 2016 slate were declared elected at the convention to the IBT vice president – West positions.

Aloise was elected even though he faced IRB corruption charges that the Teamsters United slate campaigned on, a point he appeared to acknowledge on the convention floor when asked whether he accepted the nomination for vice president – West region. Aloise replied, "To those who believe in me, thank you. You hold me up. I proudly accept the nomination..." Proceedings, 29th Convention IBT, Third Day Morning Session at 19 (June 29, 2016).

G. Persons said to be under investigation.

Several protestors contend that one or more IIO investigations are ongoing that focus on allegations of corruption and racketeering involving Hoffa, Hall, Smith, John Murphy, and William Hamilton, among others. A post made to Teamsters United's website on September 26, 2016, ten days before ballots were mailed and seven weeks before tallying was to begin, summarized the claims in the following terms:

⁵ The acceptance speeches of two candidates nominated for IBT General President, and the two candidates for IBT General Secretary-Treasurer were all posted on the OES website after the convention.

NEW CORRUPTION PROBE HITS HOFFA

As Teamster members prepare to vote for International Union officers, the Independent Investigations Officer has launched a major corruption probe into Hoffa for racketeering.

The corruption trail leads to General President Hoffa and his inner circle, including Hoffa's son, Hoffa-Hall Vice President Rome Aloise and Hoffa's Chief of Staff Willie Smith.

Anti-corruption officers are now in Federal Court as part of a widening probe into top officials for taking employer gifts and payoffs in exchange for rigging the bidding process for business with Teamster benefit funds.

The money trail begins with Charles Bertucio, an investment firm owner and insurance broker who was paid by health insurance corporations to land business with Teamster benefit funds.

Bertucio bought access to Hoffa and top Teamster officials by taking them on golf trips to Europe, flying them on private jets, and giving away tickets to the World Series and the NBA Finals.

Bertucio even hired Hoffa's son, Geoffrey Hoffa, to grease his way to Benefit Fund business from the Teamsters.

Hoffa administration officials helped Bertucio land business from Teamster benefit funds, and rigged the bidding process so Bertucio would get Teamster accounts.

When Bertucio submitted a substandard bid to the VEBA Trust, a fund covering over 20,000 Teamsters, Hoffa-Hall VP Rome Aloise and Chief of Staff Willie Smith shared inside information with Bertucio so he could restructure his bid, charge as much as possible and still land the business.

Hoffa advisor Richard Leebove monitored the Fund's deliberations even though he is exclusively a political and campaign operative and has no role in Teamster benefit funds. Bertucio landed the account and three months later, he took Hoffa, Smith, Leebove and others on a golf trip to Scotland to play at St Andrews.

The Independent Investigations Officer is now in Federal Court with subpoenas for the phone and financial records of Hoffa's chief of staff as part of an investigation into the VEBA scam and the cover-up of the pay-for-play golf trips.

"Hoffa-Hall and corrupt officials sell out the members and use our union to line their own pockets," said General President candidate Fred Zuckerman. "Teamster members can clean house when they get their ballots in October."

http://www.teamstersunited.org/new_corruption_probe_hits_hoffa (last visited on February 10, 2017). The article linked to Teamsters United's campaign literature, an 8-page spread the dominant theme of

which was the corruption allegations made against top IBT officials and the impact of that corruption on rank-and-file members.⁶

In its brief in support of the motion to enforce the Final Order filed November 3, 2016, the Government’s description of the IIO’s investigation corroborated what Teamsters United had earlier described in the September 26, 2016 post on its website. The Government wrote:

The IIO is investigating the conduct of a number of high-ranking Union officials and employees, including Ken Hall, General Secretary-Treasurer of the Union, William C. Smith III, Executive Assistant to the General President, Nicole Brener-Schmitz, formerly the IBT’s Political Director, and John Slatery, the IBT Benefits Department Director. Generally, these investigations concern broad practices of Union officers and employees receiving payments and gifts from employers, vendors, and others doing business with the Union. This includes the awarding of contracts for a Union fund in 2013, on which Hall, Smith, and other high ranking Union officials were Trustees, to a company represented by a facilitator, Charles Bertucio, who had close personal relationships with several high ranking Union officials; payments and the giving of things of value to high ranking Union officials, by vendors, their agents, employers and others doing business with the Union or its funds, and allegations of widespread financial wrongdoing by Brener-Schmitz that was known within the Union and tolerated by senior officials.

United States v. IBT, 88 Civ. 4486, U.S. Memorandum of Law (ECF No. 4526) 3 (S.D.N.Y. Nov. 3, 2016)

To date, only those charges against Hall, Aloise, Bertucio, Smith, and Brener-Schmitz detailed in Sections A. through D., above, have been forthcoming from the IIO. None has been adjudicated.

H. The results in the International officers election.

The tally of ballots in the International officers election, completed November 19, 2016, showed the following for at-large positions:

General President (elect 1)		
James P. Hoffa	Hoffa-Hall 2016	102,401
Fred Zuckerman	Teamsters United	96,377

General Secretary-Treasurer (elect 1)		
Ken Hall	Hoffa-Hall 2016	102,702
Tim Sylvester	Teamsters United	94,937

⁶ Portions of this campaign literature, including the material referencing Aloise and Smith, was published in the *Teamster* magazine election issue “battle pages” that was mailed to all members and targeted for receipt shortly before the ballot mailing date. Brener-Schmitz is not mentioned in the website posting or in the battle pages.

Vice President At Large (elect 7)		
John F. Murphy	Hoffa-Hall 2016	101,021
Greg Floyd	Hoffa-Hall 2016	100,487
Fred Simpson	Hoffa-Hall 2016	100,422
George Miranda	Hoffa-Hall 2016	100,370
Fred Potter	Hoffa-Hall 2016	100,241
George Tedeschi	Hoffa-Hall 2016	99,916
Steve Vairma	Hoffa-Hall 2016	99,688
Sandy Pope	Teamsters United	95,531
Willie Ford	Teamsters United	93,406
Stan White	Teamsters United	93,203
Jerry Yarbrough	Teamsters United	92,668
Joe Darmento	Teamsters United	92,639
Carlos Lizarraga	Teamsters United	92,296
John Thyer	Teamsters United	91,735

International Trustee (elect 3)		
Kevin Moore	Hoffa-Hall 2016	101,718
Denis Taylor	Hoffa-Hall 2016	100,859
Jim Kabell	Hoffa-Hall 2016	100,237
Todd Anderson	Teamsters United	94,774
Dave Bernt	Teamsters United	92,966
Dave Loobie	Teamsters United	92,496

In the contest for General President, Hoffa outpolled Zuckerman by 6,024 votes, a 3% margin. In the race for General Secretary-Treasurer, Hall, against whom the IIO filed a disciplinary charge two weeks before the tally of ballots commenced, achieved a larger margin against his opponent, 7,765 votes (a 4.0% margin), than Hoffa achieved against Zuckerman.

In the election for seven at-large vice presidents, all candidates on the Hoffa-Hall 2016 slate prevailed. The margin between the winning candidate with the fewest votes, Steve Vairma, and the losing candidate with the most votes, Teamsters United’s Sandy Pope, was 4,157, a figure less than any other margin between winning and losing at-large candidates. The results show that Pope outperformed the other at-large vice president candidates on the Teamsters United slate.⁷ When the average tally of all Hoffa-Hall 2016 candidates for at-large vice president, 100,306, is compared with the average tally of all

⁷ Pope’s tally of 95,531 was 2,125 more than Willie Ford, the next highest candidate for that office on the Teamsters United slate, and 2,873 votes more than the average tally of the other six at-large vice president candidates on the Teamsters United slate. Indeed, results show that, after Zuckerman, Pope polled more votes than any other Teamsters United candidate.

Teamsters United candidates for that office (including Pope), 93,068, the margin of 7,238 (3.8%) falls midway in the range of winning tallies anchored by Hoffa (6,024; 3.0%) on one end and Hall (7,765; 4.0%) on the other.⁸

The tally showed the following for regional positions:

Vice President - East (elect 3)		
Sean O'Brien	Hoffa-Hall 2016	33,850
Bill Hamilton	Hoffa-Hall 2016	33,655
Dan Kane, Sr.	Hoffa-Hall 2016	33,165
Bob Randall	Teamsters United	26,490
Randy Shepler	Teamsters United	26,047
Matt Taibi	Teamsters United	25,969

Vice President - Central (elect 4)		
Tony Jones	Teamsters United	36,151
Bill Frisky	Teamsters United	36,006
Bob Kopystynsky	Teamsters United	35,752
Avral Thompson	Teamsters United	35,738
Becky Strzechowski	Hoffa-Hall 2016	26,501
Brian Buhle	Hoffa-Hall 2016	25,998
Gordon Sweeton	Hoffa-Hall 2016	25,942
John Coli	Hoffa-Hall 2016	25,691

Vice President - South (elect 2)		
Kimberly Schultz	Teamsters United	10,733
John Palmer	Teamsters United	10,531
Ken Wood	Hoffa-Hall 2016	8,348
Tyson Johnson	Hoffa-Hall 2016	8,300

The protestors do not seek rerun elections in the Central and South regions because all Teamsters United candidates prevailed in those contests. With respect to the East region, where the protestors seek a rerun election, the margin between the winning candidate with the fewest votes, Dan Kane, Sr., and the losing candidate with the most votes, Bob Randall, was 6,675. The margin between the average tally for Hoffa-Hall 2016 candidates and the average tally for Teamsters United candidates was 7,388, a 12.4% spread.

⁸ A similar margin exists in the final at-large contest, International trustees. There, the three Hoffa-Hall 2016 candidates averaged 100,938 votes, a 3.8% margin over the 93,412 votes the Teamsters United candidates averaged.

Analysis

The protestors seek a rerun of the International officers election for all at-large positions and for the vice president positions in the East region. The protestors also seek a reopening of nominations for the vice president positions in the West region and, should the number of candidates duly nominated for that office exceed the number to be elected, inclusion of that contest on the rerun ballot.

This electoral relief, the protestors submit, is necessary to remedy violations of the Final Order's disciplinary rules the IBT – and in particular Ken Hall – are said to have committed, violations that include improperly staying the hearing of disciplinary charges brought against Rome Aloise and impermissibly delaying production of documents the IIO requested in multiple disciplinary investigations.

For the reasons set forth below, we DENY these protests. We conclude the actions of the IBT and Hall that the protestors argue are prohibited by the disciplinary provisions of the Final Order are not violations of the *Election Rules*. The *Election Rules* define our jurisdiction, and we find they do not prohibit or in any way regulate the conduct the protestors present.

A. The Final Order separates the election process from the disciplinary process.

The Final Order establishes the framework for the election of International officers. Paragraph 10 guarantees that the structural electoral reforms, including one-Teamster, one-vote, originating under the Consent Decree will be maintained permanently; paragraphs 12 through 15 establish the qualifications the Independent Election Supervisor must possess; and paragraphs 16 through 21 set the standards that the Election Rules must meet and the procedures for adopting them.

Union discipline is addressed by paragraphs 24 through 42 of the Final Order. Of importance here, the Final Order establishes that “[t]he 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, [and] to impose discipline,” among other authority.

That the election and discipline processes are separate is manifest from the Final Order itself. Judge Preska recognized that recently when she denied the IBT's motion to enjoin the disciplinary charge against Hall. The Court wrote: “[T]he Court of Appeals has instructed that the election and disciplinary processes are separate. United States v. IBT (Carey), 156 F.3d 354, 361-62 (2d Cir. 1998). The IBT's request that the Court interfere with a disciplinary process duly instituted by the IIO on the basis that it coincides with a Union election is therefore without basis.” *United States v. IBT*, 88 Civ. 4486, Order (ECF No. 4548) 3 (S.D.N.Y. Nov. 15, 2016)

The Second Circuit opinion to which Judge Preska referred elaborated on the separation between the election and disciplinary provisions of the Consent Decree in the following terms:

The Election Officer is not assigned disciplinary responsibilities. His mandate is to supervise the reformation of the IBT's electoral processes, and, where necessary, expeditiously to investigate and rule upon protests arising out of those processes—all with a view to ensuring “fair, honest, open and informed elections.” 1996 Election Rules art. I (implementing Consent Decree § F at ¶ 12(D)(ix)). Where the EO uncovers electoral abuses, he is empowered to “take whatever *remedial* action is appropriate,” *id.* art. XIV § 4 (emphasis supplied), in order to preserve and promote the integrity of the IBT's democratic processes.

The EO's mandate stands in contrast to that of the Independent Review Board (“IRB”), which is explicitly cloaked with the union's “disciplinary authority.” Consent Decree § F at ¶ 12(A); *see also id.* § G at ¶ (m); *United States v. Int'l Bhd. of Teamsters* (“*IRB Rules*”), 998 F.2d 1101, 1105–06 (2d Cir.1993) (describing evolution and functions of IRB). In this capacity, the IRB is involved in meting out punishment in relation to the culpability of the offender for past infractions of union rules, including acts of corruption and criminal activity that bring “reproach” on the IBT. *See, e.g., Simpson*, 120 F.3d at 343, 348–49. Disciplinary proceedings before the IRB follow procedures that fully comply with, and even surpass, the procedural protections of § 101(a)(5). *See* Consent Decree § F at ¶ 12(A).

United States v. IBT, 156 F.3d at 361-62.

At times, the Election Officer and the IRB have been called upon to address matters in their respective areas that arise from the same set of facts, but in such circumstances they have confined their examinations to their respective areas of authority. In the Carey matter, General President Ron Carey was found to have benefited from the use of more than \$700,000 of IBT funds to support a direct mail campaign to broad segments of the IBT membership in support of his candidacy for re-election. This use of union funds for a campaign purpose violated the *Election Rules*, and Election Officer Barbara Zack Quindel found that the extensive campaign mailing effort may have affected the results of what was a close election between Carey and challenger James Hoffa. She refused to certify the election and instead ordered that it be rerun. Following Quindel's resignation from her post, Election Appeals Master Conboy⁹ was appointed Election Officer solely to determine whether Carey should be permitted to stand in the rerun election or be disqualified. In exercising this authority, Judge Conboy recognized the distinction between the election and disciplinary elements of the Consent Decree. He wrote:

[T]he primary role of the Election Officer is not to punish election misconduct, but to guard the democratic process from the effects of misconduct. *See* 96 Elec. App. 195, at 5 (May 30, 1996) (GSB) (“The Election Officer's mandate under the *Rules* is not to discipline and punish but to ensure that the democratic process proceeds fairly and openly”). For the most part, punishment is better left to other entities. Undoubtedly, the IRB, which can hold formal hearings allowing the admission of “facts, evidence, or testimony,” is better suited than the Election Officer, who gathers evidence on an inquisitorial model, to punish

⁹ Kenneth Conboy was appointed Election Appeals Master in 1995 and served in that capacity for the 1995-96 election cycle. When Election Officer Barbara Zack Quindel resigned her position after ordering a rerun of the 1996 International officers election, Judge Conboy was appointed Election Officer for the sole purpose of determining whether Ron Carey should be permitted to stand in the rerun election or be disqualified.

members of the union for malfeasance. Moreover, the IRB can impose punitive remedies: if the IRB determines, for example, after appropriate process, that Mr. Carey's actions violated the IBT Constitution, available remedies will include suspending or expelling Mr. Carey from the union, or preventing him from holding office for a fixed period of time. See IBT Const. Art. XIX, Sec. 10(a).

Decision of Election Officer Kenneth Conboy to Disqualify IBT President Ron Carey, at 27 (Nov. 17, 1997).

Carey faced disqualification as a candidate for violation of the *Election Rules*, but was separately subject to Union discipline, with penalties up to suspension or barring from the IBT under IRB procedures based on the same conduct. Acting as Election Officer, Judge Conboy considered only the impact on the integrity of the election machinery in reaching his decision to disqualify Carey from participation in the rerun election. He wrote:

I have determined that the appropriate exercise of discretion in this case is to disqualify Mr. Carey from participating as a candidate in the rerun election. This is a strictly remedial measure which is necessary to ensure a fair rerun election and to protect the integrity of the electoral process. To excuse the impact of such significant electoral misconduct on the part of the highest officer of the Union in these circumstances would broadly open the rerun election and future IBT elections to the risk of repeated injury -- both by Mr. Carey and his supporters and by other parties. See, e.g., 91 Elec. App. 167 (SA) (failure to disqualify slate that had violated the Rules would simply give them "another opportunity to ignore and discredit the Election Rules"). Indeed, failure to disqualify in this case would constitute a damaging precedent that would undermine the deterrent effect of the Election Rules going forward.

Moreover, as Judge Edelstein recently observed, the maintenance of free and democratic IBT elections is predicated upon the vigilance and respect for the Election Rules, "the linchpin in that effort." *United States v. IBT*, No. 88 Civ. 4486, 1997 WL 602546, at (S.D.N.Y. Sept. 29, 1997). To allow a candidate to run under the Rules which he broadly and intentionally violated would do direct injury to the credibility of those Rules. Allowing Mr. Carey to run, under these circumstances, simply would not provide a clean slate and a level playing field in the rerun election. Mr. Carey's appearance on the ballot, with the blessing of the federal election officer, would render the rerun election inherently unfair, which is plainly inimical to the values and objectives of the Consent Decree.

Decision of Election Officer Kenneth Conboy to Disqualify IBT President Ron Carey, at 35 (Nov. 17, 1997). Apart from the election protest alleging violation of the Election Rules that resulted in Carey's disqualification as a candidate, the IRB instituted Union disciplinary proceedings against Carey, alleging that his improper direction of IBT funds to his Union officer campaign for re-election brought reproach on the IBT. The IRB, administering the disciplinary provisions of the Consent Decree, barred Carey from the IBT permanently.

Judge Edelstein emphasized the distinction drawn in the Consent Decree between election and disciplinary processes in *United States v. IBT (Potter)*, 39 F.Supp.2d 397 (S.D.N.Y. 1999), where he

affirmed the certification of the 1998 rerun election results. The Election Officer had certified the results, and the Election Appeals Master affirmed that decision. The losing slate appealed the certification to the District Court, arguing that several of the candidates the Election Officer had certified faced IRB charges of misconduct and that certification should await resolution of those charges. The Court recounted the Election Officer's reasoning as follows:

In determining whether pending IRB charges and allegations warranted a delay in certification, the Election Officer and Election Appeals Master considered whether the misconduct at issue implicated the fairness and integrity of the IBT Rerun Election. The Election Officer reasoned that “[t]he IRB charges cited by the protestors would only justify delay or withholding of certification ... if the conduct involved, evaluated under the [Election Rules], was a violation that may have affected the outcome of the election in the sense that it abridged the IBT rank-and-file membership’s right to a free, fair and honest election.” EO Decision at 33–34; *see also* EAM Decision at 8, 10. Both the Election Officer and the Election Appeals Master concluded that the charges and allegations against certain members of the Hoffa Slate that the Leedham Slate cited (excluding those involving Potter) did not affect the integrity of the election process. EO Decision at 34–58, EAM Decision at 8. Therefore, they determined that certification was appropriate.

United States v. IBT, 39 F.Supp.2d at 399. Judge Edelstein agreed with this analysis, holding:

The Election Officer’s function under the Consent Decree is to ensure a fair, honest and open election process, not to sit in judgment of a candidate’s character or fitness for office based upon alleged misconduct that he determined did not affect the integrity of the election. The Consent Decree’s disciplinary process is the appropriate avenue for sanctioning or removing officers who engage in such misconduct.

Id. at 400.

B. The protestors’ assertions of improper conduct by the IBT in delaying the Aloise trial and by Hall in delaying production of documents allege violations of the disciplinary provisions of the Final Order.

The protestors assert, with respect to the Aloise hearing, that the delay of the hearing on the misconduct charges against him, and its consequent impact on the timing of the final adjudication, violated the disciplinary procedures contained in the Final Order, which require that the union “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 Final Order permits the IIO to “grant an extension of this ninety (90) day period upon request for good cause.” Final Order ¶32.

When the IRB forwarded the proposed charges against Aloise to General President Hoffa on February 10, 2016, the disciplinary provision just cited required final adjudication by May 10, 2016. The IBT requested an extension of the deadline to July 17, 2016, which the IRO granted, again pursuant to the disciplinary provisions of the Final Order. After the deadline was extended, the IBT sought an additional – this time indefinite – extension, which the IRO denied. The IRO then took jurisdiction of the hearing procedure. The schedule for adjudication of the charges has since been a matter for the IRO to determine.

The Final Order disciplinary provisions also establish deadlines for notices of examination, which included notices to produce. Thus, Section B.2. of the disciplinary rules incorporated in the Final Order by reference states that “[t]he Independent Investigatory Officer’s investigatory authority shall include, but not be limited to, the authority: a. To cause the audit or examination of the books of the IBT or any affiliated IBT body *at any time* to the extent that the Independent Investigations Officer may determine necessary.” (Emphasis supplied). For the March 4 and March 11 notices of examination the IIO sent to Hall, the IIO set a deadline of ten days for production of the requested materials. New deadlines of April 8, then April 22, May 13, July 5, July 26, and finally September 6 were set by the IIO. When the IIO concluded that production made through the last deadline unacceptably withheld tens of thousands of documents, he recommended to the GEB that a charge be brought against Hall for obstruction and interference.

The violations these delays are said to constitute are of the disciplinary provisions of the Final Order and the disciplinary rules administered by the IDO that are incorporated into those provisions.

C. The delays the protestors complain of do not violate the Election Rules.

The protestors assert that delays in the disciplinary process obtained by the IBT’s incumbent administration, with the assistance of its counsel had the purpose of reducing or avoiding altogether the negative impact that corruption investigations and, potentially, hearings and verdicts resulting from those investigations might carry for those incumbents seeking reelection.¹⁰ Although the protestors assert that these delays violated the disciplinary rules under the Final Order, they also claim that the delays violated the *Election Rules* because they denied information to the membership that was necessary when deciding how to cast their ballots.

The protestors cite two *Rules* provisions to support their request for relief. They contend the IBT’s delays in conducting the Aloise hearing and producing documentary evidence to the IIO violated Article I, which grants to the Election Supervisor “the authority to take all necessary actions, consistent with these Rules, to ensure fair, honest, open, and informed elections.” They also contend the delays interfered “with the right of any IBT member to vote, including, but not necessarily limited to, the right independently to determine how to cast his/her vote, the right to mark his/her vote in secret and the right to mail the ballot himself/herself,” rights guaranteed by Article IV, Section 12 of the *Rules*. The protestors assert that the delays had the purpose and foreseeable effect of denying members information about candidates competing in the election, thereby interfering with their right to vote.

We hold that our obligation to insure “informed elections” does not encompass the violations of disciplinary rules of the Final Order the protestors contend the IBT and Hall committed. We further hold that the *Rules*’ provision prohibiting interference with voting applies to the implicitly coercive act of collecting ballots from members, not to the alleged withholding of information at issue in these protests.

¹⁰ As described in the facts, the initial adjourned date for adjudication of the Aloise charges was agreed to the IIO, and now that the IRO has assumed adjudication authority for the charges, the IRO controls the schedule. The IIO set dates for responding to document requests after the IBT failed to comply fully with the requests, but court enforcement of the Final Order in this regard was not sought until November 2016.

1. The Election Supervisor insures “informed elections” under Article I by enforcing the Rules provisions that inform members of the details of the electoral process and permit candidates and their supporters access to the membership.

Article I grants the Election Supervisor “the authority to interpret” the *Rules*. No previous decision arising under the *Rules*, of which we are aware, construes the obligation to insure “informed elections.” We conclude that its meaning is plain from a full reading of the *Rules*, and the phrase does not, as the protestors contend, authorize a rerun election under the circumstances presented here.

The Election Supervisor’s obligation to provide “informed elections” takes two forms, both of which are specified with particularity in the *Rules*. First, he insures that members are informed of the details of delegate and International officer elections so they can participate in them, and, once the elections have concluded, of their results. Second, he insures that candidates and their supporters are provided the opportunity to reach the membership and inform them of their candidacies, the issues in the election, their platforms on those issues, and the reasons they should be elected.

Many *Rules* provisions insure that members are informed about the election processes so they may exercise their right of participation. For example:

- *Local Union Election Plans*: Article II, Section 4 requires each local union to prepare and submit to the Election Supervisor, months before nominations meetings, a proposed plan for conducting delegates and alternate delegates election. Under subsection (e) of this provision, each local union must post notices on all local union bulletin boards that the proposed plan has been submitted for review. Subsection (c) requires each local union to produce promptly a copy of the proposed plan to any local union member and any candidate for International office who requests it. Subsection (h) requires that, once the proposed plan is approved, the local union must post on all local union bulletin boards a summary of the plan’s details, including the date, time, and location of the nominations meeting, the eligibility requirements needed to run, the eligibility requirements needed to nominate or second, the procedures for nominating, seconding, and accepting nomination in person or in writing, the fact that the election will be conducted by mail, the date ballots will be mailed, the date by which ballots must be returned, and the date by which dues must be paid in order to be eligible to vote. The Election Supervisor has enforced the requirement of posting notices that the proposed plan has been submitted for review, *see Richards*, 2010 ESD 41 (October 14, 2010); that the proposed plan must be produced to any requesting local union member or International officer candidate, *see Schmit*, 2010 ESD 42 (October 25, 2010); and that the plan summary be posted, *see Wyatt*, 2015 ESD 62 (December 28, 2015).
- *Notice of nominations meeting*. Article II, Section 5(d) requires each local union to mail to each member and to post on all local union bulletin boards a notice of the nominations meeting, its date, time and location, the eligibility requirements needed to run, the eligibility requirements needed to nominate or second, the procedures for nominating, seconding, and accepting nomination in person or in writing, and the procedures and deadline by which slates may be formed. The Election Supervisor has enforced this requirement. *See Kohler*, 2016 ESD 90 (January 28, 2016), *aff’d*, 2016 EAM 10 (February 19, 2016).
- *Notice of nominations meeting results*. Article II, Section 6 requires each local union to post on all local union bulletin boards a notice of the names of members who were nominated at the local

union's delegates and alternate delegates nominations meeting, the positions for which they were nominated, and the slates that were formed (if known). The Election Supervisor has enforced this notice requirement. *See Godin*, 2016 ESD 82 (January 25, 2016).

- *Notice of election.* Article II, Section 7(d) requires each local union with a contested delegates and alternate delegates election to mail with ballots and to post on all local union bulletin boards a notice of election informing members of the date by which ballots must be returned, the procedure by which members may request duplicate ballots; the number of delegates and alternate delegates to be elected, and an explanation of the requirements and procedures for voting. The Election Supervisor has enforced this requirement. *See Mummert*, 2011 ESD 255 (May 12, 2011).
- *Notice of election results.* Article II, Section 12 requires each local union with a contested delegates and alternate delegates election to post on all local union bulletin boards a copy of the official election tally sheet. The Election Supervisor has enforced this requirement. *See Villa*, 2016 ESD 216 (May 20, 2016).
- *Notice of International officers election.* Article IV, Section 2 requires that the notice of election be published in *Teamster* magazine, posted on all union bulletin boards, and included in ballot packages mailed to members.

These provisions collectively create structure through which members receive information in multiple ways over many months regarding elections for delegates and alternate delegates in their local unions and the election for officers of the International union, including 1) the dates, times and locations of critical events in the electoral process; 2) the eligibility requirements for participating, whether as a candidate, a nominator, a seconder, or as a voter; 3) the names of candidates and the slates they have formed; 4) instructions for voting and obtaining replacement ballots; and 5) the election results.

At the local union delegate election level in the just-completed election cycle, the electoral process was spread over at least four months (and often longer), from the submission of the proposed local union plan by September 30, 2015, to the nominations meeting in January or February 2016 (notice of which was given 21 days in advance), followed at least 30 days later by the mailing of ballot packages, followed at least 24 days later by the counting of ballots. Throughout the process, members were notified through postings and mailings of events in the electoral process, and, in local unions where the nominations meetings produced contests, members received ballots at their homes. Similar information was disseminated to the membership in the International officers contest, from notices in *Teamster* magazine of the nomination of candidates, to the notice of election posted union-wide and included in ballot packages that listed all candidates and their slates. Like the delegate election process at the local union level, the International officer electoral process was spread over months, from the nomination of candidates at the June 2016 convention, the October 6 mailing of ballot packages, and the November 14 counting of ballots. The Article I requirement for "informed elections," as particularized by the notice provisions cited above, was thus fulfilled.

The Election Supervisor's second role in insuring informed elections is through administration and enforcement of the provisions by which candidates and their supporters may communicate their campaign message. The *Rules* provisions that promote an electorate informed as to the issues in an election are these:

- *Worksite lists.* Article VII, Section 1(b) grants to each delegate and alternate delegate candidate and each accredited or nominated candidate for International office the right to a list of all local union worksites where local union members work, as well as the worksite addresses. The Election Supervisor has enforced this requirement. *See Halstead*, 2016 ESD 211 (May 11, 2016). This provision, as enforced, serves the purpose of permitting candidates and their supporters to learn the locations of worksites where members work, so they may inform those members of their candidacies, their campaign platforms, and information about the upcoming election.
- *Membership lists for accredited and nominated candidates for International office.* Article VII, Section 3 permits accredited and nominated candidates for International office to receive a complete IBT membership list, which they may use to inform members of their candidacies, their campaign platforms, and information about the upcoming election.
- *Candidate literature and mailings, and face-to-face campaigning.* Article VII, Section 7 establishes the right, and the procedure for exercising that right, of candidates to have their campaign literature mailed and/or emailed to the local union membership or segments thereof. Article VII, Section 12(a) establishes the right of members to campaign face-to-face with members and the right of those members to receive that message. Subsection (e) of that same section establishes the right of members to campaign on employer parking lots where members park their vehicles for work, while subsection (d) preserves the pre-existing right to use union and employer bulletin boards and employer premises to campaign. Together, these provisions permit candidates and their supporters to inform members of their candidacies, their campaign platforms, and information about the upcoming election. Enforcement of these provisions is numerous Election Officer decisions under these *Rules*, as well as informal interventions to gain access to employee parking lots to allow on-site campaigning by candidates and candidate representatives.
- *“Battle pages” in Teamster magazine.* Article VII, Section 10 establishes the right of accredited and nominated candidates for International office to publish their campaign literature in *Teamster* magazine and on the IBT website. This provision promotes an informed election by permitting accredited and nominated candidates to advertise their candidacies and platforms directly to the membership. The campaign literature is mailed to the home address of every IBT member in the United States of America, Puerto Rico, and Canada, and is also posted on the IBT’s website.
- *Candidate acceptance speeches.* The candidates for General President and General Secretary-Treasurer nominated to the ballot at the International Convention deliver acceptance speeches to the delegates. Article III, Section 5(m). The recording of these speeches was made available on the OES website.
- *International Officer Candidate Forum.* Under Article VII, Section 6, the Election Supervisor “shall have the authority to conduct International Officer candidate forums. The forums shall be conducted to promote the fair, honest, open, and informed participation of the IBT membership in the election of the IBT International Officers.” This provision permits candidates to debate issues of importance to the membership, promote their accomplishments and platforms while distinguishing themselves from their opponents. For the 2016 International officer election, a candidate forum was held at the National Press Club in Washington, D.C., on August 25, 2016. Notice of the forum was disseminated to members through *Teamster* magazine, bulletin board postings, and social media promotion through the IBT’s Facebook page. The forum was

disseminated live on C-SPAN and Facebook. The forum was recorded and was made available on the OES and C-SPAN websites for later viewing.

These provisions taken together fulfill the Article I requirement of “informed elections” by giving access to the membership to candidates who exercise it. Within this framework, candidates are free to campaign to the membership for votes with messages that tout their own programs or criticize their opponents’ records, and the *Rules* do not regulate the content of campaign material. See *Blair*, 2016 ESD 114 (Feb. 16, 2016); *Jensen*, 2006 ESD 167 (April 25, 2006). Candidates in the International officer election in fact used the IRB charges in campaign messaging. Ultimately, of course, the degree to which the membership is informed about candidacies and platforms is the result of the effectiveness of candidates’ campaigns.

The protestors seek to expand the meaning of “informed elections,” as that phrase is used in Article I, to include the effect they claim resulted from the delays the IBT injected into the adjudication of the charges against Aloise and compliance with the notices to produce detailed in the Hall charge. The protestors argue that the IBT’s obligations under the disciplinary provisions of the Final Order are subsumed within the “informed elections” phrase of Article I such that delay in adjudication or noncompliance with disclosure requests can be remedied by the Election Supervisor through the *Election Rules*’ protest procedure.

This argument has no support in the *Rules* or in the structure created by the Final Order. As just demonstrated, specific *Rules* provisions spell out the obligations of local unions and the International union to inform the membership that particular elections are occurring and the details of the elections so members may participate in them. Additional specific *Rules* provisions articulate the rights of candidates and their supporters to inform the membership of their candidacies, their campaign platforms, and the reasons for supporting them and opposing competing candidates. These rights and obligations are enforceable through the protest procedure because they are specified in the *Rules*.

Not included in the *Rules* are the disciplinary provisions of the Final Order. Those provisions are administered and enforced by the Independent Disciplinary Officers, not the Election Supervisor. As such, while the IBT and its officers are required to process proposed charges in a particular manner and timeframe, and produce documents timely following receipt of notice to produce from the IIO, the Election Supervisor has no enforcement authority under the *Election Rules* to compel compliance with the investigative and disciplinary provisions of the Final Order. Nor does the Final Order give the Election Supervisor any authority to direct the IDOs in the performance of their assigned responsibilities.

2. *The alleged delays by the IBT and Hall in processing the Aloise hearing and producing requested documents do not constitute “interference with voting” proscribed by the Rules.*

The protestors assert that the *Rules*’ proscription on interference with voting applies to the improper delays they allege the IBT and Hall injected in the processing the Aloise and document production matters. We disagree.

Article IV, Section 12 applies to the International officers election. It declares the following:

No person or entity shall limit or interfere with the right of any IBT member to vote, including, but not necessarily limited to, the right independently to determine how to cast his/her vote, the right to mark his/her vote in secret and the right to mail the ballot

himself/herself. No person or entity may encourage or require an IBT member to mark his/her ballot in the presence of another person or to give his/her ballot to any person or entity for marking or mailing.

This proscription, also found at Article II, Section 15 for local union delegate elections, concerns matters such as ballot collection or coercion of members in the exercise of their independent decision to cast a secret ballot in an election. *See, e.g. Pope*, 2006 ESD 316 (June 30, 2006) (ballot collection by a steward); *Berg*, 2006 ESD 278 (May 30, 2006), *aff'd*, 2006 EAM 46 (June 20, 2006) (ballot collection by a candidate); and *Zuckerman*, 2016 ESD 324 (November 2, 2016) (attempted ballot collection).

This provision does not apply to the alleged withholding of information by a union entity or officer from the disciplinary officers of the IBT. Members, with or without the information the protestors claim is critical, retained the right to vote, the right independently to determine how to cast their ballots, the right to mark their ballots in secret, and the right to mail the ballots themselves. Nothing the IBT or Hall did or failed to do, as recited in this decision, interfered with or limited those rights.

3. *The Election Rules – and in particular the “informed elections” provision – imposed no duty on the IBT or Hall enforceable by the Election Supervisor to comply with the disciplinary provisions of the Final Order.*

The protestors contend that delaying the Aloise hearing and the production of documents to the IIO denied members critical information about candidates, thus violating the Article I guarantee of “informed elections.” The protestors contend that the LMRDA’s equal voting rights provision, Section 101(a)(1), 29 U.S.C. § 411(a)(1), which is adopted by reference in Article XII of the *Rules*, requires a “meaningful vote.” The protestors assert that a “meaningful vote” in the International officers election could have occurred only if the Aloise adjudication and the Hall production of documents had occurred within the timeframes set by the Final Order and its disciplinary rules. We reject this contention, as the cases the protestors rely upon did not concern election of officers and are otherwise inapposite to the facts presented here or have been discredited.

The protestors rely on *Bauman v. Presser*, 1984 WL3255, at *7-8 (D.D.C. Sep. 19, 1984), where an emergency vote was called on a contract ratification, the vote occurring before an informational meeting was held and before members who opposed the proposed contract could circulate opposition materials. The court ordered a revote, finding that the emergency nature of the vote deprived members of the opportunity to deliberate over the proposal.

The protestors also cite *Hicks v. Cylinder Gas, Chem., Petroleum, Distillery, Auto Serv. & Accessory Drivers, Local 283*, 150 L.R.R.M. 2082, 1994 WL 842914 (E.D. Mich. Oct. 31, 1994), another contract ratification case, where the union misinformed the members that a proposed contract included a 50-cents across-the-board increase when it did not, and the union called a vote on two hours’ notice. The court ordered a revote.

Here, by contrast, the election was for officers, not contract ratification, and the IBT membership had many months to consider the qualifications of candidates for International office. They also had the campaign material of both slates as well as the information contained in the IRB report on Aloise by which to evaluate his candidacy and those associated with him. In addition to the campaigns’ own distribution of this information, the “Battle Pages” included in the *Teamster* magazine mailed to every member of the

union amplified campaign messages – including the information contained in the IRB report on Aloise. For these reasons, we conclude that neither *Bauman* nor *Hicks* provides a basis for the relief protestors seek.

The protestors also point to *Blanchard v. Johnson*, 532 F.2d 1074 (6th Cir. 1976), a case involving a vote on an affiliation, not an election of officers. There, the union submitted for membership vote a proposal for affiliation with a national union without informing the membership of two other affiliation proposals. The court ordered that the membership be informed of the other proposals.

Blanchard has been discredited, and we decline to apply it to the election of International officers here. The court in *Sheen v. Screen Actors Guild*, 2012 WL 2360923, at *6 (C.D. Cal. Mar. 28, 2012), rejected the argument that *Blanchard* “recognizes a cause of action under [the statute] for uniform deprivation of the ‘right to a meaningful vote.’” The court in *Ackley v. Teamsters*, 958 F.2d 1463, 1476 n.10 (9th Cir. 1992), expressed similar disdain, holding that “[w]e do not understand how the language of [Section 411(a)(1)], which simply guarantees ‘equal rights and privileges’ to all union members, can be read to include” a right to a “meaningful vote.” We conclude that Section 411 is an anti-discrimination statute and nothing more – that “no equal protection issue arises when all of the rank-and-file members are treated identically.” *Ackley*, 958 F.2d at 1471; *see also Members for a Better Union v. Bevona*, 152 F.3d 58, 63 (2d Cir. 1998) (the statute “prohibit[s] the *unequal* treatment of union members with respect to their voting rights” and nothing more) (emphasis in original); *see also Calhoon v. Harvey*, 379 U.S. 134, 138-39 (1964) (statute is “no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote”).

For these reasons, we find no support in the LMRDA for protestors’ proposition that a “meaningful vote” required the IBT to conduct Aloise’s hearing and Hall to produce the requested documents promptly. This analysis bolsters our conclusion that the actions the IBT and Hall took which allegedly violated the disciplinary provisions of the Final Order do not also state violations of the *Election Rules* we administer and enforce.

D. The IRB’s allegations of corruption against Aloise were public and the protestors campaigned on them.

The protestors contend that what they characterize as wrongful conduct of the IBT and Hall in the course of responding to the IRB Aloise report and IIO requests affected the outcome of the election, justifying a rerun. We find no *Rules* violation here, and we therefore need not reach the issue of whether the conduct may have affected the election’s outcome.

First, we note that Aloise was nominated and elected to the vice president – West region position at the IBT convention in June 2016, at a time when he faced IRB charges. The protestors were aware at or before the time of the convention that the time for completing adjudication of those charges had been adjourned to after the convention. No protest was filed alleging that this adjournment and resulting later date for disposition of the charges violated the *Rules*. Accordingly, the protests brought now concerning the delay in Aloise’s adjudication are untimely filed.

Were we to reach the issue of impact on the election by the delay in adjudication, we would find no likelihood that the delay may have affected the outcome. Ample proof in the record demonstrates that the protestors had the evidence of Aloise’s alleged corruption well in advance of the IBT convention in

the form of the IRB report, and they campaigned vigorously on that evidence. The IRB's report was delivered to General President Hoffa on February 10, 2016. TDU and Teamsters United trumpeted the allegations on their websites on February 12, and they and Teamsters United's supporters made Aloise's alleged corruption – and his association with the Hoffa-Hall 2016 slate – a focus of their campaign publicity through the convention and, indeed, through the period for International officer balloting.

The protestors argue that the delay of Aloise's trial deprived them of more material that could have been used in campaigning – factual findings, or even a guilty verdict before the convention.¹¹ That possibility was foreclosed to them on March 31, 2016, however, when the IIO, acting within his authority, granted the IBT's request for an extension to July 17 of the date for completing the adjudication on the charges, notice of which was included in the *Teamster* magazine IDO report mailed June 24, 2016. By the new July 17 completion date, Aloise was no longer a candidate, having been elected as vice president – West region at the June 2016 IBT convention.

Aloise's qualifications for office, including questions raised by the IRB charges, could have been put to a membership vote in the International officers election, if opposing candidates had achieved nomination to the ballot at the International convention. The IRB charges were publicized to convention delegates, and to Union members generally; nevertheless, candidates opposed to Aloise did not achieve ballot nomination, whether because of the overwhelming support the Hoffa-Hall 2016 candidates (Aloise included) enjoyed among the delegate body, because of the meager support the Teamsters United candidates were able to engender, or for other reasons.

The Aloise report also detailed the alleged conduct of W.C. Smith, General President Hoffa's executive assistant, in soliciting and receiving from an interested employer at no expense to himself six tickets to the Playboy Super Bowl party. This evidence formed the basis of IIO charges against Smith that were released on November 17, 2016, but the February 10, 2016 Aloise report publicly revealed the evidence against Smith. Smith was not a candidate for International office, but he was a close associate of the lead candidate on the Hoffa-Hall 2016 slate. Teamsters United and their supporters campaigned extensively on the claim that Aloise's allegedly corrupt dealings with employers led directly to Hoffa. As Zuckerman put it in his convention acceptance speech: "Rome strong-armed local officers into dropping the members' contract demands. In return, the bosses gave Rome tickets to the Playboy party at the Super Bowl for Hoffa's chief of staff. You sell out the members, and you walk away with tickets to a Playboy party for Hoffa. That's the corruption-concessions connection."

The *Election Rules* include means by which candidates can distribute their campaign message. Teamsters United made full and vigorous use of those provisions to publicize the corruption allegations against Aloise and, by extension, others. As Judge Edelstein held, "certification need not be delayed pending the outcome of the IRB proceedings regarding charges against members of the Hoffa Slate and the resolution of allegations of misconduct." *United States v. IBT (Potter)*, 39 F.Supp.2d at 401.

¹¹ It would also be speculative to assume the result of the disciplinary proceeding before any adjudication of the charges.

E. The IIO's disciplinary charges against Hall, solely for failure to produce documents, do not state a Rules violation. Moreover, there is no likelihood his alleged conduct may have affected the outcome of the election.

Like the pending IRB charges involving Aloise, the IIO report recommends charging Hall with a Union disciplinary offense based on late and incomplete responses to requests for documents in response to IIO investigative demands. And, like the IRB charges against Aloise, the Hall report alleges misconduct that did not affect the integrity of the election process in any way. *See United States v. IBT*, 39 F. Supp. 2d at 399-400. Accordingly, the protests based on the Hall IIO charges do not state a violation of the *Election Rules*.

In addition, we find no likelihood that the delay of Aloise's hearing may have affected the outcome of the election. We reach the same conclusion with respect to Hall. Indeed, Hall's alleged conduct in withholding production of documents, and the way in which it came to light, may have provided campaign fodder for Teamsters United candidates.

The protestors' argument with respect to Hall is that had he produced all requested documents timely the subsequent events that might have occurred could have affected the election. The protestors contend that *if* he had timely produced the documents the IIO requested in the March 4 and 11, 2016 notices to produce (the total number of which exceeded 80,000 documents), and *if* the IIO had examined those documents and found sufficient evidence to conduct oral examinations of witnesses, and *if* any third parties the IIO subpoenaed possessed and timely produced documents and/or witnesses responsive to the subpoenas, and *if* the evidence the IIO accumulated was sufficient in the IIO's assessment to warrant one or more charges against one or more members, and *if* the IIO prepared proposed charges, the report substantiating each charge, and the exhibits to accompany the report and forwarded the charging package to General President in advance of balloting in the International officers election, and *if* one or more of the members the IIO determined to charge was either a candidate on the Hoffa-Hall 2016 slate or was a close known associate of a candidate, *then and only then* would the resulting election have been an "informed election" under Article I. That this analysis relies on layer upon layer of speculation is obvious.

But the reality is that the IIO gave Hall until September 6, 2016 to comply fully with the notices to produce served on March 4 and 11. Had Hall fully complied with the notices by that September date, without withholding any documents as privileged or non-responsive, the IIO would have had no cause to bring a charge of obstruction and interference with the investigation on October 31, 2016. The effect of such compliance would have been that the IIO would have made no public announcement at all concerning the existence of an investigation, and the membership would have known nothing about it. The volume of documents, the witnesses to be examined, the internal deliberations concerning whether to bring charges and against whom, the drafting of charges in that event, and the assembly of the charging package would, we have little doubt, have extended well beyond the voting period.

Hall's failure to comply fully with the notices to produce, in effect, put the existence of the investigation into the open. The charge the IIO brought laid out the notices to produce, including the identities of the persons whose email records were sought, and detailed the delays in production injected by Hall. The nearly contemporaneous motion by the Government to enforce the Final Order against the IBT and Hall provided additional detail about the investigation and the potential targets of it. This information exposed Hall and other members of the Hoffa-Hall 2016 slate to negative publicity during the voting period, information that Teamsters United and their supporters exploited. By withholding

documents the Court would later order him to produce, Hall prompted the public charge by the IIO of obstruction and interference and exposed to public view what had been a confidential investigation, giving Teamsters United and its supporters material that could be used for campaigning if the candidates so chose. On this account, we find no evidence to support protestors' claims that Hall's delay in production may have contributed to the victory of the at-large and East region candidates on the Hoffa-Hall 2016 slate.¹²

We have considered all other arguments raised in the protests and conclude that they are without merit.¹³

Conclusion

For the reasons stated, we DENY these protests.

In doing so, we note that protests P-419-120316-NA & P-420-120316-NA were filed December 3, 2016 as post-election protests. Post-election protests are defined as “[p]rotests concerning election day or post election day conduct.” Article XIII, Section 3. Neither protest identified conduct that occurred on or after the date the results in the International officers election were announced. Rather, they relied on conduct that occurred and was public well before the announcement of results. Accordingly, we conclude that these two protests were untimely filed. *Berg*, 2006 ESD 296 (June 4, 2006), *aff'd*, 2006 EAM 44 (June 15, 2006). Nonetheless, time limits under the *Rules* are prudential and not jurisdictional, and we exercise our discretion to decide each of these protests on their merits. *Nichols and Hoffa-Hall*, 2011 EAM 55 (July 16, 2011).

¹² We also observe that, even with the public charge of obstruction and interference brought against Hall, he won his election by a wider margin than his running mate, James Hoffa, who did not face IIO charges.

¹³ We specifically reject the contention that if the IIO investigation proceeded faster and the Brener-Schmitz charges had been published before the November 9, 2016, those charges could have been used as campaign material to affect the outcome of the election. First, we observe that the IIO report of obstruction and interference by Hall was published on October 31, 2016, in the midst of the International officer balloting and in the same time frame that the protestors argue would have been significant had the Brener-Schmitz report been similarly lodged. Teamsters United publicized the Hall charges in campaign literature. With that information available and published, Hall won his election by a wider margin than his running mate, James Hoffa, who did not face IIO charges. Second, the IIO report on Hall concerned alleged misconduct – withholding of documents requested concerning, among others, W.C. Smith and Brener-Schmitz. Information concerning the alleged misconduct of those two individuals was publicly available months before the election. *See* note 3, *supra*. When Teamsters United published literature on the IIO charges against Hall, however, it described the “targets” of the IIO investigation as “Hoffa, Hall, Hoffa’s assistant Willie Smith, running mate Rome Aloise, campaign operative Richard Leebove, and others.” *See* “Feds Charge Ken Hall” Teamsters United Posting and Flyer dated November 2, 2016, at http://222teamstersunitedorg/feds_charge_ken_hall (last viewed on February 10, 2017) (also filed in *United States v. IBT*, 88 Civ. 4486 (ECF No. 4531-2) (S.D.N.Y. Nov. 3, 2016)). Teamsters United chose, for its own reasons, not to mention Brener-Schmitz in its campaign literature about the IIO report of Hall even though she is mentioned specifically in that report. The record of actual conduct by the Teamsters United campaign therefore completely undercuts the argument made here that campaigning specifically on Brener-Schmitz – an obscure IBT employee and not a candidate for anything – may have had an effect on the election.

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Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.com

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, c/o Jeffrey Ellison, 214 S. Main Street, Suite 212, Ann Arbor, MI 48104, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
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