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Combating Organized Crime with Union Democracy: A Case Study of the Election Reform in United States v. International Brotherhood of Teamsters

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COMBATING ORGANIZED CRIME WITH UNION DEMOCRACY: A CASE STUDY OF THE ELECTION REFORM IN *UNITED STATES V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS*

*James B. Jacobs & Dimitri D. Portnoi**

In attempting to rid the International Brotherhood of Teamsters of the entrenched organized-crime influence that had controlled the union for decades, the Department of Justice's 1988 civil RICO suit against the union's leadership initiated historic changes in how that union selects its leadership. This Article documents and analyzes the election-reform prong of the consent order that settled the RICO suit. While reformers had hoped that fair rank-and-file elections would lead to their control of the union, that has not occurred, nor have fair elections produced a model union democracy. However, the election reforms have contributed to the purging of organized crime's influence from the union and make it more difficult for labor racketeers to regain control in the future.

INTRODUCTION

The ambition of the U.S. Department of Justice's 1988 civil Racketeer Influenced and Corrupt Organization Act[1] ("RICO") lawsuit against the top leadership of the International Brotherhood of Teamsters was to purge organized crime's presence and influence from the union, including its international headquarters, more than

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1. 18 U.S.C. § 1961–1968 (2000). RICO was enacted in 1970 to protect the public from organized criminal activity affecting interstate commerce. *See generally* Pamela H. Bucy & Steven T. Marshall, *An Overview of RICO*, 51 ALA. LAW. 283 (explaining the purpose and scope of RICO).

six hundred locals, and dozens of regional councils.[2] The suit was part of the government's campaign against the Italian-American organized crime "families" known as the Mafia or Cosa Nostra.[3] By the time the case was filed,[4] the Federal Bureau of Investigation ("FBI") and the U.S. Department of Justice ("DOJ") had successfully investigated and prosecuted hundreds of organized crime cases all around the country, especially in the mid-Atlantic, Northeast, and Midwest regions.[5] In New York City, home to five Cosa Nostra families, several hundred agents worked primarily on organized-crime investigations.[6]

The FBI agents and federal prosecutors were well aware of the remedial limitations of criminal prosecution.[7] They understood that Cosa Nostra represents the epitome of organizational criminality and that the families replace imprisoned soldiers and leaders by internal reassignments and promotions.[8] Consequently, federal investigators and prosecutors sought to attack Cosa Nostra's bases of economic, political, and organizational strength,[9] especially in labor unions.[10]

In the 1950s, a number of investigations revealed widespread Cosa Nostra labor racketeering in the International Longshoreman's Association.[11] From 1957 to 1959, the U.S. Senate's McClellan Committee (John F. Kennedy was a member and Robert Kennedy was chief counsel) exposed extensive corruption and racketeering in the Teamsters and several other national and international unions.[12] In the 1970s and 1980s, Senator Sam Nunn (D-Ga.) continued to hold hearings on various aspects of labor racketeering.[13]

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2. JAMES B. JACOBS ET AL., BUSTING THE MOB: UNITED STATES V. COSA NOSTRA 167–81 (1994).

3. *Id.* at 3–28, 167–81.

4. United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. June 28, 1988).

5. James B. Jacobs & Lauryn P. Gouldin, *Cosa Nostra: The Final Chapter?* 25 CRIME & JUST.: REV. RES. 129, 129–82 (1999).

6. JACOBS ET AL., *supra* note 2, at 3–28.

7. *See* JAMES B. JACOBS, MOBSTERS, UNIONS, AND FEDS 238–53 (2006).

8. *Id.*

9. *Id.*

10. *Id.*

11. JACOBS ET AL., *supra* note 2, at 6.

12. *Id.* at 168–70.

13. James B. Jacobs & Elizabeth A. Mullin, *Congress' Role in the Defeat of Organized Crime*, 39 CRIM. L. BULL. 269, 287 (2003).

In 1982, the DOJ brought its first civil RICO suit against a labor union, a large Teamsters local in New Jersey.[14] The case, *United States v. International Brotherhood of Teamsters Local 560*,[15] went to trial and resulted in a resounding victory for the government. The judge appointed a trustee and vested him with wide-ranging authority to run the local, supervise its elections, and purge organized crime's influence.[16] Several other labor racketeering cases against local unions followed.[17] The 1986 Report of the President's Commission on Organized Crime urged the DOJ to file such a suit against the leadership of the International Brotherhood of Teamsters ("IBT").[18] By 1988, the groundwork was laid for the first civil RICO suit against an entire international union.[19] The complaint was filed in New York City even though the Teamsters' headquarters, "the Marble Palace,"[20] is located in Washington D.C.[21] New York's FBI field office was the most aggressive and creative in organized-crime investigations, and U.S. Attorney Rudy Giuliani previously had brought several of the most important organized-crime prosecutions in U.S. history.[22] Undoubtedly, because he had formerly served as assistant deputy attorney general, Giuliani had considerable influence with "Main Justice" in Washington in procuring authority over the case.[23]

The government's civil RICO complaint listed scores of murders and assaults of IBT dissidents in order to document the Mafia's pervasive presence in union affairs. Proving a history of extensive labor racketeering within the Teamsters Union posed a lesser

14. JACOBS, *supra* note 7, at 161–82.

15. 948 F.2d 1338 (2d Cir. 1991).

16. *See* Robert C. Stewart, *Reflections on Labor Racketeering and Interdisciplinary Enforcement*, 9 TRENDS IN ORGANIZED CRIME 60, 95 (2006).

17. JACOBS, *supra* note 7, at 182.

18. PRESIDENT'S COMM'N ON ORGANIZED CRIME, THE EDGE: ORGANIZED CRIME, BUSINESS, AND LABOR UNIONS (1986); *see also* KENNETH C. CROWE, COLLISION: HOW THE RANK AND FILE TOOK BACK THE TEAMSTERS 85 (1993).

19. James B. Jacobs & Dimitri D. Portnoi, *Administrative Criminal Law & Procedure in the Teamsters Union: What Has Been Achieved After (Nearly) Twenty Years*, 28 BERKELEY J. EMP. & LAB. L. 429, 491–93 (2007).

20. *Minnesota Newspaper Teamsters Say No to Concessions*, TEAMSTERS FOR A DEMOCRATIC UNION, Sept. 10, 2008, http://www.tdu.org/node/2350.

21. *United States v. International Brotherhood of Teamsters*.was filed in the Southern District of New York. 728 F. Supp. 1032 (S.D.N.Y. 1990).

22. JACOBS ET AL., *supra* note 2, at 167–81.

23. *See id.* at 20.

challenge than crafting a remedy that offered a reasonable chance of success. The civil RICO complaint itself did not specifically set out how systemic organizational change was going to be accomplished, although the government asked for court supervision, carried out by court-appointed officers.

Teamsters for a Democratic Union ("TDU"), a well-established Teamsters rank-and-file "dissident" group long dedicated to reforming the union, pressed the DOJ in Washington and the U.S. Attorney's office in New York City to make election reform the keystone of any settlement or ultimate injunctive relief.[24] Once the suit was filed, TDU (with legal assistance from the ACLU) sought to intervene in the lawsuit as an independent party.[25] Judge Edelstein denied that petition, but the Second Circuit ultimately allowed TDU to intervene.[26] TDU ultimately persuaded the government lawyers to make union election reform an important part of the settlement.[27]

The government's civil RICO suit against the IBT settled in 1989 on the eve of trial.[28] The settlement embodied an agreement to purge the union of corruption and racketeering, to empower three court-appointed officers to investigate and prosecute wrongdoing, and to supervise fair and democratic elections of the general president and other international union officers who comprise the General Executive Board.[29] In a previous article, the authors provided an empirical analysis of the disciplinary prong of the "trusteeship," an effort that has ultimately resulted in the suspension

24. *See* CROWE, *supra* note 18, at 19; JACOBS ET AL., *supra* note 2, at 174–75.

25. JACOBS ET AL., *supra* note 2, at 172. TDU was represented by Paul Levy of Public Citizen and Tom Geoghegan, a Chicago labor lawyer. Levy continued to represent TDU's interests in the litigation until the late 1990s. He considers his most important successes to have been persuading the U.S. Attorney to make election reform a keystone of the remedy, protecting the TDU membership list from public disclosure, and (with Geoghegan) persuading Judge Edelstein to reject Election Officer Holland's first proposed election rules in favor of rules that gave the EO a great deal more responsibility for supervising the election. Telephone Interview with Paul Levy, Staff Attorney, Public Citizen Litigation Group (Jan. 22, 2009). The ACLU lawyer representing TDU was Helen Hershkoff. She obtained pro bono assistance from Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York City. Interview with Helen Hershkoff, Professor of Law, New York University School of Law, in N.Y. (Dec. 1, 2008).

26. Interview with Helen Hershkoff, Professor of Law, New York University School of Law, in N.Y. (Dec. 1, 2008).

27. JACOBS ET AL., *supra* note 2, at 174.

28. *Id.* at 170–77.

29. *Id.*

or expulsion of more than five hundred members and officers.[30] In this Article, we document and analyze the election-reform prong of the trusteeship. If anything, this remediation has been even more ambitious than the disciplinary effort. Indeed, it has been so extensive, required such extraordinary resources, and generated so much litigation that it is easy to lose sight of its initial rationale.

It bears emphasizing that the extraordinary twenty-year effort by the government and the federal district court to assure fair and democratic elections in the Teamsters Union was not occasioned by, and cannot be justified by, a desire to achieve an ideal model of union democracy. The purpose of the civil RICO lawsuit was to purge organized crime's influence from the IBT, and ultimately the remedial litigation should be judged on that criterion.

It is true, of course, that the 1959 Landrum-Griffin Act,[31] which was a response to the labor racketeering exposed by the McClellan Committee hearings, also sought to enlist union democracy as an antidote to union corruption and racketeering.[32] However, it has never been rigorously enforced and its ideals have gone unfulfilled. Were it otherwise, there would have been no need for the 1988 civil RICO suit.

The TDU officers may have believed or at least hoped that fair elections would enable them and like-minded reformers to obtain control of the IBT. That dream came close to being realized when, in 1991, in the Teamsters' first rank-and-file election of international officers, Ron Carey defeated two candidates associated with the long-dominant regime. But, Carey's expulsion from the union in 1997 on account of campaign finance violations dealt the rank-and-file reform movement a blow from which it has not recovered. While the Mafia's influence has been mostly eliminated, the incumbent Hoffa administration thoroughly dominates the union.

30. Jacobs & Portnoi, *supra* note 19, at 483–90.

31. 29 U.S.C. 401-531 (2000).

32. Jacobs & Portnoi, *supra* note 19, at 472.

I. THE CIVIL RICO SUIT, SETTLEMENT AND IBT RESISTANCE

A. The Complaint, the Consent Order, and the Commitment to Free and Fair Elections

On June 28, 1988, the U.S. Attorney's Office in Manhattan filed a civil RICO complaint against the IBT, eighteen members of its General Executive Board ("GEB"), more than a dozen Mafia bosses, and the Mafia "Commission."[33] The complaint called the IBT "a captive labor organization, which has been infiltrated, dominated, exploited and controlled by La Cosa Nostra figures."[34] U.S. Attorney Rudy Giuliani explained that the lawsuit aimed to end the Mafia's powerful and long-standing influence in the union with a remedy "that will allow the many honest members of the Teamsters to run their own affairs in a democratic manner and participate in GEB elections that are free and fair."[35] The lawsuit sought "court oversight [which would last] only for so long as necessary to eliminate organized crime's influence over the Teamsters, to put permanent reforms into place, and to return control of the Teamsters to the many honest working men and women of the union."[36]

The 113-page complaint drew on a well of information from congressional hearings,[37] criminal and civil litigation, media reports, books and articles, cooperating government witnesses, electronically intercepted conversations, and investigative material contributed by all fifty-eight FBI field divisions.[38] The report of the President's Commission on Organized Crime[39] also provided valuable information, including former IBT General President Roy Williams's

33. JACOBS, *supra* note 7, at 204–11.

34. Complaint ¶ 53 at *14, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. June 28, 1988).

35. Press Release, U.S. Attorney's Office for the S. Dist. of N.Y., Outline of Civil Complaint 3–4 (June 28, 1988) (on file with authors).

36. *Id.* at 4.

37. *See generally* Jacobs & Mullin, *supra* note 13, at 277 (reviewing the many congressional investigations of organized crime).

38. *Federal Government's Use of Trusteeships Under the RICO Statute: Hearings Before the Permanent Subcomm. on Investigations of the S. Comm. on Governmental Affairs*, 101st Cong. 593 (1989) (statement of Floyd I. Clarke, Executive Assistant Director, Federal Bureau of Investigation) [hereinafter 1989 RICO Hearings].

39. PRESIDENT'S COMM'N ON ORGANIZED CRIME, *supra* note 18.

testimony that "[e]very big [Teamsters] local union . . . had some connection with organized crime."[40]

The complaint alleged that, for decades, Cosa Nostra exercised "substantial influence" over the international union[41] through the office of the IBT general president.[42] It further alleged that Cosa Nostra influenced IBT elections for international officers, including the general president and members of the GEB.[43] According to the complaint, Cosa Nostra directed the selection of the previous two IBT presidents, Roy Williams and Jackie Presser.[44] "While the technical procedures by which the Teamsters elect their President has been adjudged lawful . . . the Government alleges . . . that La Cosa Nostra members and associates have taken control of and perverted that election process to insure the election of candidates under their influence."[45] In a press release, Giuliani charged that:

> In return [for keeping the dominant clique in power] union officers have allowed La Cosa Nostra ready access to union funds and jobs and free reign over certain IBT Locals, which La Cosa Nostra figures have used as instrumentalities to extort monies from employers. Thus, the IBT's leaders get their union offices, and La Cosa Nostra figures get their money—all to the detriment of union members, victimized businesses and the general public.[46]

The complaint sought a court-implemented remedial effort that would purge the union of Cosa Nostra members and influence.[47] Emphasizing the importance of free elections for breaking Cosa Nostra's hold on the union, the complaint sought an election of international union officers, run by a court-appointed trustee in such a manner that it would not be vulnerable to intimidation and improper influence and would "reflect the decision of the union

40. *Id.* at 89.

41. Complaint, *supra* note 34, ¶ 53 at *14.

42. *Id.* ¶¶ 56–57 at *15; PRESIDENT'S COMM'N ON ORGANIZED CRIME, *supra* note 18, at 123.

43. Complaint, *supra* note 34, ¶ 73(e) at *28.

44. *Id.* ¶ 59 at *16.

45. Press Release, U.S. Attorney's Office for the S. Dist. of N.Y., Outline of Civil Complaint 3–4 (June 28, 1988) (on file with authors).

46. *Id.*

47. Complaint, *supra* note 34, ¶ 117(d) at *46.

members who are found to be eligible to vote."[48] The complaint asked the court to appoint a trustee who would be empowered to prevent racketeering "until such time as free and fair elections can be held . . . ."[49] The IBT's General Executive Board passed a resolution prohibiting individual union defendants from settling with the government.[50] Judge Edelstein ordered the GEB to rescind that ruling.[51] Several GEB defendants, fearing burdensome attorneys' fees, entered into settlement talks and eventually agreed to resign from the union.[52]

Assistant U.S. Attorney Randy Mastro pressed for a court-appointed officer empowered to veto the union's expenditures and appointments and with authority to run the next five elections for international officers.[53] A week later, the union defendants counter-proposed that the court's remedial authority be divided among: an "independent magistrate" to hear and decide disciplinary matters; a "review officer" to investigate and file disciplinary charges; and an "election supervisor" to review, but not conduct, the election at the 1991 convention.[54] Mastro agreed to the troika plan in principle but with: (1) an independent administrator who would wield disciplinary and certain other powers of the IBT general president and GEB; (2) an investigations officer who would investigate and prosecute administratively violations of the consent agreement, federal labor law, and the IBT constitution; and (3) an election officer who would "supervise" the 1991 and 1996 international officers elections.[55] According to Mastro's proposal, rank-and-file IBT members would directly elect the general president and general secretary-treasurer, while the other international officers would be elected by convention

48. *Id.* ¶ 117(e) at *46.

49. *Id.* ¶ 117(f) at *46.

50. *See* CROWE, *supra* note 18, at 95–97.

51. *See id.* at 93, 97.

52. *See* Jacobs & Portnoi, *supra* note 19, at 439. On January 17, 1989, after five individual members of the GEB met with DOJ to discuss settlements, the GEB voted to prohibit individuals from settling separately.

53. *See* CROWE, *supra* note 18, at 93, 95. The union defendants rejected this first draft, in part because the election provisions were vague, providing only that a single court-appointed officer would run the union as well as the next five elections. Three days later, Mastro responded with a new draft that proposed direct rank and file election of only the general president and general secretary-treasurer. *Id.*

54. *See id.* at 95.

55. *Id.*

delegates.[56] Furthermore, the U.S. Department of Labor would supervise the 2001, 2006, and 2011 elections.[57] The GEB rejected this and several subsequent proposals.[58] IBT General Counsel James T. Grady told the press: "The entire document, from page one to the last page, was totally unacceptable and an insult to the entire American labor movement and the Teamsters in particular."[59]

Two days before trial,[60] after having previously rejected a proposal for direct elections of only a few international officers, the GEB agreed to rank-and-file elections *of the entire board.*[61] Two days later, Judge Edelstein approved a consent order whose preamble stated: "WHEREAS, the union defendants agree that it is imperative that the IBT, as the largest trade union in the free world, be maintained democratically, with integrity and for the sole benefit of its members and without unlawful outside influence."[62] The order called for a triumvirate of court-appointed officers—an independent administrator, investigations officer, and election officer. The investigations officer would investigate and prosecute violations of the consent order and the Teamsters constitution and, when appropriate, bring disciplinary charges before the independent administrator, who would function as a judge.[63] The roles of these two remedial officers would be phased out after the election officer ("EO") certified the 1991 election.[64] However, their authority would largely be subsumed by a three-member Independent Review Board that would continue to investigate wrongdoing, make recommendations to the IBT about disciplinary charges and, if dissatisfied with the IBT's response, adjudicate and punish disciplinary charges.[65]

The consent order provided that "[international officers] be elected by direct rank-and-file voting by secret ballot in unionwide,

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56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 96.

60. *Id.* at 97.

61. *Id.* at 98.

62. Consent Order at 2, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Mar. 14, 1989), *available at* http://www.irbcases.org/pdfs/ConsentDecree.pdf.

63. *Id.* at 3.

64. *Id.*

65. *Id.* at 19–23.

one-member, one-vote elections . . . ."[66] It authorized the EO to "supervise" the international union elections.[67] Only two sentences dealt with the scope of the EO's powers: "In advance of each election, the Election Officer shall have the right to distribute materials about the election to the IBT membership. The Election Officer shall supervise the balloting process and certify the election results for each of these elections as promptly as possible after the balloting."[68] The consent order invested the EO with "authority to employ accountants, consultants, experts, investigators, or any other personnel . . . ."[69] It also set forth basic rules to govern IBT elections for international officials, including procedures for convention delegate selection, nomination of international officers, and direct mail rank-and-file voting for international officers.[70] To serve as EO, Judge Edelstein selected Michael Holland, a labor lawyer who previously served as general counsel to the United Mine Workers, one of just a few international unions that select international officers by a rank-and-file election.[71]

B. Defining the Election Officer's Authority: The Autumn of Discontent

The relationship between the court-appointed officers and the union in the months following the finalization of the consent order proved so contentious that Judge Edelstein called this period "The Autumn of Discontent."[72] The international union and a number of IBT locals went to court to challenge the actions of the court-appointed officers.[73] This litigation resulted in Judge Edelstein's extraordinary All Writs Act[74] injunction, ordering that any litigation over the consent order be brought only in his court.[75]

66. *Id.* at 15.
67. *Id.*
68. *Id.* at 15–16.
69. *Id.* at 17.
70. *Id.* at 13–16.
71. *See* CROWE, *supra* note 18, at 106.
72. United States v. Int'l Bhd. of Teamsters, 728 F. Supp. 1032, 1040 (S.D.N.Y. 1990).
73. *Id.* at 1040–42.
74. 28 U.S.C. § 1651 (2000).
75. *Int'l Bhd. of Teamsters*, 728 F. Supp. at 1044.

1. IBT Challenges to the Court-Appointed Officers

On July 19, 1989, Elections Officer Michael Holland notified the DOJ and the IBT that he intended to follow a notice-and-comment procedure[76] in promulgating guidelines for the 1991 international election process.[77] The IBT objected, contending that Holland lacked authority to issue guidelines for the selection of convention delegates and for the nomination of candidates for international office.[78] According to IBT General Counsel Grady, by using the word "supervise" rather than "conduct," the consent order envisioned a passive EO-monitoring role.[79] Grady insisted that the 1991 international election should be governed by the IBT constitution and local union election bylaws, not by the consent order.[80]

Grady criticized Holland's staff as "unnecessary and unwarranted" and their salaries as "excessive."[81] Holland responded that he was responsible for overseeing an unprecedented union election, an "enormous undertaking" requiring "much planning, significant training, education and communication with the IBT membership, and ultimately significant personnel and financial resources . . . ."[82] He defended the proposed staff salaries as being in line with salaries for similarly situated IBT employees.[83]

Under the consent order, the Independent Administrator, Frederick B. Lacey,[84] and not the EO, had the authority to make an application to the court.[85] Therefore, on Holland's behalf,[86] Lacey

76. On July 19, 1989, Holland informed IBT General Counsel James T. Grady that he would hire a consultant and three full-time staffers to work at an EO headquarters located in the Marble Palace in Washington, D.C. Affadavit in Support of Application II of the Independent Administrator at ¶ 2, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Sept. 29, 1989) [hereinafter Holland Affidavit].

77. *Id.* ¶ 2.

78. MICHAEL HOLLAND, THE COOKBOOK: HOW THE ELECTION OFFICER SUPERVISED THE 1991 TEAMSTER ELECTION ch. 1, at 2 (July, 1992) (on file with authors).

79. Holland Affidavit, *supra* note 76, ¶ 7.

80. *Id.*

81. *Id.*

82. *Id.* ¶¶ 3, 15. In an attempt to rally rank-and-file opinion, Grady published these objections in the *International Teamster*, a monthly magazine mailed to all Teamster members. *Id.*

83. *Id.* ¶¶ 2–4.

84. Lacey was a former New Jersey U.S. attorney and former federal district court judge. Jacobs & Portnoi, *supra* note 19, at 442.

85. Consent Order, *supra* note 62, at 18.

asked Judge Edelstein to clarify the scope of the EO's authority, to approve the EO's draft timetable for the 1991 election, and to order the IBT to comply with the EO's proposal for hiring staff.[87] Lacey admitted that there was a bona fide dispute "concern[ing] the application and interpretation of [the consent order's election provisions] and particularly the meaning of [the] phrase '[t]he Election Officer shall supervise the IBT election.'"[88] The IBT insisted that "supervise," as used in the consent order, only covered the distribution of informational materials to the membership, overseeing balloting, and certifying election results.[89] According to the IBT, the consent order did not authorize Holland to supervise the selection of convention delegates or nominating procedures for candidates for international office.[90]

Judge Edelstein ruled that "supervise" should be interpreted according to its most expansive and proactive dictionary meaning,[91] "to coordinate, direct, and inspect continuously and at first hand the accomplishment of; oversee with the powers of direction and decision the implementation of . . . ."[92] In addition, he held that the consent order's reference to the "'1991 election' . . . was intended to encompass the entire electoral process [including convention delegate selection] which will culminate in the 1991 election . . . ."[93]

Pointing out that the Teamsters' 1.7 million members constituted more voters than the voting populations of twenty-six states,[94] Judge Edelstein labeled as "disingenuous" the IBT's opposition to the EO's request for three support staff and a consultant.[95] He also ruled that since the IBT had strenuously criticized the EO in the *International Teamster*, the union's official

86. *Id.*

87. Application II of the Independent Administrator, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. Sept. 29, 1989) (on file with authors).

88. *Id.* at 1–2.

89. United States v. Int'l Bhd. of Teamsters, 723 F. Supp. 203, 205 (S.D.N.Y. 1989), *aff'd*, 931 F.2d 177 (2d Cir. 1991). The consent order provided that the EO "certify" the election, but did not define that term. Consent Order, *supra* note 62, at 15–16.

90. *Int'l Bhd. of Teamsters*, 723 F. Supp. at 207.

91. *Id.* at 206.

92. *Id.*

93. *Id.* at 207.

94. *Id.* at 208.

95. *Id.* at 208–09.

magazine, it was reasonable for the EO to hire a public relations firm.[96] In addition, Judge Edelstein approved the 1991 election timetable and ordered the IBT to direct IBT locals to comply with the EO's Local Union Survey that sought information about each local's past and present election procedures.[97] He ruled that "it is within the scope of the duties of the Election Officer to take any further reasonable actions necessary to carry out his duties as the Election Officer and ensure fair elections for the IBT membership."[98] Because of the IBT's repeated attempts to stymie the EO's effort to hire and pay staff, Judge Edelstein approved the DOJ's creation of a fund that the three court-appointed officers could draw against to cover expenses and that the IBT would have to replenish.[99] These rulings blunted the international union's attack on the EO, but IBT locals and joint councils continued to challenge the EO's authority, as well as the authority of the Investigations Officer ("IO").

2. Defining the Independent Administrator's Authority under the Consent Order

To place fully in context the IBT's resistance to the EO, it is important to note the union's effort to undermine all the court-appointed officers, including and especially the Independent Administrator ("IA"). As IA, Judge Edelstein appointed Frederick B. Lacey, a former New Jersey U.S. Attorney and a former federal district court judge. IA Lacey exercised a veto over all IBT appointments, contracts, and expenditures. He also sat as judge on disciplinary charges filed by the IO.[100] The IBT launched a wide-

96. *Id.* at 209.

97. *Id.* at 208. For more information on the Local Union Survey, see *infra* text accompanying notes 146–47.

98. *Int'l Bhd. of Teamsters*, 723 F. Supp. at 207.

99. *Id.* at 210.

100. *Internal Review Board Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Education and the Workforce*, 105th Cong., 2d Sess. 13 (1998) [hereinafter *IRB Hearings*] (statement of J. Frederick B. Lacey, Member, Independent Review Board). Lacey did not have anything like sufficient resources or staff to oversee the IBT's day-to-day vast operations. He reviewed only the largest expenditures and contracts. He let most personnel appointments go forward, subject to the possibility of subsequent removal. Importantly, Lacey's veto power depended upon a reasonable belief that a contemplated act amounted to racketeering activity; he had no authority to veto "imprudent acts." *Id.* at 16 (statement of Charles M. Carberry, Investigations Officer, Independent Review Board).

When asked whether the IRB, or its predecessor IA, could step in should the Teamsters purchase a Learjet, IO Carberry responded:

ranging attack on Lacey's decisions.[101] For example, the IBT challenged Lacey's authority to interpret the Teamsters' constitution.[102] Judge Edelstein held that because the consent order had the legal status of Teamsters constitutional law,[103] the IA's disciplinary authority necessarily included the authority to interpret the IBT constitution's disciplinary provisions.[104]

3. IBT Locals' Challenges to the Court-Appointed Officers' Authority

Several IBT locals also challenged the court-appointed officers' authority. On November 17, 1989, five Chicago-area local unions filed a lawsuit in the Northern District of Illinois, challenging the authority of EO Holland to change the IBT constitution's election procedures.[105] One of the plaintiffs, Daniel Ligurotis, secretary-treasurer of Local 705 and an IBT international vice-president, had signed the settlement.[106] The Chicago suit's first count contended that the consent order was void because, by purporting to amend the

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> Under the consent decree now, imprudent acts would not fall within anybody's oversight. One of the differences that I saw between the Teamsters' consent decree and some of the other Civil RICO consent decrees involving other unions around the country is that, even the initial court officers had certain limits on both their responsibilities and their powers.

Id.

101. For example, the consent order required that the GEB, prior to every meeting, provide the IA notice and an agenda and notice. Consent Order, *supra* note 62, at 10. By chance, Lacey heard from a journalist that an upcoming GEB meeting was scheduled to interpret the term "bring reproach" in the Teamsters constitution. *IRB Hearings*, *supra* note 100, at 12 (statement of J. Frederick B. Lacey, Member, Independent Review Board). Lacey noted wryly, "[a]nd by coincidence, with their interpretation the charge we had pending against an international vice president for association with organized crime would not be prosecutable." *Id.*

102. United States v. Int'l Bhd. of Teamsters (*Friedman & Hughes*), 743 F. Supp. 155 (S.D.N.Y. 1990), *aff'd*, 905 F.2d 610 (2d Cir. 1990).

103. *Id.* at 160.

104. In answer to a congressional committee's question whether the IBT had complied with the consent order, Lacey responded, "That is a question I could spend the rest of the week on. They fought me at every turn." *IRB Hearings*, *supra* note 100, at 12 (statement of J. Frederick B. Lacey, Member, Independent Review Board).

105. Investigations Officer v. Friedman & Hughes, Decision of the Independent Administrator 9–11 (Jan. 22, 1990), *aff'd*, *Friedman & Hughes*, 743 F. Supp. 155.

106. *Id.* at 9–10. At a membership meeting one week after Judge Edelstein's decision affirming the EO's actions, Ligurotis was quoted as saying, "I'm not going to go along with any of this shit. Nobody's going to come up and tell me how to run my locals." *Id.* At the next membership meeting, one day before filing suit, Ligurotis told the membership that Holland was "overstepping his bounds," that "we're not getting a fair shake in New York," and then declared "fuck the Government—they're not going to get this union away from me!" *Id.*

IBT constitution without following that constitution's amendment procedures, it violated the Landrum-Griffin Act (formally the Labor-Management Reporting and Disclosure Act).[107] Count two alleged that the consent order, as interpreted by Judge Edelstein, violated the IBT constitution.[108] Count three charged that enforcement of the consent order required infringement of the contracts between the international union and its subordinate entities.[109] Count four asserted that the consent order violated an implied contract between each Teamster member and his or her local union.[110]

In response to the Chicago suit, the U.S. Attorney in the Southern District of New York asked Judge Edelstein to issue an All Writs Act[111] injunction prohibiting any further action in the Chicago suit and ordering Ligurotis held in contempt of the consent order's bar on interference with the court-appointed officers.[112] On November 27, 1989, Judge Edelstein granted the injunction.[113]

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107. Local 301 v. Holland, 732 F. Supp. 918, 921 (N.D. Ill. 1990). The court described the allegations as follows:

> In Count I, the Chicago plaintiffs contend that the consent decree amended the IBT constitution without complying with Article III, §§ 8, 9 and Article IX, § 7 and in derogation of the plenary authority of the delegates to an IBT convention as set out in various provisions of the IBT constitution. They also contend that the consent decree amended the bylaws of the local unions without a membership vote.

Id.

108. *Id.* ("In Count II, the Chicago plaintiffs claim that the consent decree as interpreted by the New York court violates various IBT constitution provisions.").

109. *Id.* ("In Count III, they contend that enforcement of the consent decree 'constitutes violations of contract, *viz.*, provisions of the 1986 IBT constitution alleged herein.'").

110. *Id.* ("Finally, in Count IV, the Chicago plaintiffs assert that enforcement of the consent decree 'constitutes violations of contract, *viz.*, provisions of Chicago plaintiffs Local Unions Bylaws alleged herein.'"); *see* United States v. Int'l Bhd. of Teamsters (*Chicago Suit*), 726 F. Supp. 943, 945 (S.D.N.Y. 1989), *aff'd*, 899 F.2d 143 (2d Cir. 1990).

111. 28 U.S.C. § 1651(a) (2000).

112. *Chicago Suit*, 726 F. Supp. at 944–45.

113. *Id.* at 947. Two days following this decision, the Chicago plaintiffs submitted an amended complaint dropping Ligurotis as a plaintiff. *Id.* Nonetheless, Judge Edelstein found Ligurotis in contempt for "a blatant attempt to forum shop for relief from rulings he perceives as adverse" and further found that Ligurotis "has the singular power to force the withdrawal of this suit." *Id.* at 948. Judge Edelstein imposed substantial fines against Ligurotis, which continued to increase until the Chicago suit was withdrawn. *Id.* at 949–50. However, the Second Circuit reversed in part, holding that Ligurotis could only be held in contempt for the period during which he was a named plaintiff; he could not be held responsible for coercing other plaintiffs to drop the suit. *Chicago Suit*, 899 F.2d at 148–49. The IA subsequently permanently barred Ligurotis from the IBT, finding him culpable on two counts: (1) obtaining an interest-free loan from his local union; and (2) "engaging in a pattern of conduct that rewarded corruption and allowed unlawful activity to flourish." United States v. Int'l Bhd. of Teamsters (*Ligurotis*), 814

On December 1, 1989, Cleveland Local 507 President and International Vice President Harold Friedman filed suit in the Northern District of Ohio against the IA, the IO, and the IBT, alleging that the consent order breached his local's contract with the international union.[114] Judge Edelstein ordered Local 507 to withdraw the suit and ordered Friedman to show cause why he should not be held in contempt.[115] After Friedman's lengthy and emotional testimony, Edelstein gave Friedman one week to withdraw the suit or be held in contempt.[116] Friedman complied.[117]

On December 8, 1989, New Jersey IBT Joint Council 73 filed suit in the federal District Court of New Jersey challenging IO Charles M. Carberry's authority to examine the books and records of the joint council and one of its constituent local unions.[118] Carberry moved to have the case transferred to Judge Edelstein's court,[119] and New Jersey District Court Judge David Ackerman so ordered.[120]

F. Supp. 1165, 1168 (S.D.N.Y. 1993). The latter charge cited Ligurotis's vexatious litigation in the *Chicago Suit*. *Id.* at 1170.

114. United States v. Int'l Bhd. of Teamsters (*All Writs Act Opinion*), 728 F. Supp. 1032, 1037–38 (S.D.N.Y. 1990).

115. *Id.* at 1038.

116. *All Writs Act Opinion*, 728 F. Supp. at 1038–39.

117. *Id.*

118. Joint Council 73 v. Int'l Bhd. of Teamsters (*Joint Council 73 II*), 741 F. Supp. 491, 492 (S.D.N.Y. 1990).

119. *Id.*

120. *Id.* Even after Judge Edelstein's All Writs Act order, Joint Council 73 proved to be a contumacious litigant. It sought to have Judge Edelstein removed from the case due to bias. Joint Council 73 v. Int'l Bhd. of Teamsters (*Joint Council 73 I*), 734 F. Supp. 626, 627 (S.D.N.Y. 1990). After Judge Edelstein dismissed that suit, the Joint Council attempted to block Carberry's access to books and records. At one appointment to inspect the books, the union officers refused to allow the IO's agents to use the office photocopier and were instructed to leave on account of the office assistant's sudden illness. United States v. Int'l Bhd. of Teamsters (*Joint Council 73 III*), 134 F.R.D. 50, 55 (S.D.N.Y. 1991). On another day, after making an appointment, the agents found the Joint Council's offices locked. *Id.* at 56. When Judge Edelstein left for an August vacation, the joint council filed a new lawsuit challenging the IO's power to take sworn statements. The complaint alleged that Judge Edelstein's previous ruling on the point "betrays a monumental ignorance of federal labor law." *Id.* at 57. Infuriated, Edelstein required the parties to present oral arguments at 6:30 p.m. that evening at his vacation home on Long Island. *Id.* at 58–59. He described the suit as "a case study in vexatious, harassing litigation brought without any proper purpose." *Id.* at 61. He criticized the union attorneys for being unprepared, "violat[ing] the most basic responsibility of a lawyer to her client and the court—to be prepared in court." *Id.* Judge Edelstein imposed sanctions upon the attorneys in excess of $35,000. *Id.* at 64. The Second Circuit ultimately vacated those sanctions. United States v. Int'l Bhd. of Teamsters, 948 F.2d 1338 (2d Cir. 1991).

C. Judge Edelstein's All Writs Act Opinion

After Judge Edelstein enjoined lawsuits in Illinois, Ohio, and New Jersey, U.S. Attorney Benito Romano (Giuliani's successor) requested an All Writs Act injunction against any and all lawsuits seeking to litigate issues arising under the consent order from being filed in any forum other than Judge Edelstein's courtroom.[121] On December 15, 1989, Judge Edelstein signed an order requiring all (approximately seven hundred) subordinate IBT entities to show cause why such an injunction should not be granted.[122] General President William McCarthy telexed to all Teamster locals, "I urge that you fight this unprecedented and ill-advised attempt of the government to deprive you and your members of your legal and constitutional rights."[123] He listed ten legal points for union lawyers to pursue.[124] Ultimately, 282 out of the 651 local unions, 20 out of the 44 joint councils, and 2 area conferences submitted timely briefs.[125]

In an extraordinary opinion, Judge Edelstein held that because the consent order vested his court with exclusive jurisdiction[126] and because there was a significant risk that the order would be interpreted inconsistently, he would enjoin all other courts from exercising jurisdiction in cases relating to the *IBT* consent order.[127] Judge Edelstein enlisted the federal All Writs Act to stop the nationwide litigation against the consent order and the court-appointed officers.[128] Dating back to the nation's founding,[129] the infrequently used All Writs Act states: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to

121. *All Writs Act Opinion*, 728 F. Supp at 1036.

122. *Id.* at 1039.

123. CROWE, *supra* note 18, at 121.

124. *All Writs Act Opinion*, 78 F. Supp. at 1030 n.18.

125. *Id.* at 1040.

126. *Id.* at 1044.

127. *Id.* at 1046–49.

128. United States v. Int'l Bhd. of Teamsters (*Joint Council 73 III*), 134 F.R.D. 50, 58-59 (S.D.N.Y. 1991).

129. *See In re* Josephson, 218 F.2d 174, 177–78 (1st Cir. 1954).

the usages and principles of law."[130] The Act has been used to enjoin "repeated, baseless, vexatious litigation by the same plaintiff in a federal court" and, under certain circumstances, to enjoin parallel proceedings.[131] By ordering the entire membership of the Teamsters to submit to the jurisdiction of his court and by enjoining other courts from exercising jurisdiction related to the consent order in the IBT cases, Judge Edelstein may have issued the most sweeping All Writs Act injunction in American history.

It would be hard to exaggerate the importance of this decision. It operated against every Teamsters member, IBT subordinate unit, and IBT employer, as well as against all other courts.[132] Without Judge Edelstein's all out commitment to enforcing the consent order, the civil RICO suit would certainly have failed.

II. SUPERVISING THE 1991 ELECTION

A. The Rules for the 1991 Election: Challenges from the International Brotherhood of Teamsters, the Teamsters for a Democratic Union, and the Association for Union Democracy

The consent order envisioned a three-stage process for electing international IBT officers. At the first stage, local unions would elect delegates to a nominating convention.[133] EO Holland's rules set out detailed secret-balloting procedures for members of IBT locals to nominate and elect delegates to the IBT national convention.[134] At

130. 28 U.S.C. § 1651(a) (2000). On the question of how frequently the All Writs Act is used, one Supreme Court opinion quipped: "What never? Well, hardly ever!" Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 36 (1980) (emphasis omitted).

131. *All Writs Act Opinion*, 728 F. Supp.at 1043. The All Writs Act was originally codified in the Judiciary Act of 1789, which Justice O'Connor once described as "the last of the triad of founding documents, along with the Declaration of Independence and the Constitution itself." Sandra Day O'Connor, *The Judiciary Act of 1789 and the American Judicial Tradition*, 59 U. CIN. L. REV. 1, 3 (1990).

132. In order for the All Writs Act injunction to be effective, the court needed personal jurisdiction over the respondent. In 1996, this was tested when Labatt's Brewery of Toronto, Canada, refused to comply with the EO's order to allow union campaigning in the company's parking lot. United States v. Int'l Bhd. of Teamsters (*Labbat's*), 945 F. Supp. 609, 612 (S.D.N.Y. 1996). Judge Edelstein found that Labatt's had the necessary minimum contacts with the United States because its actions in Canada had an effect in the United States. Specifically, Labatt's actions in Canada could hinder the ability of the EO to supervise the election in the United States, thereby compromising the goal of a fair, free, and democratic 1996 election, as well as endangering the consent order's goal of eradicating organized crime from the IBT. *Id.* at 621.

133. Consent Order, *supra* note 62, at 13–15.

134. *Id.* at 13.

the second stage, the elected delegates would attend a national convention that would nominate candidates for general president, secretary-treasurer, and vice presidents.[135] To get on the ballot, a candidate would need the votes of 5 percent of the delegates.[136] At the third stage, Teamsters members would mail in secret-ballots for the international officers positions.[137]

The EO's election rules called for both a nominating convention and direct rank-and-file voting.[138] No labor organization had ever elected international officers via a process like this. Practically all American unions elect international union officers at a national delegate convention.[139] Those few that use direct rank-and-file voting—such as the United Mine Workers, the United Steel Workers of America, and the United Electrical, Radio and Machine Workers of America—do not hold nominating conventions.[140]

The last step was for the EO to "certify" the 1991 election results.[141] Neither the consent order nor the election rules defined this term.[142] Holland proposed that, after the election, the EO should resolve any post-election protests and announce the final results.[143] Not until after the 1996 election did Judge Edelstein opine on the meaning of "certify."[144]

In order to facilitate compliance with the 1991 election procedures,[145] EO Holland decided to utilize or at least build on past

135. *Id.* at 13–14.

136. *Id.* at 14. As Holland took on more authority for running the convention, he issued supplementary rules covering media access, nominating and acceptance speeches, and diverse operations. HOLLAND, *supra* note 78, ch. 3, at 7.

137. Consent Order, *supra* note 62, at 15. Step three provided that no less than four and no more than six months after the convention, the international officers would be elected by "direct rank-and-file voting by secret ballot in unionwide, one-member, one-vote elections." *Id.*

138. HOLLAND , *supra* note 78, ch. 1, at 7.

139. *Id.*

140. *Id.*

141. *Id.* ch. 4, at 107–11.

142. Holland devoted a few pages of *The Cookbook*, his detailed account of the 1991 election, to the certification question. *See id.*

143. *Id.*

144. *See infra* text accompanying footnotes 653–680.

145. Holland could only draw limited lessons from his experience with the rank-and-file election procedures of the United Mine Workers Association. Where that union represents workers in a single industry concentrated mainly in West Virginia and Pennsylvania, the Teamsters represent workers in many trades and services spread out across the United States and Canada. *See* CROWE, *supra* note 18, at 106.

practices.[146] Toward that end, in January, 1990, he sent out the Local Union Survey[147] to determine how locals currently notified members of the location, time, and voting procedures for election of convention delegates.[148]

On February 22, 1990, Holland sent the draft election rules to all Teamsters entities.[149] He convened hearings on the draft rules in San Francisco, Seattle, New York City, Baltimore, Chicago, Memphis, Cleveland, and Toronto.[150] Over five hundred Teamsters members attended these meetings; nearly 125 members offered on-the-record comments.[151] After considering these and other comments, Holland redrafted the rules with an explanatory commentary.[152]

The IBT again insisted that the EO did not possess authority to promulgate election rules,[153] specifically objecting to the delegate selection plan, having to provide candidates with free campaign space in the *International Teamster*, having to provide membership lists to all candidates, secret nominations balloting at the national convention, and numerous other procedures.[154] In dismissing all these objections, Judge Edelstein relied on the consent order's terms and on lessons from the 1972 United Mine Workers of America ("UMWA") election that was supervised by the Department of Labor ("DOL") following the assassination of insurgent candidate Joseph Yablonski.[155] For example, noting that the DOL required the UMWA's newsletter to publish the views of the different candidates, Judge Edelstein stated that "[n]o opposition candidate may mount a

146. HOLLAND, *supra* note 78, ch. 4, at 107–11. Holland determined that approximately 47 percent of locals already used mail ballots. Moreover, the election of about 39 percent of locals had been uncontested ("white ballot"). About 28 percent of locals scheduled officer election at the same time as the delegate elections. *See id.* ch. 2, at 4.

147. *Id.* ch. 2, at 2.

148. HOLLAND, *supra* note 78, ch. 2, at 2.

149. *Id.* ch. 1, at 5.

150. *Election Rules Order*, 742 F. Supp. at 98 n.1. The cities were selected to ensure that at least one hearing was held within each area conference. *Id.*

151. HOLLAND, *supra* note 78, ch. 1, at 5.

152. *See id.* ch. 1, at 6.

153. *Election Rules Order*, 742 F. Supp. at 98.

154. *Id.* at 98–106.

155. *Id.* at 100–02.

viable challenge to the entrenched IBT plutocracy without standing on an equal footing with regard to distribution of their views."[156]

Initially, EO Holland preferred that locals run their own delegate elections, with some monitoring by his office. This decision drew sharp criticism from two groups: (1) TDU, a reform group of rank-and-file Teamsters members seeking to promote union democracy, strengthen financial controls, curb corruption, and elect leaders dedicated to better contracts;[157] and (2) the Association for Union Democracy ("AUD"),[158] a small Brooklyn-based non-governmental organization that promotes union democracy.[159] Both AUD and TDU submitted amicus briefs arguing that the proposed election rules did not provide for sufficient EO supervision.[160] AUD attacked the proposed election rules for leaving local union officers in charge of printing ballots, determining candidate eligibility, running the delegate elections and counting the ballots.[161] AUD charged that "[i]n the all-pervasive lawlessness that has permeated the union, it would be foolhardy, even irresponsible, to depend upon the local union officers for safeguarding the integrity of the elections."[162] TDU and the DOJ submitted briefs supporting the AUD position.[163]

The EO and the IA contended that the proposed election rules already strained the meaning of "supervision," and that any more

156. *Id.* at 100. As we shall see, this is an extremely insightful statement. In the final analysis, the fair election procedures established by the consent order have not come close to putting opposition candidates on an equal footing with candidates who are supported by the incumbent administration. For an account of the Yablonsky assassination, see HERMAN BENSON, REBELS, REFORMERS, AND RACKETEERS: HOW INSURGENTS TRANSFORMED THE LABOR MOVEMENT 75–76 (2004).

157. *See generally* DAN LA BOTZ, RANK-AND-FILE REBELLION: TEAMSTERS FOR A DEMOCRATIC UNION (1990) (discussing the history of the TDU).

158. The Association for Union Democracy (AUD), http://www.uniondemocracy.com (last visited Feb. 10, 2009).

159. Susan Jennik, who headed AUD's Teamster Fair Election Project and represented AUD before Judge Edelstein, wondered on receiving the rules: "How the hell can he think these local officers in the most corrupt union in the country would run a fair election?" *See* CROWE, *supra* note 18, at 123. Herman Benson, also of AUD, put it more colorfully: "The son of a bitch! . . . He's proposing turning the conduct of the election over to the local officials. The whole point of the RICO suit is these guys are so infiltrated by racketeers that you can't depend on them to run a clean union." *Id.* Benson was decidedly skeptical of trusting local union officers to run fair delegate elections: "All Holland wants to do is receive tally sheets from the locals as to how their votes went." *Id.*

160. *Election Rules Order*, 742 F. Supp. at 106.

161. Rules for the IBT International Union Delegate and Officer Election, art. II, § 2.

162. *See* CROWE, *supra* note 18, at 126.

163. *Election Rules Order*, 742 F. Supp. at 106.

activism would cross the line from "supervising," to "conducting" the election.[164] The IBT also argued that it would be unduly burdensome to require the IBT to bear the cost of supervision.[165] By contrast, the DOJ and the two reform organizations advocated a much more proactive EO role.[166]

Edelstein sided with TDU, AUD, and DOJ.[167] He found that the proposed election rules failed to satisfy his previous ruling that the EO should supervise "each and every portion of the election process."[168]

> Complete supervision of all facets of the election process is the only way to guarantee the integrity of the elections and encourage extensive rank and file participation. To that end, the Election Officer must oversee each and every facet of this election in order to prevent any possibility of fraud, coercion, intimidation, harassment, or threat in any of its varied forms. While the Election Officer has commented that he will consider the [sic] 'the history of prior proceedings alleging improper election conduct' in determining the proper amount of supervision, this subjective determination is insufficient. Locals where members are intimidated or reluctant to lodge protests may be inadequately safeguarded.[169]

TDU also criticized Holland's decision to give the candidates no more than a random sample of IBT members' names.[170] Judge Edelstein agreed with the TDU.[171] Additionally, he supported TDU's objection that the IBT leadership was using the *International Teamster* to "subvert[] a free and fair election by assailing the legitimacy and integrity of the Court Officers and damaging the possibility of reform."[172] Judge Edelstein found that the magazine

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164. *Id.*

165. *Id.* at 106–07.

166. *Id.* at 106 (stating that the AUD, TDU, and the Government "ask this Court to reaffirm its earlier broad interpretation of the scope of the Election Officer's duty to 'supervise' the election").

167. *See id.*

168. *Id.*

169. *Id.*

170. *Id.* at 101.

171. *Id.* at 101–04.

172. *Id.* at 102–03.

had a "fatally biased official editorial posture" against the court and the court-appointed officers.[173] He pointed to the magazine's attacks on the court-appointed officers' expenditures and to the magazine's charges that the officers are "constantly seeking to expand their 'powers.'"[174]

Judge Edelstein's ruling left Holland and his staff with the unprecedented responsibility of supervising every facet of the most ambitious rank-and-file union election in U.S. history.[175] The Teamsters would be one of only a few international unions, and by far the largest, ever to elect international officers directly.[176]

B. Step One: The Delegate Election

1. The Local Union Survey and the Local Union Election Plans

The requirement that the EO supervise each and every facet of the election heightened the importance of the local union convention delegate elections. The EO's Local Union Survey sought to determine every IBT local's past practice on scheduling and locating nominating meetings, distributing election notices, and voting procedures.[177] Ultimately, the EO received 525 "more-or-less complete responses."[178] They revealed "quite divergent experiences" and practices.[179] While some locals had a consistent history of contested elections, others had not had a contested election in decades.[180]

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173. *Id.* at 103.

174. *Id.*

175. *Id.* at 106.

176. The other two unions were much smaller and far more geographically concentrated than the IBT. Moreover, the Mine Workers and the Steelworkers ceased using nominating conventions when they adopted direct rank-and-file voting.

177. HOLLAND, *supra* note 78, ch. 2, at 3. After sending out the survey by registered mail in January 1990, the EO staff contacted each local to encourage an accurate and prompt response. *Id.* ch. 2, at 2.

178. *Id.* ch. 2, at 3. This number represented slightly more than 80 percent of the surveys distributed. Of the 126 locals that did not complete the surveys, at least five had been merged with other locals. *Id.*

179. *Id.* ch. 2, at 4.

180. *Id.* Apportioning delegates to each IBT local was also a complex process. One thousand nine hundred fifty-eight delegates had to be divided up among 638 locals according to the size of each local's membership. *See id.* ch. 2, at 5–6.

EO Holland required each local union to submit a plan for electing delegates and alternate delegates to the national convention.[181] He hired and trained twenty-three regional coordinators and field staff to review and, if necessary, modify these plans.[182] With a few exceptions, all of the IBT locals' election plans required some changes.[183] The EO's most frequent objection was that a local's rules failed to provide enough time between the delegate nominations and the delegate elections.[184]

Holland operated with a presumption against imposing unfamiliar and complicated election procedures on the locals.[185] He preferred that the locals adhere to past practice "unless the departure from past practice afforded an enhanced and freer opportunity for participation."[186] The election plan approval process required a complex determination that took into account each local union's characteristics. For instance, locals with jurisdiction over a large geographical area had to provide for delegate nomination meetings in multiple locations or for written nominations.[187] Most locals cooperated with the EO's regional coordinators, modifying their election plans to meet objections, concerns, and recommendations.[188]

In July 1990, Holland informed the IBT locals that he would approve, in most cases,[189] mail balloting for delegate selection.[190] In certain circumstances, *he required* mail balloting.[191] Ultimately, 488 plans (78 percent of locals) provided for a mail-ballot election of

181. *Id.* ch. 2, at 8.

182. *See* United States v. Int'l Bhd. of Teamsters (*Election Rules Order*), 742 F. Supp. 94, 104 (S.D.N.Y. 1990).

183. HOLLAND, *supra* note 78, ch. 2, at 7–8.

184. *Id.* ch. 2, at 8.

185. *Id.* ch. 2, at 12.

186. *Id.*

187. *Id.* ch. 2, at 9.

188. *Id.* ch. 2, at 8.

189. *Id.* ch. 2, at 10. He made an exception for locals with a history of in-person voting, and for locals with only one employer and an easily accessible union hall. *Id.*

190. *Id.*

191. *Id.* ch. 2, at 11. Four factors informed this decision: (1) history of coercion at the polling site; (2) size of the local; (3) voter turnout in recent elections; and (4) geographic dispersion. For example, Alaska's statewide IBT Local 959 would not be allowed to use in-person voting during the harsh winter months. *Id.*

convention delegates.[192] In twenty-three cases, Holland imposed balloting by mail over the "strenuous" objections of IBT locals.[193]

2. Implementing Procedures for Nominating and Electing Delegates to the National Convention

The local unions were responsible for providing notice to the membership of nomination meetings, either by mail, publication in a union newspaper, or some other method "reasonably calculated to inform" the membership.[194] The notice required a regional coordinator's prior approval.[195] The EO's staff required that notices be sent out ten to thirty days prior to the nomination meetings.[196] They personally attended the nomination meetings at every local; checked the eligibility of the nominators, the seconders, and the nominees; and resolved protests.[197]

The election rules required that, in order to be eligible to run for delegate or alternate delegate, a candidate had to be a Teamster member in "good standing" for twenty-four consecutive months prior to the nomination meeting.[198] Good standing required being up to date with dues and having "active membership status," either by being employed or actively seeking employment.[199] A nominator or seconder had to be currently in good standing.[200]

To reduce the number of protests over the eligibility of nominees, nominators, and seconders, the EO's staff strongly encouraged candidates, nominators, and seconders to submit to prequalification vetting.[201] The EO hired the Center for Economic Organizing to check dues-payment records and, where necessary, to obtain relevant information from employers, the union local, and/or

192. *Id.* ch. 2, at 13. Seventeen locals used both mail-in and in-person voting. *Id.*

193. *Id.* The fourteen locals that did not submit any plans had plans imposed upon them. *Id.*

194. *Id.* ch. 2, at 15.

195. *Id.* ch. 2, at 16.

196. *Id.* ch. 2, at 15.

197. *Id.* ch. 2, at 17–18.

198. *Id.* ch. 2, at 18. Sometimes a member falls behind on her dues payment and thus falls out of good standing because of a prolonged absence from work. When she returns to work, the employer is supposed to make payroll deductions to bring the employee's union dues up to date. The employee may be unaware that this did not occur and that she is not a union member in good standing.

199. *Id.*

200. *Id.*

201. *See id.*

the prospective delegate nominee, nominator, or seconder herself.[202] Ultimately, the EO staff checked the eligibility of over two thousand candidates for delegate and alternate delegate, and of more than twelve hundred prospective nominators and seconders.[203]

During the delegate election period, 623 locals held 836 nomination meetings.[204] At least one EO staff member attended every meeting except two (on account of inclement weather).[205] IBT members nominated approximately thirty-two hundred candidates for delegate and fifteen hundred for alternate delegate.[206] At 307 locals there were contested elections; 316 locals held uncontested "white ballot" elections.[207] Interestingly, this represented a slight *increase* in the number of "white ballot" elections compared with the most recent previous local-officer elections, demonstrating that free elections do not necessarily mobilize voters.[208] In close to half of IBT locals, there was no effective challenge to the officers who held the reins of power.[209]

The rules permitted members to challenge the eligibility of delegate nominees, nominators, and nominee seconders no later than forty-eight hours following the nomination meeting.[210] EO staffers in Washington investigated the challenged Teamster's eligibility status and presented findings to an EO staff attorney who drafted a conclusory opinion and recommendation.[211] EO Holland reviewed the recommendation and rendered the final decision.[212]

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202. *See id.* ch. 2, at 18–20.

203. *Id.* ch. 2, at 21.

204. *See id.* ch. 2, at 25.

205. *Id.*

206. *Id.* ch. 2, at 26.

207. *Id.*

208. *See id.* It is important to note that this comparison might be apples to oranges. The local union surveys used information on the most recent *local-officer* elections to establish voting procedures for *convention- delegate* elections.

209. *Id.*

210. *Id.* ch. 2, at 27.

211. *See id.* ch. 2, at 28.

212. *Id.* While this procedure might seem summary, the only basis for a challenge at this point was ineligibility: that the member had not been in good standing for the requisite period of time. The EO staff were present at all but two meetings in order to report irregularities. In those few meetings where violence or intimidation occurred, Holland placed a candidate's name on the ballot, ordered a new meeting, or allowed written nominations. *See id.* ch. 2, at 26–27.

The regional coordinators subsequently conducted the delegate elections in accordance with each IBT local's approved plan.[213] For the mail-ballot elections, the regional coordinators and field staff supervised ballot printing and mailing, while affording the candidates' designated representatives an opportunity to observe the printing and mailing process.[214]

Nearly three hundred thousand members cast ballots in 307 contested IBT local delegate elections.[215] The EO staff had to count the ballots and resolve any post-election or deferred pre-election protests that could have affected an election's outcome.[216] Prior to certifying a local's delegate election results, the EO had to determine whether the total number of challenged ballots was large enough to have affected the election result; if not, the challenged ballots remained uncounted.[217] In four cases, the EO ordered a rerun election: (1) at Local 63, the slates on the printed ballots had been juxtaposed; (2) at Local 406, after the mail balloting, two winning delegates were found ineligible; (3) subsequently, at Local 406 a candidate improperly affixed the local union's insignia to his campaign literature; the IA reversed the EO's determination of delegate eligibility;[218] and (4) at Local 886, a candidate's name was misspelled in a close contest.[219] The EO ordered a recount in every case where there was a protest or a recount request.[220] However, no election result was changed on account of a recount.[221]

EO Holland reviewed the election reports submitted by the on-site EO staffer, the tally sheet of the votes, the determinations of eligibility of nominators, seconders, delegates (and alternates), and voters—consulting the list of officers against whom the IO had filed disciplinary charges.[222] By June 5, 1991, nearly a year after Judge

213. *See id.* ch. 2, at 29.

214. *See id.* ch. 2, at 29–30.

215. *Id.* ch. 2, at 1.

216. Such protests could arise before the ballot was opened or before an in-person voter cast her ballot. *See id.* ch. 2, at 48–49.

217. *Id.* ch. 2, at 48.

218. *Id.* ch. 2, at 51–52. The IA reversed the EO's decision because the challenged member had received pension benefits, which traditionally signals retirement from employment and the union.

219. *Id.* ch. 2, at 52.

220. *Id.* ch. 2, at 53.

221. *Id.*

222. *Id.* ch. 2, at 49.

Edelstein approved the election rules,[223] Holland certified the election of 1,936 delegates and 1,030 alternate delegates.[224]

C. Step Two: The Nominating Convention

The 1991 nominating convention in Orlando, Florida was a watershed in the history of the Teamsters Union, perhaps in the history of the American labor movement. Over twelve thousand delegates, alternate delegates, guests, Teamsters officers and members, and press representatives attended.[225] Judge Edelstein and his clerks took hotel rooms in Orlando.[226] The delegates nominated over seventy candidates for sixteen international union positions.[227] The whole process ran smoothly.[228]

1. Planning for the Convention

Article IV of the EO's rules required the Election Officer to supervise all aspects of the nomination process, from convention planning to verifying and counting ballots.[229] At the convention, delegates made nominations from the floor.[230] A secret ballot followed.[231] Those candidates who received at least 5 percent of delegates votes advanced to the general election ballot.[232]

While dealing with the logistics of any large union convention presents significant challenges, the 1991 IBT convention posed unusual difficulties because of conflicts within the Teamsters hierarchy and uncertainty about the EO's role vis-à-vis the Teamsters officials.[233] As early as August 1990, EO Holland was aware that convention planning was behind schedule due to bickering between the offices of General President William McCarthy and Secretary-

223. *Id.* ch. 2, at 50.

224. Consent Order, *supra* note 62, at 15.

225. HOLLAND, *supra* note 78, ch. 3, at 1.

226. *Id.*

227. *Id.* ch. 3, at 2.

228. *See id.* ch. 3, at 2–3.

229. *Id.* ch. 3, at 3.

230. *Id.* ch. 3, at 6.

231. *Id.*

232. *Id.*

233. *Id.* ch. 3, at 8 ("Differences of opinion between the offices of the General President and the General Secretary-Treasurer, and the failure to have a single principal and active coordinator or 'point' person responsible for convention activities during 1990, made coherent planning impossible.").

Treasurer Weldon Mathis, as well as to the union's failure to designate a person to coordinate convention planning.[234] Because decisions needed to be made, Holland and his staff participated in the resolution of numerous issues outside the EO's mandate.[235]

The EO often had to prod the IBT and its consultants to make decisions necessary for the EO's work to proceed.[236] IBT officers frequently invited Holland to participate in decisions that had little to do with the EO's mandate.[237] Perhaps due to concern that convention planning be impartial and/or because the EO proved to be a competent resource, the IBT sought EO assistance in resolving many logistical issues.[238]

Holland had difficulty locating a site within the Dolphin Hotel where secret-ballot voting could take place.[239] Because of poor planning, potentially suitable rooms had been assigned for other purposes.[240] Ultimately, the IBT asked the EO to assist in *constructing* voting rooms.[241] To ensure an orderly and efficient convention, the EO actively participated in resolving issues related to seating arrangements for delegates, candidates' family and guests, floor demonstrations, media access, security, and communications equipment.[242]

The convention's timetable required nominations and balloting to be conducted on the same day.[243] In the morning, there were floor nominations and candidate speeches.[244] Then, ballots were printed.[245] In the late afternoon, delegates marked the ballots in secret.[246]

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234. *See id.* Another early problem was the selection of an appropriate location for secret balloting. By the fall of 1990, the IBT, still headed by William McCarthy, had not yet determined how it would use the convention space at the Dolphin Hotel. *Id.* ch. 3, at 10.

235. *Id.* ch. 3, at 11.

236. *Id.*

237. *Id.*

238. *See id.* ch. 3, at 8–12. The EO staff (seventy-five people) maintained for itself the most visible office space at the convention. *Id.* ch. 3, at 14–15.

239. *Id.* ch. 3, at 10.

240. *Id.* The IBT adopted a space allocation plan produced by the EO staff, convention consultants, and the hotel convention staff. *Id.*

241. *Id.* ch. 3, at 13. A Maryland subcontractor shipped the prefabricated units to the Dolphin Hotel. *Id.*

242. *Id.* ch. 3, at 15–16.

243. *See id.* ch. 3, at 15–17.

244. *Id.* ch. 3, at 6–7, 15–16.

245. *Id.* ch. 3, at 6, 16.

246. *Id.* ch. 3, at 6.

The rules required that each delegate be a member in good standing *at the time of the convention.*[247] Starting in mid-May, the EO's contractor, the Center for Economic Organizing, began conducting eligibility checks on twenty-seven hundred individuals; of these, it found twenty-three hundred to be eligible.[248] The Center kept checking and rechecking eligibility until the first day of the convention, to make sure that as many delegates as possible could be seated.[249] Ultimately, the EO staff was able to certify the eligibility of 1,930 of the 1,936 delegates, while requiring five delegates to bring their dues up to date.[250]

Holland also had to deal with some important and tricky issues regarding press access. At previous conventions, the IBT had not allowed television cameras on the convention floor.[251] In the run up to the 1991 convention, CBS sought an order from Judge Edelstein to gain access to the convention floor in order to film events that would air on *60 Minutes*.[252] Judge Edelstein directed the EO to provide the most liberal possible media access consistent with the orderly conduct of convention business.[253] The EO promulgated rules that granted the media free access throughout the hotel, except for the convention-hall floor and voting rooms, where the media had limited access.[254]

2. The $64,000 Question: Could the Rank-and-File Overturn the Consent Order at the Convention?

In addition to nominating candidates for international union offices, the convention delegates had to vote on certain IBT constitutional amendments that had been agreed to by the consent-order signatories.[255] On the one hand, the consent order provided that the Teamsters constitution "shall be deemed and is hereby amended"

247. *Id.* ch. 3, at 35.

248. *Id.*

249. *Id.* ch. 3, at 35–36.

250. *Id.* ch. 3, at 36.

251. *Id.* ch. 3, at 41–43. At previous IBT conventions, there were some ugly incidents on the convention floor. Dissidents who tried to speak or make a nomination were beaten and dragged from the room. *Id.* ch. 3, at 61–62.

252. *Id.* ch. 3, at 42.

253. *Id.* ch. 3, at 42–43.

254. *Id.* ch. 3, at 44.

255. *Id.* ch. 3, at 23.

to incorporate changes agreed to in the consent order.[256] On the other hand, the same paragraph provided that, "[b]y no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote."[257] "The $64,000 Question"[258] was: what would occur if the convention delegates rejected some or all of the EO's election provisions?

Back in March 1989, Assistant U.S. Attorney Randy Mastro told Judge Edelstein that the U.S. Attorney's Office considered the constitutional amendments embodied in the consent order to have become automatically and immediately effective.[259] However, at a congressional hearing a month later, IBT General Counsel James Grady stated that the convention delegates could reject these amendments, including the provisions establishing the three court-appointed officers.[260] The issue was further confused when, in April 1989, U.S. Attorney Benito Romano called this matter an unresolved legal issue.[261]

In his first quarterly report to Judge Edelstein in August, 1989, Independent Administrator Lacey urged the judge to resolve the disagreement over the constitutional status of the consent order provisions.[262] However, Judge Edelstein took no action.[263] In his fourth quarterly report in July, 1990, Lacey again urged Judge Edelstein to answer the $64,000 question.[264] Again, Judge Edelstein declined, and again Lacey did not file a formal application for a court ruling.[265] Finally, in March 1991, the U.S. Attorney's Office, with the support of IA Lacey and EO Holland, filed an application seeking

256. Consent Order, *supra* note 62, at 5.

257. *Id.* at 5–6.

258. It is not clear who first used the expression, but it was widely used. HOLLAND, *supra* note 78, ch. 3, at 23.

259. *Id.* ch. 3, at 24.

260. *Id.* ch. 3, at 25.

261. *Id.* ch. 3, at 25; 1989 RICO Hearings, *supra* note 38, at 18 (testimony of Benito Romano, U.S. Attorney, Southern District of New York).

262. HOLLAND, *supra* note 78, ch. 3, at 26.

263. *Id.*

264. *Id.* ch. 3, at 27.

265. *Id.* ch. 3, at 27–29. Under the consent order, the IA, but not the EO, had authority to make formal applications to the district court. Consent Order, *supra* note 62, at 18.

a court order to enjoin the Teamsters national convention from repealing the consent-order provisions that were added to the IBT constitution and enjoining the Teamsters from taking any action to alter the nominating process as set forth by the EO's rules.[266]

Judge Edelstein granted the government's motion, reminding the IBT that it voluntarily had signed the consent order, which called for free and fair rank-and-file elections:

> I tend to be amused when I remember that the IBT by its representatives have made heroic statements from time to time to reaffirm their commitment to a union free of corruption and their dedication to free elections. How I wish that some of these statements could have been true. Time has proved, however, that these statements are empty of any meaning or purpose for the good of this important union.[267]

The Second Circuit affirmed the district court's decision on June 7, 1991,[268] and the United States Supreme Court denied certiorari on June 20, 1991, just four days before the convention began.[269] Thus, while the consent order authorized the convention delegates to vote on IBT constitutional amendments imposed by the consent order, the vote would have no legal effect. Fortunately, for the election-reform effort, indeed for the whole IBT-remediation project, the convention delegates, including all the candidates for general president, voted to accept the constitutional amendments.[270]

The delay in resolving the status of the constitutional amendments was a major obstacle to effective convention planning. As EO Holland noted, "[i]f subordinate entities were not made to understand that the process in its entirety was inevitable, there would be greater incentive to ignore the Election Officer or attempt to impede him and his staff."[271] For months, Holland had to navigate under a cloud of uncertainty.

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266. Consent Order, *supra* note 62, at 18.

267. United States v. Int'l Bhd. of Teamsters, 764 F. Supp. 787, 795 (S.D.N.Y. 1991).

268. HOLLAND, *supra* note 78, ch. 3, at 30.

269. *Id.*

270. *Id.* ch. 3, at 31.

271. *Id.* ch. 3, at 30.

3. Convention Week

Holland and his staff enforced the IBT constitutional requirement that IBT locals pay expenses for elected delegates to attend the convention, unless the local was financially unable to do so.[272] Holland did not find any local union to be so impecunious.[273]

The convention proceeded smoothly thanks to cooperation between the EO and IBT staffs, which took joint responsibility for ensuring that convention participants were properly registered.[274] The IBT staff issued delegate credentials.[275] The EO decided, with the IBT's support, to expand media access beyond what had been permitted at past conventions.[276]

Every morning when nominations took place, the EO cleared the floor of all but elected delegates.[277] A regional coordinator and security staffer managed access to the floor microphones to ensure that delegates had a fair opportunity to make nominations.[278] Immediately following the nominations, EO staff randomly ordered the nominees names on the ballots.[279] After the candidates approved proofs of the ballots, the two-hour ballot printing process began.[280] At approximately 4:30 p.m., the ballots were delivered to the voting area.[281] Voting took place from 5:00 p.m. to 8:00 p.m.[282] After counting the ballots, Holland announced which nominees had attained the 5 percent threshold necessary to be listed on the general election ballot.[283]

The EO was responsible for ensuring that the exhibition hall, where nominations were made and seconded, would be maintained

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272. *Id.* ch. 3, at 37.

273. *Id.*

274. *Id.* ch. 3, at 54.

275. *See id.*

276. Perhaps one example of the good will that developed during the convention is that the IBT subsequently appointed to the IRB Grant Crandall, the Regional Coordinator who served as a liaison between Holland and the various campaigns. *Id.* ch. 3, at 57.

277. *Id.* ch. 3, at 58.

278. *Id.* ch. 3, at 58–59.

279. *Id.* ch. 3, at 59.

280. *Id.* Holland could not find a union printer in Orlando who could print the ballots quickly enough to meet this schedule. Consequently, he established a union print shop at the Dolphin Hotel. *Id.* ch. 3, at 18.

281. *Id.*

282. *Id.*

283. *Id.*

as a politically neutral site.[284] The EO staff ensured that there were no partisan signs or banners displayed in politically neutral areas; on voting days even partisan hats, buttons, t-shirts, and jackets were prohibited.[285] They permitted floor demonstrations only for general president and secretary-treasurer candidates.[286]

4. The Nominees

The convention nominating procedure produced three slates of candidates headed by general presidency candidates Ron Carey, R.V Durham, and Walter Shea.[287] The EO ruled James P. Hoffa, the son of former General President James Riddle Hoffa (1957–67),[288] ineligible because he had not been a Teamster for the requisite previous two years.[289] Each slate nominated a candidate for secretary-treasurer and candidates for the fourteen international vice president positions.[290]

D. Step Three: The General Election

Immediately following the completion of the nominating convention, the EO focused on two important general election issues. The first was whether voting in this unprecedented nationwide rank-and-file election should be by mail or in person.[291] The second was how to determine voter eligibility.[292]

EO Holland opted for mail balloting.[293] During the delegate election process, 86 percent of locals with contested elections had used mail balloting, either exclusively or in combination with in-person voting.[294] Moreover, mail balloting during the delegate elections had achieved 33 percent voter participation as compared

284. *Id.* ch. 3, at 39.

285. *Id.* ch. 3, at 49.

286. *Id.* ch. 3, at 48.

287. *Id.* ch. 3, at 65.

288. CROWE, *supra* note 18, at 168.

289. HOLLAND, *supra* note 78, ch. 3, at 60–61. For a list of all nominated candidates, see CROWE, *supra* note 18, at 287–88.

290. HOLLAND, *supra* note 78, ch. 3, at 65.

291. *Id.* ch. 4, at 2.

292. *Id.*

293. *Id.* ch. 4, at 3.

294. *Id.* ch. 4, at 2–3.

with 19 percent for in-person voting.[295] None of the interested parties—the IBT, the three general presidential nominees, TDU, or AUD—objected.[296] Judge Edelstein approved it.[297]

Determining voter eligibility—i.e., being up to date on dues payments and being employed or actively seeking work—was more complicated. Most members (more than 90 percent) pay dues via a check-off system whereby employees authorize the employer to deduct union dues from their paycheck and transmit these dues directly to the union.[298] Under both the Teamsters' constitution and the Labor-Management Reporting and Disclosure Act,[299] a member cannot be disenfranchised with respect to a union election on account of an employer's malfeasance or misfeasance in forwarding the required check-off payment.[300] Holland promulgated a voter eligibility test whereby a person was deemed eligible to vote if: (1) the employee paid Teamster Union dues through a check-off procedure; and (2) the employer paid the member's dues the last time the employer sent dues payments to the union.[301] However, problems were inevitable because the Teamsters represented workers employed by nearly forty-five thousand separate employers.[302] For example, at Local 732, only 20 percent of the 6,179 members appeared to meet the constitutional eligibility standards as a result of employer bankruptcies, historically poor enforcement of check-off remittances against employers, and turnover of union staff.[303]

The difficulties of conducting a mail-ballot election for a union with as many members and as geographically diffused as the Teamsters can hardly be exaggerated. How would the mail ballots be distributed? One option would be to make them available at local union headquarters, but Holland opted to have them mailed to each member from central headquarters in Washington D.C.[304] That

295. *Id.* ch. 4, at 3.
296. *Id.*
297. *Id.*
298. *Id.* ch. 4, at 5–6.
299. 29 U.S.C. §§ 401–531 (2000).
300. HOLLAND, *supra* note 78, ch. 4, at 7–8.
301. *Id.* ch. 4, at 5.
302. *Id.* ch. 4, at 6.
303. *Id.* ch. 4, at 4.
304. *See id.* ch. 4, at 2.

decision required an accurate mailing list for more than 1.5 million Teamsters. The first step was to provide IBT locals with the names of members with erroneous addresses, based upon return of the *International Teamster* as undeliverable.[305] The locals were able to correct some of these addresses.[306] The second (and more costly) step was to run the remaining erroneous addresses through the U.S. Postal Service's national change of address database.[307] The third step was to request assistance from Teamsters employers, starting with the largest employer, United Parcel Service ("UPS"), with about two hundred thousand employees.[308] In all, the EO staff contacted 350 employers concerning eighty thousand problematic residential addresses.[309]

The EO selected security specialist Joe Loesche[310] to ensure ballot security.[311] Loesche assigned security personnel to the four printing and mailing facilities in Cleveland, Chicago, Ottawa, and Toronto, as well to the Washington, D.C. ballot counting site.[312] To prevent forgery, the color of ballots for each region was not revealed until the day printing began.[313] The voters received and returned ballots in nested envelopes.[314] As the first ballots arrived, they were stored in a ballot security room with twenty-four-hour security guards.[315] The candidates could designate observers to stay with the ballots.[316]

The rules permitted candidate observers to monitor each step of the counting process.[317] This meant that three observers, one from

305. *Id.* ch. 4, at 17–20.

306. *See id.* ch. 4, at 19–20.

307. *Id.* ch. 4, at 20–21.

308. *Id.* ch. 4, at 22.

309. *Id.* ch. 4, at 24. Updating the Teamsters membership list ensured maximum participation in the 1991 election and would also aid the Teamsters in membership communication for years to come. *See id.* ch. 4, at 17–27.

310. Loesche had formerly been director of security for the United Auto Workers and deputy superintendant of police in Detroit, Michigan. *Id.* ch. 3, at 21.

311. *Id.*

312. *Id.* ch. 4, at 44–45.

313. *Id.* ch. 4, at 15–16.

314. *See id.* ch. 4, at 93.

315. *Id.* ch. 4, at 46.

316. The two Durham observers maintained a daily, twenty-four-hour watch on the ballots, literally sleeping in the room with the ballots. *Id.* ch. 4, at 46–47.

317. *Id.* ch. 4, at 55.

each slate, could observe each count station.[318] The ballot was contained inside a ballot envelope that itself sat inside a business-reply envelope, the outside of which contained a code that, for eligibility purposes, identified the voter. The first work station checked eligibility.[319] Any ballot challenged by a candidate's observer was returned to the ballot security room; its validity would be resolved only if, after the votes were counted, the total number of challenged ballots could alter the election's outcome.[320]

At the first station, an election worker could challenge a ballot based on the condition of the envelope.[321] An improperly sealed envelope posed a risk that the member was not the person who filled in the ballot. At station two, a slitter machine opened the business-reply envelope. At station three, a ballot counter removed the sealed ballot envelope from the outer envelope.[322] Any marking on the sealed ballot envelope that disclosed the voter's identity voided the ballot.[323] At station four, another slitter machine opened the ballot.[324] At station five, count workers extracted the ballots and determined whether the optical scanning machine could read the ballot.[325] If the ballot was torn or crumpled, count workers at another station "remade" the ballot by copying the information from the voter's ballot to a clean ballot.[326] If the ballot was incorrectly filled out (e.g., bubbles not completely filled in), count workers remarked the ballot.[327] This procedure generated the most disputes because it required discerning the voter's intent. After all ballots from a local union were processed, they were taken to a ballot-tabulation room to be run through the optical scanning machine.[328]

In all, 396,172 Teamsters, representing 28.2 percent of the eligible membership, cast ballots.[329] Of these, 11,372 ballots were

318. *See id.*
319. *Id.* ch. 4, at 92.
320. *Id.* ch. 4, at 93, 100, 102.
321. *Id.* ch. 4, at 92–93.
322. *Id.* ch. 4, at 94.
323. *Id.*
324. *Id.* ch. 4, at 95.
325. *See id.*
326. *Id.* ch. 4, at 98.
327. *Id.*
328. *Id.* ch. 4, at 100.
329. *Id.* ch. 4, at 106.

voided on account of voter error in marking or mailing.[330] Furthermore, 17,125 challenged ballots were never counted because they could not affect the election's outcome.[331]

E. Protests and Appeals to the Election Officer and Certification of the Election

During the 1990–1991 election, members and candidates sent over 1,500 protests to headquarters.[332] Of those, 250 concerned the eligibility of individual members to participate in the delegate nomination process.[333] There were only two challenges to a nominated candidate's eligibility.[334]

EO Holland sought to resolve pre-convention and pre-general-election challenges as swiftly as possible. By resolving a disputed matter prior to the election, the EO "prevented the wrongful pre-election conduct from affecting the results of an election."[335] Resolving disputes early could prevent the need for a re-run election.

Protests had to be filed in writing at EO headquarters in Washington, D.C. All protests regarding a specific delegate election were consolidated under a single case number.[336] Eligibility protests, assigned to EO central-office attorneys, usually did not require field investigation because they generally related to being up to date on dues payments. The EO assigned other protests to the regional coordinator responsible for the area from which the protest arose; the regional coordinator could enlist the assistance of adjunct coordinators to conduct field investigations.[337]

Three elements of the protest process need emphasizing. First, all investigations began with a formal protest by a Teamster member; the EO staff did not initiate investigations or investigate anonymous tips.[338] Second, the EO staff did not have a specially designated investigations team. The regional coordinators and adjunct

330. *Id.*
331. *Id.*
332. *Id.* ch. 6, at 8.
333. *Id.*
334. *Id.*
335. *Id.* ch. 6, at 3.
336. *Id.* ch. 6, at 32–33.
337. *Id.* ch. 6, at 36.
338. *See id.* ch. 6, at 32–33.

coordinators conducted the investigations.[339] The most frequent protests were charges of employer campaign interference.[340] Third, protests were resolved without hearings, so they could be resolved expeditiously, preventing members and locals from being disenfranchised.[341] The rules required members to file protests within two days of the day the protestor became aware, or reasonably should have become aware, of the protested action.[342] The EO then had five days to investigate and make a decision.[343] In the event of an appeal, the Independent Administrator had three days to conduct a hearing and two additional days to render a decision.[344]

In the 1991 election, there were seventy-six post-election protests, known as "post protests."[345] Seventy-four of those related to delegate selection and two to the international election.[346] Because "post protests" only had to be considered if cumulatively they could have affected an election result, most of these were not investigated or resolved.[347] Twenty convention-related protests involved disputes about local unions refusing to pay the expenses of elected delegates.[348] Protests over "P cases" involved disputes about all other pre-election matters.[349]

The protests and their resolutions fill twenty-eight volumes. The following examples illustrate the most frequent types: employer protests, local union protests, and campaign finance protests.

1. Protests Against Employers' Conduct

The largest number of protests dealt with challenges to employers' actions that allegedly interfered with the union candidates' campaigning. The EO found these protests meritorious more frequently than protests over campaign interference by union

339. *Id.* ch. 6, at 36.

340. United States v. Int'l Bhd. of Teamsters (*1996 Election Rules*), 896 F. Supp. 1349, 1360 (S.D.N.Y. 1995).

341. *See* HOLLAND, *supra* note 78, ch. 6, at 4.

342. *1996 Election Rules*, 896 F. Supp. at 1359.

343. *Id.* at 1360.

344. *Id.*

345. *Id.*

346. *See* HOLLAND, *supra* note 78, ch. 6, at 8.

347. *Id.*

348. *See id.*

349. *See id.*

officials, members, and other individuals.[350] Complaints alleged 314 campaign violations against 122 different employers.[351] The most frequent charges against employers were: (1) failure to provide union candidates access to the employer's property; and (2) retaliation against an employee for engaging in union campaign activities.[352] The final election rules included rules on workplace access even though employers were not parties to the consent order.[353]

It was certainly not obvious that the EO could exert authority over employers who were not and could not have been parties to the RICO suit. However, a fair election would not be possible if employers allied themselves with one faction (usually the incumbent regime). The legal issue came to a head in a protest involving Yellow Freight Systems, Inc.[354] The Carey campaign alleged that the employer blatantly supported Durham, while preventing TDU and Carey's supporters from communicating with Yellow Freight's employees.[355] With respect to the Detroit site, EO Holland ruled that Carey had a reasonable way to communicate with IBT members off company property.[356] However, with respect to the Chicago Ridge protest, Holland found no reasonable alternative and therefore ordered Yellow Freight Systems to provide union candidates with access to the company's property.[357] Yellow Freight appealed to the Independent Administrator on the grounds that: (1) the EO did not have jurisdiction over employers; (2) the National Labor Relations Board ("NLRB") had exclusive jurisdiction to regulate candidate access to employer property; and (3) the EO's factual findings did not have a reasonable basis in fact.[358] The Independent Administrator upheld the EO's ruling.[359]

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350. *Id.* ch. 4, at 11.

351. *Id.* ch. 6, at 11.

352. *See id.* ch. 6, at 19–20.

353. United States v. Int'l Bhd. of Teamsters (*1996 Election Rules*), 896 F. Supp. 1349, 1364–67 (S.D.N.Y. 1995).

354. United States v. Int'l Bhd. of Teamsters (*Yellow Freight II*) 948 F.2d 98 (2d Cir. 1991); *see also* HOLLAND, *supra* note 78, ch. 6, at 17–19.

355. *Yellow Freight II*, 948 F.2d 98; *see also* HOLLAND, *supra* note 78, ch. 6, at 17–19.

356. *Yellow Freight II*, 948 F.2d at 100–01.

357. *Id.*

358. *See id.* at 101–02.

359. United States v. Int'l Bhd. of Teamsters (*Yellow Freight I*), No. 88 Civ. 4486, 1991 WL 51065, at *1 (S.D.N.Y. Apr. 3, 1991).

Yellow Freight then appealed to Judge Edelstein, who ruled that Yellow Freight, though not bound by the consent order, was subject to his All Writs Act injunction.[360] He reasoned that jurisdiction over employers was necessary to achieve the court's goal of enforcing free and fair IBT elections: the union incumbents' advantage could only be neutralized by allowing all candidates access to employer work sites.[361] Judge Edelstein rejected the contention that the NLRB possessed exclusive jurisdiction, holding that the NLRB could not have exclusive jurisdiction since it the All Writs Act injunction prevented the NLRB from hearing disputes emanating from the consent order.[362] Moreover, the consent order was derived from a RICO suit and not from a suit brought under the National Labor Relations Act ("NLRA").[363] Judge Edelstein also held that he would affirm the IA's decisions on employer protests unless they were arbitrary and capricious.[364]

The Second Circuit upheld Judge Edelstein's decision relating to the All Writs Act injunction and the NLRA.[365] However, it remanded on the issue of whether the IBT candidate who filed the protest had a reasonable alternative means for communicating with the company's Chicago Ridge employees.[366] Holland later noted: "Such decisions permitted direct campaigning among IBT members, at the facilities where they worked; such campaigning proved to be one of the most effective campaign devices utilized by any candidate."[367]

On the same day that it decided *Yellow Freight II*, the Second Circuit upheld another important Judge Edelstein election ruling.[368] Neal Henderson, a member of Boston Local 25, had been employed by Star Market as a warehouseman for almost fifteen years.[369] His

360. *Id.* at *4.

361. *Id.* at *3.

362. *Id.* at *3–4. The National Labor Relations Act guarantees union members a limited right of access to employers' premises. *Id.* at *3 (citing 29 U.S.C. § 158(a)(1)).

363. *Id.* at *4; National Labor Relations Act, 29 U.S.C. §§151-169 (2000).

364. *Yellow Freight I*, 1991 WL 51065, at *2.

365. *See* United States v. Int'l Bhd. of Teamsters (*Yellow Freight II*), 948 F.2d 98, 99 (2d Cir. 1991).

366. *Id.* at 107–08.

367. HOLLAND, *supra* note 78, ch. 6, at 19.

368. United States v. Int'l Bhd. of Teamsters, 954 F.2d 801, 804 (2d Cir. 1992).

369. United States v. Int'l Bhd. of Teamsters (*Star Market*), 776 F. Supp. 144, 147 (S.D.N.Y. 1991).

IBT local elected him as a convention delegate committed to Ron Carey's slate.[370] He alleged that his employer terminated him because of his post-convention support for Carey.[371] Holland found that such retaliation violated the election rules and ordered Star Market to reinstate Henderson with back pay.[372] When Star Market refused to comply with the order, the U.S. Attorney asked the district court to enforce the EO's order.[373] Judge Edelstein held that Star Market waived all arguments by failing to appeal directly to the EO and that *Yellow Freight I* dictated a decision in Henderson's favor because the All Writs Act injunction covered Star Market.[374] Judge Edelstein's and the Second Circuit's opinions in *Star Market*, in effect, gave the court-appointed officers the power to protect union insurgents against retaliation by employers who might be sympathetic or beholden to the union's dominant faction.[375]

The EO's final election rules and interpretive decisions also dealt with posting campaign material on workplace bulletin boards. If the boards were previously available to union members, the EO prohibited the employer from curtailing their use by IBT election candidates.[376] A related issue involved supporters of competing candidates removing or defacing the opposition's campaign notices and advertisements. The IA ordered employers to divide their bulletin boards in order to provide space for all candidates.[377] In some cases, regional coordinators actually drew dividing lines on the boards.[378]

Yet another line of cases guaranteed candidate-employees access to their own workplaces for campaigning during non-work hours, regardless of the availability of a reasonable alternative.[379] IA Lacey ruled that employers had to allow candidates to campaign in

370. *Id.*

371. *Id.* at 148.

372. *Id.*

373. *Id.* at 148–49.

374. *Id.* at 150. Star Market argued before the Second Circuit that the EO's and Independent Administrator's hearings violated due process and contravened an existing arbitration agreement. Int'l Bhd. of Teamsters, 954 F.2d at 804.

375. *Id.*; *Star Market*, 776 F. Supp. at 154.

376. HOLLAND, *supra* note 78, ch. 6, at 29–30.

377. *Id.* ch. 6, at 30.

378. *Id.*

379. *Id.* ch. 6, at 30–31.

outdoor areas, such as parking lots, and that candidates access to the work site itself during non-work time could only be restricted under stringent guidelines.[380]

2. Protests Against Local Unions

Recognizing that the workplace is the best place for union candidates to contact union members,[381] the EO's election rules required local unions to provide candidates with information about their members' work locations.[382] Delay in providing this information was "tantamount to denial to the candidate of his ability to campaign."[383] When a local did not comply with this rule, the EO took swift remedial action. For instance, EO Holland required Local 705 to mail the candidates' campaign literature to all its members.[384] He also ordered Local 710, where delay occurred earlier in the election period, to prepare and distribute the candidates' literature at the IBT members' work sites.[385]

The EO took responsibility for ensuring the integrity of the mail balloting process. The primary risks to the integrity of mail balloting are that: (1) a ballot may be filled in by someone other than the member to whom it belongs; and (2) voters are coerced. These risks are illustrated by a protest arising from Local 63's mail-ballot election for delegates and alternate delegates. Two slates contested the election; one was committed to Ron Carey, and the other was uncommitted.[386] The protest alleged that Local 63 officers themselves solicited and filled out some voters' mail ballots.[387] The EO appointed a special investigatory team to make unannounced work site visits to interview Local 63 members.[388] The investigation

380. *See id.*

381. *Id.* ch. 6, at 22. Holland explained that: "Numerous members could be contacted in a relatively short period of time. When at work—or travelling to and from work—members were more likely to be receptive to receiving campaign message which, after all, affect their working conditions. During such periods, they were not distracted by familial or similar obligations. Moreover, face-to-face campaigning was more effective and less expensive than mailings or telephoning." *Id.*

382. *Id.* ch. 6, at 21.

383. *Id.* ch. 6, at 23.

384. *Id.* ch. 6, at 23–24.

385. *Id.* ch. 6, at 24.

386. *Id.* ch. 6, at 26.

387. *Id.* ch. 6, at 27.

388. *Id.*

revealed that at least some ballots were filled out by Local 63 officers and business agents.[389] Although the members of the winning slate themselves were not implicated, their supporters were.[390] Finding the election to be the "fruits of that poisonous tree," the EO disqualified the entire slate and certified the Carey Slate.[391] After the early, swift, and strong reaction to this type of election fraud, the EO found no further evidence of similar conduct during either the delegate or general elections.[392]

3. Campaign Finance

Campaign financing is critical in union elections as it is in elections for governmental offices. This is especially true for an IBT election in which candidates have to communicate their message to voters all across the United States and Canada. Donations from outside the union could easily influence the election, but raising enough money from union members to finance a nationwide campaign is a daunting challenge, especially for insurgents who lack name recognition and patronage to dispense.

The consent order prohibited IBT candidates from receiving campaign contributions from non-IBT members:

> No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office.[393]

This prohibition supplemented federal labor law, which prohibits unions from making contributions or providing benefits to candidates on an unequal basis and which prohibits labor organizations from making contributions to candidates and campaigns in other unions.[394] Federal labor law also prohibits employer representatives from

389. *Id.*

390. *Id.* ch. 6, at 28.

391. *Id.*

392. *See id.*

393. Consent Order, *supra* note 62, at 5.

394. *See* HOLLAND, *supra* note 78, ch. 15, at 2.

contributing to union candidates' campaigns and, to prevent corruption, from making any gifts to union representatives.[395]

The election rules aimed to make IBT-campaign financing more transparent. Campaign donations would have to be reported and available for all candidates to review. Violations could be punished by fines and even removal from office.[396]

With respect to the consent order's campaign finance provision, several election protests required the EO to interpret "employer," "labor organization," and "campaign contributions."[397] The latter generated the most controversy. The EO prohibited IBT entities from endorsing IBT candidates on the ground that an endorsement is a "material thing of value" and therefore a campaign contribution.[398] Indeed, an EO advisory stated that endorsements, solicitations of endorsements, and certain volunteer work all constitute campaign contributions.[399]

The Durham slate filed an election protest against the Teamsters for a Democratic Union on account of TDU's support for Ron Carey.[400] It argued that TDU should be prohibited from supporting (by endorsements, financial contributions, or labor) Ron Carey because TDU received financial contributions from the Teamster Rank and File Education and Legal Defense Fund ("TRF," a TDU entity that solicits donations from non-Teamsters), which, in turn, received contributions from non-IBT members, who are prohibited from contributing to IBT candidates.[401]

EO Holland ruled in favor of TDU and Carey, indicating for some critics Holland's bias in favor of Carey.[402] Holland ruled that

395. *See id.* ch. 15, at 1–2.

396. *See id.* ch. 15, at 3–4.

397. *See id.* ch. 15, at 4–5.

398. *Id.* ch. 15, at 5.

399. *See id.* ch. 15, at 6.

400. *See id.* ch. 6, at 15. Independent committees were groups comprised solely of IBT members not directly affiliated with a candidate or slate, but actively supporting one or more candidates. TDU was an important example. *See id.* Breaking with previous practice, TDU endorsed Ron Carey for general president and organized rallies on his behalf. *See id.* ch. 6, at 15–17.

401. *See id.* ch. 6, at 15–16. TDU was founded in 1976 by Teamsters concerned about "corruption, lack of leadership accountability to the membership, undemocratic procedures, and unfair, ineffective, and even ill-intentioned bargaining and grievance adjustment strategies." United States v. Int'l Bhd. of Teamsters (*TDU/TRF Disclosure*), 968 F.2d 1506, 1508 (2d Cir. 1992). *See also* LA BOTZ, *supra* note 157.

402. HOLLAND, *supra* note 78, ch. 6, at 15–17.

TDU could support candidates in the IBT election as long as it maintained an accounting system that assured that its election expenditures were funded exclusively with money from persons or entities who themselves could legally contribute to candidates.[403] This decision provided a green light for the Teamster National Black Caucus and the Teamster Hispanic Caucus to contribute to Durham's campaign.[404]

Holland ordered TDU and TRF to file reports identifying contributors of more than $100 and to disclose those reports to international union candidates.[405] Such disclosure was necessary because of "the possibility . . . that the campaign contribution limitations of the *Consent Order* and the *Rules* may be breached."[406] Therefore, Holland ordered independent committees, specifically including TDU and TRF, to disclose their donations.[407]

After Judge Edelstein affirmed Holland's decision, the Second Circuit Court of Appeals stayed the disclosure order until it could rule on the merits.[408] Ultimately, after the 1991 election was over, the Second Circuit ruled in favor of TDU on two grounds: (1) TDU was not bound by the consent order because the IBT officers who signed the consent order did not represent TDU;[409] and (2) because TDU was not attempting to frustrate the consent order's implementation, it was not in violation of the All Writs Act injunction.[410]

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403. *Id.* ch. 6, at 16.

404. *Id.* ch. 6, at 17.

405. *See TDU/TRF Disclosure*, 968 F.2d at 1508.

406. *Id.* at 1509.

407. *See id.* TDU and TRF opposed disclosure because their members had faced retaliation including "brutal physical attacks, arson, threats of physical harm, and economic reprisals . . . ." *Id.* at 1508. TDU and TRF offered to provide the EO with any information relevant to investigations of campaign finance violations. *See id.* at 1509.

408. *See* HOLLAND, *supra* note 78, ch. 15, at 16.

409. *See TDU/TRF Disclosure*, 968 F.2d at 1511.

410. *See id.* at 1511–12. Judge Edelstein ruled that employers, while nonparties to the litigation, could frustrate the consent order and therefore were subject to the All Writs Act injunction. TDU voluntarily complied with the EO's reporting requirements and in no way interfered with the implementation of the consent order. The Second Circuit specifically did not address the question of whether the All Writs Act injunction could extend to TDU in the absence of voluntary compliance. *Id.* at 1512. The candidates spent approximately $3.8 million in the election. HOLLAND, *supra* note 78, ch. 15, at 12.

F. The Candidates and the 1991 Election

The 1991 rank-and-file election of the IBT's international officers was a watershed event in the history of the union. Historically, the Teamsters' General Executive Board and its organized-crime allies selected the IBT international president.[411] The next convention then unanimously affirmed the GEB's choice.[412]

1. The Candidates

The three candidates for IBT general president in the 1991 election were Ron Carey, R.V. Durham, and William Shea.[413] Ron Carey was president of Local 804, which represents UPS workers in the metropolitan New York City area.[414]

In his 1993 book on the Teamsters, labor journalist Kenneth Crowe called Carey a strong, dedicated, and competent IBT official, who offered an alternative to the labor racketeers who dominated the international union.[415] He opined that "[i]f the Teamsters ever were to change . . . it would take a person like Carey to do it."[416] Crowe praised Carey for "carefully accounting for every dollar of the members' money and preventing anyone else in the local from playing the dirty game of kickbacks and shakedowns that had destroyed the reputation of the IBT."[417]

Carey had opposed the previous three national UPS contracts.[418] A majority of UPS workers nationwide had rejected the 1998 contract, but the IBT still agreed to it, a two-thirds membership vote being required to defeat the GEB's approval of a national contract.[419]

Carey clearly was the candidate of change who could break the incumbent regime's multi-decade control of the IBT.[420] Carey ran

411. For example, the GEB selected Jackie Presser as general president when Roy Williams resigned after being convicted. The GEB selected William McCarthy as general president after Jackie Presser died. *See* JACOBS, *supra* note 7, at 44.

412. CROWE, *supra* note 18, at 159.

413. HOLLAND, *supra* note 78, ch. 3, at 65.

414. *See* STEVEN BRILL, THE TEAMSTERS 156 (1978).

415. *See* CROWE, *supra* note 18, at 130–31.

416. *Id.* at 135.

417. *Id.* at 130.

418. *Id.*

419. *Id.*

420. *Id.* at 169.

with TDU's strong backing, but he was not a TDU member and sought not to be defined as TDU's candidate.[421]

Carey's candidacy got a huge boost when the incumbent IBT regime was unable to coalesce around a single candidate.[422] In fact, there was a major schism among the leadership after Jackie Presser stepped down in 1988 on account of illness.[423] Secretary-Treasurer Weldon Mathis became acting president but lost the position when the General Executive Board selected Vice President William McCarthy in the summer of 1988.[424]

International Vice President R.V. Durham announced his candidacy for general president after incumbent President William McCarthy decided not to run.[425] Durham, also president of IBT Local 391, received the support of a majority of the GEB, who saw him as carrying on the policies and apparatus of the McCarthy administration.[426] Durham defined himself as a steadfast fighter for the rights of truck drivers.[427] Despite the GEB's support for Durham, International Vice President Walter Shea also chose to run.[428] While Shea had been an international vice president for a decade, he had no political base within the IBT.[429] He joined the union as a researcher for the IBT's Eastern Conference.[430] In the ensuing years, he held several IBT administrative positions, finally serving as the union's

421. *Id.* at 144–45. Carey attended the TDU convention and accepted its endorsement and support, but emphasized throughout his campaign that the TDU was just one of several organizations whose endorsement he welcomed. One Carey campaign aide noted: "The downside is that for years Teamster leaders have been pounding it into the members that TDU is a bunch of complainers, dissidents, communists, employer representatives. A litany of propaganda [that was] tagged onto Ron [Carey]." *Id.* Nonetheless, Carey did run with some TDU members on his ticket, such as Diana Kilmury, who would become the first woman ever to serve on the GEB. *See id.* at 180.

422. *Id.* at 129–68

423. *Id.* at 78, 83

424. *Id.* at 86–89. Subsequently, five members of the GEB sued McCarthy and Mathis for retaliation on account of being stripped of their jobs for their support of Walter Shea in the 1991 election. *Id.* at 186; Shea v. McCarthy, 953 F.2d 29 (2d Cir. 1992).

425. CROWE, *supra* note 18, at 153.

426. *Id.* at 153–54.

427. Durham convinced Congress to act to ensure that the cab sizes, where drivers sit, did not shrink pursuant to state regulation. He famously drove a small cab up to Capitol Hill; Senator Ted Kennedy sat down in it to demonstrate the discomfort. *Id.* at 156–69.

428. *Id.* at 159–60.

429. *Id.* at 165–66.

430. *Id.* at 162.

day-to-day administrator in Washington D.C.[431] The GEB endorsement made Durham the frontrunner.[432] The delegates at the Orlando convention confirmed his lead; he received 1,001 delegate votes, compared to Shea's 574 and Carey's 289.[433]

2. The Campaign

Carey ran against what he derisively called "concessionary bargaining" and weak contracts.[434] By contrast, he claimed to have delivered strong contracts for his local in New York.[435] Carey argued that corruption and the perception that the leaders of the Teamsters were lining their own pockets diminished the union's bargaining power. He insisted that a union dedicated to its members, not to its leaders, would deliver better contracts.[436]

Durham presented himself as a leader who had already produced results, most notably, protecting the health and safety of truckers.[437] He claimed the reformer's mantel by supporting the consent order provision that established direct elections; he also proposed a permanent, independent ethics review committee.[438] Shea defined himself as a competent and honest administrator.[439] His campaign, however, had little resonance with the rank-and-file.[440]

The 1991 campaign was marked by negative campaigning. EO Holland required the *International Teamster* to give each slate nine pages of space in its September, October, and November issues.[441] Carey chose to display a picture of a group of pigs feeding at a trough filled with dollar bills. The caption said: "They're feasting on your dues!"[442] The ads had been prepared by November Group, a Washington-based political marketing firm, which was later

431. *Id.* at 156, 162–66.
432. *Id.* at 181–82.
433. *Id.* at 214.
434. *Id.* at 141–42.
435. *Id.* at 142.
436. *Id.*
437. *Id.* at 158.
438. *Id.* at 185.
439. *Id.* at 160.
440. *Id.* at 180, 189, 194.
441. *Id.* at 224.
442. *Id.* at 225.

implicated in the campaign finance violations that led to Carey's expulsion from the IBT.[443]

Durham used his space to attack Shea for never having been a working Teamster or a local union officer. He accused Carey of having been a "scab" (i.e., a worker who crosses picket lines, a strike breaker).[444] He also excoriated Carey for cooperating with federal investigators in the investigation and prosecution of a member of Carey's local.[445] Carey's team tried to capitalize on Carey's reputation for fighting corruption: "Ron Carey *did not* hesitate to force a Local 804 official caught in wrongdoing out of office."[446]

Durham sought to define Carey as the TDU candidate, hoping to sway many Teamsters who regarded TDU negatively.[447] One letter that Durham distributed to union officials and employees in the Marble Palace raised the (presumably frightening) specter that "we could wake up one morning to find Ron Carey TDU president of the IBT."[448] A month later, Durham stated, "TDU's outright lies and deceptions, coupled with the antiunion media's distortions, have fired up Carey's supporters."[449] Durham's ads accused Carey of being "Mr. Immunity" for allegedly cutting a deal with the government to testify against fellow Local 804 member John Long.[450] Durham also made the baseless accusation: "Scabbing on a Teamsters strike is as low as you can go. Ron Carey scabbed on a UPS strike."[451]

In the October issue, Carey sought to reinforce his message that he would purge the racketeers who had victimized the union for decades.[452] In the *International Teamster*, he placed a picture of

443. *Id.* at 224–25.

444. *Id.*

445. John Long and Ron Carey were colleagues and rivals within Local 804; Carey served as president and Long as secretary-treasurer. Long was convicted in Judge Edelstein's court for taking a $9,000 payoff. Subsequently, U.S. Attorney Giuliani argued that the civil RICO suit against the IBT was related to the Long conviction, so it would be heard by Edelstein. *Id.* at 137–38.

446. *Id.* at 225–26.

447. *Id.* at 251–52.

448. *Id.* at 251.

449. *Id.* at 251–52.

450. *Id.* at 225.

451. *Id.* at 226.

452. *Id.*

Durham standing arm-in-arm with a convict in chains and with a machine-gun-toting gangster.[453]

The government's remedial strategy was predicated on the belief that, if given an opportunity, the Teamsters rank-and-file would choose an honest leader over a corrupt organized-crime-backed leader.[454] Durham himself had not been *charged* with specific wrongdoing or improper alliance with organized crime, but in the minds of many people who wanted drastic change in the IBT, he was guilty by association.[455] In fact, three vice presidential candidates on his slate were charged with wrongdoing.[456] In the midst of the campaign, the Investigations Officer charged Robert Sansone with failing to investigate a member of his local's organized-crime ties.[457]

Six weeks before the mail-in ballot deadline, the Carey campaign had enough money to mail a small pamphlet to 650,000 members.[458] The pamphlet's cover showed a cigar-smoking gangster wearing a Durham slate button.[459] The caption asked, "Guess who runs the Teamsters?"[460] The pamphlet's first page provided the answer: "Starting Now, You Do."[461] The "Carey Promise" had four prongs: "1. Throw out the Mafia, 2. Better Pensions, 3. Better Health Care, and 4. Stop Corruption."[462] The pamphlet stated that three members of the Durham Slate had been charged with "corruption, kickbacks and mafia ties."[463] It charged "Old Guard leaders" with destroying the union and criticized Durham and his wife and son for drawing multiple IBT salaries.[464]

When the mail ballots were counted, Carey had 188,883 votes, Durham 129,538, and Shea 71,222.[465] The result was widely

453. *Id.*

454. *Id.* at 246.

455. *Id.* at 249.

456. *Id.* at 225–26.

457. *Id.* at 229.

458. *Id.* at 251.

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

463. *Id.*

464. It was common practice for international IBT officers to draw salaries from locals, joint councils, and area conferences, as well as from the international union. When they retired, they also drew multiple pensions. *Id.*

465. *Id.* at 259.

regarded and heralded as an enormous victory for the government and TDU. Some saw it as a historic turning point for the entire U.S. labor movement.[466] The *New York Times* rhetorically asked, "Can It Be Morning in Teamsterland?"[467] Chris Scott, who at the time was the President of the North Carolina AFL-CIO, mused, "[i]n five years it is conceivable that Carey is so popular that he makes Jimmy Hoffa look like a footnote in history."[468]

3. The Carey Years: 1992–1997

Carey promised the IBT membership: "a new Teamster union. . . . The union that's been won back by its members. The union that's going to work for its members. A union that will not be tolerating corruption."[469] He stood by his pledge to end concessionary bargaining by maintaining a hard line against a Pennsylvania trucking company that demanded a concessionary contract, including a 22 percent wage cut.[470] Carey stood firm even though it led to the company's bankruptcy and to the unemployment of the three hundred employees.[471]

Carey sold the union's jets and put together a budget with strict spending controls.[472] When Carey took office, he cut his own salary by $75,000 to $173,000 per year and reduced all top officers' pay.[473] He dissolved the four area conferences, purportedly saving more than $11 million.[474]

However, the IBT's financial situation was precarious. The 1991 convention had voted to increase weekly strike benefits from $55 to $200 without providing a way to pay for it.[475] At the end of a

466. *Id.*

467. Jonathan Tasini, *Can It Be Morning in Teamsterland?*, N.Y. TIMES, Dec. 13, 1991, at A39.

468. CROWE, *supra* note 18, at 258.

469. *Id.* at 258.

470. *Id.* at 265.

471. *Id.*

472. *Id.* at 266.

473. Gregory S. Johnson, *Crunch Time for Carey: Embattled President of Teamsters Faces Depleted Strike Fund, Rampant Spending*, J. COM., Jan. 9, 1995, at 79.

474. *Carey: End "Real Teamster" Caucus*, TRAFFIC WORLD, Oct. 16, 1995, at 45.

475. *See* Johnson, *supra* note 473.

major 1994–95 truckers' strike, the IBT's strike fund was almost exhausted. Carey reduced the weekly strike benefit back to $55.[476]

A three-week nationwide truckers' strike in April completely depleted the fund;[477] it paid out $28 million in one strike[478] and $100 million in total.[479] Carey's administration was saddled with an expensive pension system that had to pay pensions to local union officials who were already receiving pensions from their local unions; that double-dipping cost the union $34 million before Carey ended it in 1994.[480] In addition, by the end of 1995, the IBT had spent $12 million for the salaries and expenses of the court-appointed officers serving pursuant to the consent order.[481] One political opponent's campaign literature referred to him as Ron "Ca$h & Carey."[482]

In advance of the truckers' strike and for the first time in IBT history, Carey put a dues increase up for a rank-and-file vote.[483] In retrospect, this turned out to be a huge mistake. The proposal lost by a 3-to-1 margin.[484] After the truckers' strike, Carey signed a new National Master Freight Agreement, covering all the union's freight carriers.[485] Many members expressed disappointment with the outcome, which froze part-time pay, eliminated overtime for dock workers, and enabled freight carriers to move more freight intermodally, i.e., a combination of train and truck requiring fewer hours for truck drivers.[486]

476. John D. Schulz, *Hard Times at the Teamsters Union: $100,000 Club Dwindles to 145 Officers*, TRAFFIC WORLD, Aug. 7, 1995, at 15.

477. Johnson, *supra* note 473.

478. John D. Schulz, *Hoffa Preparing '96 Challenge to Carey*, TRAFFIC WORLD, Jan. 23, 1995, at 14.

479. Janet Moore, *Hoffa Son Visits City, Evokes Memories: Teamsters Candidate Seeking to Follow Father Into Union Presidency*, AKRON BEACON J., Nov. 21, 1995, at C6.

480. *Id.*

481. *See id.*

482. Jill Hodges, *Hoffa Brings His Bid to Head Teamsters to Minnesotans*, MINNEAPOLIS STAR TRIB., May 30, 1996, at 1D.

483. William Flannery, *Teamsters Dealing with Dues, Labor Pact*, ST. LOUIS POST-DISPATCH, Mar. 30, 1994, at 7C.

484. *Id.*

485. *See* Johnson, *supra* note 473.

486. *Id.*

Carey could claim some successes. In 1995, the union gained nearly 4,000 members, halting a sixteen-year decline.[487] Meanwhile, the Teamsters' lobbying efforts paid off when it convinced the Clinton administration to delay implementation of provisions of the North American Free Trade Agreement that would have allowed trucks from Mexico to haul freight into the United States.[488]

IV. THE 1996 ELECTION DEBACLE: THE FALL OF RON CAREY

The 1996 election promised to be highly competitive because of the candidacy of James P. Hoffa, whose name alone made him a formidable candidate. His father, Jimmy (James Riddle) Hoffa, was one of the most charismatic labor leaders in U.S. history.[489] His presumed assassination by mafia figures only added to his notoriety. Hoffa's long and complex association with organized crime made him anathema to union reformers.[490] Inevitably then, some people feared that a James P. Hoffa general presidency would mean a return to the old days of labor racketeering.[491] That fear was reinforced by the support Hoffa immediately received from individuals and families with ties to his father.[492]

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487. *See* John D. Schulz, *Teamsters Reverse Membership Decline; Start 'NAFTA Highway Safety Alert'*, TRAFFIC WORLD, Mar. 4, 1996, at 18. This membership increase was largely due to the growth of UPS, the Teamsters' largest employer. *See id.*

488. *See id.*

489. *See* Steven Greenhouse, *Once Again, the Hoffa Name Rouses the Teamsters' Union*, N.Y. TIMES, Nov. 17, 1996, at 1. For a full account of the elder Hoffa's involvement with the union see WALTER SHERIDAN, THE FALL AND RISE OF JIMMY HOFFA (1972); DAN E. MOLDEA, THE HOFFA WARS: TEAMNSTERS, REBELS, POLITICAINS, AND THE MOB (1978); LESTER VELIE, DESPERATE BARGAIN: WHY JIMMY HOFFA HAD TO DIE (1977); ARTHUR A. SLOANE, HOFFA (1991); THADDEUS RUSSELL, OUT OF THE JUNGLE: JIMMY HOFFA AND THE REMAKING OF THE AMERICAN WORKING CLASS (2001).

490. *See generally* JACOBS, *supra* note 7, at 264–65 n. 30 (listing sources that detail Hoffa's associations).

491. *See, e.g.*, Stanley Holmes, *Son of Hoffa Seeks to Rule Divided Teamsters*, SEATTLE TIMES, Jan. 20, 1996, at A1 (describing the differences between Carey supporters who believed "Hoffa want[ed] to bring back the old guard, the nepotism and the corruption" and Hoffa supporters who believed he would strengthen the Teamsters).

492. For example, Hoffa's candidacy was made possible by a job with the Michigan Joint Council of Teamsters headed by Larry Brennan. Hoffa and Larry's father, Bert Brennan, were friends, business partners, and criminal codefendants. DAN MOLDEA, THE HOFFA WARS 80, 140 (1978).

A. A New EO and Revised Election Rules

The consent order gave the government the option of supervising the 1996 IBT election if the government chose to pay for it.[493] On February 7, 1995, the IBT and the government agreed that a court-appointed officer would supervise the 1996 IBT election and further agreed that "it is the intention of the Government and the IBT that the Election Officer function in 1996 as similarly as possible to the 1991 Election Officer."[494] After Holland resigned from his position in 1993, Judge Edelstein appointed Amy Gladstein, an attorney with experience at the NLRB and in private practice.[495] Edelstein removed Gladstein when she hired her husband and law partner as EO legal counsel, a decision that Judge Edelstein called "egregious misconduct and deplorably flawed judgment."[496] Judge Edelstein then appointed Barbara Quindel, a Minnesota labor attorney who had served as one of Holland's regional coordinators.[497]

Election Officers Appointed to Oversee IBT Elections[498]

Officer	Term	Background
Michael Holland	1989–1993	Labor Lawyer
Amy Gladstein	1993–1995	Labor Lawyer
Barbara Quindel	1995–1997	Labor Lawyer
Banetta Mansfield	1997	Labor Lawyer
Michael Cherkasky	1997–1999	Prosecutor
William Wertheimer	2000–2002	Labor Lawyer
Richard Mark	2005–2007	Prosecutor

The Quindel appointment drew some sharp criticism. One Carey critic told the *Journal of Commerce*: "Her comportment in the last election convinced old-guard Teamsters that she was opposed to

493. Consent Order, *supra* note 62, at 16.

494. *Id.* at 2.

495. *See* Philip Dine, *Running Teamsters Election Full-Time Job for This U.S. Appointee*, ST. LOUIS POST-DISPATCH, Feb. 24, 1995, at 1C.

496. *See* Neil A. Lewis, *At the Bar; Wherein a Court-Appointed Lawyer Is Dismissed: 'Flawed Judgment' or 'a Marriage Penalty'?*, N.Y. TIMES, May 19, 1995, at A27.

497. *See Labor Lawyer from Milwaukee to Oversee '96 Teamsters Vote*, J. COM., June 1, 1995, at 3B.

498. *See supra* notes 71, 495, 497 and accompanying text; *infra* notes 619, 670, 746 and accompanying text; *Richard W. Mark – Biography*, Orrick, http://www.orrick.com/lawyers/Bio.asp?ID=96657 (last visited May 22, 2009).

them. . . . There were the perceptions of local union officials that she was zealous against the non-Carey slate."[499] Judge Edelstein also appointed former federal judge and former deputy New York City police commissioner Kenneth Conboy to serve as Election Appeals Master, in order to fill the appellate role in election protests previously played by the IA.[500]

Because EO Quindel was convinced that mail balloting had been successful in the 1991 delegate-selection and general elections, she requested that the court modify the consent order to provide that "all direct rank-and-file voting at future IBT elections would be conducted 'by mail ballot . . . .'"[501] Additionally, in order to reduce the risk of intimidation and coercion at the delegate selection phase, Quindel issued a rule permitting delegate nominations to be submitted in writing directly to the EO office.[502]

Quindell's 1996 election rules were informed by prior court decisions and experience gained from the 1991 election. A post-1991-election Second Circuit decision permitted the EO to conduct post-election investigations only when resolution of the protest could

499. *Id.*

500. *Federal Judge Appoints a New Overseer for Teamsters' Election*, N.Y. TIMES, Sept. 30, 1997, at A26. Kenneth C. Crowe described Conboy as "a bulldog for detail and a skeptical cross-examiner of forgetful witnesses . . . ." Kenneth C. Crowe, *Ex-Judge to Make Decision on Carey*, NEWSDAY, Oct. 1, 1997, at A57.

501. United States v. Int'l Bhd. of Teamsters (*Consent Order Modification*), 159 F.R.D. 437, 440 (S.D.N.Y. 1995). Local unions would no longer be permitted to select convention delegates via in-person balloting except in compelling circumstances. United States v. Int'l Bhd. of Teamsters (*1996 Election Rules Decision*), 896 F. Supp. 1349, 1356 (S.D.N.Y. 1995). Ironically, the consent order required that all balloting occur in person. Consent Order, *supra* note 62, at 15 ("All direct rank-and-file voting by secret ballot described above shall be by in-person ballot box voting at local unions or absentee ballot procedures where necessary . . . ."). EO Holland's 1991 proposed election rules provided for local unions to use mail-in ballots for delegate elections. No parties objected to the rule and Judge Edelstein approved it without comment. HOLLAND, *supra* note 78, ch. 2, at 10; *see also* United States v. Int'l Bhd. of Teamsters (*1991 Election Rules Order*), 742 F. Supp. 94 (S.D.N.Y. 1990). Holland believed mail balloting would produce greater voter participation. HOLLAND, *supra* note 78, ch. 2, at 10. After the delegate elections, Holland was impressed by the higher participation at those local unions using mail ballots. He therefore proposed that the general election should similarly use mail ballots. The three slates of International Union Officer candidates, the Teamsters for a Democratic Union, and the Association for Union Democracy, did not object. *Id.* ch. 4, at 3. Judge Edelstein approved the plan without addressing the direct contradiction with the consent crder. *Consent Order Modification*, 159 F.R.D. at 438–40. Quindel preferred mail ballots at every stage. She requested that Judge Edelstein modify the consent order. *Id.* at 440. A consent order may be modified "by establishing that there has been a significant change in circumstances, factual or legal, and that the proposed modification is suitably tailored to deal with the changed circumstances." Juan F. v. Weicker, 37 F.3d 874, 878 (2d Cir. 1994).

502. *Consent Order Modification*, 159 F.R.D. at 438–39.

affect the election's outcome.[503] Leroy Ellis had alleged that his employer, Roadway Express, terminated him for running for international vice president on the Carey slate.[504] EO Holland had ordered that Ellis be reinstated with back pay.[505] However, Holland's decision was nullified because it had not been rendered within five days.[506] After the election, Ellis refiled the protest under the more generous post-election time limit for protests.[507] However, the election rules authorized the EO to decide a post-election protest only if the "alleged violation may have affected the outcome of the election."[508] Because Ellis had been successfully elected to the vice presidency, the employer's alleged violations had not affected the election.[509] Judge Edelstein approved a rule change for the 1996 election that authorized the EO to investigate and resolve any post-election protest alleging retaliation.[510]

The 1996 election rules also sought to ensure that candidates would have reasonable access to employers' property for campaign purposes.[511] Following the 1991 election, the Supreme Court held in *Lechmere, Inc. v. National Labor Relations Board*[512] that the National Labor Relations Act did not give non-employees a right to campaign on an employer's premises.[513] Quindel determined that, in the absence of an enforceable provision in the Election Rules, non-employee union members had no right of access to an employer's premises.[514] However, she promulgated a (rebuttable) right to campaign in parking lots during hours when IBT members were likely to be there.[515]

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503. United States v. Int'l Bhd. of Teamsters (*Ellis*), 3 F.3d 634, 637 (2d. Cir. 1993).

504. *Id.* at 636–37.

505. *Id.* at 636.

506. *Id.* at 637.

507. *Id.* at 638.

508. *Id.* at 637. Judge Edelstein upheld all of the 1996 election rules in *United States v. Int'l Bhd. of Teamsters*, 943 F. Supp. 360 (S.D.N.Y. 1996).

509. *Ellis.* 3 F.3d at 637.

510. United States v. Int'l Bhd. of Teamsters (*1996 Election Rules Decision*), 896 F. Supp. 1349, 1360–61 (S.D.N.Y. 1995).

511. *Id.* at 1364.

512. 502 U.S. 527 (1992).

513. *Id.* at 538.

514. *1996 Election Rules Decision*, 896 F. Supp. at 1365.

515. *Id.* at 1365 (The presumption could be rebutted by showing "that access to that particular employer's employee parking lot is neither necessary nor appropriate to meaningful exercise of

B. The 1996 Election and Post-Election Protest

1. The 1996 Presidential Challengers

In 1995, almost two years before the next election, Sam Theodus, a member of Carey's 1991 slate, announced that he would run for general president.[516] Ten years earlier, with TDU's endorsement, Theodus had mounted a futile challenge to incumbent General President Jackie Presser.[517] Theodus was elected on the Carey slate in 1991 as International Vice President.[518] However in 1995, labeling the Carey administration "vindictive" and "morally corrupt,"[519] Theodus called for "change, correction and rebuilding."[520] Throughout the campaign, Carey's opponents repeatedly charged that Carey purged rivals by falsely labeling them corrupt.[521] Theodus resigned from the Ethical Practices Committee, accusing Carey's supporters on the Committee of trying to intimidate members who attended Hoffa rallies; the EO later sustained these charges.[522] Theodus's main campaign issues were the sorry state of IBT finances and declining Teamster membership.[523] Ultimately, however, Theodus dropped his candidacy for general president in order to run for vice president on the Hoffa slate.[524]

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democratic rights . . . ."). Election Officer Quindel asserted that these election rules applied to Canadian as well as U.S. employers. Judge Edelstein agreed. United States v. Int'l Bhd. of Teamsters, 945 F. Supp. 609 (S.D.N.Y. 1996) (finding Labatt's Brewing Co. in Toronto subject to the election rules promulgated pursuant to the consent order.).

516. Sandra Livingston, *Theodus Will Challenge Carey in Teamster Race*, CLEV. PLAIN DEALER, Jan. 3, 1995, at 1C.

517. CROWE, *supra* note 18, at 42. TDU leader Ken Paff noted, "[t]he sorry fact is Jackie Presser could get those delegates to put the headquarters on Mars." *Id.* at 43.

518. *Id.* at 259–60.

519. Sandra Livingston, *Theodus to Run on Hoffa Ticket*, CLEV. PLAIN DEALER, Mar. 5, 1996, at 1C.

520. Sandra Livingston, *Theodus Will Challenge Carey in Teamster Race*, CLEV. PLAIN DEALER, Jan. 3, 1995, at 1C.

521. *See, e.g.*, Peter P. Donker, *Tusino Loses First Round; Ousted Local Teamsters Boss Pursues Claim of Retaliation*, WORCESTER TELEGRAM & GAZETTE, Apr. 16, 1996, at E1. Ernest R. Tusino, a delegate supporting Hoffa, was suspended from the union for two years by Carey. In his complaint to the EO, Tusino accused Carey of cooking up phony charges to purge Hoffa supporters such as himself. *Id.*

522. *See* Sandra Livingston, *Ethics Haunt Union Even as Teamsters Chief Promises a New Era*, CLEV. PLAIN DEALER, May 7, 1996, at 1C.

523. Sandra Livingston, *'A First-Class Hanging' Teamsters Gripe about Hearing on Conferences*, CLEV. PLAIN DEALER, May 28, 1994, at 1C.

524. Sandra Livingston, *Theodus May Seek Presidency*, CLEV. PLAIN DEALER, May 30, 1998, at 1C. Eventually, the Hoffa slate dropped Theodus. *Id.*

James P. Hoffa Jr., had been ruled ineligible to run in 1991. In order to become eligible, he took a job as an administrative aid to Larry Brennan, President of IBT Joint Council 43 in Michigan and a long-time Hoffa family friend.[525] Hoffa announced his candidacy on the anniversary of his legendary father's disappearance, widely attributed to a Mafia assassination.[526] Stressing the deterioration of the IBT's finances and membership, he promised to reverse the trend by cutting salaries, spending, and the "tremendous amount of perks."[527] "Today, I look at a union that has fallen on hard times, that is really in financial trouble . . . that needs leadership."[528] He proposed increasing the strike fund again, so that benefits varied according to the amount of monthly dues paid by the member; the maximum weekly strike benefit would be $250.[529]

Hoffa criticized the National Master Freight Agreement.[530] "Carey put an ineffective team on the field to negotiate . . . didn't have a clue how to negotiate. Members have to suffer for their ineptitude. Employers got everything they wanted—a 400 percent increase in intermodal use, part-timers, binding arbitration."[531] In addition, he attacked Carey for drawing on other unions to hire his administration staff. "When I become president, I'll fire those [United] [M]ine [W]orkers and I'm putting Teamsters in those jobs."[532]

Hoffa disputed Carey's record as an anti-corruption reformer. "Whatever cleanup has happened . . . [Carey] hasn't done it . . . [t]he government has done it."[533] He accused Carey of distributing

525. CROWE, *supra* note 18, at 168.

526. Tom Robbins, *In the Name of the Father: Hoffa's Son is Going for the Brass Ring, The Teamsters Presidency*, N.Y. DAILY NEWS, June 4, 1995, at 14. *See* FRANK SHEEHAN & CHARLES BRANDT, I HEARD YOU PAINT HOUSES: THE LAST RIDE OF JIMMY HOFFA (2004); LESTER VELIE, DESPERATE BARGAIN: WHY JIMMY HOFFA HAD TO DIE (1977).

527. John O'Brien, *Hoffa Son Vows Power to Union*, CHI. TRIB., June 14, 1996, at 4.

528. Sharon Cohen, *Hoffa Bids to Lead Teamsters; Son Seeking to Follow Famous Father as Chief of Union, Vows to Solve Financial Difficulties*, ROCKY MOUNTAIN NEWS (Denver, CO), Sept. 3, 1995, at 20A.

529. John D. Schulz, *Teamsters Kick Off Feisty Election; Carey Claims Lead Over "Junior" Hoffa*, TRAFFIC WORLD, July 15, 1996, at 22.

530. *See* John D. Schulz, *Hoffa Preparing '96 Challenge to Carey*, TRAFFIC WORLD, Jan. 23, 1995, at 14.

531. *Id.*

532. Randolph Heaster, *Teamsters Hear Message From Hoffa*, KAN. CITY STAR, June 10, 1996, at B1.

533. John D. Schulz, *'96 Challenge*, *supra* note 530, at 14.

"perks," including allegedly, "seven secret" apartments for Teamsters officials.[534] Hoffa sharply rejected charges that he was associated with or sympathetic to the mafia, saying: "I have never associated with organized crime . . . and I have said they killed my father and they will never come back into the Teamsters union."[535]

Hoffa called ending court-supervision a top priority: "It's time for the government to leave, thank you. The membership wants their union back."[536] Hoffa stated:

> I intend to sit down with the President of the United States and tell him what we've accomplished under this consent agreement . . . . If the government wants to continue to monitor our elections, fine. We can live with things like that, but we must have a timetable for when this will end. . . . The idea of the federal government running an organization like ours in a democratic society just isn't right.[537]

Hoffa further promised to create an independent Ethical Practices Committee.[538]

2. The 1996 Convention

The IBT's 1996 national convention in Philadelphia was highly contentious. EO Quindel tried to schedule a debate, but Carey declined, saying he was too busy.[539] Hoffa proposed that the Teamsters constitution be amended to compel a presidential debate.[540] Arguing that this would interfere with her exclusive authority to establish rules that govern the convention,[541] Quindel obtained an injunction from Judge Edelstein.[542]

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534. O'Brien, *supra* note 527, at 4.

535. Sharon Cohen, *James Hoffa, the Son, Makes Bid for Teamster Presidency*, WICHITA EAGLE, Sept. 10, 1995, at 7A.

536. John D. Schulz, *'96 Challenge*, *supra* note 530, at 14.

537. Mike Dooley, *Hoffa Says Graft Tops Problems in Union*, FORT WAYNE NEWS SENTINEL (Ind.), May 18, 1996, at 8A.

538. John D. Schulz, *supra* note 529 at 8.

539. John D. Schulz, *No Carey-Hoffa Debate*, TRAFFIC WORLD, July 15, 1996, at 8.

540. United States v. Int'l Bhd. of Teamsters (*Hoffa Debates*), 939 F. Supp. 226, 227 (S.D.N.Y. 1996).

541. *Id.* at 228.

542. *See* Schulz, *supra* note 539, at 8; *see also Hoffa Debates*, 939 F. Supp. at 233.

On the first day of the IBT Philadelphia convention, Hoffa supporters several times halted the proceedings. They booed throughout U.S. Senator Arlen Specter's (R-Pa.) speech, the national anthem, and the moment of silence for deceased members.[543] They protested against Carey's rejection of their motion to prohibit voting by eighty unelected, Carey-appointed super delegates.[544] Journalists who observed the voice vote on the issue described it as "evenly matched"[545] or favoring Hoffa,[546] but Carey declared the motion defeated. The fracas caused the Teamsters to call the police and clear the hall.[547]

Hoffa introduced a number of proposals, including: paying for increased strike benefits by drawing $15 million from the union treasury;[548] and reinforcing the autonomy of local unions by, among other things, restricting the authority of the IBT president to impose trusteeships on locals deemed corrupt.[549] Carey used various parliamentary tactics to prevent these motions from reaching a vote.[550]

Carey's convention agenda included resolutions condemning congressional Republicans and endorsing President Bill Clinton's reelection.[551] Carey allocated most of a day for a debate on changing the International Brotherhood of Teamsters' title to a gender-neutral name.[552] He also repeatedly refused to close debate on a noncontroversial oath of office for union officers.[553] According to

543. Jeffrey Brodeur, *Boos Mark Teamsters Convention*, ST. PAUL PIONEER PRESS, July 16, 1996, at 8D.

544. *See* Peter T. Kilborn, *Delegate Battle Delays Teamsters Meeting*, N.Y. TIMES, July 16, 1996, at A12. Past IBT presidents had also appointed super delegates. *Id.*

545. Merrill Goozner, *Teamsters Open With Shouting Match*, CHI. TRIB., July 16, 1996, at 1.

546. Kilborn, *supra* note 544, at A12.

547. *Uproar Halts Teamsters Convention*, ST. LOUIS POST-DISPATCH, July 16, 1996, at 5A.

548. Kenneth C. Crowe, *Teamsters President Ties Rivals in Red Tape*, NEWSDAY, July 18, 1996, at A51.

549. Peter T. Kilborn, *Teamster Chief Outmaneuvers Foes at Meeting*, N.Y. TIMES, July 19, 1996, at A10.

550. *Id.*

551. *See* Daniel LeDuc, *In a Display of Unity, Teamsters Decry Republicans in Congress. They Declined to Endorse Clinton*, PHILA. INQUIRER, July 18, 1996, at A8.

552. Peter T. Kilborn, *Cause for Sibling Rivalry at Teamsters*, N.Y. TIMES, July 17, 1996, at A16. The vote failed by an almost 2-to-1 margin. Peter T. Kilborn, *In New Rebuff to Leader, Teamsters Vote to Remain a Brotherhood*, N.Y. TIMES, July 18, 1996, at D23.

553. *See* Chris Isidore, *Gridlock Grips Teamster Meeting*, J. COM., July 18, 1996, at 1B.

well-respected labor journalist Kenneth Crowe, previously a Carey admirer:

> Carey . . . has used his position as convention chairman to frustrate Hoffa's agenda . . . . Carey has frequently ruled opposition speakers out of order, strung out debates over procedural points and ordered time-consuming votes. Votes early in the week showed that Hoffa has a slight edge in the number of delegates, but not enough to push through his program.[554]

When it came to the nomination balloting, Carey received fewer votes than Hoffa (775–954),[555] a portentous rebuke for the incumbent general president.

In the final months of the campaign, the candidates traded corruption charges. At the recommendation of the Independent Review Board ("IRB"), Carey imposed a trusteeship on Chicago Local 714 headed by Bill Hogan, a powerful Hoffa ally and vice presidential candidate on the Hoffa slate.[556] Days later, without an IRB recommendation, Carey placed Akron, Ohio Local 348 under trusteeship because its Executive Board was so polarized that it was unable to conduct union business.[557] One day later, pursuant to an IRB recommendation, Carey placed Philadelphia Local 107 in trusteeship. Hoffa charged that "[Carey is] trying to steal the election by systematically eliminating key people who have the nerve and capacity to effectively oppose him."[558]

Hoffa's charge gained credibility when a federal district court judge in Philadelphia, finding Carey in bad faith, issued a

554. Crowe, *supra* note 548.

555. Glenn Burkins, *Teamsters Chief Carey Loses Straw Poll of Delegates to Rival Candidate Hoffa*, WALL ST. J., July 19, 1996, at A14. Carey proposed that candidates for international office have to be elected officers of Teamster locals or have worked at least two years for Teamster employers. That requirement would have disqualified Hoffa. Surprisingly, given Hoffa's significant delegate margin, Carey's proposal lost by a slim margin 784–745. Peter Szekely, *Teamsters Leader Cuts Off Challenge: Carey Abruptly Ends Convention Dominated by Hoffa*, AKRON BEACON J., July 20, 1996, at D1.

556. *Teamster Chief Takes over Chicago Local*, N.Y. TIMES, Aug. 10, 1996, at 12. Hogan later resigned from the slate. John D. Schulz, *Hogan Exits Hoffa Slate*, TRAFFIC WORLD, Sept. 9, 1996, at 38.

557. *See* Janet Moore, *Carey-Hoffa Race Divides Akron Local Teamsters' 1.4 Million Members Will Vote by Mail in November*, AKRON BEACON J., Aug. 13, 1996, at C6.

558. *Hoffa Says Trusteeships Politically Motivated*, J. COM., Aug. 16, 1996, at 4B (quoting James P. Hoffa's statement about his opponent).

preliminary injunction against the Local 107 trusteeship.[559] U.S. Representative Henry Hyde (R-Ill.), the powerful chairman of the House Judiciary Committee, scheduled hearings to determine whether, as Hoffa supporters insisted, the IRB was partial to the Carey campaign.[560] Later a subcommittee of the House Committee on Education and the Workforce held a similar hearing.[561]

Some observers feared that Carey's defeat would mean the end of reform hope and the return of Mafia influence.[562] CNN aired a documentary alleging that when Hoffa was a lawyer for the Michigan Conference of Teamsters Welfare and Pension Fund in the 1990s, the fund misappropriated $725,000 for golf vacations and other perks for fund officials and that Hoffa himself had accepted a $205,000 wedding gift from organized-crime figures.[563] The Hoffa camp responded by alleging corrupt ties between Carey and Turner Broadcasting System.[564]

It took five hundred EO staffers over five days to count the mail ballots; seventy Carey and Hoffa campaign observers monitored the count.[565] The closeness of the vote required resolving the status of challenged ballots.[566] The EO contacted approximately a thousand employers to verify that challenged voters' dues had been paid.[567] The eligible ballots were counted in four supplementary counts.[568] A

559. Int'l Bhd. of Teamsters, Local 107 v. Int'l Bhd. of Teamsters, 935 F. Supp. 599, 604 (E.D. Pa. 1996). Judge Edelstein later transferred the case to his court and vacated the injunction. *See* United States v. Int'l Bhd. of Teamsters (*In re* IBT's Application to Enjoin Plaintiffs in Int'l Bhd. of Teamsters Local Union 107), 939 F. Supp. 280, 287 (S.D.N.Y. 1996).

560. *See* Jerry Seper, *Teamster Takeover Is Rebuffed; Judge Sees No Evidence Philadelphia Local Is Tied to Mob*, WASH. TIMES, Aug. 28, 1996, at A7; *see also* Jerry Seper, *Lawmakers Suspect Monitor of Meddling in Union Election*, WASH. TIMES, Oct. 11, 1996, at A5; Richard Behar, *The Trouble with the Teflon Teamster*, FORTUNE, Oct. 27, 1997.

561. *The Internal [sic] Review Bd.: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Education and the Workforce*, 105th Cong. 13 (1998).

562. *See* Holmes, *supra* note 491.

563. *See* John D. Schulz, *"Go Back to His Country Club' [sic] Carey-Hoffa Contest Intensifies as Charges Fly Amid Balloting*, TRAFFIC WORLD, Nov. 18, 1996, at 58.

564. *See id.*

565. Philip Dine, *After Long, Interesting Race, Teamsters Union Re-Elects President*, ST. LOUIS POST-DISPATCH, Dec. 20, 1996, *available at* 1996 WLNR 4593256.

566. *1996 International Brotherhood of Teamsters Election: Hearing Before the H. Education and the Workforce Subcomm. on Oversight and Investigations*, 105th Cong. 55 (1997) (statement of Barbara Zack Quindel, former IBT Election Officer).

567. *Id.*

568. *Id.*

final count was undertaken at the request of the trailing Hoffa Campaign.[569]

Ultimately, Ron Carey defeated James P. Hoffa[570] by fifteen thousand votes out of 465,647 ballots counted.[571] EO Quindel rejected as "completely without foundation"[572] the Hoffa campaign's charge that more than fifteen thousand ballots had disappeared. Carey campaign spokesman Jere Nash said: "Now is the time for the Hoffa campaign to put the force of action behind their talk of unity and to gracefully accept their defeat as the result of a fair and democratic election."[573]

2. The Investigation of Carey Campaign Finance Violations

After reviewing the Campaign Contribution and Expense Reports ("CCERs"), EO Quindel opened an investigation of the Carey campaign committee, Teamsters for a Corruption Free Union ("TCFU"). James Hoffa soon filed a post-election protest on the same subject.[574] With Quindel's investigation proceeding, the media reported that the Southern District of New York U.S. Attorney's Office was conducting a grand jury investigation of illegal contributions to the recently completed Carey campaign.[575] According to the story, Barbara Arnold donated $95,000 to TCFU.[576] Arnold was married to Michael Ansara, who owned the Share Group, a telemarketing firm retained by the November Group, which was both an IBT and Carey campaign contractor.[577] The implication was that Arnold's donation to the Carey campaign was a quid pro quo for

569. *Id.*

570. Dine, *supra* note 565.

571. John D. Schulz, *Teamster Election Validated; Election Officer Discounts Hoffa Claims Contesting Carey's Margin of Victory*, TRAFFIC WORLD, Jan. 13, 1997, at 26.

572. *Id.*

573. *See id.*

574. *See id.*

575. Bernard J. Wolfson, *Justice Eyes Carey Gift; Teamster Election $ $ Under Fire*, BOSTON HERALD, Mar. 8, 1997, at 14.

576. Decision of Kenneth Conboy to Disqualify IBT President Ron Carey, 1–2 (Nov. 17, 1997), *available at* http://www.spa.ucla.edu/ps/pdf/W00/PSM232/PDF/Carey.PDF [hereinafter Conboy Decision] It was also alleged that Share Group had overcharged the union $26,000 for phone banking. Edward Barnes, *Donorgate in the Teamsters*, TIME, Mar. 24, 1997, at 66.

577. Conboy Decision, *supra* note 576, at 1–2.

IBT contracts.[578] Over the next several weeks, the media reported on other suspicious campaign donations, amounting to $126,000.[579] The Carey campaign announced that it was returning all these monies to the original donors.[580]

New news stories painted a picture of extensive campaign finance abuse. Apparently, after Arnold sent $95,000 in donations to the Carey campaign, the IBT sent two checks each for more than $48,000 to Share Group, a telemarketing firm owned by Arnold's husband.[581] In effect, the Carey campaign used $96,000 from the IBT treasury for Carey's campaign, laundering the misappropriation as a fee for services performed by the Share Group.[582] On June 6, 1997, FBI agents arrested Martin Davis, President of the November Group on charges of embezzling $95,000 from the IBT.[583] Davis was quoted in an FBI affidavit as saying: "'The IBT knew of the plan and wanted it done this way.'"[584]

Additional charges involved money funneled into the Carey campaign by Citizen Action, a consumer rights organization. Allegedly, three weeks after the IBT made a $475,000 contribution to Citizen Action, Citizen Action sent a $75,000 check to Share Group to pay for work that the company never performed.[585] This transaction too looked like a scheme to fund the Carey campaign with IBT funds.[586] In June, Michael Ansara pled guilty to conspiracy to commit money laundering.[587] He stated to the press: "I did something dishonest. All my life I've tried to lead a moral life. It was wrong . . . ."[588] Shortly thereafter, Bill Hamilton, the IBT's head

578. *Id.* at 2.

579. *See* Bernard J. Wolfson, *Teamster Chief to Return $$*, BOSTON HERALD, Mar. 21, 1997, at 28.

580. *See id.*

581. Jerry Seper, *Campaign Contributions to Teamsters Boss Probed*, WASH. TIMES, Mar. 27, 1997, at A3.

582. *See id.*

583. Greg B. Smith, *Teamster Boss Aide Faces Embezzle Case*, DAILY NEWS (N.Y.), June 7, 1997, at 10.

584. *Id.*

585. Kenneth C. Crowe, *Court to Rule on Teamster Info*, NEWSDAY, June 11, 1997, at A19.

586. *See* Kevin Galvin, *Feds Probe Citizen Action's Alleged Ploy to Fund Teamster Elections*, LEDGER DISPATCH (Cal.), June 10, 1997, at A5.

587. Kevin Galvin, *Probe Ties Illegal Aid to Top Teamster Liberal Consumer Group Allegedly*, STAR-LEDGER (Newark, N.J.), June 10, 1997, at 69.

588. Diane Lewis, *Fall from Grace: A Man of Principle Admits Illegality*, BOSTON GLOBE, June 11, 1997, at A1.

of government affairs and top lobbyist, resigned.[589] He had been responsible for hiring Michael Ansara.[590]

Though Carey had been sworn in for a second five-year term as general president, Quindel hesitated to certify the 1996 election results.[591] Under the election rules, the EO could grant a post-election protest only where "the alleged violation may have affected the outcome of the election."[592] However, Quindel turned to the Labor-Management Reporting and Disclosure Act ("LMRDA")[593] to find a legal standard and precedent for overturning a union election.[594] The LMRDA applied different standards of review based on whether or not the union election was supervised by the Department of Labor.[595] Following an unsupervised election, the DOL and the courts apply a presumption that a violation affected the outcome.[596] Where the DOL supervises a union election, there is "a presumption of fairness and regularity," and the secretary of labor must find "convincing evidence that the violation may have affected the outcome."[597] While the EO does not stand in the same position as the secretary of labor, Quindel found the same rationale applicable to the EO-supervised 1996 IBT election.[598] Therefore, she applied the more searching standard of review to determine whether the IBT election should be voided.[599]

On August 22, 1997, more than eight months after the election, Quindel declined to certify the election.[600] Instead, she ordered a new election for general president and for twenty-one other international

589. Chris Isidore, *Teamsters' Hamilton Steps Down Amid Probe*, J. COM., July 31, 1997, at A15.

590. *Id.*

591. Philip Dine, *Teamster President in Midst of Campaign Finance Scandal*, ST. LOUIS POST-DISPATCH, Apr. 4, 1997, at C1.

592. United States v. Int'l Bhd. of Teamsters (*Morris*), 983 F. Supp. 488, 490 (S.D.N.Y. 1997).

593. 29 U.S.C. §§ 401–531 (2000).

594. *Morris*, 983 F. Supp. at 491.

595. *See id.* at 491–92.

596. *Id.* at 491.

597. *Id.* at 491–92.

598. *Id.*

599. *See id.*

600. Glenn R. Simpson, *Union Troubles: Funding for Election of Teamster President is Subject of Inquiry*, WALL ST. J., Aug. 8, 1997, at A1.

offices.[601] Quindel's report alleged a contribution scheme by consultants and Carey campaign officials whereby money was embezzled from the IBT, laundered through Carey-friendly organizations, and returned to the Carey campaign.[602] She did not disqualify General President Carey from the rerun election because she did not find that Carey himself knew about the illegal campaign contributions.[603]

Quindel's report explained how Michael Ansara had approached a volunteer fundraiser for Citizen Action; pitched the importance of Carey's reelection to the labor movement; and suggested that, in exchange for campaign contributions for Carey's reelection, the IBT would make a large contribution to an organization designated by the contributor.[604] In fact, the IBT's $475,000 donation to Citizen Action was followed by contributions to the Carey campaign.[605] In addition, on the same day Carey approved the donation to Citizen Action, he approved contributions of $260,000 to three other organizations.[606]

By end of August, Quindel was under fire from all sides. Hoffa's supporters criticized her for ignoring Carey campaign finance violations and for persistent pro-Carey bias.[607] Carey's supporters attacked her decision to order a rerun election and for ignoring Hoffa campaign finance violations.[608] Carey was partially vindicated when the Election Appeals Master, Kenneth Conboy, ordered Quindel to "thoroughly and convincingly" investigate the

601. *Feds Order New Teamsters Election*, CNN, Aug. 22, 1997, http://www.cnn.com/ALLPOLITICS/1997/08/22/teamsters/.

602. *Id.*

603. Conboy Decision, *supra* note 576, at 5. Hoffa supporters criticized the timing of Quindel's disqualification because it followed the successful IBT strike against the UPS, the IBT's largest employer; arguably the strike enhanced Carey's stature in the Union. Quindel admitted that she was ready to release her report and nullify the election eighteen days earlier but delayed its release until the resolution of the historic strike. *See Federal Official Orders Teamsters To Restage Election: Fund-Raising Abuses Cited in Presidential Campaign; Carey Not Accused of Wrongdoing*, ATLANTA J. & CONST., Aug. 23, 1997 at D.

604. Bill Sammon, *How Union Treasury Funded Carey; Creative Plan Laundered Money to Win Teamsters Election*, WASH. TIMES, Sept. 1, 1997, at A1.

605. *Id.*

606. *Id.* He later claimed not to remember approving these donations. *Id.*

607. Stephen Labaton, *Teamsters Election Monitor Is Reported Planning to Quit*, N.Y. TIMES, Aug. 30, 1997, at §1, at 8.

608. *Id.*

protest against the Hoffa campaign.[609] In early September 1997, she resigned, citing family reasons.[610] Meanwhile, Republicans in Congress called for hearings on the propriety of using government funds to run and rerun IBT elections.[611]

Federal investigators next focused on allegations that Martin Davis had concocted a scheme whereby the Teamsters would give $1 million to the Democratic National Committee in exchange for wealthy Democratic donors making contributions to Carey's campaign.[612] Nash, Ansara, and Davis—all of whom were now cooperating with federal authorities—implicated the AFL-CIO in a scheme to funnel $150,000 to Citizen Action.[613] They alleged that the Democratic National Committee tried to arrange a donation of $100,000 to the Carey campaign by a foreign citizen who wanted to contribute to the Clinton campaign; in exchange for the contribution to the Carey campaign, the IBT would donate hundreds of thousands of dollars to the Democratic Party.[614] Ultimately, the Teamsters rejected the proposed donation because the foreign citizen was an employer.[615]

Quindel left her EO position in late September after an apparent conflict of interest came to light.[616] Martin Davis alleged that he had proposed a contribution swap with the Wisconsin chapter of the New Party, a political organization in which both Quindel and her

609. United States v. Int'l Bhd. of Teamsters (*Carey Slate Protest*), 9 F. Supp. 2d 354, 356 (S.D.N.Y. 1998), *aff'd*, 168 F.3d 645 (2d Cir. 1999).

610. Kenneth C. Crowe, *Aide Quits After Voiding Carey Election*, NEWSDAY, Sept. 5, 1997, at A73.

611. *Overseeing Vote by Teamsters Called a Waste*, DALLAS MORNING NEWS, Aug. 31, 1997, at A10.

612. Steven Greenhouse, *3 Teamster Aides Make Guilty Pleas and Hint at Plot*, N.Y. TIMES, Sept. 19, 1997, at A1.

613. *Id.*

614. *Id.*

615. *Id.*

616. *See* Kevin Galvin, *Loads of Turmoil Union Election Overseer Quits*, WICHITA EAGLE, Sept. 24, 1997, at A17. Criticism continued even after her resignation. Congressional Republicans called on her to justify her $1 million salary. Bill Sammon, *U.S. Overseer for Teamsters Election Was Paid $1 Million; House Subcommittee to Ask Quindel to Justify Expenses*, WASH. TIMES, Oct. 8, 1997, at A1. In connection with this investigation, federal investigators interviewed Harold Ickes, the former White House deputy chief of staff and Terence McAuliffe, the Clinton campaign's finance chairman. Steven Greenhouse & Don Van Natta, Jr., *Proposed Deal with Democrats Draws Focus of Investigators in Teamsters Election*, N.Y. TIMES, Sept. 18, 1997, at A26.

husband were active members.[617] In addition, Davis had successfully solicited an illegal $20,000 contribution from a labor relations consultant with close ties to a member of the EO office.[618] Judge Edelstein appointed labor lawyer Benetta Mansfield as Quindel's interim successor[619] and assigned Election Appeals Master Conboy responsibility to determine whether Ron Carey should be disqualified from the rerun election.[620]

On November 17, 1997, Conboy disqualified Carey from the rerun election, basing his decision largely on Quindel's report and on evidence provided by Ansara, Nash, and Davis.[621] Conboy stated that "IBT funds . . . were used as leverage in an attempt to obtain funds for the Carey campaign . . . ."[622] Davis had used both Citizen Action and the AFL-CIO to funnel money back to the Carey campaign.[623] Conboy concluded that after donating $475,000 to Citizen Action, Davis attempted to send an additional $150,000 to Citizen Action, but IBT Government Affairs Director Bill Hamilton turned down the request for the donation given the large amount already donated.[624] Only momentarily stymied, Davis then persuaded the AFL-CIO's secretary-treasurer to accept $150,000 and make a donation of equal amount to Citizen Action.[625]

Based on testimony by Jere Nash and Monie Simpkins, Conboy concluded that Carey had to have played a role in these contribution swaps.[626] Jere Nash told investigators that Carey had approved several swaps.[627] According to Nash, he asked Carey to call Democratic National Committee chairman Terry McAuliffe to thank him for his fundraising help, and Carey later informed Nash that he had done so.[628] Nash alleged that he had specifically discussed with

617. *Id.*

618. *Id.*

619. United States v. Int'l Bhd. of Teamsters (*Rerun Election Plan*), 981 F. Supp. 222, 232 (S.D.N.Y. 1997).

620. *Id.*

621. Conboy Decision, *supra* note 576, at 5.

622. *Id.* at 5.

623. *Id.* at 6–7.

624. *Id.* at 7.

625. *Id.*

626. *Id.* at 18.

627. *Id.* at 8–10.

628. *Id.* at 8.

Carey the campaign financing assistance of Rich Trumka, the Secretary-Treasurer of the AFL-CIO, and Andrew Stern, the President of the Service Employees International Union.[629] Further, according to Nash, when Carey initially rejected his request to donate $475,000 to Citizen Action, he told Carey that: "the proposed contribution would help Martin Davis with fundraising. . . . Mr. Nash stated that Mr. Carey then approved the contribution."[630]

Carey's Executive Assistant Monie Simpkins[631] said that she had informed Carey of several Nash swap proposals and that when Carey orally approved them, she signed Carey's initials to documents indicating his approval.[632] Conboy concluded that even if each instance might have a plausibly innocent explanation, it was highly unlikely that Carey was innocent of wrongdoing in all these incidents.[633] Moreover, Conboy did not find credible Carey's testimony that he had no recollection of authorizing any of the four largest political contributions.

Conboy was clearly troubled by the prospect of "disqualifying a previously victorious candidate, to the evident impoverishment of the democratic process."[634] However, he concluded that because Carey had "tolerated and engaged in extensive Rules violations in broad furtherance of his reelection campaign,"[635] the upcoming election could not be full, fair, and free with Carey participating in it.[636]

On November 25, 1997, Carey took a leave of absence that would ultimately become permanent.[637] His appeals to Judge

629. *Id.* at 8–9.

630. *Id.* at 10.

631. *Id.* at 12–13.

632. *Id.* at 12.

633. *Id.* at 13.

634. *Id.* at 32.

635. *Id.* at 34.

636. Conboy was forced into the "paradoxical role" of "[developing] unfettered union democracy on the one hand, and protecting the resources and institutions of rank and file members from the corrupt abuses of its leadership on the other." *Id.* at 32. The only prior time a Teamster had been disqualified from standing for election was in the Local 63 case. *See* HOLLAND, *supra* note 78, ch. 6, at 26–28. Holland disqualified members from serving as delegates to the national convention, and not from seeking an international union office; charges involved "solicitation, collection and marking of ballots; repeated disregard for the directives of the Election Officer; and interference with the Election Officer's investigation processes." Conboy Decision, *supra* note 576, at 29.

637. Jim Lynch, *Amid Teamsters Fray, Portlander Waits*, OREGONIAN, Nov. 27, 1997, at C1.

Edelstein and then to the Second Circuit were unsuccessful.[638] Both courts rejected Carey's due process complaint because Conboy was not a state actor.[639] The courts also rejected Carey's argument that he had been denied due process under the LMRDA because the election disqualification was neither punitive nor disciplinary in nature, but remedial in furtherance of the consent order's mandate for fair IBT elections.[640] After both courts upheld Carey's disqualification from the rerun election, the Independent Review Board permanently barred Ron Carey and Bill Hamilton from IBT membership for life.[641] Tom Sever, who had served as secretary-treasurer under Ron Carey, took over as interim general president.[642]

In 2001, a federal grand jury indicted Carey on charges that he committed perjury in sworn testimony before the EO and the IRB, as well as before a grand jury.[643] At trial, Carey was acquitted of all charges,[644] but his lifetime ban from IBT membership was not overturned.[645]

A week after being disqualified from the rerun election, Carey appeared at TDU's annual convention. TDU had voted unanimously to stand by him during his appeal.[646] For TDU, Carey represented the best hope for progressive IBT reform. In response to TDU members' statements of support, Carey said, "Some of that sounded like an

638. United States v. Int'l Bhd. of Teamsters (*Carey Disqualification*), 988 F. Supp. 759, 770 (S.D.N.Y. 1997), *aff'd*, 156 F.3d 354 (2d Cir. 1998). The IRB subsequently permanently barred Carey from the union. United States v. Int'l Bhd. of Teamsters (*Carey & Hamilton Discipline*), 22 F. Supp. 2d 135, 139 (S.D.N.Y. 1998), *aff'd*, 247 F.3d 370 (2d Cir. 2001).

639. *Carey Disqualification*, 988 F. Supp. at 763. Carey alleged lack of due process because he did not have the opportunity to be present to confront and cross-examine witnesses and that his case was "based on evidence taken in secret." *Carey Disqualification*, 156 F.3d at 364 (quoting Carey).

640. *Carey Disqualification*, 988 F. Supp. at 765 (explaining that the EO's role is not to discipline, but rather to supervise and resolve disputes regarding the election).

641. *Carey & Hamilton Discipline*, 22 F. Supp. 2d at 139. Carey's final request to the district court was that "[a]t a bare minimum, the Court should make clear that Mr. Carey's son, also a member of the IBT, would not be subject to discipline for associating with his father." *Id.* at 145 n.5. Judge Edelstein so held. *Id.* at 145.

642. John D. Schulz, *Hoffa on Hold*, TRAFFIC WORLD, Jan. 18, 1999, at 22.

643. *Ex-Teamster Chief Carey Indicted in Funds Probe*, CHI. TRIB., Jan. 26, 2001, at 3; *see* Robert Gearty, *Ex-Teamsters Boss Goes on Trial*, N.Y. DAILY NEWS, Aug. 27, 2001, at 17.

644. Nancy Cleeland, *Ex-Teamster Leader Carey Acquitted*, L.A. TIMES, Oct. 13, 2001, at A18.

645. *Id.*

646. *See* John Russell, *Ron Carey Vows to Fight to the End*, AKRON BEACON J., Nov. 23, 1997, at B1.

epitaph. This guy ain't gone," sparking a forty-second ovation.[647] Carey assured the group that he had never known about the illegal activities of his campaign staff: "If I had known that anything was improper, I would have stopped it dead in its tracks. . . . What went on hurt our union and hurt a lot of innocent people."[648] "I want to look around this room and look in everyone's eyes and to tell you that that decision was dead wrong."[649]

Some reformers who had equated Carey's success with Teamsters reform were clearly worried by the turn of events.[650] Speaking to the Associated Press, former EO Michael Holland credited Carey with turning the IBT around:

> The genie of a more responsive union working assiduously for its members will never be put back in the bottle. . . .
>
> Whether the person that they choose symbolizes [the rank-and-file] as much as Ron Carey seemed to symbolize them is really not so much the point as it is the members having the opportunity to express their will on a continuing basis.[651]

C. The 1998 Rerun Election and the Rise of James P. Hoffa[652]

EO Quindel had begun planning for the 1998 election in August 1997 after having refused to certify the 1996 election.[653] She proposed an expeditious rerun election that would cost less than the $17.5 million 1996 election.[654] The 1998 rules provided that previously nominated candidates need not seek renomination but that supplemental nominations would be permitted.[655] There would not

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647. Steven Greenhouse, *Teamster Camp Hails Fallen Carey Even as It Scans Room for a Successor*, N.Y. TIMES, Nov. 24, 1997, at A14.

648. Russell, *supra* note 646, at B1.

649. Greenhouse, *supra* note 647, at A14.

650. *See* Kevin Galvin, *Carey's Downfall Seen as a Blow to Labor Reform*, LEDGER DISPATCH (Cal.), Nov. 25, 1997, at A14.

651. *Id.*

652. *See* Ellen Simon, *Teamster Vote Date Is Hardly a Lock: Who'll Pay the Tab Come Sept. 14?*, STAR-LEDGER (Newark, N.J.), Aug. 20, 1998, at 1.

653. *See* United States v. Int'l Bhd. of Teamsters (*In re* Application X of the Election Officer), 981 F. Supp. 222, 225 (S.D.N.Y. 1997).

654. *1996 International Brotherhood of Teamsters Election: Hearing Before the H. Education and the Workforce Subcomm. on Oversight and Investigations*, 105th Cong. 55 (1997) (statement of Barbara Zack Quindel, former IBT Election Officer).

655. *See id.* at 227.

be a national convention.[656] The rules prohibited candidates from switching slates, which would have been tantamount to "restart[ing] the entire election process."[657] Finally the rules set a limit on campaign contributions, allowing candidates to donate $5,000 to their own campaign and members to donate a maximum $1,000 to any one candidate.[658] The government and the Carey slate (Carey would not be disqualified until two months later) supported the plan.[659] The Hoffa slate objected to Quindel's proposals. Judge Edelstein ruled in favor of Quindel on every point.[660]

By the time Judge Edelstein approved the rerun election plan, Quindel had resigned,[661] and the U.S. Senate had added to an appropriations bill the requirement that the IBT reimburse the government for expenses incurred in the 1998 rerun election.[662] Congress later added to the fiscal 1998 appropriations bill an explicit prohibition on using federal funds for the IBT's rerun election.[663]

Funds for the rerun election had to come from somewhere. The IBT claimed that the government, having elected to supervise the 1996 election at its own expense, should pay for the rerun election as well.[664] Without taking a position as to who should be the funder, interim EO Mansfield asked Judge Edelstein to resolve the issue.[665] Judge Edelstein held that: "The time has come when the IBT must bear its own costs for cleansing its Augean stable. In plainer words

656. *See id.*

657. *See id.* at 228.

658. *See id.* at 229.

659. *See id.* at 226.

660. *See id.* at 232.

661. *See* Chris Isidore, *Resignation Could Delay Rerun of Teamster Vote*, J. COM., Sept. 25, 1997, at 16A.

662. *See* David Hosansky, *Tackling Teamsters Ties*, J. COM., Sept. 18, 1997, at 6A.

663. The EO budgeted $21.2 million for the 1996 election and spent $17.5 million by the end of September. However, the two congressional appropriations subcommittees with oversight of the DOJ placed legislative holds on transferring the remaining appropriated money to the EO. United States v. Int'l Bhd. of Teamsters (*Rerun Funding I*), 989 F. Supp. 468, 471–72 (S.D.N.Y. 1997), *rev'd*, 141 F.3d 405 (2d Cir. 1998). The government funding of the election may have been something of a windfall for the Teamsters. Because of the broad definition of the term "supervise," the government paid many routine Teamster election expenses, i.e., for printing, mailing, and counting ballots. United States v. Int'l Bhd. of Teamsters (*Rerun Funding II*), 141 F.3d 405, 407 (2d Cir. 1998).

664. *Rerun Funding I*, 989 F. Supp. at 474..

665. *Rerun Funding II*, 141 F.3d at 408.

they made the mess. It is their job to clean it up at any price."[666] A divided Second Circuit panel reversed.[667] The majority did not agree that the IBT was responsible for causing the rerun. Characterizing the IBT as a victim of Carey's and Hamilton's embezzlement, the judges concluded that the IBT could not be held vicariously liable[668] and that the government must bear the cost of the rerun election.[669]

1. The Rerun Election

In November 21, 1997, Judge Edelstein appointed former prosecutor Michael Cherkasky[670] as EO for the rerun election and acceded to Cherkasky's request that the election be postponed until he had an opportunity to investigate the Carey slate's campaign protest regarding the Hoffa slate's campaign finance irregularities.[671] In late February 1998, EO Cherkasky proposed that the rerun election take place that summer.[672] Judge Edelstein did not agree, noting that a decision on the rerun election should wait until Cherkasky had concluded the investigation.[673] However, Judge Edelstein did support Cherkasky's proposal that candidates be permitted to switch slate affiliation[674] in light of Carey's disqualification.

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666. *Rerun Funding I*, 989 F. Supp. at 478. Judge Edelstein also ruled that the government should contribute $920,000 held in an escrow account towards the cost of the rerun election. The account received restitution payments from three individual defendants—Jere Nash, Martin Davis, and Michael Ansara—who pled guilty and an additional $500,000 from the settlement of charges against the November Group. *See id.* at 477–78.

667. *Rerun Funding II*, 141 F.3d at 409.

668. *Id.*

669. *See id.* Of course, such a ruling did not guarantee that Congress would appropriate the money to "supervise" the election.

670. Michael Cherkasky formerly served as a high-level assistant in the Manhattan district attorney's office. He served as a court-appointed monitor for the cleanup of the New Jersey carting industry; that job earned him the title of "garbage czar." *See* Tina Daunt, *N.Y. Mob Prosecutor to Take on the LAPD Police*, L.A. TIMES, July 24, 2001, at 1.

671. Quindel had declined to act on Carey's protest. Conboy ordered her to conduct a full investigation. United States v. Int'l Bhd. of Teamsters (*Carey Slate Protest*), 9 F. Supp. 2d 354, 356 (S.D.N.Y. 1998).

672. *Teamsters Might Vote in Summer*, CHI. TRIB., Feb. 25, 1998, at 4. The ballots would have been mailed to the membership on July 27 and returned by August 25. *Election Overseer Draws Teamsters Plan*, AKRON BEACON J., Feb. 25, 1998, at C12.

673. United States v. Int'l Bhd. of Teamsters (*Rerun Election Plan II*), 1998 U.S. Dist. LEXIS 3896, at *4–5 (S.D.N.Y. 1998).

674. *See id.* at *7–8.

At the end of April 1998, EO Cherkasky resolved the protest regarding the Hoffa campaign's financial irregularities.[675] He found several campaign-finance violations. First, two employers improperly contributed over $167,000 by grossly underbilling for work conducted for the Hoffa campaign.[676] Second, the campaign failed to disclose $44,000 of cash contributions, including a $1,000 contribution from former IBT General President William McCarthy.[677] Third, international vice presidential candidate Tom O'Donnell's campaign had failed to disclose hiring a convicted felon.[678]

Despite these campaign violations, Cherkasky concluded that Hoffa should not be disqualified from the 1998 rerun election because his campaign's violations lacked the "hallmarks" that had required Carey's disqualification—personal knowledge, intentional misconduct, and abuse of official authority.[679] Instead, Cherkasky fined the Hoffa slate 10 percent of the improper contributions received from employers and barred those employers from campaigning for or contracting with a campaign or independent committee during the rerun election.[680] Judge Edelstein noted that Hoffa's violations, including his intentional concealment of the McCarthy contribution and the employment of a convicted felon, were "worrisome and suspect" and represented a "deliberate attempt to mislead the IBT members."[681] However, he agreed that Cherkasky's "primary role is not to punish election misconduct, but to protect the election process from the effect of misconduct."[682] Nevertheless, he increased the Hoffa slate's fine to $167,000, the full amount of the illegal employer contribution.[683]

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675. *See Carey Slate Protest*, 9 F. Supp. 2d at 356.

676. *Id.* at 357.

677. *Id.*

678. Employing a felon is not a violation of the rules, but the campaign concealed his employment by issuing paychecks to the real payee's wife. *Id.*

679. *Id.*

680. *Id.* at 358.

681. *Id.* at 360.

682. *Id.*

683. *Id.* at 363. The Second Circuit affirmed the decision not to disqualify Hoffa. United States v. Int'l Bhd. of Teamsters (*Carey Slate Protest I*), 159 F.3d 757, 759 (2d Cir. 1998). In another decision, the Second Circuit affirmed Judge Edelstein's increase of the Hoffa campaign's fine. United States v. Int'l Bhd. of Teamsters (*Carey Slate Protest II*), 168 F.3d 645, 648 (2d Cir.

The new timetable called for supplemental nomination ballots to be mailed out on June 15,[684] returned one month later,[685] and for the rank-and-file mail-in balloting to take place between September 14 and October 14, 1998.[686] Cherkasky was able to cover the expense of the supplemental nomination procedure by using the approximately $1 million restitution previously paid by the three Carey campaign defendants and the November Group.[687] But Cherkasky had no source of funds to pay for printing and mailing 1.4 million ballots, renting office space for counting the ballots, and compensating five hundred temporary employees.[688] Three months after the Second Circuit had ordered the government to fund the rerun election, Congress had not yet appropriated the approximately $8.6 million Cherkasky estimated as needed to supervise the rerun election.[689] By the end of June, Cherkasky had $750,000 remaining; enough to continue basic operations for fourteen weeks but not enough to hire the staff and outside contractors necessary to run the election.[690] He asked Judge Edelstein to order either the government or the IBT to pay. "It would be astounding, and a stunning waste of decades of effort spent fighting organized crime and labor racketeering, if the current paralysis over funding resulted in the abandonment of this law enforcement effort and left the rerun election in limbo . . . ."[691]

1999). The fine would be used to help finance the rerun election. Kenneth C. Crowe, *Hoffa Fined To Help Fund Election*, NEWSDAY, June 24, 1998, at A51.

684. *Judge OKs Teamsters Vote Schedule But Finding Way To Fund Election Could Stall Balloting*, MILWAUKEE J. SENTINEL, June 6, 1998, at 4; *Teamsters Election Faces Delay Over Funding Impasse*, CLEV. PLAIN DEALER, June 12, 1998, at 2C.

685. *See* sources cited in note 684..

686. United States v. Int'l Bhd. of Teamsters (*Rerun Election Plan III*), 22 F. Supp. 2d 131, 132 (S.D.N.Y. 1998).

687. Crowe, *supra* note 683.

688. *Id.*

689. *Id.*

690. *Teamster Monitor Seeking Funds*, CLEV. PLAIN DEALER, June 26, 1998, at 3C.

691. *Id.* (quoting Cherkasky). U.S. Representative Peter Hoekstra (R-Mich.), who chaired the important Oversight Subcommittee of the House Committee on Education and the Workforce, conducted extensive hearings on the election and vigorously opposed saddling taxpayers with the costs. Crowe, *supra* note 683. He stated: "I don't see any way in which this Congress can, or should, ask the American people, the taxpayers, to bail out this union's leadership again." John D. Schulz, *Hoffa Gets Closer; Judge Clears Hoffa's Bid for Teamsters' Presidency*, TRAFFIC WORLD, June 29, 1998, at 15 (quoting Rep. Pete Hoekstra).

The convention delegates mailed in 982 nominating ballots.[692] Both Tom Leedham, the head of the union's warehouse division and the endorsed candidate of TDU, and John Metz, the head of the public employee division, obtained the necessary 5 percent to be placed on the general election ballot.[693] Hoffa's place on the ballot was guaranteed by dint of his nomination at the 1996 convention.[694]

In early August 1998, U.S. Representative Peter Hoekstra (R-Mich.), Chair of the Oversight Subcommittee of the House Committee on Education and the Workforce, announced a compromise that would provide the funds necessary to conduct the rerun election.[695] The government could give the IBT $4 million to conduct the election, but the money would have to come from asset forfeitures and unexpended fund balances.[696] In other words, speaking literally, the government would not use "taxpayer money."[697] The money would be paid to the IBT as "reimbursement" for expenses related to the cost of supporting the Independent Review Board rather than as support for an election.[698] Then the IBT would give the money to the EO to cover the cost of the 1998 election.[699] This formalistic maneuver allowed Hoekstra to save face since he had so vigorously opposed using taxpayer money to pay for a private union election.[700]

Under the terms of the agreement, the IBT would contribute between $2 million and $3 million for the election.[701] However, at the last minute it refused to do so. An infuriated 88-year-old Judge

692. Sandra Livingston, *Teamsters Race Now Has Three Candidates; Hoffa Still Deemed the Frontrunner*, CLEV. PLAIN DEALER, July 1, 1998, at 1C. Applying the same 5–percent-delegate requirement for getting on the general election ballot as was required at the previous two nominating conventions, candidates needed just fifty votes to be nominated. *Id.*

693. *Id.*

694. *Id.*

695. Phillip Dine, *GOP Offers to Help Fund, Oversee Teamsters Vote*, ST. LOUIS POST-DISPATCH, Aug. 5, 1998, at A11.

696. *Id.*

697. *Id.*

698. United States v. Int'l Bhd. of Teamsters (*Rerun Election Plan III*), 22 F. Supp. 2d 131, 133 (S.D.N.Y. 1998).

699. *Id.*

700. The IRB, which investigates violations of the consent order and the IBT Constitution, is paid for by the union. *See generally id.* (discussing the budget provided to the EO for supervising the Union elections); *see also* Jacobs & Portnoi, *supra* note 19, at 445–46; Dine, *supra* note 695, at A11.

701. Simon, *supra* note 652.

Edelstein said that if there were a way to hold everyone involved in contempt of court, he would. "What can we do to save this election from becoming a Greek tragedy?"[702] He ordered the GEB to vote up or down on funding the election by September 4th.[703] "Of all my experience, I must say this is the most revolting, because nobody here seems interested in the ultimate result: that an election be held that is fair, free and honest."[704]

On August 30, 1998, the IBT's General Eexecutive Board voted to spend $2 million on the rerun of its 1996 election.[705] This gave EO Cherkasky $6 million with which to conduct the rerun election; he had budgeted for $8.6 million.[706] Cherkasky pared down his budget by slicing money from investigations and security.[707]

2. The 1998 Rerun Election: The Candidates and the Campaign

As the first months of 1998 passed with uncertainty regarding the timing of the rerun election, there were reasons for TDU to be pleased. Reform candidates had been elected in Hoffa strongholds, such as Dallas, Columbus, Chicago Local 705, and even in Detroit Local 299, Hoffa's father's local.[708]

In April 1998, Ken Hall, head of the union's 220,000 member Small-Package Division, announced his candidacy for the presidency.[709] In 1997, Hall had played a key role in the historic and successful strike against UPS, a role that had placed him close to

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702. *Id.*

703. *Id.*

704. *Id.*

705. Ellen Simon, *Teamsters Ante Up for Vote*, STAR-LEDGER (Newark, N.J.), Sept. 1, 1998, at 19.

706. *Id.* The 1996 election had cost more than $17 million. *Make Union Foot the Bill*, USA TODAY, Oct. 20, 1997, at 20A.

707. United States v. Int'l Bhd. of Teamsters (*Rerun Election Plan III*), 22 F. Supp. 2d 131, 133–34 (S.D.N.Y. 1998). Specifically, Cherkasky would "not be able to engage field staff *routinely* to conduct in-person investigations" but would instead enforce the requirement that "any protestor . . . present evidence that a violation has occurred, in order to dispose summarily of certain protests." *Id.* at 133.

708. Diane E. Lewis, *Teamsters Reformer Looks Ahead Focus Is on Finding Hoffa Challenger*, BOSTON GLOBE, Mar. 10, 1998, at E3.

709. *Teamsters' Strike Leader to Oppose Hoffa, Union Members Say*, N.Y. TIMES, Apr. 3, 1998, at A25.

Carey.[710] Hall quickly received Carey's endorsement[711] and within a week TDU's.[712] TDU organizer Ken Paff described Hall as "the person who can unify the [IBT] and pull people together."[713] Unfortunately, a serious eye condition forced Hall to withdraw from the race six weeks later.[714]

Three new candidates joined the race for general president. Tom Leedham, head of the Teamsters' 250,000-member Warehouse Division, stepped in as the TDU-backed candidate.[715] Sam Theodus, who had in 1996 defected from Carey to Hoffa, now withdrew from the Hoffa slate to run for president in his own right.[716] John Metz, President of Joint Council 13 in St. Louis, who had served in Carey's administration as head of the Public Employees Division, also threw his hat into the ring.[717] Theodus failed to receive the necessary delegate-nominating votes to win a place on the ballot, so the election proceeded with Hoffa, Leedham, and Metz.[718]

Leedham, enthusiastically backed by TDU,[719] defined himself as a reformer who would carry on the Carey legacy.[720] "We want to carry through with the reforms, but we think reform has to come a lot faster and go a lot further."[721] He said of Carey, "Nobody's done

710. Kenneth C. Crowe, *Carey Backing Hall to Head Teamsters*, NEWSDAY, Apr. 6, 1998, at A22. He stated: "We demonstrated to our members and corporate America what real power this union has if we can put aside politics and all work together." *Id.*

711. *Id.*

712. Steven Greenhouse, *Teamsters Group Backs Reform Candidate for Union's President*, N.Y. TIMES, Apr. 9, 1998, at A23.

713. Stephen Franklin, *Pull of the Past Leads Teamster into Campaign*, CHI. TRIB., Apr. 16, 1998, at 1.

714. Steven Greenhouse, *New Candidate Joins Race to Lead Teamsters Union*, N.Y. TIMES, May 23, 1998, at A8.

715. *Id.* Leedham stated: "They [Hoffa slate] have a ton of money .... We don't. So we're going to be running a grass-roots campaign. We're going to be out there with the members." *Id.*

716. Sandra Livingston, *Theodus May Seek Presidency*, CLEV. PLAIN DEALER, May 30, 1998, at 1C.

717. Philip Dine, *St. Louisan Looks to Pull Upset in Teamsters' Vote*, ST. LOUIS POST-DISPATCH, June 21, 1998, at B1.

718. Sandra Livingston, *Teamsters Race Now Has Three Candidates*, CLEV. PLAIN DEALER, July 1, 1998, at 1C.

719. Sandra Livingston, *Teamster Reformers Back Leedham*, CLEV. PLAIN DEALER, June 2, 1998, at 2C. Leedham defended Carey, saying that he had been duped by campaign consultants. Gail Kinsey Hill, *Tom Leedham's Unlikely Journey*, OREGONIAN, July 26, 1998, at B1.

720. Philip Dine, *Third Man in Teamsters Stresses His Credentials*, ST. LOUIS POST-DISPATCH, July 19, 1998, at B4.

721. *Id.*

more to change this union and reform this union than Ron Carey. . . . He was a great reformer. He rooted out the mob from our union."[722]

Hoffa also defined himself as a reformer and anti-corruption candidate.[723] "Ron Carey is a crook."[724] "[Leedham] has failed to denounce Carey, so [he] has no credibility with the members."[725] "It is appalling that a 'reform' group [TDU] would embarrass our union by allowing a proven embezzler and soon-to-be-removed officer [Carey] to address its convention."[726] Hoffa promised to create an independent ethics committee with "FBI-caliber credentials."[727]

Invoking his father's legacy, Hoffa promised to return the union to its glory days. "He [Jimmy Hoffa] climbed that mountain and made us two million strong. . . . We were kings. By God, help me climb that mountain again."[728] "We're talking about restoring the pride; we're talking about restoring the power. . . . We're playing to the fact that we're going to be a tough union."[729] Having gone to court in 1996 to force a presidential debate, Hoffa now declined to participate in a debate organized by EO Cherkasky.[730] Ultimately, Hoffa spent $6 million on his campaign, while Leedham spent $250,000.[731]

Metz tried to link Hoffa to the IBT's labor-racketeering legacy. He used his promotional space in the *Teamster* to depict Hoffa on a

722. Jim Lynch, *Amid Teamsters Fray, Portlander Waits*, OREGONIAN, Nov. 27, 1997, at C01.

723. Heaster, *supra* note 532, at 19.

724. Ellen Simon, *Campaign for Change*, STAR-LEDGER (Newark, N.J.), July 28, 1998, at 19.

725. Jim Hill, *Hoffa Campaigns in Oregon*, OREGONIAN, Aug. 1, 1998, at E01.

726. Steven Greenhouse, *Teamster Group Debates Whether to Continue Backing Carey*, N.Y. TIMES, Nov. 23, 1997, at 22.

727. Simon, *supra* note 724, at 19.

728. Randolph Heaster, *Teamsters Candidates Bring Their Campaigns to KC*, KAN. CITY STAR, Aug. 18, 1998, at D13

729. Jerome R. Stockfisch, *Hoffa Offers Ailing Union Tough Talk*, TAMPA TRIB., July 27, 1998, at 10.

730. *Hoffa Refuses Teamsters Debate*, VERO BEACH PRESS J. (Fla.), Oct. 7, 1998, at D1.

731. John D. Schulz, *Hoffa-Leedham Rematch*, TRAFFIC WORLD, June 12, 2000, at 21. Hoffa again attacked the Carey regime for fiscal irresponsibility. By the end of 1997, the Teamsters' treasury had fallen to $3.5 million, largely because of the creation of a special fund for organizing non-union companies and on account of the benefits paid to the striking UPS workers. John D. Schultz, *Tapping Out*, TRAFFIC WORLD, Aug. 24, 1998, at 16. Hoffa-supporter and President of Local 375 in Buffalo Brian Masterson said, "They [members of the Carey administration] spent more than Jackie Presser, and that's saying something." Fred O. Williams, *Local Teamsters Join Hoffa Bandwagon*, BUFFALO NEWS, Aug. 31, 1998, at 1C.

"wanted" poster, the apparent subject of an FBI manhunt.[732] He accused Hoffa of associating with the mob, impersonating a union official, and having corrupt cronies.[733] The ad drew condemnation from two members of Metz's own slate.[734] Metz's claim to be an integrity candidate was undermined by revelations about Tom Sever, a vice presidential candidate on his slate. Sever had twice run with Carey and was currently serving as the IBT's acting president.[735] In August, EO Cherkasky found that Sever had committed "very serious" election-rules violations by retaliating against officers who had endorsed other candidates and especially for retaliating against Tom Leedham, whose negotiating authority he terminated in the midst of ongoing negotiations with a large supermarket chain.[736] Sever was not disqualified, but he was required to acknowledge his wrongdoing in a letter to all Teamsters employees.[737]

When the votes were counted, James P. Hoffa won with 55 percent of the vote over Leedham's 39 percent and Metz's 6 percent. About 34 percent of the membership voted.[738] The IBT finally agreed to a mandatory debate rule for the general president candidates; however, an incumbent candidate could send an IBT vice president as a stand in.[739]

Hoffa took office promising to combat corruption and organized crime. "The mob killed my father. They're never going to come back to this union . . . ."[740] He vowed to avoid the type of partisanship that led the Carey campaign to ally with the Democratic National Committee: "We're going to take a bipartisan approach. . . . We're going to support those who support what we believe is an agenda for working men and women in this country."[741] He also

732. Philip Dine, *Attack Dogs May Chew on Hoffa's Lead*, ST. LOUIS POST-DISPATCH, Aug. 7, 1998, at C2.

733. *See id.*

734. *See id.*

735. Kevin Galvin, *Teamster Chief Told to End Retaliation*, STAR-LEDGER (Newark, N.J.), Aug. 17, 1998, at 4.

736. *Id.*

737. *Acting Teamsters Chief Sanctioned*, DALLAS MORNING NEWS, Aug. 18, 1998, at 14D.

738. *Hoffa Vows Revival*, CINCINNATI-KY. POST, Dec. 8, 1998, at C6.

739. *See id.*

740. Janet L. Fix, *Hoffa Vows No Ties to Mob for Union*, PHILA. INQUIRER, Dec. 7, 1998, at A06.

741. *Id.*

reiterated his goal of ending the court supervision that had begun with the 1989 consent order.[742]

E. The 2001 and 2006 Elections

In February of 2000, the government and the IBT jointly submitted to the court an agreement for 2000–2001 election rules that would be subject to an election supervisor, rather than to the DOL, as the 1989 consent order had envisioned.[743] The rules were modeled on the 1995–1996 election.[744] This time around, the IBT would fund the $10 million election supervision.[745] The court-appointed William Wertheimer, a Michigan labor lawyer, as the election "administrator;" Kenneth Conboy continued as the election appeals master.[746]

In June 2000, Leedham announced that he would challenge Hoffa in the 2001 election,[747] once again with TDU's endorsement.[748] Shortly after Leedham's announcement, Hoffa announced that IBT membership had topped 1.5 million.[749] Moreover, under Hoffa's leadership the union had negotiated a car-haul agreement ratified by 80 percent of employees and a contract with Northwest Airlines flight attendants ratified by 68 percent; challenged UPS to meet the terms of its contract and won 6,000 new jobs in arbitration; continued to keep the border closed to Mexican trucks despite the North American Free Trade Agreement; and negotiated resolution to a grocery workers strike that included $3.5 million in back pay.[750] The union had cut costs, including $2 million in overhead and a

742. *See* Janet L. Fix, *Hoffa Says He Can Handle Array of Teamsters' Problems*, PHILA. INQUIRER, Dec. 8, 1998, at A08.

743. United States v. Int'l Bhd. of Teamsters (*Election Access Decision*), 2000 U.S. Dist. LEXIS 16213, at *2–3 (S.D.N.Y. Nov. 8, 2000). Judge Edelstein's approval of this plan was one of his last judicial acts. He died in August 2000 at the age of ninety, after forty-eight years on the bench. David N. Herszenhorn, *David N. Edelstein, 90, Judge in Federal Court for 48 Years*, N.Y. TIMES, Aug. 21, 2000, at B7.

744. *Election Access Decision*, 2000 U.S. Dist. LEXIS 16213, at *2–3.

745. John D. Schulz, *Hoffa-Leedham Rematch*, TRAFFIC WORLD, June 12, 2000, at 21.

746. *See* John D. Schulz, *Hoffa Odds-On Favorite; Son of Legendary Labor Leader Seen Winning Landslide for Second Term in 2001 IBT Direct-Vote Election*, TRAFFIC WORLD, Nov. 27, 2000, at 22.

747. Gail Kinsey Hill, *Leedham Runs for Teamsters President*, OREGONIAN, June 9, 2000, at C1.

748. Schulz, *supra* note 746, at 22.

749. John D. Schulz, *Teamsters Back?*, TRAFFIC WORLD, June 19, 2000, at 24.

750. *Id.*

$900,000 cut in the organizing budget.[751] Meanwhile the union was receiving $2.9 million in new income through a licensing and list-use agreement with the AFL-CIO.[752]

Hoffa unsuccessfully pressed presidential candidates George W. Bush and Al Gore to commit to terminating court-appointed supervision of the IBT.[753] He appointed Ed Stier, a former prosecutor who had served for more than ten years as court-appointed trustee in the IBT Local 560 litigation, to head up an internal anti-corruption unit (Project RISE) that would hopefully demonstrate to the DOJ and the federal court (now Judge Loretta Preska) that the IBT did not require court supervision to keep itself free of corruption and racketeering.[754] Hoffa also proposed a "Democracy Package" (including one-member, one-vote elections for convention delegates and international officers) to be added to the IBT constitution.[755] He promised that "[t]he Teamsters will be the standard against which all labor democracy will be measured."[756]

In June 2000, the IRB brought embezzlement charges against Lawrence Brennan.[757] As the 2001 convention opened in Las Vegas, the IRB accused Hoffa ally William Hogan and Hoffa aide Dane Passo of negotiating sweetheart deals that ceded jobs to nonunion workers in Las Vegas.[758] Despite this embarrassment, Hoffa received overwhelming support. Going into the 2001 convention, Hoffa's campaign had raised $700,000, with an estimated additional $400,000 from sales of Hoffa gear at the convention.[759] Leedham

751. Schulz, *supra* note 746, at 22.

752. *Id.*

753. *Id.* It appears, however, that the lobbying effort may have succeeded with Barack Obama, who told Hoffa during the 2008 presidential campaign that he favors ending, or at least modifying, the court-appointed supervision. Brody Mullins, *Obama Says Teamsters Need Less Oversight*, WALL ST. J., May 5, 2008, at A1.

754. Marc Cooper, *Where's Hoffa Driving the Teamsters?*, NATION, July 24, 2000, at 11. For more on the oversight of Local 560, see JACOBS ET AL., *supra* note 2, at 31–78 and James B. Jacobs & David Santore, *The Liberation of Local 560*, 37 CRIM. L. BULL. 125 (2001).

755. John D. Schulz, *Odds-On Favorite; Hoffa Eyes Bigger Targets than Leedham as Teamsters Convention Starts in Las Vegas*, TRAFFIC WORLD, June 25, 2001, at 22.

756. *Id.*

757. Steven Greenhouse, *More Troubles for Teamsters President*, N.Y. TIMES, June 20, 2000, at A14.

758. Steven Greenhouse, *Teamsters, Tenacious as an Old Lounge Act, Convene in Las Vegas*, N.Y. TIMES, June 26, 2001, at A12.

759. John D. Schulz, *Debating Time*, TRAFFIC WORLD, Aug. 20, 2001, at 11.

had raised only $10,000.[760] At the convention, Hoffa received nominating votes from 93 percent of the delegates; Leedham received nominating votes from only 7 percent of delegates[761] and was booed during his acceptance speech.[762] In the lead up to the 2001 election cycle, Election Administrator William Wertheimer, made a major effort to mount a debate between General President Hoffa and Tom Leedham.[763] He viewed this as consistent with his authority to "insure fair, honest, open and informed elections."[764] According to Wertheimer, a debate would provide an unparalleled opportunity for democracy building in the IBT. Lamenting the low rate of voter participation in the 1991, 1996, and 1998 elections, he expected that a debate would "energize the electorate, make the election of their officers relevant to them, and encourage their involvement in the process."[765] He further noted:

> The importance debate serves in self-governance cannot be overstated. Through debate, each candidate displays not only his particular ability to think critically on substantive issues, but of equal value, the candidates together demonstrate for the membership that an 'uninhibited, robust, wide-open' exchange of views of issues important to them is not only encouraged but vital.[766]

In his August 22, 2001 memo setting out the rules for the debate, EA Wertheimer explained that:

> The democracy fostered by the Consent Decree is central to its purpose of eliminating corruption that has existed in the IBT. Unfortunately, the candidate forum provisions of the various election rules have to date resulted in no candidate forums, and democracy has been less than well served by their omission. The September 21, 2001 debate, and its broad disseminating to the membership, will mark the

760. *Id.*

761. Alison Grant, *It's Leedham vs. Hoffa Again for Teamster Head*, CLEV. PLAIN DEALER, July 1, 2006, at 1C.

762. *Teamsters Jeer Hoffa Foe*, CHI. SUN TIMES, June 29, 2001, at 54.

763. Office of the Election Administrator, In Re: Candidate Forums, Protest Decision, 2001 EAD 428 (Aug. 22, 2001).

764. *Id.*

765. *Id.*

766. *Id.*

fulfillment of one of the significant democratic promises of the Consent Decree.[767]

Both candidates agreed to a one-hour debate on September 21, 2001 at the National Press Club.[768] A panel of journalists would pose questions to the candidates.[769] Because the debate would only contribute to IBT democracy if it was widely viewed, Wertheimer committed approximately $469,000 to producing half a million video tapes of the debates: 200,000 each would be delivered to the Hoffa and Leedham campaigns and 100,000 would be mailed to IBT locals.[770]

On the day of the debate, Hoffa did not appear, sending Charles Mack to stand in for him.[771] Nor did the Hoffa campaign distribute the 200,000 video tapes of the Leedham-Mack debate.[772] The electorate was not energized; voter participation fell to 25 percent.[773] Leedham lambasted Hoffa for not participating personally and for permitting corruption to fester within the union.[774]

The general election did not generate much interest, the outcome a foregone conclusion. With only 350,000 IBT members (25 percent) out of 1.4 million eligible members bothering to send in their ballots, Hoffa won 65 percent to 35 percent.[775]

The 2006 election was much the same story. It did not seem to matter that Project RISE had imploded amid charges that Hoffa was soft on labor racketeering.[776] This time, Leedham received support from just 6 percent of convention delegates, dangerously close to failing to achieve the 5 percent threshold required to get on the

767. *Id.*

768. *Id.*

769. *Id.*

770. *Id.*

771. *Id.* Hoffa agreed to debate Leedham at the National Press Club on September 21, 2001 but then sent a vice presidential candidate to debate in his place; Hoffa's excuse was that he was in Oklahoma lobbying the state legislature. John D. Schulz, *Hoffa a No-Show*, TRAFFIC WORLD, Oct. 1, 2001, at 29

772. Office of the Election Administrator, In Re: Candidate Forums, Protest Decision, 2001 EAD 428 (Aug. 22, 2001).

773. *Id.*

774. Schulz, *supra* note 762, at 29.

775. Nancy Cleeland, *Hoffa Leads in Balloting for Head of Teamsters*, L.A. TIMES, Nov. 16, 2001, at 3.

776. For an analysis of the rise and fall of Project RISE, see James B. Jacobs and R.P. Alford, *The Teamsters Rocky Road to Recovery—The Demise of Project RISE*, 9 TRENDS ORGANIZED CRIME 5 (2005).

ballot.[777] He accused Hoffa of selling members short in the 2002 UPS agreement, which, while leading to a $5-an-hour raise, resulted in cuts in pension and health benefits that were not fully explained prior to the membership vote.[778] Once again Hoffa sent a stand-in, C. Thomas Keegel, to the presidential debate.[779] Hoffa received more than 65 percent of the vote.[780] Voter participation plummeted to only 21 percent; there were 273,000 ballots cast by 1.3 million eligible Teamster voters.

Percent of Eligible IBT Members Casting Ballots Per Election[781]

Election	IBT Members Casting Ballots
1991	28.2%
1996	34.0%
1998	34.0%
2001	25.0%
2006	21.0%

CONCLUSION

The remedial phase of *United States v. International Brotherhood of Teamsters* demonstrates just how powerful a remedy civil RICO can be if the government and federal courts are committed to reforming a corrupted organization. Because of TDU's lobbying during the period leading up to the settlement, the consent order in *United States v. International Brotherhood of Teamsters*, unlike the approximately twenty other civil RICO labor racketeering cases that the DOJ has filed since 1982, included complementary

777. Grant, *supra* note 761, at C1.

778. *See* H.J. Cummins, *With Eye on Teamsters' Top Spot, Hopefuls Hit Campaign Trail*, MINNEAPOLIS STAR TRIB., Aug. 19, 2006, at 1D; Alison Grant, *Dissent Simmers*, CLEV. PLAIN DEALER, May 7, 2006, at G1.

779. Steven Greenhouse, *Hoffa Chooses to Skip Teamsters Election Debate*, N.Y. TIMES, Aug. 27, 2006, §1,at 12.

780. Press Release, Richard W. Mark, Election Supervisor, IBT International Officer Election: Announcement of Final Ballot Tabulation Results, *available at* http://www.teamsters81.org/docs/2006_11_18_final_ballot_results.pdf.

781. *See supra* notes 329, 738, 772 and accompanying text; Michael H. Belzer & Richard Hurd, *Government Oversight, Union Democracy, and Labor Racketeering: Lessons from the Teamsters Experience*, 20 J. LAB. RES. 343, 353 (1999); *Analyzing the 2006 IBT Election*, Teamsters for a Democratic Union, http://tdu.org/node/490 (last visited May 22, 2009).

disciplinary and election-reform prongs.[782] TDU believed, and persuaded the government, that given a free choice, the union rank-and-file would reject the incumbent racketeers and their allies in favor of TDU-backed reformers. In this judgment both TDU and DOJ underestimated the tremendous advantages of incumbency and the rank-and-file's deep-seated indifference to union governance.[783] Judge Edelstein and the trustees he appointed to enforce the consent decree's electoral reforms first had to overcome Teamsters resistance and then the logistical challenges involved in planning, conducting, and monitoring a type of democratic one-person, one-vote election that had never been attempted in a union with the membership size and geographical reach of the IBT.[784] The goals were accomplished because of the determination of Judge Edelstein, Election Officer Holland, and the successor EOs.[785]

The elections prong of the *United States v. International Brotherhood of Teamsters* remedial phase has, perhaps unwittingly, provided one of the most important experiments in union democracy in the history of the United States. Hopefully, labor scholars will attempt to evaluate the comparative advantages and disadvantages of direct elections and of some of the more important rules on campaign finance and expenditures. One would like to know: (1) whether rank-and-file elections are better than delegate elections at preventing labor racketeers from attaining union office; and (2) whether direct elections are better than delegate elections for replacing labor racketeers with honest union leaders. Hopefully, union democracy scholars will be interested in studying whether direct elections produce more involvement in and more positive attitudes toward the union.

The government broke new ground in *United States v. International Brotherhood of Teamsters* by seeking electoral reform as an anti-labor racketeering remedy.[786] The importance of the

782. *See* JACOBS, *supra* note 7, at 238–53.

783. *Cf.* SEYMOUR MARTIN LIPSET ET AL., UNION DEMOCRACY: THE INTERNAL POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION (1956) (concluding that Union members' indifference toward union governance and politics made true union democracy unfeasible).

784. JACOBS, *supra* note 7, at 206–09.

785. *Id.*

786. After *United States v. International Brotherhood of Teamsters*, the government sought to include a fair election remedy in the settlement of a number of civil RICO labor racketeering cases. *See, e.g.*, James B. Jacobs & Kristin Stohner, *Ten Years of Court-Supervised Reform: A*

elections prong to the overall remedial effort seemed clearer in the early 1990s than it does today. Organized crime had played a significant role in the choice of Teamsters General Presidents Jimmy Hoffa, Frank Fitzsimmons, Roy Williams, Jackie Presser, and William McCarthy. From the government's standpoint, it was crucial that the civil RICO suit result in an IBT leadership that would be perceived as completely independent of the old regime. Arguably, the government's goal in eliminating organized crime's influence from the union could not have been achieved if the organized-crime-associated clique, perhaps through a designated surrogate, remained in power. The architects of the civil RICO suit were much more concerned about achieving a desirable election outcome than creating a democratic union. All the international elections show that a secret ballot election does not assure a voice for those opposed to the dominant regime. In retrospect, no change could have occurred without Teamsters for a Democratic Union, an entrenched rank-and-file dissident group. Even with TDU's participation, the advantages of incumbency have proved overwhelming.

Ron Carey's 1991 election as general president was a clear break with the leadership clique that had dominated the union at least since the 1950s and apparently a clear break with organized crime as well.[787] Indeed, certain observers of the IBT trusteeship charged that the federal prosecutors, federal judge, and the court-appointed remedial officers had come to regard Carey's victory as necessary for the success of the RICO suit.

Carey's disqualification from the 1998 rerun election was a huge blow to those who brought the civil RICO suit and to those charged with enforcing the consent order. Moreover, because of James Riddle Hoffa's close relationship with the Cosa Nostra bosses, there was concern that his son's election as general president might signal a return of Mafia influence. Fortunately, this has not turned out to be the case.[788] While James P. Hoffa might not have, in all cases,

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Chronicle and Assessment, 6 CAL. CRIM. L. REV. 3, ¶ 30 (2004) (noting that the consent order in *United States v. District Council of New York City and Vicinity of the United Brotherhood of Carpenters & Joiners of America*, 972 F. Supp. 756 (1997), provides court-appointed "independent review officer" with authority to "supervise" free and fair election).

787. See JACOBS, *supra* note 7 at 209, 236.

788. However, note Ed Stier's stinging criticisms of General President Hoffa in Stier's resignation letter to the GEB, resigning as head of Project RISE:

moved aggressively against organized-crime-tainted figures in the IBT, in his decade as general president, Cosa Nostra's presence and influence in the union has steadily dwindled. Indeed, the Hoffa administration has mostly cooperated with the Independent Review Board in resolving administrative prosecutions and trusteeships over organized-crime-tainted locals.

One could argue that, in the end, a democracy marked by competitive factions that to some extent hold each other accountable has not been achieved. In fact, the Hoffa administration has used the powers of incumbency to cement practically complete control over the union. There are only a handful of locals controlled by non-Hoffa supporters.

Contested Convention Delegate Elections[789]

Election	Contested	Uncontested
1991	307 (49%)	316 (51%)
1996	275 (48%)	293 (52%)
2001	137 (27%)	375 (73%)
2006	152 (25%)	454 (75%)

Judge Edelstein was insightful when early on he ruled that to be effective, opposition groups had to have equal access to the membership. But equal access has not been achieved. For one thing, it takes a great deal of money to mount a nationwide campaign. Tom Leedham's campaigns have not been able to afford a single mailing to all Teamster members. Even when "dissidents" do break through at the local level, the general president can undermine or remove

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> The second example [of Hoffa undermining anti-corruption investigations] arises out of our ongoing mission to investigate organized crime activities in the union. As our organized crime study points out, much of the racketeering influence in the union has been removed through the efforts of federal law enforcement and the IRB. However, some pockets of organized crime remain. . . .
>
> Over the past year, as our Investigative efforts became more known to potential subjects and their allies, we began to experience active resistance from the General President's office. It soon became clear that the pressure was emanating from individuals whose interests were threatened by our investigations.

Jacobs & Alford, *supra* note 776, at 18.

789. *See supra* note 206 and accompanying text; Martha Gruelle, *Teamsters Fight for the Soul of Their Union*, LABOR NOTES, Sept. 1996, at 13; Election Administrator Report No. 3 at 3, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. April 2001); Election Supervisor's Report No. 2 to the Court at 3, United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486 (S.D.N.Y. July 2006).

them through various means, including appointing personal representatives to take over the local.

The Teamsters have had five formally fair international elections, quite an achievement for a union whose leadership a generation ago was chosen by Mafia leaders in back rooms. But the union is not a thriving democracy. It is increasingly centralized and, like most unions, a one party state. The responsibility for this state of affairs ought not to be attributed to *United States v. International Brotherhood of Teamsters*. The case was brought to purge the mafia from the union; according to that criterion, the lawsuit has been a huge success. However, even on its own terms, the argument that lack of competitive elections is incompatible with democracy is not persuasive. If the definition of democracy required a significant probability of party and/or leadership change in every election, few countries, states, and other politics would qualify. There are many nations, uncontroversially considered to be democracies, that have been dominated by a single political party for a generation and even by a single president or prime-minister for a decade or longer. In the United States, southern states in the "solid south" functioned politically as one party states for a hundred years after Reconstruction.[790]

The right question is whether the election reforms resulting from the civil RICO suit played a role in purging the union of Mafia influence and whether those reforms make it significantly more difficult for organized crime to return to power in the IBT. Admittedly, a number of IBT labor racketeers were removed from the union as a result of the negotiations settling the civil RICO suit. However, the 1991 election succeeded in defeating several members of the GEB who were at least passively complicit in organized crime's exploitation of the IBT. Carey's extraordinary victory must be seen as a major blow against Cosa Nostra's influence in the union.

From 1991–1996, the IRB suspended and expelled scores of organized-crime-tainted officials from the union.[791] This

790. Chester Morgan, Presidential Elections: Mississippi's Voting History, Mississippi History Now, http://mshistory.k12.ms.us/articles/92/presidential-elections-mississippi-voting-history (last visited May 7, 2009); Republican Party of Texas, History of the Republican Party in Texas, http://www.texasgop.org/site/PageServer?pagename=library_history (last visited May 7, 2009).

791. *See* Jacobs & Portnoi, *supra* note 19, at 465 (documenting the lifetime ban of nearly twenty-five individuals for associating with a barred or suspended IBT member).

development might have occurred even without the regime change produced by the 1991 election, but that election and Carey's victory clearly created space for cooperative witnesses and new leadership to come forward. Carey favored new leadership at the local level, whether challenged incumbents were organized crime's pawns or "just" loyal members of the old regime.

Once a free and fair election of international officers (alongside IRB investigations and discipline) had cleared out the most obvious organized-crime-affiliated IBT officers, did the election apparatus make it more difficult for organized crime to regain its influence and control? Here we believe the answer is no. Organized crime could regain influence by sponsoring or supporting a candidate(s) willing to ally with them. The kind of Cosa Nostra that existed through the 1980s could supply money, muscle, and manipulation that could win a formally free and fair election. Or it could bribe or intimidate an honest candidate into becoming an ally after an election. Fortunately, that kind of Cosa Nostra no longer exists. However, one cannot rule out a resurgence or the formation of a different organized-crime group that might find labor unions an attractive target.