

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #:
 DATE FILED: 11/18/09

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 ----- x

UNITED STATES OF AMERICA, :
 Plaintiff, :

STIPULATION
AND ORDER

- against - :

88 Civ. 4486 (LAP)

INTERNATIONAL BROTHERHOOD OF :
 TEAMSTERS, et al., :
 Defendants. :

Filed
MAILED TO COUNSEL

----- x

WHEREAS, on March 14, 1989, the United States District Court for the Southern District of New York (the "Court") approved a Consent Decree (the "Consent Decree") that resolved the claims of plaintiff United States of America (the "Government") against, among others, the defendant International Brotherhood of Teamsters (the "IBT"); and

WHEREAS, Paragraph 12 of the Consent Decree provided that an Election Officer, appointed by the Court, would supervise the 1991 International Union delegate and officer election (the "1991 IBT Election"), and, at the Government's option, the 1996 International Union delegate and officer election (the "1996 IBT Election"); and

WHEREAS, both the 1991 and the 1996 IBT Elections were supervised by Election Officers appointed by the Court, and the results of those elections were certified by the Election Officers; and

WHEREAS, the IBT consented, in Paragraph 12 of the

the

Consent Decree, to supervision by the United States Department of Labor of "any IBT elections . . . to be conducted after 1991 for the office of the IBT General President, IBT General Secretary-Treasurer, IBT Vice President, and IBT Trustee"; and

WHEREAS, for the 2001 International Union delegate and officer election (the "2001 IBT Election"), the Government and the IBT entered into an agreement (the "2001 Election Agreement"), approved by the Court, with the stated objectives of permitting the IBT to conduct its 2001 Election without Department of Labor supervision, while providing safeguards sufficient to ensure that the 2001 IBT Election would be conducted in a manner that was fair, free, democratic and informed; and

WHEREAS, the 2001 IBT Election was completed and the results certified by the 2001 Election Administrator; and

WHEREAS, for the 2006 International Union delegate and officer election (the "2006 IBT Election"), the Government and the IBT entered into an agreement (the "2006 Election Agreement"), approved by the Court, with the stated objectives of permitting the IBT to conduct its 2006 Election without Department of Labor supervision, while providing safeguards sufficient to ensure that the 2006 IBT Election would be conducted in a manner that was fair, free, democratic and informed; and

WHEREAS, the 2006 IBT Election was completed and the results certified by the 2006 Election Supervisor; and

WHEREAS, the IBT and the Government agree that the 2011 International Union delegate and officer election (the "2011 IBT Election") should be conducted in a manner that is fair, free, democratic and informed; and

WHEREAS, the purpose of this Stipulation and Order is to permit the IBT to conduct the 2011 IBT Election without Department of Labor supervision, while providing safeguards sufficient to ensure that the 2011 IBT Election will be conducted in a manner that will ensure a fair, free, democratic and informed election, in accordance with this Stipulation and Order, the 2011 Election Rules as discussed in Paragraph 4 of this Stipulation and Order, and the Consent Decree;

NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Government and the IBT (the "parties"), as follows:

1. Provided that the IBT complies fully with this Stipulation and Order, the Government agrees not to exercise its option to have the 2011 IBT Election supervised by the Department of Labor. Nothing in this Stipulation and Order precludes or limits the Secretary of Labor's exercise of authority under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 401 et seq., or any other federal laws.

2. The parties have jointly agreed that Richard Mark,

Esq., will serve as the Election Supervisor for the 2011 IBT Election (the "2011 Election Supervisor"). In the event of a vacancy in the position of 2011 Election Supervisor, the parties will jointly agree upon the selection of a new 2011 Election Supervisor no later than 30 days following the vacancy or notice of the expected vacancy, whichever is earlier. The parties will submit their selection to the Court for the Court's consideration and approval. Subject to the 2011 Election Rules, the 2011 Election Supervisor is intended by the parties to function similarly to the 1991 and 1996 Election Officers, the 2001 Election Administrator, and the 2006 Election Supervisor. The 2011 Election Supervisor shall have the same rights of access to information, to suitable office space, to distribute materials about the election in advance of the election, and to distribute materials to the IBT membership regarding the activities of the 2011 Election Supervisor (including reports in union magazine distributed to all IBT members), as were available to the 1991 and 1996 Election Officers, the 2001 Election Administrator, and the 2006 Election Supervisor. In addition, and as occurred during the 2006 IBT Election, the 2011 Election Supervisor shall also have the right to distribute materials about the election and about his activities in IBT publications disseminated to members from the Graphic Communications Conference, the Brotherhood of Locomotive Engineers & Trainmen and the

Brotherhood of Maintenance of Way Employees. The 2011 Election Supervisor shall have the right to employ personnel and appoint designees, subject to the budget agreed upon by the parties. The 2011 Election Supervisor shall have the same right and obligation to file reports with the Court as did the 1991 and 1996 Election Officers, the 2001 Election Administrator, and the 2006 Election Supervisor.

3. The parties have jointly agreed that Kenneth Conboy, Esq., will serve as Election Appeals Master for the 2011 IBT Election (the "2011 Election Appeals Master"). In the event of a vacancy in the position of 2011 Election Appeals Master, the parties will jointly agree upon the selection of a new 2011 Election Appeals Master no later than 30 days following the vacancy or notice of the expected vacancy, whichever is earlier. The parties will submit their selection to the Court for the Court's consideration and approval. Subject to the 2011 Election Rules, the 2011 Election Appeals Master is intended by the parties to function similarly to the 1996, 2001, and 2006 Election Appeals Masters, and shall have the same rights as were conferred upon the 1996, 2001, and 2006 Election Appeals Masters. The standard of review that the 2011 Election Appeals Master shall apply to decisions of the 2011 Election Supervisor shall be the same standard of review applied by the Election Appeals Masters in the 1996, 2001, and 2006 IBT Elections.

4. The 2011 IBT Election shall be conducted in accordance with election rules (the "2011 Election Rules"), which shall be jointly agreed upon by the parties following comments by IBT members and any interested parties. IBT members and other interested parties will be afforded notice and a period of at least thirty (30) days to comment upon the 2011 Election Rules. After the parties have jointly agreed upon the 2011 Election Rules, they shall submit the 2011 Election Rules to the Court for its consideration and approval. If the parties cannot agree on the rules to be submitted to the Court for approval, the parties and the 2011 Election Supervisor shall submit written statements concerning any open items and the Court shall resolve those items. This process shall not affect the rights of the parties with respect to matters governed by the Consent Decree. Following approval by the Court, the 2011 Election Rules may be modified or supplemented by mutual consent of the 2011 Election Supervisor and the parties. In the event the 2011 Election Supervisor and the parties agree to modify or supplement the 2011 Election Rules, the proposed change(s) shall be submitted to the Court for its consideration and approval. If the Court disapproves of all or any part of a modification or supplement, the matter will be remanded for appropriate revision and re-submission to the Court.

5. The parties will jointly agree upon a budget for

the conduct of the 2011 IBT Election within 60 days after entry of this Stipulation and Order. The budget shall be no less than the amount expended by the 2006 Election Supervisor for the 2006 IBT Election, as adjusted for inflation. The parties intend that the budget will include reasonable allocation for the payment of fees and expenses of the 2011 Election Supervisor and the 2011 Election Appeals Master (as well as the personnel employed by each) and will enable the 2011 Election Supervisor and 2011 Election Appeals Master to fulfill their obligations under the 2011 Election Rules and this Stipulation and Order. The IBT commits to funding a budget of this amount, as well as funding certain other expenses such as rent, general administrative expenses, and hotel costs at the IBT Convention (including lodging, office and other space) that need not be included in the budget. Expenses for the conduct of local union delegate elections, other than expenses of the 2011 Election Supervisor and 2011 Election Appeals Master and their staff, will be funded by the respective IBT local unions and therefore need not be included in the budget. The parties will jointly agree upon any modifications to the budget for the conduct of the election, including a supplemental budget if the initial budget agreed upon by the parties is not sufficient to enable the 2011 Election Supervisor and 2011 Election Appeals Master to fulfill their obligations. The IBT and/or its affiliates shall be responsible

for paying the costs of the 2011 IBT Election.

6. The Government shall have the right to observe and be informed about all aspects of the 2011 IBT Election, including without limitation, the right to receive (a) all proposed modifications or supplements to the 2011 Election Rules; (b) all 2011 Election Supervisor notices or other communications with the candidates or the IBT membership; (c) notice of any proposed designees of the 2011 Election Supervisor or 2011 Election Appeals Master, and a list of the personnel or staff employed by each; (d) all campaign contribution and expenditure reports; and (e) all protest and appeal decisions of the 2011 Election Supervisor and 2011 Election Appeals Master, and, upon request of the Government, all evidence or submissions underlying any protest or appeal, or any protest or appeal decision.

7. The IBT shall purchase a policy of insurance in an appropriate amount to protect the 2011 Election Supervisor and the 2011 Election Appeals Master and any persons hired by or acting on behalf of the 2011 Election Supervisor and the 2011 Election Appeals Master, from personal liability (or costs incurred to defend against the imposition of liability) for any of their actions on behalf of the IBT, the 2011 Election Supervisor, or the 2011 Election Appeals Master pursuant to this Stipulation and Order. If such insurance is not available, or if the IBT so elects, the IBT shall indemnify the 2011 Election

Supervisor and the 2011 Election Appeals Master and any persons hired by the 2011 Election Supervisor and the 2011 Election Appeals Master from any personal liability (and any costs incurred to defend against any claim of liability) for any of their actions on behalf of the IBT, the 2011 Election Supervisor, or the 2011 Election Appeals Master pursuant to this Stipulation and Order.

8. Modifications of this Stipulation and Order must be in writing and approved by the Court.

9. Except as expressly provided for in Paragraph 1, nothing in this Stipulation and Order shall limit the rights of the Government or the IBT under the Consent Decree or the Court's

authority or jurisdiction under the Consent Decree or the All
Writs Act, 28 U.S.C. § 1651.

Dated: New York, New York
November 9, 2009

PREET BHARARA
United States Attorney for the
Southern District of New York

By: *Danna Drori*

DANNA DRORI
BRIAN FELDMAN
BETH E. GOLDMAN
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2689/2777/2732
Facsimile: (212) 637-2717

Dated: Washington, D.C.
November 05, 2009

International Brotherhood
of Teamsters

By: *BR*

BRADLEY T. RAYMOND
General Counsel
International Brotherhood
of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 624-6945
Facsimile: (202) 624-6884

SO ORDERED:

Loretta A. Preska
LORETTA A. PRESKA
UNITED STATES DISTRICT JUDGE

November 17, 2009