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ELECTION SUPERVISOR'S SUMMARY REPORT NO. 5 TO THE IBT

The February 26, 2015 Stipulated Agreement and Order appointing the Election Supervisor for the 2015-2016 IBT International Union Delegate and Officer Election (the "2016 Election Agreement") provides that "The 2016 Election Supervisor shall have the right and obligation to submit reports to the IBT which, in turn, has the obligation to share these reports with the membership and the Government." Election Agreement, ¶ 2. The Office of the Election Supervisor ("OES") periodically provides to the IBT and the Government an accountant's compilation of the OES financial statements, including a chart that shows the OES budget and the actual expenses incurred through the reporting period. This report provides additional narrative context for the financial compilations and summarizes activities conducted from December 13, 2016 through December 1, 2017. During this period OES certified the results of the IBT International Officer Election, investigated and decided post-election protests, and closed the Washington D.C. OES office location. At present, OES is responding to specific inquiries from members; resolving remaining protests; performing administrative tasks including preparing and filing tax documents and completing payments to 2016 International Officer Election vendors; and maintaining office paper records, electronic databases, and computer software. Unless there is a specific request from the IBT, I expect that this will be my final report on the 2015-2016 IBT International Union Delegate and Officer Election.

I. Election Certification

Report No. 4 (December 12, 2016), described the process used to tally ballots cast in the union-wide referendum vote. The ballot count was completed on November 18, 2016 after resolution of challenged ballots to the point where the narrowest winning margin for a contested office exceeded the number of challenged ballots still unresolved and final results were posted on www.ibtvote.org.

Five protests were filed seeking rerun elections for all at-large positions and the regional vice-president positions in the Eastern Region; three were filed shortly before the start of the ballot count and two were filed after completion of the count. No protests were filed challenging the ballot tabulation, including the process for resolving the challenged ballots and the outcome of that process.

The five protests seeking a rerun claimed multiple *2016 Election Rules* violations based on overlapping theories all converging on alleged misuses of Union resources to support candidates. The protests were investigated and the claims denied in a decision issued in February, 2017.¹ *Lobger*, 2017 ESD 378 (Feb. 10, 2017). After the *Lobger* decision issued, four pre-election protests remained open but none involved any issue that could affect certification of the International Officer Election results. Accordingly, on February 16, 2017, I certified the election results subject to any relief that might be awarded on review of *Lobger* by the Election Appeals Master.

The Election Appeals Master remanded *Lobger* for additional investigation of a claim that the IBT improperly supported candidates, and so violated the *2016 Election Rules*, by

¹ OES also decided on the merits or otherwise resolved 45 other pending pre-election protests in the period between the end of the ballot count and February 10, 2017.

resisting and limiting its response to document requests of the Independent Investigations Officer during 2016. *Lobger*, 2017 EAM 43 (March 28, 2017). The OES remand investigation encompassed witness interviews (and re-interviews), and the collection and reading of thousands of documents. On August 7, 2017, OES issued a decision on remand denying the protest in full, and that decision was affirmed on appeal. *Lobger*, 2017 ESD 387 (August 7, 2017), *aff'd* 2017 EAM 44 (October 31, 2017). The results of the 2016 IBT International Officer Election, and all challenges to that election are now final.

II. Campaign Finance Reporting

Fifty-seven individuals, slates, or independent committees filed periodic Campaign Contribution and Expenditure Reports (“CCER”) using the OES web-based system. On December 12, 2016, filers were advised of the process for closing out their CCER accounts. Teresa Flick of OES meticulously reviewed filings as they were made. She has assisted filers with reconciliations and the proper recording of transactions so that accounts could be properly wound up. Because of the pending appeal in *Lobger*, three filers had kept their CCER accounts open. Now that the protest is administratively concluded, we anticipate that all CCER accounts will be closed in the next sixty days.

In mid-2017, OES received a query regarding fundraising for future election cycles. OES has responded with an *Advisory* stating that there was no time constraint on fundraising but that any such activity directed to a future election would have to be reported on the first periodic CCER to be filed under the *Election Rules* for that election (the next being the 2020-2021 International Officer Election). The *Advisory* was released in draft form for comment on July 6, 2017, and in final form on November 28, 2017. The *Advisory* notes that campaign finance reporting under the *Election Rules* involves International Union Officer Election candidates only, and that specific rules for the upcoming election would likely be issued in 2020. Until then, if

reportable activity of fundraising or expenditures occur, persons engaged in such activity are advised to maintain records and to prepare to disclose the activity on the Period #1 CCER of the election cycle.

After the 2006 and 2011 elections, the CCER system was put into hibernation with OES's software engineering vendor attending to security patches and updates to the system's underlying software components. CCER system will, again, be put into hibernation when the last 2015-2016 campaign accounts are closed. In that dormant state, the CCER system remains available only to OES.

III. Protests

To date, OES handled 427 protests in the 2015-2016 International Officer Election, and all but four have been resolved; three pre-election protests concerning a matters unrelated to the outcome of the election, and one post-election protest alleging retaliation. OES issued 387 written decisions.² The Election Appeals Master issued 44 rulings on appeals from OES decisions: 30 affirmed the Election Supervisor's ruling; 2 were partial reversals; 2 were remands for further investigation; and 10 were dismissed or withdrawn. All protest rulings of the Election Supervisor and the Election Appeals Master are publicly available at www.ibtvote.org.

Over the years, OES has been asked about obtaining access to protest rulings of the Election Officer issued in the 1991 and 1996 International Officer Elections. These decisions existed in hard copy (1991) or in dated electronic files (1996) not easily uploaded to the OES website. Using scanning technology, however, OES has prepared the older decisions to be uploaded to the OES website (1991 will not be complete, as some hard copy decisions from that

² OES handled 406 protests in the 2011 International Officer Election, and 413 protests in the 2006 International Officer Election.

period could not be located in OES's files, or in the custody of others who had collected those decisions). The scanned files are being reviewed now and certain personal identifying information contained in the decisions (such as social security numbers) is being redacted. The decisions will be displayed when the review project is completed.

IV. Office Closing

OES closed the office in Washington, D.C., at the end of January, 2017. Records of the election and office administrative materials were boxed, indexed, and placed in storage. OES will hold ballot tabulations and other records for the statutory waiting period after the conclusion of the election and then arrange to destroy those materials.

Administrative functions of OES during the period between elections will be performed and managed by Paul Dever and Teresa Flick. These functions include reviewing and paying bills of certain service providers (there are invoices still outstanding for some activities in 2016); maintaining records; closing out the CCER accounts; preparing required tax filings; maintenance of www.ibtvote.org; and responding to occasional queries from members. I will discuss with the IBT other activities that may need to be undertaken either to close out the 2016 International Officer Election or to prepare for the next election cycle.

V. Budget and Expenses

OES proposed to the parties a budget of \$12,885,700 based on certain assumptions about the level of election activity. OES has provided periodic reports to the parties showing the total amount expended to date measured against the budget in each category. The IBT has promptly provided funding to meet OES's needs as requested.

OES will continue to share its budget and expense information with the government and the IBT quarterly so that the parties have complete information about the costs incurred. We are still working with certain vendors to obtain invoices for 2016 and 2017 activities, and this time

lag is similar to that experienced in the previous election cycle. Currently, OES has funds to pay bills still being rendered but, as in the previous cycle, additional funds will be required in 2018 to complete payments as invoices for work performed in supervising the 2015-2016 IBT International Union Delegate and Officer Election continue to be presented. We do note that OES total expenses are presently under the approved budget.

VI. The Future

Rules The Final Order entered on February 17, 2015 in *United States v. International Brotherhood of Teamsters*, 88 Civ. 4486 (S.D.N.Y.), provided for a “Transition Period” ending five years following the effective date of that order. Independent election supervision is to continue into the future (Final Order ¶ 12). After the Transition Period, the General Executive Board is responsible for promulgating *Election Rules* “which are substantially the same as those which governed the previous IBT elections but may make non-material changes as necessary to tailor the rules to a new election cycle” (Final Order ¶ 20). Any proposed changes to the *Election Rules* are subject to the approval of the Independent Election Supervisor; the Government must also receive advance notice of changes; and notice of the changes must be published to the membership (*Id.*).

The *Election Rules* for the 2020-2021 International Officer Election should be settled well before the time active campaigning can be expected to start in 2020. There have been changes – some minor, some major – to the *Election Rules* in each cycle and the next iteration will be no exception. Given the Final Order’s requirements for notice and consideration by identified stakeholders and authorities, work should start on the rules in 2019. OES can work with the IBT to develop a timetable for the rules promulgation process.

Certain subsidiary rules should also be revisited early in the election cycle. In particular, Convention Rules governing the nomination process could describe conduct, movements, and

behaviors allowed (and disallowed) on the floor so that the Sergeants-at-Arms have clear authority to guide their actions in controlling disruptive delegate behavior. The Convention Rules could also provide additional guidance on politically neutral zones at the convention.

Response Rate Of the ballot packages mailed out (including those remailed to updated addresses) and not returned as undeliverable, members returned 16% by the voting deadline. OES can examine the possibility of additional, neutral “get out the vote” efforts to increase member participation. It is possible that the balloting process itself is viewed as cumbersome, and that other methods (specifically, electronic voting) could be easier for some members to use. That said, and even with the development of secure electronic voting systems, the paper ballot is the trusted and reliable method of recording votes and OES should be reluctant to move from that without first gaining experience with other methods (in settings such as local convention delegate elections) in order to assess security and member acceptance.

Social Media OES used Facebook live to disseminate the candidates forum live, and the on-line interactions among participants was robust and uninhibited. OES should give consideration to greater use of social media throughout the election cycle. Since taking to the internet in 2001, for example, OES has posted schedules for nominations and local union delegate elections in a static table. That same information, with election results and other facts about the process, could be regularly pushed out by OES on social media platforms. Interested members could be encouraged to subscribe to the service. If that served to stimulate interest in some part of the membership, it could enhance member response to the referendum balloting.

Candidates Forum The National Press Club proved to be an excellent venue for the candidates forum. Technical support facilitated recording and dissemination; the late August date proved to be attractive to the National Press Club because that is otherwise a slow time for

news in the Capital; the club assisted in recruiting journalists for the panel; and the cost was reasonable. Consideration should be given to booking a date with the National Press Club early in the election cycle.

CCER In 2020, the CCER underlying software and programming will be 15 years old – making it ancient in terms of computer software. A functional web-based campaign finance reporting system is very important to oversight of the IBT International Officer Election: a program up-to-date as of 2020 would likely be easier for campaigns to navigate, and could include default features that would reduce errors in data entry, or make error correction easier. The CCER program should be evaluated, and costs examined to determine whether OES should maintain the existing software, or whether the program should be more fully modernized.

Consideration should also be given to whether compliance software available in the marketplace could be adapted for use in the IBT International Officer Election. The web-based CCER was created more than a decade ago at a time when there were almost no market options available. Since that time, a number of election compliance reporting software programs have become available. As the OES program was created using Federal Election Commission (“FEC”) forms as a model, marketplace options that satisfy the FEC currently may be adaptable to the specific constraints of the IBT International Officer Election. OES could evaluate alternatives among FEC-certified providers and determine whether one (or more) of those alternatives could provide a modern, user-friendly, secure solution for campaign finance reporting that OES would not have to design and maintain. Whatever approach is to be taken, that evaluation and work should start in early 2019 in order to have a working, tested, and secure program up and running by the start of the 2020-2021 election cycle.

Local Union Election Plans In 2011 and 2016, OES used a web-based system to prepare local union delegate election plans. The plan consolidates in one document the critical steps in the local union delegate election and identifies the individuals or vendors responsible for performing each step.

Before the web-based system, paper drafts of plans were transmitted between OES and the local union by mail, UPS, or fax. The web-based system cut down on paper, sped up communications between OES and local unions (which resulted in faster resolution of plan issues), and provided good control over the review and approval process. The system produced plans with a common format across the locals.

Aspects of the system, particularly the user interface, were improved for 2016 based on experience from the previous election cycle. The 2016 experience should likewise be examined for ideas that will make the web-based system easier for local unions to use and produce plan documents that better organize the key plan information. Work on improving the local union delegate election plan system is a project that should commence not later than early in 2019.

Staff Recruitment Each election cycle has had a mix of experienced personnel and new recruits to the supervisory system. For the 2020-2021 International Officer Election, OES is likely to need a higher proportion of new personnel to serve as Regional Directors – simply because of retirement from the experienced corps. To fulfill its mission, OES needs a talented, and impartial staff, all unswervingly dedicated to conducting fair, honest, open, and informed elections. I have been fortunate to have that essential support in the three cycles that I have

served as Election Supervisor. The process of identifying more qualified individuals willing to work in the field on this important project cannot start soon enough.

Dated: December 6, 2017
New York, New York



RICHARD W. MARK
Election Supervisor