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RICHARD W. MARK
Election Supervisor

September 27, 2016

Via Email cathy@hightlaw.com

Cathy Hight, Esq.
Hight Law LLC
1022 SW Salmon Street, Suite 430
Portland, Oregon 97205

Re: *Tim Sylvester Request for OES Dissemination
of Union Investigation and Discipline Materials*

Dear Ms. Hight:

I received your September 13, 2016 letter on behalf of Tim Sylvester referring to disciplinary proceedings or investigations conducted under the authority of the Independent Review Board ("IRB") of the International Brotherhood of Teamsters ("IBT") or the Independent Disciplinary Officers ("IDO") of the IBT. Without citing any provisions of the *2016 Election Rules* that govern specific conduct, and without asserting any election protest, your client requests an omnibus investigation by the Office of the Election Supervisor ("OES") into the substance of certain disciplinary matters and the way those proceedings have been conducted. Mr. Sylvester further requests that the OES create an on-line repository of "sworn examinations to date concerning the conduct of any candidate for election in the upcoming International Elections" (presumably including, but not limited to, examinations taken in Union disciplinary proceedings) with a feature allowing other candidates to analyze the posted materials.

The OES operates under rules "to supervise the reformation of the IBT's electoral processes, and, where necessary, expeditiously to investigate and rule upon protests arising out of those processes," see *United States v. IBT (Carey)*, 156 F.3d 354, 361-62 (2d Cir. 1998) (referring to Consent Decree court-appointed officers), and those rules "are designed to provide for fair, honest, open and informed elections." *2016 Election Rules*, Preamble. The Final Agreement and Order ("Final Agreement") entered in *United States v. IBT*, 88 Civ. 4486 (LAP) (S.D.N.Y. Feb. 17, 2015) also establishes Independent Disciplinary Officers to exercise the "investigative and disciplinary authority [of the Union] as previously exercised by the IRB." Final Agreement, ¶ 30; Consent Decree entered in *United States v. IBT*, 88 Civ. 4486 (DNE) (S.D.N.Y. Mar. 14, 1989), ¶ F 12(A) (disciplinary officers "shall have the same rights and powers" as the General President and/or the General Executive Board under IBT Constitution Articles VI and XIX relating to Union discipline). The IDOs, "explicitly cloaked with the union's 'disciplinary authority,'" administer a process that is distinct from

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the Election Supervisor's mandate. *See Carey*, 156 F.3d at 361-62. Your request for investigation and internet-posting of IDO materials concerns the functions and procedures of the IDOs, and not the OES. Also, as your letter demonstrates (and an internet search confirms), the IRB investigation featured prominently in your letter – the 122-page report on proposed charges against Rome Aloise – is publicly available, and has been the subject of reports and discussion aimed at and accessible to IBT members. You have both the report and its exhibits, as copies of those documents accompanied your letter. Considering all of these circumstances, OES will not take the steps requested in your letter.

Your letter illustrates the different spheres of operation for the election and disciplinary authorities under the Final Order, and those differences support the conclusion reached here. Conviction of a crime under certain federal statutes is a bar to holding union office. *See* 29 U.S.C. § 504(a); *Hodgson v. Chain Service Restaurant, Luncheonette and Soda Fountain Emp. Union, Local 11*, 355 F. Supp. 180, 185-86 (S.D.N.Y. 1973) (construing § 504(a) to include the bribery offense defined in 29 U.S.C. § 186). Your letter asserts that “[t]here is substantial evidence in the public record” that conduct has occurred which could be charged under the referenced criminal statutes. If there were evidence that a person had “been convicted” of a covered offense (29 U.S.C. § 504(a)) that would be relevant to determining, for example, candidate eligibility under the *2016 Election Rules*. But OES does not adjudicate either criminal offenses or disciplinary charges under the IBT Constitution. That is a matter for government authorities or for the IDOs. Regarding the pending charges and investigations you have cited, absent evidence relevant to a categorical determination of eligibility, there is no action for OES to take.¹

OES does not oversee the IDOs or their procedures and it is not the province of OES to determine how those proceedings occur or the terms of access to IDO records. Questions of access to testimony or other records of ongoing IDO proceedings should be addressed to the disciplinary officers. How the proceedings have been managed in terms of schedule, and the interactions of the IDOs and the IBT on that subject are also not the province of OES. Questions about those matters should be addressed directly to the disciplinary officers or the IBT.


¹ Notwithstanding the language of IBT Constitution Article XIX, Section 4(d), election results are not a bar to charges or discipline based on pre-election activity where the respondent has disputed the allegedly improper activity and there is no adverse adjudication pre-election that affects eligibility to run for office or serve in office. *United States v. IBT (Friedman & Hughes)*, 905 F.2d 610, 620 (2d Cir. 1990).

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You suggest that OES sponsorship of internet access to “sworn examinations” and other material relating to Union discipline would be similar to the campaign “battle pages” in *Teamster* magazine. The *2016 Election Rules*, however, specifically provide for candidate presentation of “battle pages,” Article VII, Section 10, and while OES is a conduit for production of the *Teamster* magazine with that material, OES does not assemble or manage the presentation of that candidate material in any way whatsoever. The *2016 Election Rules* also contain specific provisions concerning the International Officer Candidates Forum. Article VII, Section 6. There is no provision in the *2016 Election Rules*, however, for OES to collect or sponsor other material about candidates – statements, charges, public filings, whatever else may exist – and to curate that for the membership. OES, as the independent supervisor of the election, should not have such a role.

The partisan interests in the International Officer election, however, can and should choose the issues on which they wish to campaign and how to present them to the Teamster electorate. The content of your letter shows that your client has information and primary source documents about certain charges and proceedings that he believes would be of interest to the voters. Whether to publicize that material is for his campaign to decide, and not a matter for OES under the *2016 Election Rules*.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard W. Mark". The signature is fluid and cursive, with a large initial "R" and "M".

Richard W. Mark