At the Intersection of Federal Labor Law and Rank-and-File Activism: A Legal History of Teamsters for a Democratic Union

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INTRODUCTION

The year 1976 was significant in the history of the International Brotherhood of Teamsters (IBT). It was the year after Jimmy Hoffa's disappearance, and organized crime's grip over the nation's largest private sector union was nearing its peak.[1] It was also the founding year of Teamsters for a Democratic Union (TDU), an organization of rank-and-file activists dedicated to cleaning up their union and making it both more democratic and more effective in representing its members in the workplace.[2] TDU is perhaps the most important and enduring rank-and-file movement ever to emerge from the ranks of American labor. Their tenacity in the face of retaliation of every kind, and their commitment to effectuating change by organizing and mobilizing the union's rank and file, has been an inspiration to reformers in many other unions. It has brought the IBT close to being something missing from the rest of the labor movement for nearly seventy years: a two-party democracy.[3]

This article offers the legal history of TDU as a case study of the intersection of rank-and-file activism and federal labor law—especially the union democracy provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).[4] Rank-and-file activism in the context discussed here embodies a bottom-up approach to labor organizing, focused on organizing *within* unions to make those unions—and the labor movement as a whole—more democratic, less susceptible to corruption, and more

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1. PRESIDENT'S COMM'N ON ORGANIZED CRIME, THE EDGE: ORGANIZED CRIME, BUSINESS, AND LABOR UNIONS 89-145 (1986). For the accounts of two investigative reporters, see DAN MOLDEA, THE HOFFA WARS: TEAMSTERS, REBELS, POLITICIANS AND THE MOB (1978) and JAMES NEFF, MOBBED UP: JACKIE PRESSER'S HIGH WIRE LIFE IN THE TEAMSTERS, THE MAFIA, AND THE FBI (1989). For the longer view of a labor historian, see DAVID WITWER, CORRUPTION AND REFORM IN THE TEAMSTERS UNION (2003).

2. DAN LA BOTZ, RANK AND FILE REBELLION: TEAMSTERS FOR A DEMOCRATIC UNION 11 (1990).

3. Democracy has rarely taken a two- or multi-party form in the American labor movement. On the contrary, it is a labor movement with little tradition of or tolerance for a loyal opposition. A good example is the United Automobile Workers (UAW). Since World War II, the UAW had been held as a paragon of democratic and progressive unionism; it even had its own Public Review Board to ensure that it was honestly run. *See* Michael J. Goldberg, *Cleaning Labor's House: Institutional Reform Litigation in the Labor Movement*, 1989 DUKE L.J. 903, 923-25 (1989). Yet, for all those years—until everything blew up in an avalanche of corruption scandals and RICO cases, *see infra* note 205—it was run as a one-party state by the same "Administration Caucus" that had run the union since the days of Walter Reuther, the UAW president from 1946 to 1970. *See* FRANK GOEDDEKE, JR. & MARICK F. MASTERS, THE UAW: AN ICONIC UNION FALLS INTO SCANDAL 16, 139 (2021).

For a study of the difficulties establishing democracy in such environments, see Clyde W. Summers, *Democracy in a One-Party State: Perspectives from Landrum-Griffin*, 43 MD. L. REV. 93 (1984). For an examination of democracy in the last union to resemble a two-party state, see SEYMOUR MARTIN LIPSET ET AL., UNION DEMOCRACY: THE INSIDE POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION (1956).

4. 29 U.S.C. §§ 401-531.

effective at representing its members in the workplace and in the larger community.[5]

While TDU is still very active inside the IBT, the focus here is on TDU's first fifteen years, from its founding through the 1991 election of Ron Carey as President of the IBT on a reform slate backed by TDU.[6] Carey's victory was in the first-ever direct membership vote for the IBT's top officers. As this article will argue, neither Carey's victory, nor even the Teamsters' right to vote directly for their top leaders, would have ever come about without the groundwork TDU laid over the prior fifteen years.

TDU has always placed its highest priority on organizing the rank and file, not filing lawsuits. But whether inside their union fighting for democratic reforms and an end to corruption, or on the job promoting better contracts, job safety, and more secure pensions, TDU activists often found themselves enmeshed in legal battles. Sometimes they used the law as a shield against retaliation from employers or union autocrats, and sometimes they used it as a sword to force change. And, sometimes, they ran into the law's limits and found it of no help at all, whether as sword or shield.

A legal history of that period offers valuable lessons for labor activists and their lawyers engaged in the current resurgence of rank-and-file activism, whether focused on organizing nonunion workplaces or revitalizing and democratizing established unions like the United Automobile Workers Union (UAW). For better or worse, the legal doctrines and statutes explored here have not evolved much or been amended since the period covered, so TDU's experiences with them remain highly relevant to current struggles. This history also provides a good example of "movement lawyers" and their clients striking a successful balance recognizing that the clients' organizing agenda must come first, to be aided by, but not dominated by, the lawyers.

Following an overview of TDU's early history and some of the keys to its longevity, Part II of the article turns to TDU's legal battles related to the union's internal affairs, looking at both defensive struggles and offensive uses of the law. Part III shifts the focus to the workplace, examining the legal side of such TDU activities as fighting for on-the-job safety for truck drivers and organizing around the ratification of Teamster contracts. Part IV focuses on TDU's connection to the 1989 Racketeer Influenced and Corrupt Organizations Act (RICO) Consent Decree, which was obtained by federal prosecutors trying to drive the mob out of the union. TDU played critical

5. Support for that bottom-up approach can be found in KIM MOODY, US LABOR IN TROUBLE AND TRANSITION: THE FAILURE OF REFORM FROM ABOVE, THE PROMISE OF REVIVAL FROM BELOW (2007) and MIKE PARKER & MARTHA GRUELLE, DEMOCRACY IS POWER: REBUILDING UNIONS FROM THE GROUND UP (1999), as well as in the articles collected in THE TRANSFORMATION OF U.S. UNIONS: VOICES, VISIONS AND STRATEGIES FROM THE GRASSROOTS (Ray M. Tillman & Michael S. Cummings eds., 1999).

6. *See infra* text accompanying note 314.

roles in shaping the terms of the decree and participating in its implementation. The final sections offer a brief epilogue and some concluding thoughts.

I. THE EMERGENCE OF TDU

A. TDU's Early History

Teamsters for a Democratic Union began as part of a broader upsurge of rank-and-file activism throughout the labor movement during the 1970s.[7] It grew out of Teamsters for a Decent Contract (TDC), a coalition of activists organized around negotiations over the 1976 National Master Freight Agreement (NMFA).[8] Some of TDU's founding members were young socialists who had been active in the New Left politics of the 1960s and 1970s.[9] These members sought out jobs in the trucking industry with the intention of getting involved with the union and working to move it in a progressive direction.[10] Others among TDU's founders had more years in the industry and were veterans of earlier efforts to win better contracts or get better representation from their union.[11]

The 1976 NMFA negotiations came at a critical juncture for the Teamsters. First negotiated as a national contract in 1964, the NMFA had been Jimmy Hoffa's crowning achievement in growing the union's power. But Hoffa had been out of office since 1967, including four years in prison, and now he was presumed dead.[12] His hand-picked successor, like several

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7. *See* REBEL RANK AND FILE: LABOR MILITANCY AND REVOLT FROM BELOW DURING THE LONG 1970S (Aaron Brenner et al. eds, 2010) (describing insurgencies in many unions during that period).

8. LA BOTZ, *supra* note 2, at 50-68.

9. Most socialists in TDU were affiliated with the International Socialists, a New Left descendant of a faction in the Trotskyist wing of the Old Left. Aaron Brenner, *Rank-and-File Teamster Movements in Comparative Perspective*, *in* TRADE UNION POLITICS: AMERICAN UNIONS AND ECONOMIC CHANGE, 1960S-1990S 111, 125-26, 138 (Glenn Perusek & Kent Worcester eds., 1995).

10. Those who ended up working at UPS created their own organization, UPSurge, which effectively merged into TDU several years later. JOE ALLEN, PACKAGE KING: A RANK-AND-FILE HISTORY OF UPS 49-61 (2020).

11. For studies of rank-and-file rebellion and other reform efforts in the Teamsters before TDU, see LA BOTZ, *supra* note 2, at 21-40; SAMUEL R. FRIEDMAN, TEAMSTER RANK AND FILE: POWER, BUREAUCRACY, AND REBELLION AT WORK AND IN A UNION (1982); Michael J. Goldberg, *The Teamsters' Board of Monitors: An Experiment in Union Reform Litigation*, 30 LAB. HIST. 563 (1989); David Witwer, *Local Rank and File Militancy: The Battle for Teamster Reform in Philadelphia in the Early 1960s*, 41 LAB. HIST. 263 (2000).

12. Hoffa had been convicted on federal pension fraud and jury tampering charges (when on trial for taking employer payoffs) and was serving a 15-year sentence when pardoned by President Nixon in 1971. He had been at the center of highly charged confrontations with future Attorney General and Senator Robert F. Kennedy during the Senate's McClellan Committee hearings investigating labor racketeering in the late 1950s, and later when facing criminal charges brought by Kennedy's Justice Department. JAMES NEFF, VENDETTA: BOBBY KENNEDY VERSUS JIMMY HOFFA (2015) (recounting federal investigations and prosecutions of Hoffa and the personal feud between Kennedy and Hoffa). Hoffa for the most part did try to get good contracts for his members, uniting many Teamsters working for trucking companies all over

other Teamster presidents succeeding him, was less competent and more venal, catering more to the mob than the members. The post-World War II economic boom that had helped Hoffa obtain good contracts petered out during the 1970s and Teamster employers demanded and won significant concessions from the union.[13] Moreover, deregulation of the trucking industry was looming on the horizon. Its arrival in 1980 brought with it tremendous changes that would rock the union back on its heels.[14] Deregulation would make it much easier for new, nonunion competition to enter the industry and end the government's role in setting shipping rates. In the years that followed, the proportion of workers that the IBT represented in the trucking industry dropped precipitously.[15]

Even before deregulation, the IBT had been losing ground in the freight industry, but pressure generated by Teamsters for a Decent Contract in 1976 led the IBT to call a three-day national strike.[16] This strike resulted in improvements to the NMFA's cost-of-living provisions and demonstrated the influence rank-and-file activism could have in a lethargic and corrupt International. Soon after came the IBT's first election of national officers after Hoffa's disappearance, with votes to be cast by delegates at the IBT's 1976 Convention in Las Vegas. By then, TDC had broadened its focus, becoming Teamsters for a Democratic Union.[17] TDU's lone convention delegate was Pete Camarata, a shop steward in Detroit Local 299, the home local of both Jimmy Hoffa and his successor, Frank Fitzimmons. Until he was shouted down by other delegates, Camarata spoke out on the convention floor and tried to introduce resolutions against the corruption, lack of democracy, and give-backs to employers that characterized the union under Fitzsimmons.[18] Inside the convention hall, Fitzsimmons responded: "To those who say it is time to reform this organization and it's time officers stopped selling out the members, I say to them, 'Go to Hell!'" Outside the

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the country under a national master agreement, which was a testament to his skills as a labor leader. This made it easier for many of his members, and those of his colleagues in the union's leadership who were less criminally inclined, to overlook the corruption and racketeering that plagued his years in the union's presidency. *See, e.g.*, A. H. Raskin, *Why They Cheer for Hoffa,* N.Y. TIMES MAGAZINE, Nov. 9, 1958. On Hoffa's life and career, see RALPH JAMES & ESTELLE JAMES, HOFFA AND THE TEAMSTERS: A STUDY OF UNION POWER (1965); THADDEUS RUSSELL, OUT OF THE JUNGLE: JIMMY HOFFA AND THE REMAKING OF THE AMERICAN WORKING CLASS (2001); ARTHUR A. SLOANE, HOFFA (1991).

13. Brenner, *supra* note 9, at 111-16, 121-25.

14. MICHAEL H. BELZER, SWEATSHOPS ON WHEELS: WINNERS AND LOSERS IN TRUCKING DEREGULATION 107 (2000).

15. Between 1981 and 1986, the IBT lost 300,000 members. KENNETH C. CROWE, COLLISION: HOW THE RANK AND FILE TOOK BACK THE TEAMSTERS 37 (1993).

16. LA BOTZ, *supra* note 2, at 66.

17. *Id.* at 69.

18. *See id.* at 72.

convention hall, two Teamster sergeants-at-arms rewarded Camarata for his efforts with a vicious beating.[19]

Fitzsimmons' "Go to Hell" was also directed at another group of Teamster reformers who joined TDU outside the convention hall: PROD, the Professional Drivers Council for Safety and Health. Fitzsimmons even called out by name PROD's lawyer, Arthur Fox.[20] PROD had been founded with the assistance of consumer advocate Ralph Nader in 1972 following a truck safety conference that had attracted some 300 rank-and-file truck drivers.[21] PROD was led by Fox, who followed a stint at the National Labor Relations Board (NLRB) with a "dual appointment" from Nader, working half-time as a litigator at the Nader-inspired Public Citizen Litigation Group and half-time as an organizer getting PROD off the ground.[22] PROD's initial focus was on truck safety and whistleblower protections for drivers trying to keep unsafe trucks off the road. PROD soon recognized, however, that the corrupt and autocratic Teamsters union, which did not even have a safety and health department at the time, was more of an obstacle than an ally in its campaign for truck safety.[23]

At the IBT's convention, PROD released a penetrating exposé of greed and incompetence within the IBT and its lack of genuine internal democracy.[24] Some of PROD's proposals for amending the IBT constitution became planks of TDU's reform platform. Similarly, the PROD report's chapter exposing the high, often multiple[25] salaries drawn by many IBT officials was the model for TDU's "$100,000 Club," its annual report in the TDU newspaper revealing the Teamster officials with the most bloated salaries.[26]

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19. LESTER VELIE, DESPERATE BARGAIN: WHY JIMMY HOFFA HAD TO DIE 221-25 (1977).

20. BARBARA HINKSON CRAIG, COURTING CHANGE: THE STORY OF THE PUBLIC CITIZEN LITIGATION GROUP 217 (2004).

21. *See id.* at 211.

22. *Id.* at 211-13.

23. CROWE, *supra* note 15, at 51-57; NEFF, *supra* note 1, at 275.

24. *See* PROD, TEAMSTERS DEMOCRACY AND FINANCIAL RESPONSIBILITY (Arthur L. Fox II & John Sikorski eds., 1976) (hereinafter PROD Report). The Report had been financed by a grant from the Field Foundation by way of the Association for Union Democracy. HERMAN BENSON, REBELS, REFORMERS, AND RACKETEERS: HOW INSURGENTS TRANSFORMED THE LABOR MOVEMENT 198 (2005).

25. The IBT's Constitution specifically authorized local Teamster officers "to hold multiple offices, and receive multiple salaries, in the Union's extensive organizational hierarchy above the Local level." PROD Report, *supra* note 24, at 61.

26. *See* NEFF, *supra* note 1, at 276-78. Much of the PROD Report could not have been written but for the LMRDA. In response to the financial improprieties uncovered by the McClellan Committee, Title II of the LMRDA for the first time required unions to file annual disclosures with the U.S. Department of Labor. 29 U.S.C. §§ 431-32. Those reports include information on the salaries and expenses of all paid union officials. On the theory that sunlight is the best disinfectant, the statute allows public access to these reports, and through that access, PROD, TDU, and countless other union reformers have been able to learn much more about their unions' internal operations than their officers might otherwise permit. Employers must also make certain disclosures. 29 U.S.C. § 433. LMRDA-mandated disclosures are a double-edged sword from labor's perspective. Employers, anti-union consultants, and organizations like the National

In 1979, after several years of parallel efforts to reform the Teamsters, PROD and TDU merged under TDU's banner.[27] The merger added to TDU's much greater focus on rank-and-file organizing a bit of PROD's more legalistic approach, which included litigating test cases, lobbying Congress, and petitioning federal agencies for stronger truck safety and union democracy regulations and better enforcement of the ones already on the books.[28]

Over the years, TDU built a network of activists throughout the union. Much of its strength was in core Teamster crafts like truck driving and warehouse work, but at various times TDU also found support among such disparate Teamsters as flight attendants, brewery workers, cannery workers, and meat packers. In some locals, TDU members organized around efforts to amend local bylaws; in others, reformers ran slates of candidates for union office. In some areas, corrupt administration of pension funds was the target.[29] Everywhere, TDU pressed for more effective union representation at the bargaining table.[30]

TDU waged frequent national campaigns over the ratification of major Teamster contracts like the NMFA and the contract with UPS, the single largest Teamster employer. And since 1991—the first time IBT members directly elected the union's top officers—TDU has been involved in each of the national campaigns of reform candidates for the International's top offices. In three of those elections, reform slates backed by TDU were victorious, including the most recent one in 2021.[31]

For nearly five decades, TDU has endeavored to be a "school of democracy," modeling the leadership and governance skills that unions ideally develop in their ranks through democratic governance.[32] At

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Right to Work Committee and the Center for Union Facts often mine these reports, looking for dirt to use against unions when opposing union organizing campaigns or union-friendly legislation. This is all the more reason for unions to keep their own houses clean.

27. *See* LA BOTZ, *supra* note 2, at 169-80.

28. *See* CROWE, *supra* note 15, at 52-53.

29. Dan La Botz, *The Tumultuous Teamsters of the 1970s*, *in* REBEL RANK AND FILE: LABOR MILITANCY AND REVOLT FROM BELOW DURING THE LONG 1970S, *supra* note 7, at 199, 219-21.

30. For decades, TDU organized around the ten principles contained in its Rank & File Bill of Rights, reprinted in each issue of *Convoy Dispatch*, the TDU newspaper (now called the *Teamster Voice*). Every Teamster, according to TDU, should have rights to: 1) democratic local union bylaws, providing for elected, not appointed, business agents and shop stewards; 2) direct elections of the IBT's president and International officers, rather than elections by convention delegates; 3) a fair grievance procedure; 4) preservation of working conditions; 5) safety and health on the job; 6) an eight-hour day and five-day week, without mandatory overtime; 7) a decent pension; 8) an end to multiple salaries for union officials; 9) equality among Teamsters; and 10) an end to race, sex, and other forms of discrimination.

31. Noam Scheiber, *Critic of Teamsters Leader Claims Victory in Race to Succeed Him*, N.Y. TIMES (Nov. 18, 2021), https://www.nytimes.com/2021/11/18/business/economy/teamsters-union-sean-obrien.html [https://perma.cc/7A5S-XRG2].

32. Clayton Sinyai, *Schools of Democracy*, 44 LAB. STUD. J. 373 (2019); Thomas C. Kohler, *Civic Virtues at Work: Unions as Seedbeds of the Civic Virtues*, 36 BOS. COLL. L. REV. 279 (1995).

convention workshops, regional meetings, and through its publications, TDU has offered members opportunities to speak before large groups, chair meetings, and, most relevant to this article, learn about their rights.[33]

B. Keys to TDU's Longevity

TDU has been an important presence in the IBT for almost fifty years. Such longevity is amazing in a labor movement where reform or dissident caucuses rarely last longer than one or two contract or officer election cycles.[34] Many factors have contributed to TDU's longevity, including some that are unique to the trucking industry and the IBT's history and structure. Those include a trucking industry long comprised of many small companies, rather than the few behemoth employers in auto or steel; a less centralized power structure in the IBT than in many other unions; and a tradition of more autonomy on the job than typically found elsewhere.[35] Among the most important additional factors is TDU's dedicated and talented corps of organizers, headed for decades by Ken Paff, a one-time physics student at U.C. Berkeley turned truck driver and Teamster in Cleveland. In 1978, Paff moved to Detroit to begin his full-time work with TDU.[36]

Also central to TDU's longevity was a decision it made in 1991, when the slate it endorsed won the IBT's top offices in the direct membership vote TDU had long been working towards. TDU did not do what reformers did in the United Mine Workers Association (UMWA) two decades earlier, when their Miners for Democracy slate won the UMWA's top offices: TDU did not declare victory, fold its tent, and go home.[37] It recognized the role an ongoing and independent rank-and-file caucus can play even when it has succeeded in electing its allies to high office. Even the most honest and reform-minded of newly-elected officers face tremendous pressures from all directions when they take office. Those pressures are not just from employers

33. One of TDU's first and most important educational publications was ELLIS BOAL, A TEAMSTER RANK & FILE LEGAL RIGHTS HANDBOOK (1978 rev. 1984), written by a Detroit labor lawyer who did a great deal of legal work for TDU in the organization's early years and later worked with reformers in the UAW. Another important lawyer in TDU's earliest days was Ann Curry Thompson, then a recent law school graduate who at the urging of TDU organizer Ken Paff relocated to Detroit and found a job at a Detroit law firm that permitted her to take on some TDU work. Thompson later spearheaded TDU's important legal work related to Teamster pensions. Telephone Interview with Ann Curry Thompson (Nov. 30, 2022) (on file with author).

34. For a study of one short-lived example, see DANA L. CLOUD, WE ARE THE UNION: DEMOCRATIC UNIONISM AND DISSENT AT BOEING (2011).

35. Brenner, *supra* note 9, at 116-21; La Botz, *supra* note 29, at 204-07, 218-19.

36. One journalist observed that while Paff could come across as "stern, abrupt, [and] caustic . . . [he] provided the kind of egoless, highly organized, and determined leadership that the fledgling organization needed." CROWE, *supra* note 15, at 50. For Paff's reflections on TDU's early years and his approach to organizing, see STUDS TERKEL, HOPE DIES LAST: KEEPING THE FAITH IN TROUBLED TIMES 109-15 (2003).

37. PAUL F. CLARK, THE MINERS' FIGHT FOR DEMOCRACY: ARNOLD MILLER AND THE REFORM OF THE UNITED MINE WORKERS 34-36 (1981).

the union bargains with or is trying to organize; a new regime is also likely to confront resistance to change and outright opposition from other elected officials throughout the union who are still loyal to the union's "old guard," or at least to the old guard's corrupt or lazy ways of doing things.[38] Countervailing pressure from a rank-and-file caucus helps keep a reform administration on track.

Another factor critical to TDU's survival was its ability to use federal labor law to its advantage when the law had any advantages to offer. By the same token, TDU resisted the temptation to pin unrealistic hopes on litigation, focusing instead on organizing as its primary approach to reforming the union. At its founding convention, TDU adopted a resolution calling for the development of a network of lawyers willing to provide legal assistance. But the resolution made clear that while TDU would resort to the courts when necessary, "we understand that our success will be based on the size, strength and awareness of our movement."[39] As Paff put it after PROD lost a legal challenge to the IBT's method for ratifying local supplements to national contracts,

> The real issue is rank and file power. . .You can't win rank and file power by relying on the courts, federal judges, politicians or union officials. We will win our right to vote by continuing to organize the rank and file until we have our own power. That's how our union was built in the first place. That's how it will be rebuilt now.[40]

TDU's merger with PROD in 1979 tempered that view somewhat, even leading TDU to employ a series of in-house lawyers in a Washington office for years after the merger.[41] But TDU's number one priority was always

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38. Resistance and opposition can also come from honest unionists who disagree with the reformers' approach. The bottom-up, organizing model of unionism promoted by TDU was different from the top-down service or business union model that has long characterized much of the labor movement. Michael H. Belzer & Richard W. Hurd, *Government Oversight, Union Democracy, and Labor Racketeering: Lessons from the Teamsters Experience*, 20 J. LAB. RES. 343, 358 (1999).

39. LA BOTZ, *supra* note 2, at 79.

40. *Id.* at 67-68. The case, *Davey v. Fitzsimmons*, 413 F. Supp. 670 (D.D.C. 1976), upheld the IBT's practice denying members the right to vote separately for ratification of local supplements rather than have an overall vote for the national contract automatically ratify all supplements.

41. I was the first of those in-house TDU lawyers before I entered academia, followed by Joe Keffer, Julie Fosbinder, Christine Allamanno, and Karen Keys. That position was phased out as more and more of TDU's legal work was taken on by Paul Alan Levy of the Public Citizen Litigation Group. Later, Susan Jennik worked in-house for a time at TDU's New York office. PROD had always had an in-house lawyer, beginning with its founder, Arthur Fox. In the period leading up to its merger with TDU, PROD's in-house attorney/organizer was Steve Early, who had previously worked with reformers in the Mine Workers and Steelworkers and went on to a prominent career on the staff of the Communications Workers and as a writer and labor journalist. CROWE, *supra* note 15, at 140. Early played an important role in bringing about PROD's merger into TDU. JANE LATOUR, REBELS WITH A CAUSE: AN ORAL HISTORY OF THE FIGHT FOR DEMOCRACY IN NEW YORK CITY UNIONS 282-83 (forthcoming, pagination subject to change). Early's books include STEVE EARLY, SAVE OUR UNIONS: DISPATCHES FROM A MOVEMENT IN DISTRESS (2013) and STEVE EARLY, THE CIVIL WARS IN U.S. LABOR: BIRTH OF A NEW WORKERS' MOVEMENT OR DEATH THROES OF THE OLD? (2011).

organizing the rank and file. Most of the lawyers who have worked with TDU have understood and subscribed to this approach, practicing a form of "movement lawyering."[42] Among many good examples is Susan Jennik, a New York labor lawyer who had a varied career in private practice and in-house, at times with TDU, the Association for Union Democracy, and several Teamster locals. She once explained to a client:

> The law cannot solve your problems, and no lawyer and no judge is going to reform the Teamsters union. . .That's something that can only be done by the members. In order to have democracy you have to have the members actually running the union, and in order for the members to run it they have to be active in it. And in order to do that they have to organize themselves.[43]

TDU's ability to use the law at all, of course, depended on its access to lawyers, and TDU was very fortunate in that regard. Dozens of lawyers took cases for TDU or its members over the years, almost always on a *pro bono* or contingency basis. Few of those lawyers, however, could afford to take on many such cases. Although the LMRDA authorizes awards of attorneys' fees to successful plaintiffs,[44] the odds against winning many of these cases meant that lawyers knew contingency-based cases would often end up as purely *pro bono* projects.[45] This might seem similar to the economics of personal injury practice, but unlike plaintiffs in personal injury cases, union democracy plaintiffs usually seek primarily injunctive relief rather than substantial monetary damages. This means union democracy lawyers generally do not recover the large windfalls that personal injury lawyers often do. Also, unlike

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42. For a summary of some of the attributes and best practices of "movement lawyers" more generally, see Jules Lobel, *Participatory Litigation: A New Framework for Impact Lawyering*, 74 STAN. L. REV. 87, 101-02 (2022). For more expansive treatments, see, for example, Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821 (2021); Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007). For a discussion of potential ethical tensions, see Catherine L. Fisk, *Movement Lawyers: The Tension Between Solidarity and Independence*, 97 IND. L.J. 755 (2022).

43. LA BOTZ, *supra* note 2, at 4. *See also*, CROWE, *supra* note 15, at 124-25. Attorney Paul Levy described the role of TDU's lawyers this way to members of the National Lawyers Guild: "[L]awyers are definitely not in the driver's seat in the Teamster reform movement. We give legal advice, not political direction." Paul Alan Levy, *Union Democracy: Teamsters for a Democratic Union Builds Rank and File Power*, 54 GUILD PRAC. 13, 15 (1997).

44. Hall v. Cole, 412 U.S. 1, 14 (1973).

45. As one lawyer put it when asked by the Association for Union Democracy to comment on his union democracy work,

> In the past year, I have put in more than 850 hours. If I were a normal lawyer, charging a normal fee for service, that would be more than $200,000. So, my decision to represent these plaintiffs was, in effect, a decision to donate more than $200,000 to the cause of union democracy. With luck, I'll be paid some or maybe even all of that back someday, but that is far from certain. . . . I should mention that while I am donating $200,000-plus of my time to the cause, the [defendant national union] has, count them, three private practice lawyers and two in-house lawyers working on this case. All five are being paid by the [union's] membership. A common weapon defense lawyers use is to inundate plaintiffs with paper. That certainly has happened here. . . .

Leon Rosenblatt, *Fighting the Good Fight: Taking a Union Democracy Case, from an Attorney's Perspective*, $100 PLUS CLUB NEWS (Association for Union Democracy), May 2009.

personal injury litigation, union democracy cases rarely settle; instead, LMRDA defendants often opt for a "scorched earth" litigation strategy, meaning that once such a case is filed, the litigation is likely to be long, drawn out, and expensive. Finally, labor lawyers in union-side practices often find that their union clients generally disapprove of them handling such cases. Taking on union democracy work can create career conflicts of interest even when there is no actual legal or ethical conflict. That made TDU even more fortunate to work often and over many years with two excellent union democracy lawyers who had the resources of a major public interest organization behind them: Arthur Fox and his colleague Paul Alan Levy of the Public Citizen Litigation Group in Washington, D.C.[46]

There have always been more potentially meritorious TDU cases looking for lawyers than there were lawyers willing to take them on. Nevertheless, as this article demonstrates, the legal battles for which lawyers could be found played critical roles in many of TDU's struggles, both inside the union and on the job. They also made major contributions to the developing law of union democracy.

II. INSIDE THE IBT

A. The Law as a Shield

In its early days, TDU had to rely on the law as a shield to protect against threats to its very survival. As Pete Camarata's beating outside the IBT's 1976 Convention made clear, those threats were often physical. Camarata was one of many TDU activists to face the threat or the reality of physical retaliation for their reform efforts, and when they encroached too closely on the hard-core criminal elements inside the union, there was good reason to fear the worst.[47]

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46. CRAIG, *supra* note 20, at 211-41.

47. In 1986, TDU supporter Bruno Bauer was murdered, apparently for complaining to the NLRB that he was not being paid the contract rate and the union would not pursue his grievance. *See Gang-Style Murder at Truck Depot*, 56 UNION DEM. REV. 1 (Jan. 1987). Bauer's Teamsters local was controlled by New York's Colombo crime family until it was put into a trusteeship during Ron Carey's reform administration of the IBT. JAMES B. JACOBS & KERRY COOPERMAN, BREAKING THE DEVIL'S PACT: THE BATTLE TO FREE THE TEAMSTERS FROM THE MOB 69 (2011). During TDU's rise, New Jersey Teamsters Local 560 was a major center of Mafia influence inside the IBT. It was controlled by Tony Provenzano and his family (literally and figuratively). In 1979, Provenzano was convicted of ordering the murder of a political rival in his local years earlier, and the FBI believes he was involved in the disappearance of Jimmy Hoffa himself. JAMES B. JACOBS, MOBSTERS, UNIONS, AND THE FEDS: THE MAFIA AND THE AMERICAN LABOR MOVEMENT 17 n.***, 131 (2006). In the United Mine Workers of America (UMWA) less than six years before Hoffa's disappearance, Jock Yablonski, a dissident UMWA officer challenging that union's top office, was murdered, along with his wife and daughter, at the behest of the UMWA's entrenched and corrupt president, W. A. "Tony" Boyle. *See* MARK A. BRADLEY, BLOOD RUNS COAL: THE YABLONSKI MURDERS AND THE BATTLE FOR THE UNITED MINE WORKERS OF AMERICA 3 (2020).

Ken Paff recalls that around the time of TDU's founding, when he was one of several activists in Cleveland Local 407 putting out a rank-and-file paper, the local's leader stirred up members to assault them while they were leafleting at a union meeting. "We went to federal court and filed for an injunction against them. They were shocked. No one had ever done this before. They had always scared people off."[48] Paff later learned that attorneys for the Ohio Conference of Teamsters advised their clients—among them Jackie Presser, a future IBT President—that rather than resort to violence, a better tactic would be to attack TDU activists as fanatical socialists and Communists.[49] The two tactics, of course, were not mutually exclusive. Presser took up the red-baiting with great enthusiasm,[50] but that didn't mean an end to violence or threats of violence. In fact, Presser's continued use of to violence against TDU was one of the patterns of racketeering activity leading to the RICO Consent Decree that helped bring about the union's transformation.[51]

Another episode of violence, in 1986, led not only to a legal victory for TDU but contributed to an electoral victory as well. It occurred during an election campaign in Local 138, representing New York grocery warehouse workers. TDU activist Mike Ruscigno was running for trustee on a reform slate to unseat incumbents led by Frank Ribustello, who was reportedly connected to the Columbo organized crime family. Ribustello showed up at a warehouse where Ruscigno was campaigning and beat Ruscigno bloody in front of his co-workers. He then turned and shouted that anybody else trying to oust him had better "watch his fucking back."[52]

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48. TERKEL, *supra* note 36, at 111.

49. Email from Ken Paff to the author (Mar. 4, 2022) (on file with author).

50. For more on Presser's red-baiting of TDU and its connection to Lyndon LaRouche's right wing National Caucus of Labor Committees—something like the QAnon of its time—see DENNIS KING, LYNDON LAROUCHE AND THE NEW AMERICAN FASCISM 333-42 (1989); LA BOTZ, *supra* note 2, at 182-83, 188.

TDU never hid the presence of democratic socialists in its ranks. The red-baiting did slow TDU's growth in the early years and led to some hesitancy on PROD's part before the merger. LATOUR, *supra* note 41, at 282-83; NEFF, *supra* note 1, at 278. Nevertheless, TDU was able to overcome it. For one thing, a rising generation of Teamsters was less likely to be cowed by such labels than their parents' generation might have been. Most important was TDU's pragmatic approach to organizing, focusing on the day-to-day interests of working Teamsters. In fact, most of TDU's socialists belonged to the International Socialists, which splintered twice, in 1977 and 1979, over whether its members active in the Teamsters and other unions had become *too* pragmatic, not doing enough to promote a more explicit socialist agenda. Brenner, *supra* note 9, at 138 n.55; La Botz, *supra* note 29, at 217-20. For a discussion of the role a leftist, militant minority can play inside a healthy labor movement, see Micah Uetricht & Barry Eidlin, *U.S. Union Revitalization and the Missing 'Militant Minority'*, 44 LAB. STUD. J. 36 (2019).

51. *See infra* note 248 and accompanying text.

52. LA BOTZ, *supra* note 2, at 1.

Ruscigno sought help from New York labor lawyer Dan Clifton, who had begun his career with pioneering union democracy lawyer Burton Hall.[53] Clifton represented many TDU clients over the years, along with his law partners Arthur Schwartz and Louie Nikolaidis (who before going to law school had himself been a UPS Teamster and TDU activist).[54] Within two weeks Clifton was able to obtain a preliminary injunction barring Ribustello from infringing on the free speech rights of Ruscigno or any other candidates.[55] The ruling was issued from the bench immediately following an evidentiary hearing, the highlight of which was a tape recording of the whole incident. Ruscigno had begun carrying a tape recorder in case his employer tried to set him up to be fired. Ribustello's attack on Ruscigno, and Ruscigno's quick and decisive legal victory in response, were widely discussed within the local and may have turned the tide in the reformers' favor. A month after the court issued the injunction the entire reform slate was swept into office.[56]

Another tactic used by union officials to silence their critics—and a less risky one in terms of criminal prosecution or civil liability[57]—was to bring dissidents up on internal union disciplinary charges and suspend or expel them from the union, thus barring them from attending meetings, voting in union elections and referenda, or running for office. Two types of legal defenses against these attacks are available under the LMRDA. First are procedural defenses rooted in the statute's due process provision, available if the discipline was imposed without proper notice and a fair hearing.[58] Second are substantive defenses, available if the union's actions are in retaliation for, or unreasonably interfere with, union members' rights under the LMRDA's "Bill of Rights of Members of Labor Organizations."[59]

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53. For more on Burt Hall, see LATOUR, *supra* note 41, at 19-20, 30-31, 70, 148-49, 279, 302, 470, 498-99.

54. Nikolaidis was fired by UPS in 1981. He filed NLRB charges and worked for TDU while his case was pending. The case generated a financial settlement he used to pay for law school. Email from Louie Nikolaidis to the author (Sept. 16, 2022) (on file with author).

55. Memorandum and Order, Ruscigno v. Ribustello, No. CV-86-3679 (E.D.N.Y. Nov. 5, 1986).

56. LA BOTZ, *supra* note 2, at 7; *Assault in Teamsters Local 138, Brooklyn*, 56 UNION DEM. REV. 3 (Jan. 1987). The lawsuit had also sought monetary damages. After the election, Ruscigno dropped his claim against the local and reached a modest monetary settlement with Ribustello. Telephone Interview with Dan Clifton (May 26, 2022) (on file with author).

57. Actually, the risk of a serious criminal prosecution for violence short of murder is fairly small, as explained by Chicago labor lawyer Tom Geoghegan: "To me . . . a beating at a union hall is a political act. It's like Kristallnacht, the rise of fascism, etc. To the cops, it's just a punch in the nose. Two guys in a fight. And to the feds, well . . . the feds want to see some dead bodies, and my clients are only bleeding." THOMAS GEOGHEGAN, WHICH SIDE ARE YOU ON? TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK 138 (1991).

58. LMRDA § 101(a)(5).

59. *Id.* §§ 101, 102, 609. The LMRDA's Bill of Rights protects members' freedom of speech, due process, and equal rights inside their unions. Although inspired by the U.S. Constitution's Bill of Rights, it differs in important ways. For example, government restrictions on speech can be imposed only for

Pete Camarata, as TDU's most visible leader following his speech and subsequent beating at the IBT's 1976 Convention, was an early target of this tactic. His local's charges against him were unfounded, and with the help of attorney Ann Curry Thompson, Camarata was able to win a temporary restraining order blocking his expulsion.[60] That, combined with protest rallies organized by TDU, led Teamsters Joint Council 43 to overturn the discipline.[61]

The voices of union reformers who already hold some official union position can also be silenced by the threat or reality of removal from those posts. The LMRDA offers some legal protection against retaliatory removals, particularly removals from elected positions, but such protection is more limited than protections against retaliatory suspensions or expulsions from the union itself.[62] One example of reformers fighting off both suspensions from membership and removal from office involved a multi-front legal strategy in Puerto Rico Teamsters Local 901,[63] coordinated by Detroit labor lawyer Barbara Harvey, who devoted much of her career to representing TDU clients. In 2009, two elected shop stewards were removed from their positions, fined $10,000, and suspended from the union.[64] They had just run unsuccessfully for local office on a reform slate challenging a corrupt incumbent administration.[65] The union's stated reason for the discipline was the stewards' support for a supposedly unauthorized two-day strike at one of the local's other employers, protesting the firing of fellow stewards.[66] It may be no coincidence that the plaintiffs' reform slate had won in that shop by a 108-6 margin.[67]

"compelling" reasons, but union rules limiting speech need only be "reasonable." United Steelworkers of Am. v. Sadlowski, 457 U.S. 102, 111 (1982).

60. LA BOTZ, *supra* note 2, at 148, 189.

61. *Id.*; Telephone Interview with Ann Curry Thompson (Nov. 30, 2022) (on file with author); JACOBS & COOPERMAN, *supra* note 47, at 234 n.27.

62. *See* Sheet Metal Workers Int'l Ass'n v. Lynn, 488 U.S. 347 (1989); Finnegan v. Leu, 456 U.S. 431 (1982). For differing views on where that line should be drawn, see George Feldman, *Effective Democracy and Formal Rights: Retaliatory Removals of Union Officials Under the LMRDA*, 9 HOFSTRA LAB. L.J. 301 (1992); James Gray Pope, *Free Speech Rights of Union Officials Under the Labor-Management Reporting and Disclosure Act*, 18 HARV. C.R.-C.L. L. REV. 525 (1983); Elizabeth A. Roma, *The Interplay Between Free Speech Rights and Union Self-Governance: The Free Speech Rights of Elected Union Officers Under Title I of the LMRDA*, 30 A.B.A. J. LAB. & EMP. L. 1 (2014)

63. *See* Magriz v. Union de Tronquistas de Puerto Rico, Local 901, 765 F. Supp. 2d 143 (D.P.R. 2011). That local was also a defendant in one of TDU's earliest cases involving a removal from office, handled by Detroit lawyer Ellis Boal. *See* Maciera v. Pagan, 649 F.2d 8 (1st Cir. 1981). Other cases involving TDU activists' retaliatory removals from office include *Martinez v. Int'l Bhd. of Teamsters*, 2000 WL 292646 (E.D. Wash. 2000) and *Meek v. Int'l Bhd. of Teamsters*, 681 F. Supp. 1014 (E.D.N.Y. 1988).

64. *Magriz*, 765 F. Supp. at 146, 149.

65. *Id.* at 146.

66. *Id.* at 148.

67. *Id.* at 146.

The suspended stewards eventually won injunctions reinstating their union membership and their positions as stewards, after establishing that no one else had been disciplined and the strike in question, as found by an NLRB Administrative Law Judge in a parallel proceeding, was protected activity under the National Labor Relations Act (NLRA).[68] While those cases were pending, the reformers opened a third legal front when they persuaded the Department of Labor (DOL) to seek a rerun of the recent elections for local office because they were tainted by violations of the LMRDA's election provisions.[69] If the plaintiffs were going to be eligible to rejoin their reform slate as candidates in that rerun, they had to overturn their suspensions. In the meantime, the reformers' complaints to the IBT's Independent Review Board, which had been created by the 1989 RICO Consent Decree, had resulted in the local's principal officer being removed from office for embezzling more than $70,000.[70]

An effect similar to suspension or expulsion for silencing critics can be achieved by refusing to accept transfers of membership from one local union to another when otherwise appropriate. That happened to Arthur Doty, a TDU activist in Massachusetts Local 829, when he lost his Teamster job in that local's jurisdiction and tried to transfer his membership to other Massachusetts locals after finding work in theirs. In 1983, having gotten the runaround for over a year, Doty sued, represented by Somerville, MA attorney Mark Stern.[71] Only then did Teamsters Joint Council 10 order that Dody's application for membership in Local 42 be granted, but only prospectively.[72] And only after Dody amended his complaint to add new defendants and new claims did the International order that Dody's membership be given full retroactive effect.[73]

Litigation of the other issues continued[74] and the case became important for reasons far beyond the approval of one member's application to transfer locals. One was the amount of money Doty ultimately recovered. In most LMRDA cases, the principal remedies sought are injunctions. Money damages are often not available or amount to only small recoveries.[75] *Doty v.*

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68. *Id.* at 152-59; Magriz-Marrero v. Union de Tronquistas de Puerto Rico, Loc. 901, 933 F. Supp. 2d 234 (D.P.R. 2013). The NLRB later rejected the Administrative Law Judge's analysis, but long after the LMRDA litigation was resolved. Coca-Cola P.R. Bottlers, 368 N.L.R.B. 84 (2019).

69. *Magriz*, 765 F. Supp. at 147, 149.

70. *Id.*

71. Doty v. Salemme, No. 83-1985-MA, 1985 WL 25638, at *1 (D. Mass. May 1, 1985).

72. *Id.* at *2.

73. *Id.*

74. Doty claimed that Local 42 continued to interfere with his attendance at union meetings and unlawfully removed him from his shop steward position, among other things. *See* Doty v. Sewall, 908 F.2d 1053, 1055 (1st Cir. 1990).

75. Injunctive relief, "from a political perspective, . . . is usually the most important form of relief available." LAB. & EMP. COMM., NATIONAL LAWYERS GUILD, 3 EMPLOYEE AND UNION MEMBER GUIDE TO LABOR LAW § 12:81.

Sewall may be the exception proving that rule. A jury awarded Doty more than $500,000 in compensatory and punitive damages, and that verdict was upheld on appeal.[76]

Doty is most important for its role in establishing the limitations period within which a claim under the LMRDA's bill of rights may be filed. While to non-lawyers that may seem just a procedural technicality, too short a limitations period means courthouse doors will be slammed in the faces of potential plaintiffs who may have otherwise valid claims. That is precisely the result the *Doty* decision helped avoid, not only for Arthur Doty but for all LMRDA plaintiffs.

As with many federal claims, Congress did not spell out a limitations period. In these situations, courts generally "borrow" the limitations period from an analogous state claim where the federal claim is litigated.[77] For LMRDA Bill of Rights claims, this would generally be the statute of limitations for state civil rights or tort claims. In Massachusetts, this would have given Doty three years to bring his claim.[78] But a few months before Doty filed his case, the U.S. Supreme Court decided a similar limitations question for a different type of labor law claim—one seeking to overturn the result of an employment grievance resolved through a collectively bargained process. In that case, *DelCostello v. International Brotherhood of Teamsters,* the Court applied the short, six-month limitations period for unfair labor practice charges at the NLRB, rather than borrow the even shorter limitations periods available under state law for challenging arbitration awards.[79] The district court followed this precedent when it dismissed Doty's LMRDA claim for missing that six-month deadline.[80]

By the time the First Circuit decided Doty's appeal, most of the district courts and all the appellate courts that had addressed the issue, including the First Circuit itself, had concluded that *DelCostello's* six-month limitations period would apply.[81] Doty's appeal turned the tide. In a thorough opinion distinguishing or declining to follow the other cases and reversing the district court, the court explained that LMRDA Bill of Rights claims resemble civil

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76. *Doty*, 908 F.2d 1053; *Jury Awards Teamster $552,000 in Damages from Local, Officers*, 84 CONVOY DISPATCH, Jan./Feb. 1989, at 10.

77. Reed v. United Transp. Union, 488 U.S. 319, 323-24 (1989).

78. *Doty*, 1985 WL 25638 at *5-6.

79. DelCostello v. Int'l Bhd. of Teamsters, 462 U.S. 151, 155 (1983). *DelCostello* was a consolidated appeal of two hybrid section 301 and duty of fair representation cases, where the plaintiffs had sued their employers for their termination or layoff and their unions for failing to handle their grievances properly. The state law statute of limitations periods were only 30 days in one of the cases and 90 days in the other. *Id.*

80. *Doty*, 1985 WL 25638, at *5.

81. *See* Linder v. Berge, 739 F.2d 686, 690 (1st Cir. 1984); Local 1397, United Steelworkers v. United Steelworkers, 748 F.2d 180 (3d Cir. 1984); Vallone v. Local 705, Int'l Bhd. of Teamsters, 755 F.2d 520 (7th Cir. 1984); McConnell v. Chauffeurs, Teamsters and Helpers Local 445, 606 F. Supp. 460 (S.D.N.Y. 1985); Turko v. Local Lodge 5, Int'l Bhd. of Boilermakers, 592 F. Supp. 1293 (E.D.N.Y. 1984).

rights claims much more than the economic claims in *DelCostello*.[82] The court also stressed the difficult decision facing union members thinking about suing their union:

> In most cases a Title I plaintiff will be a union member who, unlike many unfair labor practice claimants, has not lost his job but wishes to remain a member. *To decide to sue one's co-workers and superiors who may have much to do with one's future fate even if one is successful gives pause.* Such a decision is not lightly taken; the pressures on such a plaintiff to collect facts, retain an attorney and reflect suggest the inappropriateness of a six month period. Moreover, the objective sought in the typical hybrid case [like *DelCostello*] is a purely personal victory in the form of restoration of job, pay, or promotion. In contrast, the objective of LMRDA cases is to increase union democracy, which is a benefit to all union members and the public at large.[83]

A few years later, the issue reached the Supreme Court, prompted by the circuit split *Doty* created. The Court followed much of *Doty*'s analysis and agreed with its result, taking specific note of "the practical difficulties faced by § 101(a)(2) plaintiffs, which include identifying the injury, deciding in the first place to bring suit against and thereby antagonize union leadership, and finding an attorney."[84]

The threat or reality of economic retaliation are additional weapons employers and autocratic union officials often wield to silence or eliminate dissident thorns in their sides. Where jobs are obtained through union hiring halls, as is typical in the building trades—including Teamster jobs bringing building materials to construction sites—dispatch procedures can be manipulated to provide the best jobs to those favored by the union and the worst jobs—or no jobs—to those who are not. This form of blacklisting was used with great effectiveness against reformers in Teamsters Local 282, a New York construction local, as recounted in an oral history compiled by the late labor historian and activist Jane LaTour.[85] This manipulation of hiring hall procedures violates a union's duty of fair representation under the NLRA,[86] and when used to discriminate against women and members of minority groups, it also violates state and federal civil rights laws.[87] Unfortunately, even successful litigation challenging these practices often takes too long to yield a timely remedy. By the time a remedy is at hand, the victim typically has long been out of the picture, having settled into a new

82. Doty v. Sewall, 784 F.2d 1, 3-4 (1st Cir. 1986).

83. *Id.* at 9 (emphasis added).

84. Reed v. United Transp. Union, 488 U.S. 319, 323, 327 (1989).

85. LATOUR, *supra* note 41, at 281-82, 301, 315-16.

86. Barbara J. Fick, *Political Abuse of Hiring Halls: Comparative Treatment Under the NLRA and the LMRDA*, 9 INDUS. REL. L.J. 339, 351-55 (1987).

87. *E.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(c)(2).

job outside the union's jurisdiction, or retired, or even died, as in the case of Local 282 reformer John Kuebler.[88]

Another way unions can force out dissidents is by withholding fair representation from workers who have been fired or laid off and are challenging their discharges through contractual grievance procedures. Unions and management generally have an adversarial relationship with respect to discharge grievances, but it can be very different when a dissident is involved: the interests of the union officials handling the grievance may be more closely aligned with management's interests than with their member's. After all, dissident complaints often focus on the union's alleged failures to negotiate better contracts or more effectively enforce existing ones. That is a status quo the employer is likely happy with. The dissident may be a thorn in the sides of both the union and management. As attorney Susan Jennik once explained, "Both parties want to get rid of this person, and they are exactly the same parties that control the grievance procedure."[89] There are legal remedies at the NLRB and in federal courts for a union's breach of its duty of fair representation, but as with hiring hall violations, the victims face a steep uphill battle, and by the time they win, if they do, many years might have passed.

For example, it took Amadeo Bianchi, a shop steward at Roadway Express, more than a decade, with multiple trials and multiple appeals in multiple forums, before he finally won his DFR claim that the union had sabotaged his grievance after he was fired in 2001 for assisting a member file an allegedly fraudulent workers compensation claim.[90] Bianchi was a TDU member and active supporter of reform candidate Tom Leedham in that year's IBT elections. Like the fired shop stewards in Teamsters Local 901 discussed earlier,[91] Bianchi was represented in this marathon litigation by Detroit attorney Barbara Harvey, who ultimately established that Bianchi had been fired for legitimately carrying out his duties as a shop steward and that

88. Kuebler, a vocal critic of corruption in the local, was fired in 1977 when his shop steward set him up. The local did nothing to get his job back or dispatch him to a new one so he filed NLRB charges. After six years, he finally got out from under the union's blacklist. He was also awarded back pay, but the union challenged the computation and the case continued. By the time Kuebler died from cancer in 1989, twelve years had passed since his discharge and he had not received a penny of back pay. He had won his case on the merits, but the union's lawyers, paid for with members' dues, continued to fight him every step of the way. Early on, Kuebler had offered to settle for a nominal $450, but as the Association for Union Democracy later explained, "[U]nion officials, not interested in resolving the case but only in crushing an opposition, rejected the . . . settlement and [spent] . . . thousands of dollars . . . rather than give their critics a moral victory." *Death of John Kuebler, Teamster Reformer*, 71 UNION DEM. REV. 1 (Aug. 1989).

89. Susan Jennik, *Toward More Perfect Unions: Public Policy and Union Democracy*, *in* UNIONS AND PUBLIC POLICY 118 (Lawrence G. Flood ed., 1995).

90. Roadway Express, Inc., 355 N.L.R.B. 197, 199 (2010), *enforced*, 427 F. App'x 838 (11th Cir. 2011).

91. *See supra* text accompanying notes 63-70.

the union's representation of him through the grievance process was tainted by union hostility based on his dissident activism.[92]

A similar example of decade-long delays in obtaining relief involved Rob Atkinson, a key TDU activist in a Pittsburgh-area UPS local who was fired in 2014 after spearheading a "vote no" campaign on his local's supplement to the national UPS contract. It took until late 2023 before he finally won a reinstatement and back pay order from the NLRB,[93] but UPS has appealed that ruling to the Third Circuit, meaning even more long delays are coming.[94] The case has been to the Third Circuit before. The Board decision now on appeal was on remand from Atkinson's earlier, successful appeal to the Third Circuit of an earlier NLRB ruling against him, which in turn had overruled an Administrative Law Judge's ruling in his favor.[95] The Board had overturned the ALJ's ruling when it changed its criteria for deferral to arbitration awards.[96] The court of appeals agreed with Atkinson that the Board had not properly considered whether the grievance hearing was "fair and regular" even under its new deferral standard.[97]

Even when they had strong cases for wrongful discharge or breach of the union's duty of fair representation, many TDU activists fell by the wayside over the years, unable to overcome the daunting obstacles to using the law as a shield against retaliation—the scarcity of lawyers willing to take their cases, difficult-to-meet legal standards, and the often interminable delays before even successful plaintiffs could secure their remedies.

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92. Roadway Express, Inc., 355 N.L.R.B. 197, 203-04 (2010). Bianchi's earlier attempt to obtain relief in court through hybrid section 301 and DFR litigation had been thwarted when his victory before a jury was reversed on the grounds that he had waived his DFR claim when he failed to raise concerns about bias during the grievance hearing itself. Bianchi v. Roadway Express, Inc., 441 F.3d 1278 (11th Cir. 2006). One of the precedents the court relied on, also involving a TDU plaintiff, had acknowledged—but was unmoved by—the "unpleasant" choice a grievant would have to make "between possibly alienating a decisionmaker in advance by objecting and waiving the issue of bias." Early v. Eastern Transfer, 699 F.2d 552, 558 (1st Cir. 1983).

93. Supp. Dec. and Order, United Parcel Serv. Inc., No. 06-CA-143062, 372 N.L.R.B. No. 158 (Nov. 21, 2023), https://apps.nlrb.gov/link/document.aspx/09031d4583bc0fe1 [https://perma.cc/99EW-EUXY].

94. United Parcel Serv. Inc. v. NLRB, No. 24-1530 (3d Cir. docketed Mar. 27, 2024). The NLRB has cross-petitioned for enforcement of its order. NLRB v. United Parcel Serv. Inc., No. 24-1531 (3d Cir. docketed Mar. 27, 2024).

95. Atkinson v. NLRB, No. 20-1680, 2021 WL 5204015 (3d Cir. No. 9, 2021). Portland, Oregon attorney Cathy Highet represents Atkinson. I co-authored with Barbara Harvey amicus briefs on behalf of TDU and the Association for Union Democracy in the Third Circuit and on remand at the NLRB.

96. United Parcel Serv. Inc., 369 N.L.R.B. No.1 (Dec. 3, 2019).

97. *Atkinson*, 2021 WL 5204015. On remand, the Board found that Atkinson's grievance hearing was not in fact fair and regular, specifically noting that cases involving Teamster joint grievance panels, rather than traditional arbitration, "especially those involving the discharge of a union dissident like Atkinson, warrant a particularly searching look at the facts." Supp. Dec. and Order, 372 N.L.R.B. No. 158, at 11 n.49. Atkinson's case was not technically a duty of fair representation case, but the criteria for the "fair and regular" component of the NLRB's deferral standard have much in common with those for proving a DFR violation, and as Bianchi's case had established, a DFR violation "plainly warrant[s] a refusal to defer." Roadway Express, Inc., 355 N.L.R.B. 197, 203-04 (2010).

Nevertheless, TDU plaintiffs won enough of these cases to deter even more widespread retaliation by employers or autocratic union officials and ensure their movement's survival.

B. The Law as a Sword

Inside the union, TDU and its lawyers used the law on offense, not just defense. Good examples are found in litigation over the "bylaws campaigns" activists waged in many Teamster locals. These were campaigns to amend local bylaws to give members a greater voice, often by converting appointed shop steward and business agent positions to elected positions. Other amendments might call for elected members on negotiating committees or greater control over officers' salaries.[98] Such campaigns were valuable to the reformers in ways beyond the merits of the particular proposals. They were excellent projects for members of new TDU chapters to hone their organizing skills on something that might be more winnable and less daunting than, say, fielding a slate of candidates for local office right off the bat.[99]

These bylaws campaigns had to follow the amendment procedures laid out in the union's governing documents, which involved presenting the proposals at membership meetings. In 1980, this was hard in locals like Detroit Local 247, which had not held membership meetings for decades, except for officer elections and to vote on contracts. And among locals that had been holding meetings, some suddenly stopped holding them when activists began speaking up.[100] TDU went on the offensive, winning an injunction that forced Local 247 to begin holding monthly membership meetings at which the proposed bylaws could be considered.[101]

The court rejected the local's argument that its twice-monthly open-door sessions when members could "freely associate" with business agents to discuss their problems were all the law required.[102] Those were not the kind of meetings contemplated by either the union's constitution and bylaws or the LMRDA provision giving union members "equal rights . . . to attend membership meetings, and participate in the deliberations and voting upon

98. In 1978, PROD published a set of model local bylaws, drafted by Arthur Fox, which contained dozens of suggestions for making Teamster locals more democratic and less susceptible to corruption. PRO. DRIVERS COUNCIL, PROPOSED MODEL LOCAL UNION BYLAWS (1978).

99. Brenner, *supra* note 9, at 129. Bylaws amendments for elected business agents had the effect of shifting some power from a local's principal officer to its members. Not surprisingly, many incumbent officers opposed them and, in 1981, the IBT amended its Constitution to bar more locals from making that change, although positions already elected could remain so. INT'L BHD. OF TEAMSTERS, CONST. 157 (2016).

100. One such local was Pete Camarata's Local 299. VELIE, *supra* note 19, at 29.

101. Wade v. Teamsters Local 247, 527 F. Supp. 1169 (E.D. Mich. 1981). Along with Detroit lawyer Ann Curry Thompson, I represented the plaintiffs.

102. *Id.* at 1171-74.

the business of such meetings, subject to reasonable rules and regulations."[103] As a basis for its ruling, the court might have relied on contract claims based on the union's constitution and bylaws, but it took an alternate route.[104] The court held that implicit in the LMRDA's language about attending and participating and speaking at union meetings was a requirement that unions actually hold meetings to begin with.[105]

While that conclusion is reasonable based on the policies underlying the LMRDA's Bill of Rights,[106] it did not find support in the strictly textualist approach the Seventh Circuit took in another union meetings case a few years later, *Grant v. Chicago Truck Drivers Union*.[107] That union worked closely with the IBT but was not formally affiliated. Its governing documents provided a weak basis for a contract claim, so plaintiffs' best hope for a remedy was the LMRDA. None was forthcoming from that court, which would accept nothing less than statutory language expressly requiring meetings:

> Perhaps Congress did assume that there would be regularly scheduled general membership meetings, and for that reason did not draft a provision creating a right to have such meetings. But . . . Congress, and not the courts, is the proper forum for correcting such a shortcoming in the present statutory framework.[108]

Teamsters have the right to vote on local bylaws amendments, but access to the ballot itself had to be litigated in *McGinnis v. Teamsters Local 710*.[109] Based in Chicago, the 15,000-member Local 710 was one of the IBT's biggest, and its members were spread over hundreds of miles and multiple states. At least 25 percent lived and worked more than 100 miles from

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103. LMRDA § 101(a)(1). The court also cited § 101(a)(2), protecting a member's "right to . . . express at meetings of the labor organization his views . . . upon any business properly before the meeting, subject to . . . reasonable rules." *Teamsters Local 247*, 527 F. Supp. at 1172-73.

104. The court's reluctance to rely on plaintiffs' contract claim was based on its misplaced belief that the LMRDA preempted state remedies. *Teamsters Local 247*, 527 F. Supp. at 1176-77. Had plaintiffs not won on other grounds, that ruling would likely have been reversed on appeal. LMRDA section 103 makes clear that members' remedies under Title I do not limit the "retention of existing rights . . . under any State or Federal law." LMRDA § 103.

105. *Teamsters Local 247*, 527 F. Supp. at 1174.

106. The court quoted Sen. Hubert Humphrey during the floor debate:

> I say to the union members, I know of no law that can protect you from mismanagement. There is only one way to protect democracy . . . in a union or in any other institution. That means the people had better take care of their business. . . . If union members really want unions which will be effective and will protect their interest, they had better get to the union meetings.

Id. The court then declared, "How much less democracy must result, and how much more potential for the abuse of power when there are no regular union meetings to 'get to' at all." *Id.*

107. Grant v. Chicago Truck Drivers Union, 806 F.2d 114 (7th Cir. 1986). I represented the plaintiffs in *Grant*, together with Chicago attorney Robin Potter, who was married to Pete Camarata and handled many TDU cases over the years. *E.g.*, Serafinn v. Local 722, Int'l Bhd. of Teamsters, 597 F.3d 908 (7th Cir. 2010).

108. *Grant*, 806 F.2d at 119.

109. McGinnis v. Teamsters Local 710, 774 F.2d 196 (7th Cir. 1985).

Chicago, including thousands who lived more than 150 miles away.[110] When a vote was held on the bylaw proposals of TDU activists, the union insisted all voting be in-person at the union hall. The local rejected the plaintiffs' request for mail ballots or regional voting sites, disregarding its own practice of using mail ballots for officer elections.[111]

Several members sued, claiming that the local's manner of conducting the vote violated members' equal voting rights under LMRDA section 101(a)(1).[112] They were represented by Tom Geoghegan, a Chicago labor lawyer and author with substantial experience representing union reformers.[113] By requiring in-person voting in a single location, they argued, the union imposed an unequal burden in the form of driving time and costs of fuel, tolls, food, and maybe lodging—in effect a poll tax—on the voting rights of members who lived far away compared to the relative ease of voting for members living in or near Chicago.[114]

Though the plaintiffs lost in the district court, the Seventh Circuit reversed.[115] The plaintiffs ultimately won an injunction requiring a combination of regional voting and absentee ballots for future bylaws votes. To reach that result, the court waded into the murky waters of defining equal voting rights under the Act.[116] If a union decides to put something to a vote, all members, subject to reasonable union rules, must have an equal right to cast their votes.[117] But as with notions of discrimination under civil rights statutes, what does that mean? Must there be overt disparate treatment, like a union rule requiring all members living further than 150 miles away to pay a poll tax that no other members must pay? Or is it enough for plaintiffs to prove that a rule neutral on its face, like the rule requiring all votes to be cast in Chicago, has a significant disparate impact on members who live and work far away? Lower courts' answers to these questions have varied since the Supreme Court first raised some of them in 1964.[118] *McGinnis* was one court's vote for an expansive reading of the LMRDA's equal voting rights provision.

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110. *Id.* at 198-99.

111. *Id.* at 198, 201-02.

112. *Id.* at 197.

113. *Id.* Geoghegan had done work for reformers in the Mine Workers and Steelworkers during the 1970s. He has since written several books, including his classic commentary on the state of the late-20th century labor movement, *Which Side Are You on?*, GEOGHEGAN, *supra* note 57. For his more recent views on organized labor, see THOMAS GEOGHEGAN, ONLY ONE THING CAN SAVE US: WHY AMERICA NEEDS A NEW KIND OF LABOR MOVEMENT (2014).

114. *McGinnis*, 774 F.2d at 201.

115. *Id.* at 203.

116. *Id.* at 200.

117. *Id.* at 199.

118. Calhoun v. Harvey, 379 U.S. 134 (1964). *See also infra* note 124 and accompanying text.

In bylaws campaigns, equal voting rights and free speech disputes sometimes focus on access to, and distribution of, information related to the vote. For example, in 1978, PROD members John Pawlak and James Stafford sued their Pennsylvania local and its officers for violating Sections 101(a)(1) and (a)(2) of the LMRDA after their bylaws proposals were defeated.[119] At the union's expense, the officers had sent all members a letter urging them to vote no, and they refused a request from the amendment's supporters to send a response.[120] That claim yielded a favorable settlement: for any future bylaw amendments proposed by the plaintiffs, "no mailing was to be sent to the membership at union expense unless Plaintiffs were afforded an opportunity at union expense to prepare and insert a letter in the mailing expressing their views."[121]

Questions over voters' access to information about issues or candidates on the ballot and opportunities to distribute that information to the members often arise in the context of contract ratification votes and officer elections as well as votes on bylaws. TDU litigation related to ratification votes is discussed in the next section. As for officer elections at the local level, many involving TDU-supported candidates have generated pre-election litigation brought by the candidates, or post-election litigation brought by the Department of Labor, when defeated candidates could persuade the agency to act.[122] Elections of the IBT's top officers have been a major focus of TDU

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119. Pawlak v. Greenawalt, No. 78-1035, 1982 WL 2083 (M.D. Pa. May 20, 1982).

120. *Id.* at *5.

121. *See Id.* Pawlak had already fought several legal battles with his local. One generated an important precedent on a member's right to sue. Pawlak v. Int'l Bhd. of Teamsters, Local Union No. 764, 444 F. Supp. 807 (M.D. Pa. 1977), *aff'd*, 571 F.2d 572 (3d Cir. 1978). The court prohibited the union from fining Pawlak the costs of defending an unsuccessful suit he had previously brought against the union without first exhausting union remedies. While the LMRDA provides that members "*may* be required to exhaust reasonable hearing procedures" for up to four months before filing suit, that language is in a section with a stated purpose of protecting member rights to sue their union. LMRDA § 101(a)(4), 29 U.S.C. § 411(a)(4) (emphasis added). In a key precedent relied on by the plaintiffs, the Supreme Court had already held in the context of NLRB proceedings that the LMRDA's exhaustion requirement could be enforced only at the discretion of public tribunals like courts and the NLRB; it was not intended as a license for unions to retaliate against members who sued them and lost. NLRB v. Indus. Union of Marine and Shipbuilding Workers, 391 U.S. 418, 427-28 (1968).

122. According to sections 402 and 403 of the LMRDA, the exclusive route to post-election remedies runs through the Secretary of Labor, who has nearly unreviewable discretion over whether to seek a court-ordered rerun of a tainted election. The Secretary must, however, issue a "Statement of Reasons" briefly explaining a decision not to proceed, Dunlop v. Bachowski, 421 U.S. 560, 571 (1975), and members whose rights are at stake can intervene in any post-election litigation brought by the Secretary. Trbovich v. United Mine Workers, 404 U.S. 528, 538-39 (1972). Candidates can bring their own pre-election litigation to enforce their statutory right to have the union distribute their campaign literature to all members, at the candidate's expense, or to remedy the union's discriminatory use of its mailing lists in support of incumbent candidates. LMRDA § 401(c); 29 U.S.C. § 481(c). TDU-supported candidates brought a number of such cases or intervened in cases brought by the Department of Labor. *See, e.g.*, Reich v. Local 843, Bottle Beer Drivers, 869 F. Supp. 1142 (D.N.J. 1994) (overturning election where incumbent's campaign letter was sent at union expense); Mims v. Teamsters Local No. 728, 821 F.2d 1568 (11th Cir. 1987) (compelling campaign mailing); Bliss v. Holmes, 721 F.2d 156 (6th Cir. 1983)

organizing since its founding. The legal side of that struggle is covered later in this article.

One TDU election case is worth singling out here: *Local 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley*, involving a Boston area local of about 700 members.[123] The election at the center of the case was not particularly important, but before it was over, the case reached the U.S. Supreme Court, and the Court's decision has been critically consequential to the ways members' rights are enforced under the LMRDA's two principal enforcement schemes. With limited exceptions, Title IV's officer election standards are enforced exclusively by the Secretary of Labor, while the free speech and equal rights provisions in Title I's Bill of Rights are enforced by federal courts in litigation brought by union members. In *Crowley*, the Court had to determine how to handle situations where those schemes overlap. Congress had indicated in the statute where the line should be, but its contours needed clarification. To the extent the Supreme Court in *Crowley* was deciding a turf war between union member litigation and the Secretary of Labor, it gave a clear victory to the Secretary, but it also left a good deal of confusion in its wake.[124]

(successfully claiming that union newsletter was biased); Camarata v. Int'l Bhd. of Teamsters, 478 F. Supp. 321 (D.D.C. 1979), *aff'd*, No. 79-2269, 1981 WL 154071 (D.C. Cir. Jan. 23, 1981) (unsuccessfully claiming that IBT magazine discriminated in favor of incumbents).

123. Local 82, Furniture and Piano Moving, Furniture Store Drivers v. Crowley, 467 U.S. 526 (1984).

124. LABOR UNION LAW AND REGULATION § 3.XI.A.3, at 294 (Christopher T. Hexter et al. eds., 2d ed. 2021) (ebook). An example of that confusion is a recent First Circuit case, *Conille v. Council 93, American Federation of State, County & Municipal Employees*, 973 F.3d 1 (1st Cir. 2020). The issue involved the election of local union delegates to intermediate union bodies like Council 93 and to union conventions. In *Council 93*, some locals got to send more delegates to the Council than other locals of the same size, while some other locals of very different sizes sent the same number of delegates. The result, plaintiffs argued, inflated the value of some members' votes while deflating the value of other votes, in violation of Title I's protection of equal voting rights. LMRDA §101(a)(1), 29 U.S.C. 411(a)(1). The district court found that while the statute did not require strict proportionality, *grossly* disproportionate representation, where the union failed to articulate any legitimate justification for the disparities, did violate plaintiffs' voting rights. Conille v. Council 93, No. 17-114-WGY, 2018 WL 2223672, at *5 (D. Mass. May 15, 2018). The Court of Appeals reversed. Conille v. Council 93, 973 F.3d at 15. As explained in the National Lawyers Guild's EMPLOYEE AND UNION MEMBER GUIDE TO LABOR LAW § 12:13,

> While that reversal was justified because the district court had crafted a remedy that had the effect of interfering with the results of an election that had already taken place, in violation of the U.S. Supreme Court's *Crowley* decision [467 U.S. at 550], the First Circuit's opinion went beyond that point and seems to assert that *any* Title I claim that overlaps with the Department of Labor's Title IV regulation of union elections must be presented, "in the first instance," to the Secretary of Labor "under the remedial provisions of Title IV" [Conille, 973 F.3d at 4]. That aspect of the First Circuit's opinion fails to recognize that while some union election practices might violate both Title I and Title IV, which might justify deferring to the DOL's jurisdiction, other union election practices, like unexplained and grossly disproportionate allocations of convention delegates, might violate only Title I. The DOL's own interpretive rules recognize that "[d]irect enforcement of title I rights, as such, *is limited to civil suit in a district court . . . by the person whose rights have been infringed" [29 C.F.R. § 452.7].*

III. ON THE JOB

TDU's efforts to clean up the union and make it more democratic comprised only part of its mission. Those worthy goals were also means to other ends. TDU believes that a more democratic union, with a more active, informed, and mobilized rank and file, will be more effective at representing its members on the job. This section looks at some of TDU's early legal battles in two areas directly related to its members' working lives: safety at work behind the wheel of a truck and contract ratification. A third important area of TDU legal activity—securing Teamsters' pensions in the face of massive corruption in their administration and diminished employer contributions—is beyond the scope of this article.[125]

A. Truck Safety

Truck safety has been a central concern of Teamster reformers since the early days of PROD. Driving a truck is near the top of any list of dangerous occupations,[126] and when a truck driver is injured or killed on the job, it is likely that occupants of any smaller vehicles involved in an accident will be in even worse shape. As mentioned earlier, PROD had its roots in consumer advocate Ralph Nader's campaign for highway safety, starting with his 1966 bestseller *Unsafe at Any Speed*.[127]

PROD and TDU lawyers litigated several important cases before the NLRB and the courts in an effort to establish legal protection for drivers who refused to drive unsafe or overweight trucks or to drive when dangerously fatigued or ill. Among the most important was an early PROD case handled by Arthur Fox, *Banyard v. NLRB*.[128] This was a consolidation of two appeals to the D.C. Circuit challenging the NLRB's rejection of two truck-safety-related unfair labor practice charges. In one, James Banyard, a truck driver and shop steward, was fired for refusing to drive a truck that was overloaded in violation of Ohio state law.[129] In the other, North Carolina Teamster Clay Ferguson was fired for refusing to drive a truck that had serious mechanical

125. Much of TDU's pension work was handled by attorney Ann Curry Thompson. Also beyond the scope of this article is attorney Barbara Harvey's work on the fairness of drug testing by employers. *See* LA BOTZ, *supra* note 2, at 261-64; *Proficiency Standards for Drug Testing Laboratories: Hearings Before a Subcommittee of the House Committee on Government Operations*, 100th Cong. 126 (June 11, 1987) (including statement of Barbara Harvey regarding the Teamsters drug testing program).

126. Truck driving ranks eighth in fatality rates, compared to, for example, power-line workers (twelfth) or police officers (eighteenth). Andy Kiersz & Madison Hoff, *The 34 Deadliest Jobs in America*, BUS. INSIDER (Dec. 16, 2021, 12:28 PM), https://www.businessinsider.com/the-most-dangerous-jobs-in-america-2018-7 [https://perma.cc/UZ4C-7W3U].

127. RALPH NADER, UNSAFE AT ANY SPEED: THE DESIGNED-IN DANGERS OF THE AMERICAN AUTOMOBILE (1965).

128. Banyard v. NLRB, 505 F.2d 342 (D.C. Cir. 1974).

129. McLean Trucking Co., 202 N.L.R.B. 710, 710 (1973).

problems.[130] In both cases, the drivers had lost contractual grievances despite favorable contract language protecting their right to refuse trucks that were in violation of state law or dangerous to drive. In both cases, the NLRB deferred to the outcomes of those grievance procedures rather than determine for itself whether the firings violated Banyard's and Ferguson's statutory rights under the NLRA.[131]

The court overturned the NLRB's decisions to defer, finding that the Board had failed to follow its own criteria for deferral.[132] On remand to determine the merits of the charges, the Board found both terminations in violation of the law and both drivers were reinstated with back pay.[133] *Banyard* was an important decision with respect to the Board's deferral policies, but its effect was curtailed some years later by *Olin Corp.*[134] *Olin* changed the Board's criteria for deferring to grievance outcomes by making it more likely the Board would defer and more difficult for charging parties to challenge those decisions. It abandoned earlier Board requirements that the arbitrator had to actually have considered the alleged unfair labor practice claim before the NLRB could defer,[135] and it placed squarely on the party opposing deferral the burden of proving that the remaining criteria for deferral had not been met.[136]

Apart from the deferral issue, *Banyard* exhibits additional features shared by many of TDU's truck safety cases. For example, they all involve grievance procedures with final steps different from those found in most other industries. Instead of using professional arbitrators to resolve grievances, many Teamster contracts, including the national freight

130. Roadway Express, Inc., 203 N.L.R.B. 157, 157 (1973).

131. *Id.* at 161; McLean Trucking Co., 202 N.L.R.B. 710, 721 (1973).

132. *Banyard*, 505 F.2d at 347-48.

133. Roadway Express, Inc., 217 N.L.R.B. 278, 280 (1975); McLean Trucking Co., 216 N.L.R.B. 925, 926 (1975). NLRA section 7 protects workers from retaliation for engaging in "concerted activity for the purposes of collective bargaining or other mutual aid or protection . . . ." 29 U.S.C. § 157. Although drivers may be alone on the road when they decide not to drive a dangerous truck, that action is usually considered "concerted" (group-related) because it furthers collective rights embodied in the contract. Interboro Contractors, 157 N.L.R.B. 1295 (1966), *enforced*, 388 F.2d 495 (2d Cir. 1967). This "Interboro Doctrine" was endorsed by the Supreme Court in *NLRB v. City Disposal Sys., Inc.*, 465 U.S. 822, 822-23 (1984). TDU filed an amicus brief urging that result. *See id.* at 824.

134. Olin Corp., 268 N.L.R.B. 573, 574 (1984).

135. Raytheon Co., 140 N.L.R.B. 883, 884-85 (1963); Monsanto Chem. Co., 130 N.L.R.B. 1097, 1097 (1961).

136. Olin Corp., 268 N.L.R.B. 573, 574 (1984). TDU successfully challenged the Board's application of its *Olin* standard in one subsequent truck safety case, *Taylor v. NLRB*, 786 F.2d 1516 (11th Cir. 1986). However, after *Olin*, many deferral decisions are made in NLRB Regional Offices well before cases reach an appealable stage. *See* NLRB, CASEHANDLING MANUAL, PART 1, UNFAIR LABOR PRACTICE PROCEEDINGS § 10118.4 (Mar. 2024), https://www.nlrb.gov/sites/default/files/attachments/pages/node-174/ulp-manual-march-2024_0.pdf [https://perma.cc/S853-UYZY].

agreement, use joint labor-management grievance committees.[137] While faster and cheaper than traditional arbitration, use of joint grievance panels can significantly reduce dissident members' prospects for winning their grievances in the first place, or for successfully challenging their lost grievances later in court or at the NLRB.[138] A principal defect of the joint committee system is that it allows the "horse-trading" of grievances. That means officials seeking to sabotage a dissident's grievance can vigorously present the grievance to the committee, thereby insulating themselves from charges of breaching their duty of fair representation (DFR), while relying on political allies on the committee to reject the grievance.[139] Joint grievance panels were a major reason many Teamsters, especially dissidents, lost truck safety grievances, despite seemingly strong truck safety language in the NMFA.

Another important aspect of *Banyard* was its incorporation of public policies established by other sources of law into its analysis of the NLRA. When Banyard refused to drive an overweight truck, he was refusing to violate an Ohio statute limiting the weight of trucks allowed on the state's highways.[140] There was some dispute whether the purpose of that law was highway safety or the more mundane goal of reducing road maintenance costs, but the court didn't care. The record showed that overweight trucks take longer to stop and are more difficult to maneuver.[141] Besides, "it remains axiomatic that it was still the law; for this or any other company to require its employees to act in violation thereof can never be upheld by the Board or this court."[142]

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137. *E.g.*, *YRCW National Master Freight Agreement for the Period of April 1, 2019 through March 31, 2024, art. 7-8*, https://www.sec.gov/Archives/edgar/data/716006/000071600619000010/yrcw-2019630xex101.htm [https://perma.cc/AT7L-L7N8].

138. This is especially true in light of *Olin* placing the burden on charging parties to prove that the criteria for deferral have not been met. Olin Corp., 268 N.L.R.B. 573, 574 (1984). Teamster joint committees rarely produce a transcript or written record of the proceedings, and their decisions are often as brief as a single sentence announcing the winner. Moreover, nothing like the pretrial discovery in civil litigation is available to charging parties at the NLRB before it makes its deferral decision in most cases.

139. JAMES & JAMES, *supra* note 12, at 167-85; Elliot S. Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 336-41 (1973); Clyde W. Summers, *Teamster Joint Grievance Committees: Grievance Disposal Without Adjudication*, 7 INDUS. REL. L.J. 313 (1985). Outside the context of discipline cases and discharge cases in particular, the opportunities for the horse-trading of grievances inherent in joint grievance committees are not necessarily a bad thing. As the Supreme Court has recognized, resolving disputes under a contractual grievance procedure is "a part of the continuous collective bargaining process." United Steelworkers v. Warrior & Gulf Co, 363 U.S. 574, 581 (1960).

140. Banyard v. NLRB, 505 F.2d 342, 343 (D.C. Cir. 1974).

141. *Id.* at 346-47.

142. *Id.* at 347. It was of no consequence that the employer had a policy of reimbursing drivers who were fined if caught violating the state weight limits. *Banyard* was the key precedent when the Ninth Circuit overturned Board deferral to another grievance decision that allowed drivers to be fired for complying with state law. In that case, UPS had been requiring drivers to honk their horns in residential

Outside of the NLRB, TDU was less successful in arguing that losing grievants could challenge grievance outcomes violating public policy. While an arbitration award's conflict with public policy is a well-established basis for judicial review when challenged by the employer or union,[143] grievants themselves are barred from going to court to challenge a lost grievance unless they can prove a breach by the union of its duty of fair representation—its obligation to represent grievants fairly through the process.[144] Proving a DFR breach is exceedingly difficult—particularly when the grievance is decided by a joint grievance committee rather than an arbitrator[145]—so TDU lawyers in some cases argued that when a grievance outcome violates public policy, proof of a DFR violation should be unnecessary. They argued that unlike the typical DFR case, these disputes involved more than the private interests of the employee, the employer, and the union—the parties who agreed to be bound by the results of the grievance procedure. A public interest challenge, by contrast, involved the interests of an additional "party": the public. It had not agreed to be bound by the results, and the public interest was not served by allowing drivers to be fired for refusing to break the law. No takers could be found in the courts for those arguments.[146]

In the face of these difficulties in finding remedies for truck drivers forced to drive dangerous trucks, TDU, as PROD had before it, also attempted to recruit federal highway safety agencies and state legislatures in their fight for truck safety.[147] But it was Congress that gave TDU its biggest

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neighborhoods each time they stopped for a delivery in violation of a state law prohibiting honking unless safety related. Garcia v. NLRB, 785 F.2d 807 (9th Cir. 1986).

143. Ann C. Hodges, *Judicial Review of Arbitration Awards on Public Policy Grounds: Lessons from the Case Law*, 16 OHIO ST. J. DISPUTE RES. 91, 93-95 (2000).

144. Vaca v. Sipes, 386 U.S. 171, 192-93 (1967).

145. *See supra* notes 137-39 and accompanying text. DFR cases brought by TDU members that involved joint grievance committees include *Thomas v. United Parcel Service, Inc.*, 890 F.2d 909 (7th Cir. 1989), *Early v. Eastern Transfer*, 699 F.2d 552 (1st Cir. 1983), and *Braxton v. United Parcel Serv. Inc.*, 806 F. Supp. 537 (E.D. Pa. 1992).

146. In *Finn v. Yellow Freight Sys., Inc.*, No. 82-2547, 1983 WL 30676 (E.D. Pa. Sept. 9, 1983), *aff'd*, 749 F.2d 26 (3d Cir. 1984), I was one of the lawyers representing Joseph Finn, a Pennsylvania Teamster who was fired for refusing to drive in violation of Federal Motor Carrier Safety (FMCS) regulations when he was dangerously fatigued. The district court avoided ruling on the public interest challenge by granting the defendant's motion for summary judgment on other grounds. In another public policy case, Pittsburgh lawyers Paul Boas and Ron Berlin had crafted a remarkable victory out of arguments that a trucking company's dispatch procedures violated FMCS regulations because they resulted in too many drivers being dispatched when they were dangerously fatigued. That victory was overturned on appeal. Vosch v. Werner Continental, Inc., 734 F.2d 149 (3d Cir. 1984), *rev'g*, Gaibis v. Werner Continental, Inc., 565 F. Supp. 1538 (W.D. Pa. 1983).

147. *E.g.*, Pro. Drivers Council v. Bureau of Motor Carrier Safety, 706 F.2d 1216, 1218-20 (D.C. Cir. 1983) (demonstrating a losing effort to force the BMCS to amend its hours-of-service rules); *TDU/PROD Files Petition, Seeks Changes in BMCS Regulations*, 62 CONVOY-DISPATCH, June 1986, at 3; David Schwab, *Truckers Cite Abuses in Opposing Bigger Rigs*, STAR-LEDGER, Oct. 6, 1982, at 1 (describing TDU members' testimony opposing legislation allowing heavier and longer tractor-trailer combinations on state highways); Lillian Micko, *Inside Trenton: Debate Keys on the Long and Short of Truck-Size Bill*, COURIER-POST, Nov. 19, 1982, at 15.

truck safety victory when it enacted whistleblower protections for drivers as part of the Surface Transportation Assistance Act of 1982 (STAA).[148] PROD and TDU, led in these efforts by attorney Arthur Fox, had been lobbying Congress on this issue for years. By 1980 they had persuaded Senator Charles Percy to introduce their proposal, with language drafted by Fox, as an amendment to a comprehensive bill to overhaul federal truck safety laws.[149] That bill died in the House. Two years later, however, Percy, joined by Senator John Danforth, tacked the whistleblower protections onto a transportation infrastructure bill that became law in January 1983. During the previous month, while the vote was pending, TDU had urged its members to write or call their Senators and members of Congress in support of the bill's whistleblower protections.[150]

STAA remedies were a big improvement. Enforcement was placed in the hands of the Department of Labor, not the NLRB, and deferral to grievance outcomes is not an issue, because if the agency declines to go forward with their cases, complainants can proceed on their own.[151] Moreover, both punitive damages and attorneys' fees are available in appropriate cases, but neither is available in NLRB proceedings. Most importantly, when there is probable cause to believe a driver was fired in violation of the Act, immediate reinstatement is available pending a hearing, rather than waiting months or years for all the proceedings to be completed.[152]

TDU followed up the bill's passage with efforts to educate its members about the law. It developed a relationship with Minnesota truck safety lawyer Paul O. Taylor and recruited him to co-author TDU's *STAA Handbook* and to lead workshops on the STAA at several TDU conventions.[153] Taylor's Truckers Justice Center developed a national practice representing drivers in STAA cases. One of his most significant victories was on behalf of John

148. 49 U.S.C. § 31105.

149. *PROD-TDU Truck Safety Act Moves in House*, 8 CONVOY-DISPATCH, Aug-Sept 1980, at 3; *TDU Testifies for Truck Safety*, 4 CONVOY-DISPATCH, Mar. 1980, at 3.

150. *TDU Wins New Law, Truck Safety Victory*, 31 CONVOY-DISPATCH, Jan. 1983, at 1. TDU distanced itself from parts of the STAA that forced some states to allow longer and heavier trucks on their highways. The political realities were that the whistleblower protections were the price the trucking lobby had to pay for using the highway bill to get longer and heavier trucks on the road in more states. CRAIG, *supra* note 20, at 233-34.

151. *See, e.g.*, Calmat Co. v. U.S. Dept. of Lab., 364 F.3d 1117 (9th Cir. 2004); Yellow Freight Sys., Inc. v. Martin, 983 F.2d 1195 (2d Cir. 1993).

152. 29 U.S.C. §31105(b)(2)(A). The remedy's constitutionality was upheld in Brock v. Roadway Express, Inc., 481 U.S. 252 (1987), in which TDU filed an amicus brief. *Id.* at 255.

153. MICHAEL GOLDBERG, DAVID PRATT, JOANNE SHALLCROSS & PAUL O. TAYLOR, THE STAA HANDBOOK: HOW TO USE THE SURFACE TRANSPORTATION ASSISTANCE ACT (STAA) TO ENFORCE TRUCK SAFETY AND PROTECT YOUR JOB (David Pratt & Arthur L. Fox eds., 2000); *Truck Safety and the STAA Whistleblower Law: OSHA Records Show Increase in Cases, but Law Still Underused*, 191 CONVOY DISPATCH, Mar./Apr. 2001, at 4; *Your Right to Refuse to Operate Unsafe Equipment: Do's and Don'ts*, 284 TEAMSTERS FOR A DEMOCRATIC UNION (Apr. 2013), https://www.tdu.org/news_your-right-refuse-operate-unsafe-equipment-dos-and-donts [https://perma.cc/EGK3-YRB2].

Youngermann, a UPS feeder driver and TDU activist who was fired in 2009 for refusing to pull a trailer at night with no taillights.[154] He had been reinstated through the grievance procedure but without full back pay. Through his STAA case, he not only won all his back pay but was also awarded $100,000 in punitive damages.[155] As Taylor later explained, "Through the efforts of TDU in educating commercial drivers John knew he had the right to refuse to drive an unsafe vehicle."[156]

TDU's activities promoting the safety of truck drivers on the job lead to a natural question: why was it TDU, which operated on a shoestring budget, and not the IBT itself, with its vastly superior resources, that fought these fights? TDU offered one answer when it described IBT lobbying efforts at the time of the STAA's passage:

> During the same month TDU/PROD was fighting for the bill's passage, the IBT did send General Sec.-Treas. Ray Schoessling to testify on Capitol Hill. But it was to testify against proposed legislation that would [prevent] a union officer convicted of serious crimes from continuing to hold office while appeals go on. To put it in plain language, the priority was on keeping [indicted and subsequently convicted IBT president] Roy Williams in power, not protecting the lives of members.[157]

B. Contract Ratification

Throughout the 1980s, under the leadership of both Roy Williams and his successor, Jackie Presser, the IBT's performance at the bargaining table was often characterized by misplaced or corrupt priorities. That led to many battles over the ratification of collective bargaining agreements, with TDU frequently urging members to vote them down. TDU's organizing around those issues often had a courtroom component, fighting over questions like the timing of ratification votes, the extent of information about proposed contracts the IBT was required to make available, the counting of the ballots, and the most basic question—whether the union would conduct a ratification vote at all.

While TDU members were often engaged in local contract fights, it was TDU's organizing around national contracts like the UPS, car haul, and freight agreements that helped build it into a national rank-and-file movement. Recession and the ongoing effects of trucking deregulation were shrinking the number of Teamster jobs in the industry and employers were

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154. Youngermann v. United Parcel Serv., Inc., ARB No. 11-056, at 2 (U.S. Dep't of Labor, Feb. 27, 2013), https://www.oalj.dol.gov/PUBLIC/ARB/DECISIONS/ARB_DECISIONS/STA/11_056.STAP.PDF [https://perma.cc/6A48-857R].

155. *Id.* at 7-12.

156. *Driver Wins Record Whistle-Blower Award Against UPS*, TEAMSTERS FOR A DEMOCRATIC UNION (Mar. 8, 2013), https://www.tdu.org/news_driver-wins-record-whistle-blower-award-against-ups [https://perma.cc/6XA8-F29H].

157. *TDU Wins New Law*, *supra* note 150.

relentlessly demanding concessions, with top Teamster officials all too willing to make them.[158] Reformers knew they had no realistic chance of voting in new leadership until they had access to the type of direct membership votes for top officers that their counterparts in unions like the Mine Workers and Steelworkers had. But they did have access to another type of direct membership vote—over contract ratification—and that became the focus of their organizing. Through its many "Vote No" campaigns, TDU established itself as a powerful voice of the Teamster rank-and-file by organizing on a truly national scale.

That strategy paid off in September 1983 when TDU shocked both IBT president Jackie Presser and the national business press with its successful campaign to defeat amendments to the NMFA.[159] The amendments would have made deep pay cuts and established two-tier wages under the NMFA for the first time, with no assurances the concessions would save jobs.[160] As the giant headline across the front page of TDU's newspaper shouted,

Members: 94,086
Presser: 13,082.[161]

Presser responded with a variety of tactics to manipulate the outcomes of subsequent ratification votes. TDU's lawyers, often with Paul Levy in the forefront, managed to overcome many of those tactics in court.[162]

Because the right to ratify contracts has long been a part of the IBT Constitution,[163] Teamsters have not often needed to go to court to compel a vote, although the issue has come up with respect to mid-term contract

158. *See supra* text accompanying notes 13-15.

159. Business Week called the vote "a slap in the face" for Jackie Presser. LA BOTZ, *supra* note 2, at 241. Many local officers not affiliated with TDU also opposed the concessions. Paul Alan Levy, *Membership Rights in Membership Referenda to Ratify Collective Bargaining Agreements*, 4 HOFSTRA LAB. L.J. 225, 239 (1987).

160. CROWE, *supra* note 15, at 62-63; *Members: 94,086 Presser: 13,082*, 38 CONVOY DISPATCH, Oct. 1983, at 1.

161. *Id.* The vote also demonstrated TDU's ability to organize and mobilize the Teamster rank and file on a far greater scale than previously contemplated. As a result, TDU moved its goal of direct member elections to the center of its organizing agenda. *See infra* text accompanying note 210.

162. Other lawyers included Barbara Harvey in Detroit. *See* McCuiston v. Hoffa, 313 F. Supp. 2d 710 (E.D. Mich. 2004); Hicks v. Cylinder Gas, Chemical, Petroleum Drivers Local 283, No. 94-73688, 1995 WL 581258 (E.D. Mich. May 23, 1995); Meek v. Int'l Bhd. of Teamsters (Airlines Div), 681 F. Supp. 1014 (E.D.N.Y. 1988). Also, Robert Handelman in Columbus. *See* Parker v. Local 413, Int'l Bhd. of Teamsters, 501 F. Supp. 440 (S.D. Ohio 1980), *aff'd*, 657 F.2d 269 (6th Cir. 1981).

Levy's article on the subject, *supra* note 159, provides many insights into the strategies of the parties and the behind-the-scenes maneuvering. Unfortunately, just as the article was going to press one of Levy's major wins, *Carothers v Presser*, 636 F. Supp. 817 (D.D.C. 1986), which had contributed to the article's generally optimistic tone, was overturned on appeal. Carothers v. Presser, 818 F.2d 926 (D.C. Cir. 1987).

163. INT'L BHD. OF TEAMSTERS, CONST. 49 (2016). The otherwise autocratic IBT under Jimmy Hoffa and his predecessor Dave Beck agreed to guarantee members the right to ratify contracts as a compromise necessary to consolidate the bargaining authority they needed for the creation of a *national* freight agreement—authority previously spread among many of the union's locals and regional entities. Levy, *supra* note 159, at 236-37.

changes, particularly when the union claims changes are merely interpretations of the contract.[164] More typically, the IBT would hold "quickie" votes, giving members no opportunity to organize any coordinated response. TDU defeated that tactic in court on several occasions.

The most important precedent involving a national contract is *Bauman v. Presser*.[165] The IBT was seeking approval of an agreement extending by two years its national contract with UPS, and Presser was trying to avoid the kind of embarrassing defeat his proposed changes to the master freight agreement had suffered the year before. He knew the proposal might be controversial. While it contained sweeteners in the form of cash bonuses and some pay increases, it locked in all non-monetary aspects of the old contract for an additional two years.[166] That meant there would be no changes in the arduous working conditions at UPS.[167]

Abandoning past practice, Presser tried to keep secret that negotiations were even happening until, seemingly out of the blue, at a meeting of local officers he revealed the new contract he wanted ratified.[168] The next day the IBT mailed to all UPS Teamsters a ballot to be mailed back "as soon as possible." The mailing included a brochure extolling the virtues of the proposed contract and urging the members to ratify it "immediately."[169] This left no time for locals to follow the usual practice of holding meetings at which members could debate the merits of proposed contracts before voting. It also left TDU with no time to distribute its own "contract bulletin" urging members to vote no and to coordinate such efforts at UPS locals all over the country.[170] By the time the locals that even tried to convene membership meetings were able to do so, and by the time TDU could get its views out to its supporters, many Teamsters had already mailed in their ballots.[171]

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164. *E.g.*, Walker v. Consolidated Freightways, 930 F.2d 376, 381 (4th Cir. 1991) (affirming that a delay in implementing a raise was a modification, not an interpretation).

165. Bauman v. Presser, No. 84-2699, 1984 WL 3255 (D.D.C. Sept. 19, 1984). This case's appeal was dismissed as moot. Bauman v. Presser, No. 84-5727, 1985 WL 202619 (D.C. Cir. Jan. 23, 1985).

166. *Bauman*, 1984 WL 3255, at *4.

167. As I know from representing a rank-and-file caucus at UPS in Seattle early in my career, UPS was known as a "tennis shoe outfit," meaning its delivery drivers almost literally had to run to meet their demanding delivery schedules. Another common complaint was the excessive and mandatory overtime they had to work, especially during the months leading up to Christmas. While the pay was good, for many weeks on end they could barely see their families and were physically exhausted, with no right to turn down the extra work without jeopardizing their jobs. During the holidays, workweeks at UPS could easily total sixty hours or even longer. ALLEN, *supra* note 10, at 8.

168. *Bauman*, 1984 WL 3255 at *2-3.

169. *Id.* at *4.

170. *Id.* at *2-*4. This was before the advent of email and social media. It took at least a few days before activists could get their message out via "snail mail" or by having sympathetic feeder drivers, whose job was to transport packages in bulk from one UPS hub to another, distribute bundles of TDU newsletters and flyers to each hub where there might be an interested audience.

171. Although the deadline for returning ballots was about three weeks, TDU staff lawyer Julie Fosbinder monitored the mail counts at the post office where the ballots were being received, and TDU

The TDU plaintiffs went to federal court before the votes could be counted and won a preliminary injunction impounding the ballots.[172] It was critical to their victory that they had gotten into court *before* the ballots were counted and the contract declared ratified. Once a collective bargaining agreement is in place, it is almost impossible to have it overturned no matter how serious the LMRDA violations might have been during ratification. At best, plaintiffs might win injunctions or declaratory relief regarding the conduct of *future* votes.[173]

The *Bauman* plaintiffs persuaded the court that such a quick ratification vote violated the LMRDA's equal voting rights and free speech provisions.[174] It held that the LMRDA guarantees more than a "mere naked right to cast a ballot"; it also guarantees the right to a "meaningful" vote.[175] This vote failed to meet that standard because it "effectively denied plaintiffs their right to convey their views and to seek the support of their fellow members."[176] Another vote could be conducted, but the union had to wait 15 days before ballots could be mailed out.[177]

TDU also repeatedly litigated members' access to the specific terms of proposed contracts before they cast their ratification votes. When one of these disputes was resolved in 1990 in what the court called a "saga of litigation" between TDU and the IBT, the court expressed frustration with the IBT's refusal to abide by precedents that the IBT itself had been party to:

> Rather than following the precedents as outlined above, or even making a good faith effort to abide by the spirit of the court's rulings, defendants have again refused to provide plaintiffs with a complete copy of the proposed UPS

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was able to prove that, within one week, almost 40,000 ballots had already been returned. Thus, "the vast majority of members casting [those] ballots . . . did so without the benefit of an informational meeting." *Id.* at *5, *8.

172. *Id.* at *10.

173. Meek v. Int'l Bhd. of Teamsters, 681 F. Supp. 1014, 1019 (E.D.N.Y. 1988); Alan Hyde, *Democracy in Collective Bargaining*, 93 YALE L.J. 793, 805 (1984) ("[N]o court has ever enjoined an agreement already in operation, even if unratified by a membership plainly entitled to do so under applicable union rules.").

174. *Bauman*, 1984 WL 3255 at *9.

175. *Id.* at *7 (citing Bunz v. Moving Picture Machine Operators' Union, 567 F.2d 1117 (D.C. Cir. 1977)). Some courts utilizing a narrow textual analysis of the LMRDA's voting rights language have disagreed with *Bauman* and *Bunz* and concluded that so long as all members are equally denied the opportunity of a "meaningful" vote, there is no violation. *E.g.*, Ackley v. Western Conference of Teamsters, 958 F.2d 1463 (9th Cir. 1992). *See* Nicholas A. Smoger, *Protecting Democracy Within Unions: The Case for a Meaningful Vote Under Title I of the LMRDA*, 108 IOWA L. REV. 981, 992-93 (2023).

176. *Bauman*, 1984 WL 3255 at *8. The court followed by analogy the reasoning of a case arising under the LMRDA's officer election provisions. Marshall v. Local 468, Int'l Bhd. of Teamsters, 643 F.2d 575 (9th Cir. 1980). As Levy had pointed out to the *Bauman* court, there was more precedent on fair and unfair election procedures under Title IV, given the Secretary of Labor's resources for bringing those cases, than there was under Title I, where members had to find their own lawyers to bring their cases. Levy, *supra* note 159, at 241-42.

177. *Bauman*, 1984 WL 3255 at *10.

> contract. Instead, they have forced the issue once again into litigation, by taking a narrow view of court precedent, apparently to further their own internal political purposes.[178]

With respect to the likelihood that an injunction could cause harm to the defendant—a factor courts must weigh before granting a preliminary injunction[179]—the court concluded that the IBT had "not shown that they will be harmed at all."[180] The court reasoned that providing plaintiffs with copies of proposed contracts:

> is simple relief, and it certainly cannot be argued that it will disrupt the election process . . . [or] cause undue interference with the internal affairs of the union. The only harm to themselves defendants may have shown is the loss of another political battle with the TDU, and that does not constitute a bar to plaintiffs' relief.[181]

While TDU was successful in getting timely access to information about proposed contracts, its attempts to use the LMRDA to facilitate distribution of that information to the union's membership met disappointing results. In *Carothers v. Presser*, the plaintiffs sought to establish TDU's right to send a mailing, at its own expense, to all Teamster carhaulers entitled to vote in an upcoming referendum on the National Automobile Transporters Agreement.[182] To protect the confidentiality of the IBT's membership lists, TDU would use a union-approved mailing service.[183]

The district court ruled for the plaintiffs, concluding that the union's refusal to grant this limited access to its mailing list "unreasonably inhibit[ed] plaintiffs' ability to communicate with other members," thereby denying them "a reasonable, informed, meaningful vote" under the LMRDA.[184] The

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178. Patrick v. McCarthy, 743 F. Supp. 894, 896-97 (D.D.C. 1990) (citing Riley v. McCarthy, 723 F. Supp. 1521 (D.D.C. 1989)); Carothers v. McCarthy, 705 F. Supp. 687 (D.D.C. 1989); Braxton v. Presser, No. 87-2742 (D.D.C. 1987)).

179. Mary Kay Kane & Alexadra D. Lahav, 11A FEDERAL PRACTICE AND PROCEDURE (Wright & Miller, eds., 3d. ed. 2023) § 2948.

180. *Patrick*, 743 F. Supp. at 901.

181. *Id.* This is another example of the union spending its members' dues money on lawyers fighting to the bitter end rather than seeing its dissident members win any kind of victory. *See supra* note 88 and accompanying text. Because of their political nature, union democracy cases rarely settle. And when prevailing LMRDA plaintiffs are awarded attorneys' fees as part of the remedy, the members' dues end up funding both sides of the litigation.

182. Carothers v. Presser, 636 F. Supp. 817, 819 (D.D.C. 1986), *rev'd*, 818 F.2d 926 (D.C. Cir. 1987).

183. *Id.* at 820.

184. *Id.* at 824. The court followed the two-step analysis from *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982): Does the union policy interfere with members' LMRDA-protected speech and, if so, is the rule nevertheless permissible under the statute's "reasonable rules" proviso? *Id.* at 825. Citing numerous precedents giving the statute a broad reading, the court in *Carothers* answered "yes" to the first question. *Id.* at 827. It then answered "no" to the second, because the union was free to make reasonable rules regarding access to its mailing lists and because members seeking access would have to bear the costs, thus limiting the size of any Pandora's Box the ruling opened. *Id.* Moreover, any risk that such communications might convey erroneous or misleading information was outweighed by the union's

D.C. Circuit reversed, holding that the statute's free speech and voting rights provisions did not create an independent right of access to a union's mailing list.[185] Utilizing a more textualist analysis than the district court had, and echoing the approach the Seventh Circuit took a year earlier in one of the union meeting cases,[186] the court concluded that if Congress had wanted the statute to provide that kind of access to union membership lists, it could have said so explicitly, just as it had in Title IV with respect to officer elections.[187] But the D.C. Circuit's decision was not a total loss. While the court ruled that denying access to a mailing list for a union referendum mailing was not, standing alone, an LMRDA violation, it acknowledged that an injunction ordering such access can be appropriate where a court has made "a particularized finding" of a violation of a right "specifically enumerated in the statute."[188]

TDU plaintiffs, represented by Barbara Harvey, litigated two more important issues related to contract ratification. In one case, the union had removed several members affiliated with TDU from elected positions on the union's negotiating committee.[189] The court ruled that their removals violated their LMRDA rights and it blocked a ratification vote until the members were reinstated with full rights to participate in the committee's deliberations.[190] In another case, the court held that TDU plaintiffs stated an equal voting rights claim when the union failed to count their votes against a local supplement.[191] They subsequently won an important settlement giving them the right to observe the vote counts in future ratification votes.[192] In several

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obligations "not to suppress communication between the members, and . . . to encourage full, fair and informed participation in union votes." *Id.* at 826.

185. Carothers v. Presser, 818 F.2d 926, 929 (1987).

186. *Id.* at 934 (citing Grant v. Chicago Truck Drivers Union, 806 F.2d 114 (7th Cir. 1986)).

187. *Carothers*, 818 F.2d at 930. LMRDA § 401(c) gives candidates a right to use union membership lists for campaign mailings. The court's approach makes sense for most of the LMRDA, including Title IV, but it gives short shrift to an argument that Title I's open-ended language should be construed more broadly because of Title I's legislative history, which was very different from the rest of the statute. Levy, *supra* note 159, at 257. Unlike most of the LMRDA, which was reported out of committee with detailed reports explaining the thinking of the relevant House and Senate committees, Title I's Bill of Rights was added on the floor of the Senate, well after those reports were drafted. That sequence renders less relevant to interpretations of Title I some of the language in those Reports, *e.g.* S. REP. NO. 86-187, at 7 (1959), often heavily relied on by courts calling for judicial restraint in the LMRDA's enforcement. *See* Stuart Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199, 209 (1960).

188. *Carothers*, 818 F.2d at 931 (citing Sheldon v. O'Callaghan, 497 F.2d 1276 (2d Cir. 1974)) (explaining that the union used its mailing list in a "patently unfair" way to urge members to vote in favor of a proposed union constitution and published misleading articles in the union newspaper doing the same, while denying union dissidents the opportunity to do their own mailing).

189. Meek v. Int'l Bhd. of Teamsters, 681 F. Supp. 1014, 1016 (E.D.N.Y. 1988).

190. *Id.* at 1019.

191. McCuiston v. Hoffa, 313 F. Supp. 2d 710, 714 (E.D. Mich. 2004).

192. Stipulated Consent Judgment, McCuiston v. Conder, No. 04-70047 (E.D. Mich. Apr. 11, 2005).

other cases, however, TDU lost challenges to the way local supplements to national contracts were ratified.[193]

Another controversial issue was the two-thirds supermajority the IBT required to vote down a contract. TDU had been organizing around that issue since 1976, when the IBT forced through a national carhaul contract opposed by a majority of voting members.[194] The issue came to a head following a 1987 vote on the NMFA, when a contract that 64 percent of the voters opposed was nevertheless ratified.[195] While litigation challenging the vote was pending, the IBT's leadership capitulated on the issue,[196] perhaps recognizing that the unpopularity of the two-thirds rule would jeopardize their hold on union office if the government's much-discussed RICO case came to pass and brought with it changes in how the union's top officers were chosen.[197]

IV. TDU, THE RICO CONSENT DECREE, AND THE MEMBERS' RIGHT TO VOTE

By the late 1980s, TDU had managed to survive all kinds of threats to its existence. With the help of federal labor law as at least a partially effective shield against employer and union retaliation, TDU did more than just survive. It was also able to protect truck drivers fired for refusing to drive unsafe trucks when the union failed to do so. With the help of the law as a

193. *See* Davey v. Fitzsimmons, 413 F. Supp. 670 (D.D.C. 1976). See also *Carothers v. McCarthy*, 705 F. Supp. 687, 696-97 (D.D.C. 1989), where TDU plaintiffs failed to persuade the court that their rights were violated when they were barred from offering resolutions to be voted on at local union meetings supporting or opposing ratification of a proposed national contract. Because ratification of the national contract automatically meant ratification of all local supplements, they had argued, straw votes taken at local meetings would "allow members in one Union local to communicate their views . . . to distant members around the country, who are not likely to be aware of the specific [local] agreements that affect members elsewhere." *Id.* at 696. TDU organizing around this issue eventually resulted in amendments to the IBT Constitution that gave members the right to meaningful vote on local supplements to national contracts. INT'L BHD. OF TEAMSTERS, CONST. ART. XII § 2 (2016). *How TDU Won Contract Rights for All Teamsters*, TEAMSTERS FOR A DEMOCRATIC UNION (Mar. 15, 2013), https://www.tdu.org/news_how-tdu-won-contract-rights-for-all-teamsters [https://perma.cc/DGQ5-3ASS].

194. Ken Paff, *The History of the "2/3 Rule" on Teamster Contracts*, TEAMSTERS FOR A DEMOCRATIC UNION (Oct. 9, 2018), https://www.tdu.org/history_2_3_rule [https://perma.cc/4Q9X-V6EC].

195. CROWE, *supra* note 15, at 136.

196. *Id.*

197. That change in the two-thirds rule, however, came with a loophole: if fewer than half the members covered by a proposed contract vote in the referendum, a two-thirds supermajority was still required to defeat it. James Hoffa used that loophole to force through the 2018 UPS contract over the objections of a majority of those who voted. That outraged many UPS Teamsters and led to the loophole's elimination at the same 2021 IBT Convention at which the TDU-backed reform slate that won office that year was nominated. *The Two-Thirds Rule Is Over—We Won Majority Rule!*, TEAMSTERS FOR A DEMOCRATIC UNION (June 23, 2021), https://www.tdu.org/two_thirds_rule_is_over [https://perma.cc/2YNQ-68CF].

sword to force change, TDU had also achieved some important victories at the local level, electing reformers to local union office and, in some locals, replacing appointed business agents and shop stewards with elected ones. And with its Vote No campaigns in contract ratification referenda, it built a union-wide fight against the concessionary bargaining the IBT's mobbed-up leadership seemed content with.

TDU understood, however, that as important as these successes were, a real change of direction for the IBT would come only if reformers could win election to the IBT's top offices. That was how reformers in the Mine Workers cleaned up their corrupt union in the early 1970s and how activists in the Steelworkers nearly won in their union a few years later.[198] But the likelihood of such reform in the IBT, where top officers were elected by convention delegates, not by the members directly, was near zero. TDU needed a way to force the IBT to change how it elected its top officers. An opportunity to do just that presented itself when federal prosecutors brought an ambitious civil racketeering case against the IBT to free it from the grip of organized crime. TDU's influence on the remedies from that case created the openings that brought something close to true democracy to the Teamsters.

Federal prosecutors waged an all-out war on organized crime during the 1980s, and one of the main battlefields was the Teamsters union.[199] Mafia infiltration had reached a point where the mob was no longer just raiding pension funds, extorting payoffs from employers or taking bribes to sell out the members, and embezzling from union treasuries; it was actually picking IBT presidents.[200] Federal prosecutors' legal weapons of choice were RICO trusteeships and monitorships—broad civil remedies available under the federal racketeering statute.[201] Decades of prosecuting corrupt individuals had proven insufficient; convicted racketeers were simply replaced by more people cut from the same cloth.[202] Federal prosecutors were looking for more transformative remedies to root out organized crime from the labor movement, and the culmination of that effort was the 1989 RICO Consent

198. For studies of those insurgencies, see CLARK, *supra* note 37; PHILIP W. NYDEN, STEELWORKERS RANK-AND-FILE: THE POLITICAL ECONOMY OF A UNION REFORM MOVEMENT (1984); Paul J. Nyden, *Rank-and-File Movements in the United Mine Workers of America, Early 1960s-Early 1980s*, *in* REBEL RANK AND FILE, *supra* note 7. For an examination of the litigation surrounding those officer elections in the Mine Workers and Steelworkers, with a particular focus on efforts to overcome the inherent advantages of incumbency, see Edgar N. James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 HARV. CIV. RTS.-CIV. LIB. L. REV. 247, 325-51 (1978).

199. JAMES B. JACOBS, BUSTING THE MOB: UNITED STATES V. COSA NOSTRA 31-79, 167-210 (1994).

200. JACOBS & COOPERMAN, *supra* note 47, at 17-18.

201. 18 U.S.C. § 1964(a) (authorizing courts to remedy RICO violations by, among other things, "ordering [the] . . . reorganization of any enterprise, making due provision for the rights of innocent persons.").

202. JACOBS & COOPERMAN, *supra* note 47, at 80.

Decree that transformed the Teamsters.[203] It did so in two significant ways. First, it succeeded in greatly reducing—although not completely eliminating—organized crime's presence in the union.[204] Second, in part as a means of accomplishing that primary objective, the Consent Decree mandated that top IBT officers be elected directly by the members, rather than by convention delegates, in government supervised elections.[205]

This section will not retrace the litigation leading to the Consent Decree nor describe in detail its administration and enforcement.[206] Rather, it will focus on three aspects of TDU's relationship with the Consent Decree: its prior efforts to achieve the direct election of the IBT's top officers; its role in shaping the Consent Decree's remedy when its terms were first negotiated; and its influence on the election rules under the Decree and on the outcome of the elections that followed.

A. TDU and the Right to Vote Before the RICO Case

For years before federal prosecutors filed their RICO case, TDU had been campaigning in every available forum for changes to the way the IBT's top officers were chosen. In effect, TDU had exhausted all other available remedies before trying to obtain that result through the government's RICO case. The LMRDA requires national unions to elect their top officers at intervals no longer than five years "either by secret ballot among the members. . .or at a convention of delegates chosen by secret ballot."[207] Most national unions, including the pre-Consent Decree Teamsters, used the

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203. Order (Consent Decree), United States v. Int'l Bhd. of Teamsters, No. 88 Civ. 4486, (S.D.N.Y. Mar. 14, 1989). For an overview of prior efforts to root out corruption from labor's ranks and the legal developments leading up to the Consent Decree, see Goldberg, *supra* note 3.

204. In the first few years of the Consent Decree, hundreds of "mobbed-up" officials were removed from the union, including twelve International officers and fifty local presidents. Yet twenty years later, 30 percent of the cases before the Independent Review Board, created by the Consent Decree to continue rooting out corruption, still involved an organized crime connection. Organized crime's remaining influence, however, appears to be localized and has not played a significant role in the elections of the IBT's top officers. JACOBS & COOPERMAN, *supra* note 47, at 80-81, 144, 187, 198, 216-19.

205. Federal prosecutors have continued to seek transformative RICO remedies in the wake of the *Teamsters* case, most recently in the United Auto Workers Consent Decree, *United States v. UAW*, No. 20-13293 (E.D. Mich. Jan. 29, 2021). That decree resulted in UAW members first voting to switch the union's method of electing its top officers to direct elections and then voting into most of those top offices a slate of reformers, including the union's new president. Luis Feliz Leon & Jane Slaughter, *It's a New Day in the United Auto Workers*, LAB. NOTES, Mar. 2023.

206. For overviews of that nature see CROWE, *supra* note 15; JACOBS & COOPERMAN, *supra* note 47; Belzer & Hurd, *supra* note 38; George Feldman, *The New Teamsters and the Labor Movement*, 38 WAYNE L. REV. 527 (1992); George Kannar, *Making the Teamsters Safe for Democracy*, 102 YALE L.J. 1645 (1993); Clyde W. Summers, *Union Trusteeships and Union Democracy*, 24 U. MICH. J.L. REF. 689 (1991); Andrew B. Dean, *Note, An Offer the Teamsters Couldn't Refuse: The 1989 Consent Decree Establishing Federal Oversight and Ending Mechanisms*, 100 COLUM. L. REV. 2157 (2000).

207. 29 U.S.C. § 481(a). In contrast, elections of local officers are at intervals no longer than three years by direct vote of the members. *Id.* § 481(b).

convention method.[208] Two of the most important unions that opted for direct elections were the Mine Workers and the Steelworkers. It is no coincidence that those unions were at the center of two of the most prominent rank-and-file insurgencies of the 1970s, when PROD and TDU were just getting started.[209]

At its Rank & File Convention in the fall of 1985, TDU formally adopted the goal of winning the right to direct member elections of the IBT's top officers.[210] By the IBT's 1986 Convention the following spring, TDU had collected nearly 100,000 Teamsters' signatures on petitions urging the International to make that change.[211] IBT president Jackie Presser was not impressed, and at the IBT Convention the delegates overwhelmingly voted down TDU's proposal.[212] They also defeated by an overwhelming margin Presser's sole challenger, Sam Theodus, the president of Cleveland Local 407 whose reform candidacy TDU had endorsed.[213] Nobody had expected a different result. Most convention delegates were already part of the union's power structure and subject to many forms of pressure from above—both carrots and sticks—to vote the party line in public convention votes.[214] As journalist Kenneth Crowe explained, "the Teamsters election process discouraged those who wanted to see the union reformed from opposing the incumbents. 'The system doesn't allow them to. Who is going to stand up in front of the guy who controls the union and say they are voting for someone else?' Not many."[215]

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208. DORIS B. MCLAUGHLIN & ANITA L.W. SCHOOMAKER, THE LANDRUM-GRIFFIN ACT AND UNION DEMOCRACY 9, Table 1 (1979).

209. *See supra* text accompanying note 198.

210. *Teamsters & the Right to Vote*, TEAMSTERS FOR A DEMOCRATIC UNION (Sept. 25, 2014), https://www.tdu.org/news_teamsters-right-vote [https://perma.cc/7AAW-AKRQ]. The results achieved by TDU's campaigns around national contract votes gave TDU reason to believe it could also succeed in mobilizing rank-and-file Teamsters to vote for reform candidates on a national level if the members ever won that right. See *supra* text accompanying note 161.

211. CROWE, *supra* note 15, at 39.

212. *Id.* at 42-43.

213. *Id.*

214. Local officers who voted "the wrong way" could face retaliation in a variety of forms. They could be denied the multiple salaries and perquisites that come with appointments to other positions in the union hierarchy while still holding their local offices. They could also be removed from office with less legal protection than ordinary members have before membership rights can be affected. *See supra* note 62 and accompanying text. Workplace grievances coming out of their locals could be lost at a higher rate due to political manipulation of the joint grievance committees typical of many Teamster contracts. *See supra* text accompanying notes 137-39. Their locals could be placed in trusteeships by the International and run by IBT appointees with little recourse for up to eighteen months, assuming compliance with all procedural requirements. *See* 29 U.S.C. § 464(c). And the local itself could even be gerrymandered out of existence by being merged into another local.

215. CROWE, *supra* note 15, at 43 (quoting Sam Theodus). As TDU later put it, "The fact that the most hated president in Teamster history could get 99% support from local union officials only showed how rotten the system was." *Teamsters and the Right to Vote, supra* note 210.

No LMRDA lawsuit could compel a switch to direct elections, but TDU and its attorneys saw an opening for at least making the convention method more democratic. The statute requires delegates voting for top officers to be "chosen by secret ballot."[216] The IBT and some other unions interpreted that to mean local officers, who were already elected by secret ballot, could automatically serve as convention delegates *ex officio*, even though their elections could be as long as twenty-nine months before the next convention.[217] In IBT locals there are seven elected officers, and only very big locals are entitled to delegations larger than that. Only those extra delegates would be elected for the sole purpose of representing their locals at the convention. In most locals, *no* delegates were elected shortly before the convention unless their local officer elections, held at three-year intervals, happened to occur at that time.[218]

TDU criticized that practice on two principal grounds.[219] First, when delegates are elected up to two-and-a-half years before the convention, slates of challengers to incumbent officers usually have not emerged and controversial issues that might need to be voted on at the convention have not yet crystalized. Voters focus largely on local issues and thus cannot elect delegates based on their views of the candidates or issues to be voted on at the convention.[220] Second, it unnecessarily limits the pool of candidates who might have a shot at being elected. When members vote for local officers, they take into consideration candidates' prior experience in other union posts, their administrative, organizational, and leadership skills, and other traits important to performing the duties of union officers. Those traits are less important for someone serving as a convention delegate only, where the most important factor is simply being willing to cast votes at the convention according to the preferences of the members who sent them there.[221]

Unfortunately, the Department of Labor, responsible for enforcing the LMRDA's election provisions, had long interpreted the Act to permit this

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216. 29 U.S.C. § 481(a).

217. *See* Teamsters for a Democratic Union v. Sec'y of Lab., 629 F. Supp. 665, 667 (D.D.C. 1986), *aff'd*, 810 F.2d 301 (D.C. Cir. 1987). Before 1961, all delegates were elected shortly before IBT conventions, but Jimmy Hoffa changed that, understanding that the *ex officio* method could help him consolidate power. Herman Benson, *On Helping Teamsters to Fight Racketeers*, 50 UNION DEM. REV. 2-3 (Jan. 1986).

218. At the 1986 IBT Convention, roughly 90 percent of the delegates were *ex officio*. Theodus v. Brock, No. 86-2467, 1987 WL 14599, at *1 (D.D.C. July 17, 1987), *aff'd sub nom.* Theodus v. McLaughlin, 852 F.2d 1380 (D.C. Cir. 1988).

219. PROD had first raised objections to local officers automatically serving as convention delegates in 1976. PROD REPORT, *supra* note 24, at 91.

220. As Herman Benson of the Association for Union Democracy summed up this criticism, "it's as though we elected mayors to run our cities, and then years later they cast our electoral votes for president of the United States." Benson, *supra* note 217, at 2 (crediting Arthur Fox for the analogy).

221. CROWE, *supra* note 15, at 173.

practice.[222] In 1981, TDU pressed the Secretary of Labor to reconsider that position, and in 1985, together with the Association for Union Democracy (AUD), it formally petitioned the Secretary to promulgate new interpretations of the statute.[223] The Secretary refused, and litigation ensued. A case seeking a ruling before the 1986 IBT Convention was dismissed on the grounds that the LMRDA permitted only post-election remedies for violations of Title IV,[224] so TDU filed a second case after Presser's reelection.[225] In addition to the policy arguments described above, TDU's attorney, Arthur Fox, also made the textual argument that if Congress had intended to permit local officers to serve as *ex officio* convention delegates, it would have said so explicitly.[226] Congress had done exactly that elsewhere in Title IV when it expressly authorized local officers to serve as *ex officio* electors of the officers of intermediate union bodies like joint councils.[227]

While this issue was brewing in the courts, the President's Commission on Organized Crime weighed in with an endorsement of the TDU position.[228] Both the district and appellate courts, and even the Department of Labor, acknowledged that electing all delegates shortly before the convention was a "worthy concept" and "would enhance union democracy."[229] Nevertheless, the Secretary argued that the LMRDA permits unions to decide that issue for themselves[230] and the courts, pursuant to the *Chevron* doctrine,[231] deferred to that interpretation.[232] The same issue resurfaced a few years later, however, in the context of the Consent Decree.[233]

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222. 29 C.F.R. § 452.120.

223. *See* Teamsters for a Democratic Union v. Sec'y of Lab., 629 F. Supp. 665, 667-68 (D.D.C. 1986), *aff'd* 810 F.2d 301 (D.C. Cir. 1987); Rulemaking Petition of Teamsters for a Democratic Union and Association for Union Democracy, filed with the Department of Labor, Aug. 9, 1985, *reprinted in* 156 DAILY LAB. REP. (BNA) D-1 (Aug. 13, 1985).

224. *Teamsters for a Democratic Union*, 629 F. Supp. at 671.

225. Theodus v. Brock, No. 86-2467, 1987 WL 14599 (D.D.C. July 17, 1987), *aff'd sub nom.* Theodus v. McLaughlin, 852 F.2d 1380 (D.C. Cir. 1988).

226. Theodus v. McLaughlin, 852 F.2d at 1385.

227. 29 U.S.C. § 481(d). It is noteworthy that a very similar textualist argument was relied on by the D.C. Circuit a year earlier to deny TDU's efforts to win a right to do mailings, at their own expense, in contract ratification referenda. See *supra* text accompanying notes 185-87. In contrast here, where the textualist argument could have resulted in an expansion of members' democratic rights, the Court ignored it. See *infra* text accompanying notes 230-32.

228. PRESIDENT'S COMM'N, *supra* note 1, at 34. TDU had provided testimony at the Commission's hearings on its experience dealing with corruption inside the IBT and its view that the best anti-corruption program would be to give members the right to vote for their top officers. *See Teamsters and the Right to Vote*, *supra* note 210.

229. Theodus v. McLaughlin, 852 F.2d at 1386 n.4; Theodus v. Brock, 1987 WL 14599, at *4.

230. *See* Theodus v. McLaughlin, 852 F.2d at 1382.

231. Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

232. Theodus v. Brock, 1987 WL 14599, at *3; Theodus v. McLaughlin, 852 F.2d at 1383.

233. *See infra* text accompanying notes 269-70.

B. "No Mob Control, No Government Control, Right to Vote"

Not long after Presser's reelection at the IBT's 1986 Convention, word began leaking that the Justice Department had a major civil RICO case in the works that could place the entire IBT under a court-imposed trusteeship.[234] Over the previous few years, federal prosecutors had pioneered the use of RICO trusteeships at the local union level,[235] and the President's Commission on Organized Crime had urged the Justice Department to make "systematic use of trusteeships" to clean up the IBT, which it called the union "most controlled" by organized crime.[236]

TDU recognized immediately that this was its "chance to push for the right to vote."[237] Its response to the rumored trusteeship was best characterized by its slogan, "No Mob Control, No Government Control, Right to Vote."[238] TDU agreed that the government should bring a civil RICO case and that a major "reorganization"[239] of the IBT was necessary to root out organized crime's influence. But instead of a full-blown trusteeship, TDU argued that requiring the government to supervise direct member elections of the IBT's top officers was a better option.[240]

Before the Justice Department even confirmed its intention to seek a trusteeship over the IBT,[241] TDU and its lawyers were engaged in behind-the-scenes discussions with the government's lawyers, seeking to influence the direction of the case. In April 1987, TDU sent a detailed, single-spaced nine-page letter—in effect, a legal brief—to Assistant Attorney General Stephen Trott laying out its position.[242] Although it opened with the concern that a RICO trusteeship would unnecessarily conflict with the LMRDA's fundamental purpose of protecting the rights of union members to choose their own leaders,[243] the letter's more practical arguments probably made a

234. Philip Shenon, *Corrupt Unions to Be the Target of Justice Dept.*, N.Y TIMES (Nov. 22, 1986), https://www.nytimes.com/1986/11/22/us/corrupt-unions-to-be-the-target-of-justice-dept.html [https://perma.cc/RRJ2-LPUD].

235. The first and most important case involved a major base of Mafia power inside the IBT, Local 560 in New Jersey. United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279 (D.N.J. 1984), *aff'd* 780 F.2d 267 (3d Cir. 1985). *See generally* Goldberg, *supra* note 3, at 909-16, 965-83; James B. Jacobs, Eileen M. Cunningham & Kimberly Friday, *The RICO Trusteeships After Twenty Years: A Progress Report*, 19 LAB. LAW. 419, 439-52 (2004).

236. PRESIDENT'S COMM'N, *supra* note 1, at 50, 89, 138.

237. Editorial, *Who Will Control the Teamsters Union?* 71 CONVOY DISPATCH, Jun./Jul. 1987, at 1.

238. *Teamster Corruption and the Consent Decree*, TEAMSTERS FOR A DEMOCRATIC UNION (Nov. 14, 2008), https://www.tdu.org/news_teamster-corruption-and-consent-decree [https://perma.cc/KY8A-9EJW].

239. *See supra* note 201.

240. *See infra* text accompanying note 246.

241. Leslie M. Werner, *U.S. Seeks Control of Teamster Union*, N.Y. TIMES, June 11, 1987, at A19.

242. Letter from Ken Paff to Stephen Trott, Assistant Attorney General (Apr. 10, 1987) (on file with author). While signed by TDU's Organizer, the letter was drafted by Chicago attorney Tom Geoghegan.

243. *See id.* at 2.

bigger impression on the government's lawyers. TDU stressed that a full-blown trusteeship over a 1.6-million-member national union would not just be like a local trusteeship "only bigger."[244] It would be qualitatively different and much more complex and difficult to administer than a trusteeship over a 10,000-member local like Local 560.[245] And most important with respect to the right to vote, TDU argued that if the convention method of electing top IBT officers remained in place at the end of the trusteeship, it would provide the means through which the mob could retake control:

> As the President's Commission on Organized Crime pointed out, many of the big-city IBT locals hold a natural attraction for organized crime. They are, and always will be, power centers in the IBT. They will have a natural king-making influence at IBT conventions. In that respect, the very structure of the IBT is an open door for a return to power by organized crime.[246]

By this time, TDU was well known to the Justice Department.

Its members had testified at hearings held by the President's Commission on Organized Crime and congressional hearings on corruption in Teamster pension funds,[247] and Justice Department lawyers could use TDU's help in building their RICO case. If the case went to trial, TDU witnesses would no doubt be needed to testify.[248] TDU was becoming for the Justice Department a "highly knowledgeable ally."[249]

When federal prosecutors finally filed their complaint,[250] it was "not what was expected earlier," TDU explained to its members.[251] "It expresses the need for 'free and fair elections,' along with a limited role for a trustee. . . . [T]he Justice Department has begun to move toward the TDU stand."[252] TDU's communications with the government's lawyers, along with

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244. *Id.* at 3.

245. *See supra* note 235 and accompanying text.

246. Letter from Ken Paff, *supra* note 242, at 3.

247. *See supra* note 228 and accompanying text; *Fraud and Abuse in Pensions and Related Employee Benefit Plans*: *Hearing Before the Select Comm. on Aging*, 97th Cong. 18-35 (1981).

248. For example, one of the RICO "predicate offenses" prosecutors needed to prove was that top IBT officials aided and abetted the mob in extorting from the members their rights to union democracy protected by the LMRDA. Goldberg, *supra* note 3, at 950-55. *See also* JACOBS & COOPERMAN, *supra* note 47, at 31-32. The violence and threats of violence associated with that extortion of membership rights was perhaps best evidenced by an attack on TDU's 1983 convention at a hotel in Romulus, Michigan, that was carried out by "BLAST" (Brotherhood of Loyal Americans and Strong Teamsters), "the organization of bully boys formed by Jackie Presser to bash TDU." *See* CROWE, *supra* note 15, at 19, 178. *See also* NEFF, *supra* note 1, at 383-86; PRESIDENT'S COMM'N, *supra* note 1, at 114-18.

249. JACOBS & COOPERMAN, *supra* note 47, at 6.

250. Complaint, United States v. Int'l Bhd. of Teamsters, 88 Civ. 4486 (S.D.N.Y. June 28, 1988). The U.S. Attorney in New York, Rudy Guiliani, had prevailed in a Department of Justice turf battle and brought the case to New York from Washington. Day-to-day management of the case was in the hands of Assistant U.S. Attorney Randy Mastro. CROWE, *supra* note 15, at 13-15, 20-22, 65-69.

251. *TDU to Enter Federal Lawsuit*, 81 CONVOY DISPATCH, Aug./Sept. 1988, at 2.

252. *Id.*

its efforts and those of its allies to influence public opinion on the question,[253] were largely responsible for that shift in the Justice Department's thinking.[254] And as a less intrusive remedy, TDU's approach offered the Justice Department some protection from the growing political backlash, orchestrated by the AFL-CIO, against a full government takeover.[255]

But the complaint was still vague about the details of the remedy the government sought. So, two months before the trial date, TDU filed a motion to intervene on the defendants' side, as it had previously resolved to do if the government went forward with its case.[256] Seeking to "protect the rights of the innocent rank and file Teamster members," TDU reiterated its opposition to a full trusteeship and its proposal of direct elections as an alternative.[257] In support of intervention, it argued that no other party in the case was looking out for the union's rank and file. The Justice Department's goal was fighting organized crime, and it was not particularly interested in, knowledgeable about, or committed to protecting other interests of the members affected by the remedy it wanted.[258] And the top IBT officers still running the union were among the very individuals charged with aiding and abetting the mob's extortion of their members' right to a democratic union. They could not be counted on to protect the members' interests, particularly when remedies threatened to shift power from their hands to their members' hands.[259]

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253. *E.g.*, Jane Connolly, *Purging the Teamsters: Why Not Try Union Democracy*, THE NATION, Sept. 5, 1987, at 192; Tom Geoghegan, *Union Suit*, NEW REPUBLIC, Aug. 22, 1988, at 14; Ken Paff, *Let the Teamsters Vote*, WASH. POST, June 21, 1987, at B5, col. 2. Several newspapers, including the *New York Times*, editorialized in favor of government-supervised rank-and-file elections for the IBT's top offices as the appropriate remedy to be sought in the RICO case. *E.g.*, *The Right Medicine for the Teamsters*, N.Y. TIMES, Sept. 4, 1988, at E14.

254. An early advocate for the TDU position inside the prosecution team was Michael Moroney, an investigator with the Labor Department. *See* CROWE, *supra* note 15, at 65, 68-69.

255. Before the government filed its suit, union lobbyists persuaded over 200 members of Congress to sign a letter to the Attorney General opposing a RICO trusteeship over the IBT, Letter from William L. Clay, et al., to Hon. Edwin Meese III (Dec. 10, 1987), and shortly after the suit was filed, the number approached 300. Many prominent politicians from both major parties spoke out against the case. *See* Dwyer, Garland & Bernstein, *Will Going After Unions Bust Up RICO?*, BUS. WEEK, May 30, 1988, at 30; JACOBS & COOPERMAN, *supra* note 47, at 35-36. The AUD, which believed the mob's domination of the IBT justified drastic remedies, warned that "[t]he real danger is that the Department of Justice, bowing to political pressures, will back off and reach a settlement . . . that makes cosmetic changes but leaves a corrupt system intact." *The Government's RICO Suit Against the Teamsters: A Statement by the Association for Union Democracy*, 69 UNION DEM. REV. 3 (Apr. 1989).

256. Teamsters for a Democratic Union, Memorandum in Support of Motion to Intervene, United States v. Int'l Bhd. of Teamsters, 88 Civ. 4486 (S.D.N.Y. Jan. 17, 1989); *TDU to Enter Federal Lawsuit, supra* note 251, at 2.

257. JACOBS & COOPERMAN, *supra* note 47, at 33, quoting TDU's motion, which had been drafted by Tom Geoghegan and Paul Levy. The motion was also supported by the American Civil Liberties Union, which endorsed TDU's proposed remedy. *Id.*

258. *See id.* at 45-46.

259. *See id.* That conflict of interest was one of the reasons the Second Circuit later rejected arguments some IBT affiliates made that the Consent Decree did not apply to them:

Since the differences between the government and TDU positions involved potential remedies, not the merits of the underlying RICO claims, all sides agreed to postpone resolution of the motion until the case reached the remedies stage.[260] As it turned out, neither the IBT nor the mob was in a position to put up much of a defense to the government's case. The leadership of each was in disarray[261] and their cases were weak on the merits.[262] The parties reached a settlement resulting in the Consent Decree on the eve of trial, and although the district court later denied TDU's motion to intervene,[263] the motion had served to remind both sides, just as their settlement negotiations were heating up, of TDU's proposed alternative to a total government takeover.

TDU's proposal became the basis for key aspects of the Consent Decree. Although three court-appointed officials, with staff, would be in place to implement the remedy, oversee the investigation and expulsion of racketeers and mob associates from the union's ranks, and supervise elections,[264] the remedy was far less than a full trusteeship. Many of the IBT's top officers and GEB members remained in place, running the union until elections were held in 1991, and the court's appointees overseeing the Consent Decree could play no role in the union's collective bargaining or political activities.[265]

When it came to the IBT elections in 1991 and the years thereafter, the Consent Decree "read like paragraphs from the PROD . . . and TDU platforms to reform the IBT."[266] The agreement not only called for the direct

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> With regard to the elimination of the local union officers' *ex officio* status as Convention delegates, the Affiliates' position is actually adverse to the IBT membership. Under the Consent Decree, if local union members wish to send their local officers to the Convention as delegates, they need only vote for them in free elections. The Affiliates' argument in this regard is nakedly designed to prevent the membership from selecting delegates that it might prefer over those local officers who have caused their Affiliates to challenge the Consent Decree.
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> United States v Int'l Bhd. of Teamsters, 931 F.2d 177, 186 (2d Cir. 1991).

260. *TDU Presses for Right to Vote,* 85 CONVOY DISPATCH, Mar. 1989, at 1.

261. Jackie Presser, who had been on medical leave, died shortly after the case was filed, and a power struggle ensued within the General Executive Board (GEB) over who should succeed him and how to respond to the case, with the individual defendants wondering how they were going to pay their legal bills if the case went to trial. *See* CROWE, *supra* note 15, at 91-93, 96, 98, 102; JACOBS & COOPERMAN, *supra* note 47, at 31. (The DOJ was seeking to bar the union from paying their individual legal expenses. Goldberg, *supra* note 3, at 996 n.581.) The mob, meanwhile, "was reeling from the most aggressive law enforcement attack in U.S. history. Scores of LCN [Cosa Nostra] leaders were in prison; many of the rest were under indictment or anticipating indictment." JACOBS & COOPERMAN, *supra* note 47, at 21.

262. "With each deposition [of a member of the IBT's GEB] the underlying theme of the RICO case was being proven and reinforced: the union's top officers failed to act against corruption." CROWE, *supra* note 15, at 91. *See also* Lubasch, *Ex-Teamster Chief Tells Jury Union is Controlled by Mafia*, N.Y. TIMES, June 2, 1987, at 1, col. 3.

263. JACOBS & COOPERMAN, *supra* note 47, at 40, 46. TDU continued to participate in the case through *amicus curiae* briefs. *Id.* at 8.

264. *Id.* at 41-43.

265. *Id.* at 5, 223.

266. CROWE, *supra* note 15, at 99. *See also Racketeering Suit Is Settled by Teamsters—Union Agrees to Reforms Such as Direct Elections and Court Review Board*, WALL ST. J., Mar. 14, 1989, at 3 ("[T]he

elections of the top two IBT positions, General President and General Secretary-Treasurer[267]—it also required direct elections of all IBT Vice Presidents, eleven of whom would be elected on a regional basis.[268] In addition, the Consent Decree provided that all convention delegates—who would nominate, by secret ballot, the candidates to be voted on in the direct elections—must be elected shortly before the convention.[269] This was an important change TDU had been unable to obtain under the LMRDA, whether through administrative rulemaking at the Department of Labor or litigation in the courts.[270]

The leading study of the Teamsters' RICO case from a criminal law perspective summed up TDU's role in shaping the Consent Decree this way:

> The FBI and DOJ did not embark on *U.S. v. IBT* to make union democracy a reality in the Teamsters union. Nor were they motivated primarily by concern about the exploitation of rank-and-file Teamsters . . . . [They] adopted TDU's . . . election reform recommendations because . . . [they] came to believe that free and fair elections would bring about the ouster of corrupt union leaders and make the union more racketeer-resistant.[271]

Achieving a Consent Decree that called for direct, government supervised elections, however, was only one step. As the next section will demonstrate, TDU continued to play an outsized role in further shaping the details of the remedy and organizing rank-and-file Teamsters to take full advantage of the openings it created.

C. TDU and the Consent Decree's Implementation

Once the Consent Decree was in place, many details remained unresolved, particularly with respect to the elections. The court appointed Michael Holland, a Chicago labor lawyer and former general counsel of the United Mine Workers, as its Election Officer (EO).[272] One of his main tasks was to develop election rules to establish procedures—and appropriate

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terms of the settlement were greatly influenced by the concerns and platform of . . . Teamsters for a Democratic Union").

267. *Teamster Reform: How It's Lining Up*, 85 CONVOY DISPATCH, Mar. 1989, at 3.

268. CROWE, *supra* note 15, at 99; Goldberg, *supra* note 3, at 998. TDU would have preferred even more regional elections and smaller regions, because "[s]uch elections tend to produce at least one or two high-ranking officers, independent of the union president. These officers could be in a position to challenge a corrupt Presser-style leader." Letter from Ken Paff, *supra* note 242, at 5. *See also* PROD REPORT, *supra* note 24, at 90. That is a position supported in the academic literature. *E.g.*, J. DAVID EDELSTEIN & MALCOLM WARNER, COMPARATIVE UNION DEMOCRACY 319 (1975); Gamm, *The Election Base of National Union Executive Boards*, 32 INDUS. REL. 295 (1979). TDU had also favored shortening the terms of top IBT officials from five years to three, Letter from Ken Paff, *supra* note 242, at 5, but that suggestion went nowhere.

269. Goldberg, *supra* note 3, at 998.

270. *See supra* text accompanying notes 222-39.

271. JACOBS & COOPERMAN, *supra* note 47, at 20.

272. CROWE, *supra* note 15, at 106.

safeguards against fraud—for the elections of the convention delegates who would nominate the national candidates and for the direct membership votes to follow. As the district court emphasized, "[N]o question is more central to the ultimate success of this Consent Decree than this proposed framework [for conducting] . . . fully democratic, secret ballot elections . . . . *These election rules are the linchpin* in that effort."[273] They soon became a major source of concern for TDU and for the Association for Union Democracy (AUD), which joined TDU in efforts to influence the election rules' final form.[274]

The EO followed a notice and comment rulemaking process.[275] Both TDU and the AUD were alarmed by what they saw in the proposed rules. The court had previously made clear that the EO should carry out his duty to "supervise" the election in a manner giving the "most expansive and proactive" meaning to that term,[276] but the EO's proposed rules, according to the AUD, did just the opposite. They took such a passive approach to supervising the election they were "a recipe for disaster."[277] Their most glaring flaw was that the in-person voting, for convention delegates and for the top IBT officers, would take place at some 650 locations, perhaps even 1000, with virtually no supervision by the EO or his staff:

> Incredibly in both stages, the local incumbent officials will be in control of the election. The proposed rules do not require any supervision or oversight in the locals by any representative of the [EO]. The local election committee will organize the voting and count the ballots.[278]

The AUD explained that while the EO's approach might be appropriate "for a union already governed by a normally decent and democratic leadership. . .this is a union heavily infiltrated by organized crime."[279]

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273. United States v. Int'l Bhd. of Teamsters, 742 F. Supp. 94, 97 (S.D.N.Y. 1990), *aff'd* 931 F.2d 177 (2d Cir. 1991) (emphasis added).

274. The AUD is a small, civil liberties-type organization devoted to promoting democratic practices in American unions. Attorney Susan Jennik was its executive director during this period. After the Consent Decree was entered, the AUD established a "Teamster Fair Election Project" to help assure a fair election and an honest count. A decade earlier, it had established a similar election project in connection with a direct member election in the Steelworkers when Ed Sadlowski headed an insurgent slate in that union. While the AUD does not endorse candidates in union elections, it is no surprise that almost all requests for its assistance in union elections come from challengers, not incumbents. *AUD's Teamster Fair Election Project*, 78 UNION DEM. REV. 2 (Oct. 1990); CROWE, *supra* note 15, at 122, 249. For a description of the AUD's work by its founder and longtime executive director, see BENSON, *supra* note 24.

275. *Int'l Bhd. of Teamsters*, 742 F. Supp. at 98.

276. United States v. Int'l Bhd. of Teamsters, 723 F. Supp. 203, 206 (S.D.N.Y. 1989).

277. *AUD Letter: "Teamster Election Rules a Recipe for Disaster,"* 76 UNION DEM. REV. 1 (June 1990).

278. *Id.* (quoting Letter from Herman Benson, Judith Schneider, and Susan Jennik to Michael Holland (Mar. 30, 1990)).

279. *Id.* at 2. As Benson explained to a journalist, "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." CROWE, *supra* note 15, at 123.

TDU raised additional objections to the proposed rules. The EO had authorized only very limited access by accredited candidates to the union's membership lists, which they needed for campaign mailings and opinion polling of the IBT's membership.[280] He believed he was constrained by the limits placed on such access by an election provision of the LMRDA.[281] TDU argued that the circumstances surrounding the Teamster elections were at least as extraordinary as the elections in the United Mine Workers twenty years earlier.[282] The Department of Labor supervised those elections under the LMRDA much more heavily than what the EO was proposing. It also provided much greater access to the union's membership list.[283]

The EO's final rules did not address the major concerns raised by the AUD and TDU. When the rules were presented to the district court for its approval, the IBT predictably argued that they went much too far, while the Justice Department lawyers for the most part supported the EO's position.[284] The Justice Department's position disappointed the AUD and TDU because the U.S. Attorney's own comments on the proposed rules had urged the EO to take a more aggressive approach involving all-out, on-site supervision along the lines the AUD had urged.[285]

Only the AUD's and TDU's *amicus curiae* briefs called for more hands-on, direct supervision over all aspects of the election process.[286] They also called for greater access to the union's membership lists to help level the playing field for challengers running against entrenched incumbents enjoying all the advantages of incumbency.[287] Those briefs provided the basis for one of the few times the district court rejected recommendations from the EO.[288]

In addition to specifically ordering the election rules to provide accredited candidates with the access to the IBT's membership list that TDU

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280. United States v. Int'l Bhd. of Teamsters, 742 F. Supp. 94, 101 (S.D.N.Y. 1990).

281. *See* 29 U.S.C. § 481(c).

282. *Int'l Bhd. of Teamsters*, 742 F. Supp. at 101-02. From the beginning, TDU had been invoking the Mine Workers' precedents as models for the type of government supervision IBT elections would require. Letter from Ken Paff, *supra* note 242, at 4.

283. *See* Hodgson v. United Mine Workers, 344 F. Supp. 17, 36 (D.D.C. 1972).

284. Although the court cited a letter dated May 14, 1990 from the government's lawyers to the court as supporting the AUD and TDU positions, *Int'l Bhd. of Teamsters*, 742 F. Supp. at 106, that gave the May 14 letter a generous reading. While it stated that the EO should "err on the side of more, not less, supervision," it also stated that he "need not have representatives present at each and every phase of the electoral process or at each and every polling site." *How the Government Backtracked on the Election Rules*, 77 UNION DEM. REV. 3 (Aug. 1990). That was in contrast to the March 30 letter to the EO, where the U.S. Attorney had urged the EO to "have representatives on hand to monitor all phases of that process . . . including particularly the actual voting and the counting and securing of the ballots." *Id.*

285. *How the Government Backtracked on the Election Rules*, *supra* note 284.

286. *Int'l Bhd. of Teamsters*, 742 F. Supp. at 106.

287. *See* James, *supra* note 198, at 337-38; Summers, *supra* note 3.

288. United States v. Int'l Bhd. of Teamsters, 742 F. Supp. 94 (S.D.N.Y. 1990), *aff'd*, 931 F.2d 177 (2d Cir. 1991); JACOBS & COOPERMAN, *supra* note 47, at 62.

had pushed for,[289] the court emphatically rejected "the fundamental philosophy" behind the EO's approach of "allow[ing] local unions significant autonomy" in running the elections of the convention delegates and IBT officers:

> These final election rules fall short [of the court's mandate] since they do not provide for the Election Officer to supervise each and every portion of the election process. . . . *[T]he 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.[290]

Given the cost and logistical challenges of closely supervising in-person voting at as many as 1,000 individual voting sites,[291] the EO soon determined that almost all voting in delegate elections, and all voting for the national candidates, would be conducted by mail ballots, which the EO would print, mail, receive, and count.[292]

Once the new election rules were in place, TDU's focus turned to organizing Teamsters to get involved in the election process: to run for convention delegate, to circulate petitions to get candidates accredited, to raise money for candidates, and of course, to get out the vote. At its 1989 convention, TDU endorsed the candidacy of Ron Carey for the IBT's presidency.[293] Carey was the head of a large New York-area UPS local who had been famously profiled by author Steven Brill as the very opposite of the mobbed-up leaders who dominated the IBT in the wake of Jimmy Hoffa's disappearance.[294] Although he was never a TDU member and "carefully kept himself at a distance,"[295] Carey's reform slate eventually included ten TDU members, including the first woman ever elected an IBT vice president, Canadian Teamster Diana Kilmury.[296]

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289. *Int'l Bhd. of Teamsters*, 742 F. Supp. at 101-04. To be accredited, candidates had to get signatures from 2.5 percent of the union's electorate (nationally for the top two officers and at-large vice presidents and regionally for regional vice presidents). Any candidates who misused the membership lists for purposes unrelated to the election risked being held in contempt of court. Under the rules, accredited candidates also got to have their campaign literature published and distributed free of charge in so-called "battle pages" to be included in two issues of the IBT's *Teamster Magazine*. JACOBS & COOPERMAN, *supra* note 47, at 86.

290. *Int'l Bhd. of Teamsters*, 742 F. Supp. at 106 (emphasis added). The court of appeals affirmed in all significant respects. United States v Int'l Bhd. of Teamsters, 931 F.2d 177 (2d Cir. 1991).

291. *See supra* text accompanying note 278.

292. *See* Feldman, *supra* note 206, at 553-54, 554 n.56. Another reason for choosing mail ballots is that the percentage of potential voters who actually vote tends to be higher. JACOBS & COOPERMAN, *supra* note 47, at 98.

293. CROWE, *supra* note 15, at 144.

294. STEVEN BRILL, THE TEAMSTERS 156-99 (1978).

295. CROWE, *supra* note 15, at 144.

296. *Id.* at 259.

During the campaign, approximately 1,500 election protests were filed with the EO.[297] TDU and AUD lawyers were drawn into hundreds of them, helping to draft protests and present evidence in hearings before the EO or appeals pursuant to Consent Decree procedures. In some cases, TDU lawyers pursued these election protests all the way to the court of appeals.[298]

One of the most important EO decisions addressed whether TDU as an organization could participate in the election process at all. The Consent Decree had imposed limits on the sources and kinds of outside support candidates could accept.[299] Ron Carey's opponents argued he could not accept assistance from TDU because its nonprofit arm, the Teamsters Rank and File Education and Defense Fund (TRF), accepted contributions from non-Teamsters, who were barred from contributing to campaigns.[300] The EO ruled that because TDU was a caucus within the union comprised exclusively of Teamsters, it could freely participate in the election on an independent basis.[301] However, it could not use any funds from TRF to support its election-related activities and it would have to keep careful records to show that there was no comingling of funds.[302]

The EO's procedures for supervising that outcome, however, put TDU and the AUD in a bind that forced them into a bitter legal dispute with the EO and District Court Judge David N. Edelstein, who had been presiding over the case from the beginning.[303] The EO was requiring TDU, TRF, and the AUD to disclose—not just to the EO, but also to all the candidates—lists of their contributors and supporters.[304] When TDU attorney Paul Levy tried to argue before the district court that such disclosures could open their contributors up to very real threats of economic or physical retaliation,[305]

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297. After the election, the EO issued a report containing a statistical analysis of the nature and resolution of the protests and more detailed descriptions of some of the most noteworthy examples. MICHAEL H. HOLLAND, THE COOKBOOK: HOW THE ELECTION OFFICER SUPERVISED THE 1991 TEAMSTER ELECTION 6:1-42 (July 1992).

298. *E.g.*, United States v. Int'l Bhd. of Teamsters, 948 F.2d 98 (2d Cir. 1991), *vacated as moot*, 506 U.S. 802 (1992) (upholding EO rule permitting non-employee union members to campaign in employers' parking lots if there are no feasible alternatives).

299. CROWE, *supra* note 15, at 98. The AUD had raised concerns at the time that these restrictions went too far. Herman Benson, *Discussing the RICO-Teamster Suit Settlement*, UNION DEM. REV. 4 (June 1989).

300. *See* JACOBS & COOPERMAN, *supra* note 47, at 97.

301. HOLLAND, *supra* note 297, at 15-17.

302. *Id.*

303. Before they filed their case, the government's lawyers took advantage of the court's procedures to steer the case to Judge Edelstein, who had a reputation for being very government-friendly. JACOBS & COOPERMAN, *supra* note 47, at 20.

304. United States v. Int'l Bhd. of Teamsters, 968 F.2d 1506, 1508-09 (2d Cir. 1992).

305. *See* NAACP v. Alabama, 357 U.S. 449, 462 (1958) (holding that Alabama violated the first amendment rights—specifically the freedom of association—of NAACP members by requiring disclosure of the organization's membership lists, which risked exposing those members "to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility").

Judge Edelstein seemed to disbelieve that such fears could be justified that far into the Consent Decree's administration.[306] At one point, as the court of appeals later noted, the hearing was adjourned "for the ostensible purpose of hearing . . . witnesses concerning credible fears of retaliation . . . . [H]owever, when TDU . . . produced nine witnesses who were prepared to testify, the district court did not hear any evidence."[307] At the hearing's conclusion, Judge Edelstein expressed frustration with Levy and TDU for even raising the issue: "I am very disappointed in you and your [clients]. We no longer seem to be sharing the same objective . . . . You are now an adversary instead of an amicus. Now go to the court of appeals."[308]

The district court and, initially, the Second Circuit denied TDU's request for a stay of the EO's disclosure requirements pending appeal.[309] That forced TDU to make a Hobson's choice between compromising the anonymity, and perhaps the safety, of its supporters and seeing the EO ban the Carey slate from receiving any further TDU assistance.[310] However, the court of appeals granted a stay a few weeks later, which remained in place through the rest of the election.[311] The court eventually resolved the issue in TDU's favor, ruling that neither the Consent Decree nor the All Writs Act gave the EO jurisdiction over TDU.[312] The court thus avoided the need to address TDU's more substantive First Amendment arguments.[313]

When all the votes were finally counted, the Carey slate won a hard-fought victory.[314] It had two electoral advantages beyond the critically important government supervision that made the vote fair. First, Carey was running in a three-way race, with the old guard's support split between two competing slates. Carey was able to win with a plurality, not a majority, of the vote.[315] Second, TDU became, in effect, Carey's campaign organization, based in the network of experienced and often battle-tested rank-and-file activists all over the country that it had built over the prior fifteen years. As one of Carey's lawyers put it, "TDU has a network of very dedicated and

306. During the hearing, Judge Edelstein said, "I believe this is the time for the TDU to come out of the closet, stand up and be counted. . . . If they wish anonymity, that itself points a finger of suspicion about the quality of the leadership in this TDU." CROWE, *supra* note 15, at 248.

307. *Int'l Bhd. of Teamsters*, 968 F.2d at 1509.

308. CROWE, *supra* note 15, at 249.

309. *Int'l Bhd. of Teamsters*, 968 F.2d at 1510.

310. The AUD was already the subject of such a ban. *See* CROWE, *supra* note 15, at 250.

311. *Int'l Bhd. of Teamsters*, 968 F.2d at 1510.

312. *Id.* at 1511-12. This was the first time in the case the court of appeals overruled a decision by Judge Edelstein. JACOBS & COOPERMAN, *supra* note 47, at 97.

313. *See supra* note 305.

314. JACOBS & COOPERMAN, *supra* note 47, at 98-99.

315. Carey received 48 percent of the vote. R.V. Durham, an IBT vice president who also headed a large North Carolina local, the North Carolina Joint Council, and the IBT's health and safety department, received 33 percent, and Walter Shea, an IBT vice president and executive assistant to four previous IBT presidents, received 19 percent. *Id.* at 91-92, 98-99.

hardworking activists. *It is the only network out there.*"[316] Even the incumbents were no match for TDU's organizing:

> On the national level, the old guard. . .had never been forced to organize their support. They relied on lining up the endorsements of middle-level officials, but they did not seem to grasp that the "support" of these eminences was worthless unless they in turn took steps to see that the members were spoken to, received campaign literature, and actually voted. The Teamster bureaucracy was incapable of acting like a real political machine because it never needed to before.[317]

Unfortunately for the old guard, TDU had spent the prior fifteen years in the trenches, organizing, educating, and mobilizing a network of rank-and-file activists that became, if not "a real political machine," then at least an effective campaign organization and prominent voice for continued reform in the IBT and the entire labor movement.

V. EPILOGUE

While it lasted, Carey's reform administration was a breath of fresh air, not just for the Teamsters but for the labor movement as a whole. For example, the IBT's 1997 strike against UPS was one of the biggest and most successful strikes in recent labor history.[318] And the support Carey gave as IBT president to John Sweeney's "New Voice" slate in the 1995 AFL-CIO leadership election led to an insurgent slate's victory over the Federation's incumbents for the first time in over a century.[319]

Unfortunately, it didn't last. During his 1996 reelection campaign, Carey faced a well-funded old guard reunited behind Jimmy Hoffa's son, James P. Hoffa. In contrast to 1991, Carey brought in to run his campaign outside political consultants who "had little or no connection to the Teamster membership, and bypassed key rank-and-file leaders who had organizing skills and a political base."[320] Carey ended up winning a very close

316. CROWE, *supra* note 15, at 145 (quoting Richard N. Gilberg) (emphasis added). Put another way, Carey provided the name, but TDU provided the organization. Belzer & Hurd, *supra* note 38, at 349.

317. Feldman, *supra* note 206, at 534.

318. *See* David Moberg, *The UPS Strike: Lessons for Labor*, 1 WORKING USA 11, 29 (Sept.-Oct. 1997); Michael Schiavone, *Rank-and-File Militancy and Power: Revisiting the Teamster Struggle with the United Parcel Service Ten Years Later*, 10 WORKING USA 175, 182 (Jun. 2007); Matt Witt & Rand Wilson, *The Teamsters' UPS Strike of 1997: Building a New Labor Movement*, 24 LAB. STUD. J. 58, 59 (1999).

319. *See* BENSON, supra note 24, at xv-xviii; Frank Swoboda, *AFL-CIO Elects New Leadership*, WASH. POST (Oct. 26, 1995), https://www.washingtonpost.com/archive/politics/1995/10/26/afl-cio-elects-new-leadership/0ef5ab9a-e9dc-4b49-beec-ce332e43555c [https://perma.cc/HLS4-9QAT]. Although the Sweeney slate's victory was as much a palace coup as it was a popular revolt, most sympathetic observers at the time believed the labor movement was better off for the new blood at the top. *See, e.g.*, STANLEY ARONOWITZ, FROM THE ASHES OF THE OLD: AMERICAN LABOR AND AMERICA'S FUTURE 17 (1998).

320. Belzer & Hurd, *supra* note 38, at 352.

election,[321] but evidence surfaced that his senior campaign staff had set up an elaborate scheme to launder union funds for campaign use and Carey had failed to stop it.[322] As a result, the EO overturned his reelection on August 22, 1997.[323] Carey was barred from participating in the rerun election and was later expelled from the union.[324]

The illegal activities of Carey's reelection campaign were a significant setback to reform in the IBT and a major embarrassment to TDU. Nevertheless, TDU regrouped and, in the subsequent rerun election, provided the backbone for the reform campaign headed by Tom Leedham, the secretary-treasurer of Local 206 in Oregon and the head of the IBT's warehouse division under Carey.[325] Outspent by a huge margin and waging an uphill battle to overcome Hoffa's name recognition, the Leedham slate nevertheless managed to win close to 40 percent of the vote.[326]

TDU continued to support reform slates in subsequent elections, including one led by Sandy Pope, a TDU activist and the head of New York Local 805, who was the first woman to run for the IBT's presidency.[327] Before 2021, all those TDU-backed candidates lost, but TDU continued to function "[i]n essence . . . as a rank-and-file political party within the international organization . . . opposed to the administration currently led by James P. Hoffa."[328] It continued doing what it had always done: fielding reform slates in local union elections, calling to the attention of federal prosecutors and the union's Independent Review Board evidence of corruption and remaining mob ties that Hoffa's administration often ignored, and organizing around the negotiation and ratification of major Teamster contracts and often local contracts as well. During much of this period, Barbara Harvey was TDU's most important lawyer.[329] She was heavily

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321. JACOBS & COOPERMAN, *supra* note 47, at 132.

322. *Id.* at 133-35.

323. *Id.* at 135-36, 140-42; *see also* Steve Early, *What Went Wrong? The Campaign Money Scandal of Teamster President Ron Carey*, IN THESE TIMES (Dec. 14, 1997), https://inthesetimes.com/article/what-went-wrong [https://perma.cc/E5Y6-UCBG].

324. JACOBS & COOPERMAN, *supra* note 47, at 135-36, 140-42; *see also* Early, *supra* note 323. Carey was subsequently acquitted on federal charges of perjury and filing false reports. Steven Greenhouse, *Ron Carey, Who Led Teamster Reforms, Dies at 72*, N.Y. TIMES, Dec. 13, 2008, https://www.nytimes.com/2008/12/13/us/13carey.html [https://perma.cc/8F28-2CTW].

325. JACOBS & COOPERMAN, *supra* note 47, at 150, 195.

326. *Id.* at 151 (noting that a third candidate won 6 percent of the vote).

327. Steven Greenhouse, *In the Teamsters, A Candidate Tries to Break the Mold*, N.Y. TIMES (June 27, 2011), https://www.nytimes.com/2011/06/28/business/28teamsters.html [https://perma.cc/4B79-ZBRB].

328. Serafinn v. Local 722, Int'l Bhd. of Teamsters, 597 F.3d 908, 911 (7th Cir. 2010).

329. In part, this was because during the James Hoffa years, Public Citizen caused Paul Levy to give up much of his TDU work. During Carey's presidency, the IBT and Public Citizen had become allies in work related to the North American Free Trade Agreement. After Hoffa's election, cutting back the Litigation Group's union democracy work was the price Public Citizen had to pay for continuing that alliance. Email from Paul Alan Levy to the author, June 23, 2023 (on file with author).

involved in negotiations over revisions to the Consent Decree's election rules and provided critical legal assistance to the campaigns of Hoffa's challengers, as well as to TDU activists in many Teamster locals trying to resist Hoffa's efforts to turn back the clock on reform.[330]

TDU always understood that the effectiveness of its proposal for direct elections "does not require that challengers win the election. The very threat of a rank-and-file election will have a chastening effect on the leadership."[331] As Paul Levy noted after his clients lost the contract ratification vote that followed his important legal victory in *Bauman v. Presser*,[332] even a lost ratification vote, if a fair one, can be an important "barometer of membership dissatisfaction, to which leaders will respond if they are compelled to recognize its extent."[333] Losing outcomes in bylaws campaigns and union officer elections can have the same effect: "Practices and policies may be modified to meet the criticism and lower the level of discontent. Although the incumbent oligarchy stays in power, it becomes responsive to the election returns."[334]

But sometimes lightning does strike twice, as it did in the IBT in 2021 when the union voted reformers into its top offices for a second time.[335] Hoffa's last victory, in 2016, had been a squeaker,[336] and as the 2021 election approached, Hoffa announced he would not seek another term. That created the opening for a victory by TDU-backed challengers over a slate Hoffa had endorsed to be his successors. Once in office, those new reformers seemed to pick up right where the reformers of the Carey era had left off—by winning a major collective bargaining victory over UPS, the union's biggest employer.[337]

CONCLUSION

Teamsters for a Democratic Union has been a major force inside one of the country's most important and powerful unions for almost fifty years.

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330. Two representative cases are *Roadway Express, Inc.*, 355 N.L.R.B. 197 (2010), *enforced*, Roadway Express, Inc. v. NLRB, No. 10-12445, 2011 U.S. App. LEXIS 10832 (11th Cir. 2011) and *Magriz v. Union de Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143 (D.P.R. 2011). *See* discussion *supra* text accompanying notes 63-70, 90-92.

331. Letter from Ken Paff, *supra* note 242, at 8.

332. *See supra* notes 165-77 and accompanying text.

333. Levy, *supra* note 159, at 243, 248 n.105.

334. Summers, *supra* note 3, at 106.

335. Scheiber, *supra* note 31.

336. Hoffa actually lost the vote among U.S. Teamsters, achieving his narrow victory with the help of winning margins among Canadian Teamsters. Alexandra Bradbury, *In Election Squeaker, Teamsters United Nearly Topples Hoffa*, LAB. NOTES (Dec. 15, 2016), https://labornotes.org/2016/12/election-squeaker-teamsters-united-nearly-topples-hoffa [https://perma.cc/UAA5-DKYC].

337. Noam Scheiber, *UPS Reaches Tentative Deal with Teamsters to Head off Strike*, N.Y Times, July 25, 2023, https://www.nytimes.com/2023/07/25/business/economy/ups-teamsters-contract-strike.html [https://perma.cc/NM9X-HUW7].

Given all the forms of retaliation its members faced, the fact that TDU even survived its first decade makes its legal history worthy of study. It exposes some of the strengths and weaknesses of the statutes and legal doctrines intended to protect the rights of union members to engage in exactly the kind of rank-and-file activism TDU promoted.

But TDU didn't just survive. It went on to transform the Teamsters into one of the most democratic unions in the American labor movement. Of course, TDU's organizing did not achieve that transformation on its own, even with the assistance of a "TDU bar association" of labor lawyers and public interest lawyers dedicated to the cause of union democracy. It took the Justice Department's RICO case to create the openings TDU was able to exploit. However, it is equally true that federal prosecutors alone and the trusteeship they originally proposed would not have accomplished that transformation without TDU's role in shaping the remedy and then organizing rank-and-file Teamsters within its framework. The government was interested in fighting crime, not in promoting union democracy, and certainly not in promoting a rank-and-file insurgency. Without TDU, it is possible—but by no means certain—that the government's attack on the mob would have succeeded, but it might have weakened or even destroyed the union in the process. Certainly, any union emerging on the other side of the trusteeship as originally conceived would have looked very different from the Teamsters of today.

The balance TDU and its lawyers struck to utilize the law in the service of TDU's organizing agenda, and not as a driver of that agenda or as an alternative to it, can serve as a good model for other rank-and-file and grassroots activists, whether inside the labor movement or out in the broader community. As TDU's Ken Paff put it many years ago, "We don't *rely* on the government or the law. We use the government and the laws, and we *rely* on the rank and file."[338] One can only hope, though, that other groups trying to follow that approach have the same success that TDU had in finding movement lawyers willing to join them in their struggle.

338. LA BOTZ, *supra* note 2, at 326.