



The Bradlau Group, LLP

Final Report by Independent Examiner

for

International Union of Elevator Constructors, Local 1

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**Final Report to
Local 1 President/Business Manager and USAO EDNY
October 10, 2008**

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Final Report to Local 1 President/Business Manager and USAO EDNY October 10, 2008

On October 5, 2005, International Union of Elevator Constructors Local 1 (Local 1) and the United States Attorney for the Eastern District of New York (USAO EDNY) entered into a Non-Prosecution Agreement (Agreement) that allowed Local 1 to avoid criminal prosecution in exchange for undertaking specified remedial measures.¹ The Agreement also obligated Local 1 to engage an Independent Examiner chosen by the USAO EDNY to monitor the local's compliance with the terms of the Agreement. In March 2006, The Bradlau Group, LLP (TBG) was engaged by Local 1 as the Independent Examiner.

Continuing through October 6, 2008, TBG observed, recorded and is now reporting on Local 1's success in implementing and/or sustaining the remedial measures specified in the Agreement. TBG is pleased to report that Local 1 has achieved at least substantial compliance with all the terms and conditions of the Agreement and has achieved full compliance with most.

BACKGROUND

International Union of Elevator Constructors Local 1

Local 1 is the collective bargaining agent for nearly three thousand elevator constructors in the New York City metropolitan area. Local 1 has jurisdiction over elevator work in the five boroughs of New York City and elevator work in the surrounding counties of New York, and New Jersey located within thirty-five miles of New York City Hall, including all of Long Island, but excluding all of Monmouth County. At this writing, there are about 2700 members of Local 1. Of these, about 900 work in construction, 375 in modernization, and 1000 in service or repair. There are currently thirty-three active members classified as operators, or about 1% of the total membership. Through July 2008, approximately 31% of the work hours credited to Local 1 members were earned in construction, 14% in modernization, 42% in service and repair, and .2% operating construction elevators and hoists.

In addition to representing the membership in collective bargaining, Local 1 supports and participates in elevator industry apprenticeship and other training programs, and provides health, welfare and retirement benefits through the National Elevator Industry Benefit Plans and the Local 1 Annuity Fund. These plans are governed by boards of trustees that include both union and employer

¹ The full text of the Agreement, along with all of the exhibits that were attached to and incorporated in the Agreement, is attached to this report as Exhibit 1.

representatives. Local 1 also provides death benefit coverage to its members. This death benefit is funded through an insurance policy.

The Criminal Scheme

City and Federal law enforcement agencies investigating fraud and corruption in the New York City construction industry uncovered a no-show jobs scheme involving operators of temporary construction elevators and hoists that went on for about twelve years, from 1989 through early 2001. This scheme took advantage of then shared jurisdiction claimed by Local 1 and International Union of Operating Engineers Local 14 (Local 14) over so-called “joint venture” or “dual purpose” cars that were used alternately to transport personnel and materials. According to the Government, this scheme cost New York City construction companies at least \$6 million in just its last two years.

As part of this racketeering scheme, a certain select group of Local 1 members was dispatched by corrupt Local 1 officers to run construction elevators and hoists used to move personnel on about twenty high rise construction projects in New York City. The Local 1 Constitution and By-Laws² and Collective Bargaining Agreements (CBAs) with the contractors’ associations required Local 1 to impartially refer qualified operators for employment based on an open employment list maintained and kept current by Local 1. Nevertheless, Local 1 officers participating in the racketeering scheme circumvented the list and hand picked operators to put on contractor payrolls at particular construction sites. These hand picked operators submitted fraudulent time sheets claiming that they worked hours that had not been worked. These operators either grossly inflated the hours they worked or they did not appear on the construction sites at all. The Local 1 members who participated in the scheme kicked back to the corrupt union officers a portion of the wages they were paid by the contractors. In exchange for allowing their names to be used for no-show jobs, the operators who participated in the scheme profited by receiving a portion of the ill-gotten wages and inflated employer contributions to their pension and annuity plans.

In addition, some people affiliated with Local 1 approached contractors and employers at various non-union job sites where Local 1 elevator operators were not employed and demanded payments in return for not disrupting work at the sites. One way these labor peace payments were hidden was by putting Local 1 members on the contractors’ payrolls. Paychecks were generated based on fraudulent time sheets claiming hours had been worked by Local 1 elevator operators when, in fact, they had not.

² Article XVI – Duties of Day Secretary.

Federal Criminal Prosecutions

The indictments were unsealed in February 2002. One associate and twenty-six members or officers of Local 1 were prosecuted by the USAO EDNY and convicted for the part each played in the criminal no-show jobs scheme. At the time the indictments were unsealed, there were about 2,600 Local 1 members. Of these, about 150 were classified as Operators. It is difficult to fix an exact number because only the corrupt officers knew who was being offered the opportunity to work as an operator.

The Government charged that Charles L. Novak, who was a Local One Vice President/Business Agent until 2000, and Matthew Joseph Downey and Anthony DeGennaro, who acted as Local One representatives at various construction sites around New York City, were members of a racketeering enterprise ("The Local One Operators' Crew") that corrupted Local 1 through the no-show job scheme and other crimes, and that they abused Local 1 members' right to employment referrals through an open employment list. The Government charged that four additional people who acted as representatives of Local 1 at various construction sites, William C. Barthold, David Coakley and William Tracy, along with Susan DeGennaro, the spouse of Anthony Degennaro, conspired with Novak, Downey and Anthony DeGennaro to commit various crimes, including demanding and receiving unlawful labor payments, mail fraud, extortion, interstate transportation of property converted and taken by fraud, money laundering and witness tampering. Robert Shannon, who was a Local 1 Vice President/Business Agent, and Terence Carr,³ who was a member of the Local 1 Executive Board, each was charged with demanding and receiving unlawful labor payments in violation of the Taft-Hartley Act.

Most of the members and all of the union officers who were convicted are no longer affiliated with Local 1.⁴ Novak currently is in federal prison.

Change in Local 1 Leadership after the Federal Indictments

Then President/Business Manager, John Green, and Secretary/Treasurer, Anthony "Tony" Orrigo, were not indicted by the Government in the no-show jobs scheme. However, in 2003 they were removed from office by the IUEC for violating union rules. Green and Orrigo were brought up on charges and tried before a disciplinary panel convened in Philadelphia by the IUEC General President. Green and Orrigo were found guilty of transferring \$78,000 of union funds to Orrigo in the form of extra paychecks as compensation for "overtime" without having first obtained proper authorization to make these payments to Orrigo. After Green and Orrigo were removed, the four Local 1 VP/Business

³ Terence Carr is the son-in-law of John Green, who was Local 1's President/Business Manager from 1984 to 2003.

⁴ Terence Carr is currently employed by the International Union of Elevator Constructors as an organizer in Local 1's geographic area.

Agents met to select one of their number as interim President/Business Manager. Raymond Hernandez (Hernandez) was selected. Hernandez then named Anthony Carudo (Carudo) interim Secretary/Treasurer and scheduled a special election to select replacements to serve the remainder of Green's and Orrigo's terms of office. Hernandez and then Day Secretary Joseph Nolan (Nolan) were the nominees for President/Business Manager; Carudo and Michael Duffy (Duffy) were the nominees for Secretary/Treasurer. Hernandez and Carudo were elected to Green's and Orrigo's unexpired terms. Nolan continued to serve as Day Secretary until shortly before the regularly scheduled Local 1 General Election in June 2004, when he resigned and pulled out of the race for Day Secretary, leaving Gary Reifenhauser (Reifenhauser) to run unopposed. Hernandez and Carudo were both elected to full three year terms as President/Business Manager and Secretary/Treasurer respectively in June 2004.

Accordingly, at the time the terms and conditions of the Agreement were negotiated with the USAO EDNY, and when TBG's term as the Independent Examiner required by the Agreement began, the paid officers of Local 1 were: Hernandez, President/Business Manager; Carudo, Secretary/Treasurer; Reifenhauser, Day Secretary; and Edward Krull, Leonard Legotte (Legotte), Fredrick McCourt, Jr. (McCourt), and Robert Stork (Stork) Vice Presidents/Business Agents.

The Non-Prosecution Agreement

In addition to evidence demonstrating criminal misconduct by individual officers and members of Local 1, the federal investigation also produced evidence of wrongdoing attributable to Local 1 itself. In October 2005, after lengthy negotiations with Local 1's counsel and special defense counsel, the USAO EDNY agreed not to prosecute the organization if the union would undertake to implement certain remedial measures spelled out in a formal Non-Prosecution Agreement.

The Agreement requires Local 1 to undertake specified remedial measures to address concerns raised by the USAO EDNY and other law enforcement and regulatory bodies about Local 1's internal controls; hiring list and work assignment practices; labor practices; and disciplinary and election procedures. In addition to pledging to comply with the terms of the Agreement, Local 1 also committed to comply with all applicable laws. Through this undertaking the Local 1 leadership made a commitment to the USAO EDNY, the Local 1 membership, and the public that the integrity of Local 1 would be restored.

The Independent Examiner

Pursuant to the Agreement, the USAO EDNY appointed TBG as the Independent Examiner charged with reviewing and monitoring Local 1's: internal controls;

hiring list and work assignment practices; labor practices; disciplinary and election procedures; and compliance with applicable laws and the Agreement.

This Final Report to Local 1's President/Business Manager and the USAO EDNY is submitted by TBG as the Independent Examiner pursuant to paragraph 9.d. of the Agreement.⁵ This report was preceded by three Semi-Annual Confidential Reports to Local 1's President/Business Manager and the USAO EDNY. The President/Business Manager presented each of these confidential reports to Local 1's Executive Board for review. Although there is provision in the Agreement for making all or part of this Final Report public, paragraph 9.d. states, "All other Reports will remain confidential." To ensure that the members of Local 1 are given the fullest disclosure possible of the observations and findings of the Independent Examiner, much of the substance of the preceding three confidential reports is incorporated in this Final Report.

Paragraph 9.d. of the Agreement requires the Independent Examiner to evaluate and report on the progress made by Local 1 in implementing and/or sustaining the remedial steps detailed in paragraph 6 of the Agreement. Although Local 1 has not achieved full compliance with all the terms of the Agreement, Local 1 has achieved at least substantial compliance with each of the remedial steps. In our judgment, full compliance with certain steps specified in the Agreement was rendered impractical by changes in circumstances that were likely not anticipated in October 2005 when the Agreement was executed.

In addition to observing, recording, evaluating and reporting on the progress made by Local 1 in implementing and/or sustaining the remedial steps detailed in paragraph 6 of the Agreement, TBG also investigated a series of allegations and monitored how the local's leadership responded to several challenges related to the broader responsibility of the local to comply with the overall terms of the Agreement and with applicable law.

SUMMARY OF TBG CONCLUSIONS ABOUT LOCAL 1 IMPLEMENTING and/or SUSTAINING THE REMEDIAL MEASURES REQUIRED BY THE AGREEMENT

Local 1 was required to comply with all the terms and conditions of the Agreement and with applicable law, rule and regulation. Local 1 has achieved at least substantial compliance with all the terms and conditions of the Agreement and has achieved full compliance with most.

⁵ This provision says, in pertinent part:

... the Independent Examiner, at the expiration of his or her term, will file a Final Report, which report will be made public; except that at the discretion of the Examiner and the USAO in consultation with Local 1, portions of the final report may remain confidential.

The Agreement requires Local 1 to undertake six categories of remedial measures. These measures are detailed in Paragraph 6, subparagraphs a through f. Four of these remedial measures directly address the historical criminal scheme described above by requiring specific reforms intended to ensure that members have fair access to work opportunities, that operators are paid for no more than the hours they actually work and that no one but duly elected or appointed officials of Local 1 hold themselves out to employers as representatives of the local. Another remedial measure addresses governance of the local by requiring that elections be fair, nondiscriminatory, open and democratic. The Agreement also required changes to Local 1's disciplinary practices. The details of the disciplinary reform are specified in Paragraph 7 of the Agreement.

The specified remedial measures are set forth below in ***bold print***, exactly as they appear in the Agreement.

- a. ***Implementing a procedure to effectively monitor the assignments and hours worked of elevator operators, to ensure that operators are only paid for hours for which they work or are entitled to vacation or holiday pay.***
- b. ***Implementing procedures to ensure that the operator hiring list is maintained in a fair and impartial manner and elevator operators are only hired from the operator hiring list.***
- c. ***Implementing procedures to computerize and make available to all members the current and historical operator hiring lists, including job assignments.***
- d. ***Implementing procedures to ensure that Local 1's elections are conducted in a fair, nondiscriminatory, open and democratic manner, as consistent with the Labor Management Reporting and Disclosure Act (LMRDA). Such procedures shall ensure that no candidate or member be intimidated in any way in connection with an election.***
- e. ***Implementing a procedure to immediately investigate, bring charges against and discipline any Local 1 member for violation of the constitution or by-laws of Local 1 of the International. Local 1 also agrees to apply these same procedures to members and officers who violate any state, federal or Local law if such violation brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law. Under such circumstances, Local 1 agrees that such a violation by any Local 1 member is a serious***

matter that reflects on the integrity of Local 1, and shall be treated as such.

- f. Bar any practice or procedure that allows any Local 1 member or other person who is not an officer or employee of Local 1, or an officially designated shop steward or organizer, to act in any way on behalf of Local 1 or its members in any way connected to Local 1 business.***

The following is a brief summary of TBG's conclusions about Local 1's success in implementing and/or sustaining these remedial measures. Our conclusions, and the bases for these conclusions, are discussed more fully beginning at Page 13.

- Local 1 is in substantial compliance with the requirements of the Agreement pertaining to work hours and hiring lists (paragraphs **6.a.** through **6.c.** above). Full compliance with the specified remedial measures is impractical because circumstances have changed since the Agreement was executed. In particular, Local 1 lost jurisdiction over "dual purpose" or "joint venture" cars to Local 14 and, as a consequence, there has been and will continue to be no work for operators except for occasional patch work.
- Local 1 is in compliance with the remedial step requiring procedures to ensure "open and democratic" elections (paragraph **6.d.** above).
- Local 1 is in compliance with the requirement that it implement a procedure to immediately investigate and bring charges against any member who engaged in misconduct (paragraph **6.e.** above).
- Finally, as to barring any practice that allows unauthorized persons to act on behalf of Local 1 (paragraph **6.f.** above), Local 1 is in compliance with the Agreement and we report that TBG has received no reports nor obtained any evidence that such practice has occurred during the period that TBG has been the Independent Examiner.

SUMMARY OF ALLEGATIONS INVESTIGATED AND CHALLENGES MONITORED

Through appearances of TBG staff at Executive Board and General meetings, frequent visits to the union hall and an announcement in the Local 1 newsletter, TBG advertised the firm's presence as Independent Examiner, our toll free telephone number (866-674-1824)⁶ and our availability and willingness to receive and investigate behavior that may undermine remedial measures required by the Agreement and/or allegations of misconduct that threaten the integrity of the union.

⁶ No allegations were received through this toll free number. All the allegations that TBG received were communicated in person, by mail, email or through telephone calls to TBG's main number.

From April through December 2006 TBG received eighteen (18) allegations of misconduct by officers of Local 1 that we deemed to merit further attention and/or inquiry. Each of the eighteen allegations was brought to our attention by current or former members of Local 1, with the possible exception of one allegation that was made in an anonymous letter. TBG communicated these allegations to the USAO EDNY and to the United States Department of Labor (USDOL). TBG reported to these law enforcement agencies on the progress and results of the inquiries that we undertook in pursuit of evidence that the alleged misconduct did or did not take place. As to one of the eighteen allegations, TBG did not conduct its own independent investigation, but deferred to the appropriate criminal law enforcement agencies. The lead agency investigating this incident could not substantiate the allegation and did not recommend criminal charges against anyone. Similarly, despite extensive evidence gathering activities, TBG was unable to substantiate the other seventeen allegations. In the absence of credible evidence to support these allegations, no one has been charged with committing any of the improper acts that were alleged.

In the period immediately preceding the Local 1 general election in June 2007, there were several charges and countercharges of misconduct among members that appear to have been alleged in pursuit of political advantage. The complainants and cross-complainants initiated union disciplinary proceedings. TBG did not pursue these election related allegations, opting instead to observe and record how the leadership of Local 1 and the leadership of the IUEC handled them. As will be described at some length below, we conclude that the leadership handled the allegations competently and in a manner consistent with established procedures.

Other allegations include that people admitted to Local 1 as so-called “quota hires” are/were a factor in deciding who has political control over the local and that so-called “patchwork”⁷ was not being distributed fairly among the unemployed operators. TBG concluded that neither of these allegations is supported by the evidence. Each of these allegations is discussed more fully below.

THREE YEAR PERIOD OF REHABILITATION: SPECIAL CHALLENGES

In addition to the challenges that any organization can expect to face during a period of rehabilitation, Local 1 faced several special challenges: recovering

⁷ “Patch work” and “patching the hatch” are expressions that refer to the floor by floor process of patching or sealing all the gaps and imperfections in the interior walls of an elevator shaft. A skilled person is needed to operate the temporary open platform used for this work before the permanent elevator cab has been installed in the shaft. The key factors in how long one of these patchwork assignments will last are the rise of the shaft (number of floors) and the number of elevator shafts in the building.

from the aftermath of a three month lock-out in 2005; loss of operator work to Local 14 International Union of Operating Engineers (Local 14); financial difficulties and challenges; and a hard fought general election of officers.

2005 Lock Out

Local 1's CBAs with the major elevator companies expired on March 17, 2005. Negotiations over new contracts with the Elevator Manufacturers Association of New York, Inc. (EMANY) broke down resulting in a lock-out by EMANY employers Kone, Inc., Otis Elevator Co., and Schindler Elevator Corp. that lasted until June 26, 2005. Local 1 achieved a tentative agreement with ThyssenKrupp and other independent elevator companies before March 17, 2005, so employees of these companies continued to work during the lock-out, as did the operators and the members who erected outside hoists. Both these groups were covered by separate CBAs.

TBG was told that the membership displayed "unbelievable" solidarity during the lock-out and Local 1 was supported by contributions from other IUEC locals throughout the United States. Eventually, Local 1 reached agreement with EMANY on contract terms that were not quite as favorable as the tentative agreement reached earlier with ThyssenKrupp and the independents. As the EMANY companies employed the most Local 1 members, the union's leadership used the EMANY agreement as its industry pattern agreement, giving nearly the same contract terms to ThyssenKrupp and the independents.⁸ The hourly rates of pay are the same, preserving the principal of "one union, one hourly rate", which means all Local 1 members in each category of worker receives the same hourly rate no matter which signatory employer they work for.

Failure to achieve CBAs with terms as favorable as those tentatively agreed to with ThyssenKrupp and the independents before the lock-out, provoked criticism and even anger among some members who blamed the failure on the negotiating style and tactics of the Local 1 leadership. This criticism was still being voiced during the 2007 Local 1 General Election campaign.

Loss of Operator Work to Local 14 International Union of Operating Engineers

In October 2005, when the Agreement was signed, Local 1 members were still operating construction elevators and hoists on high rise projects in the New York Metropolitan area. By entering into the Agreement, Local 1 undertook to follow a specified formula for allocating work on so-called "joint-venture" cars between Local 1 and Local 14 to prevent more than one person from being paid to operate

⁸ The hourly rates of pay are the same. Kone, Inc., Otis Elevator Co., and Schindler Elevator Corp. are permitted by their CBA to equip their employees in the field with Global Positioning Satellite transceivers. ThyssenKrupp and the independents are not.

one of these cars at a time.⁹ However, since 2005 the operator work available to Local 1 members has dropped precipitously.

The CBAs Local 1 had with the Contractors Association of Greater New York (CAGNY) and the New York Building Contractors Association (BCA), the two leading general contractor associations, expired June 30, 2005, and in April 2006 Local 1 lost a jurisdictional battle with Local 14 over the operation of “joint venture” or “dual purpose cars” that are used alternately to hoist personnel and materials. The lack of CBAs with CAGNY and BCA were a significant factor in the arbitrators’ rulings against Local 1.

In the ten month period March through December 2005,¹⁰ Local 1 members classified as Operator/Apprentice or Operator/Journeyman were credited with working a total of nearly 80 thousand hours, an average of eight thousand hours per month. In the second quarter of 2008, Local 1 members classified as Operator/Apprentice or Operator/Journeyman were credited with working less than six thousand hours as operators, an average of less than two thousand hours per month. Adjusted to exclude hours credited to members working in construction, service and repair, and modernization who are misclassified in the database as Operator/Apprentices or Operator/Journeymen, the hours members were credited for working as operators in the second quarter of 2008 totals less than four thousand hours. This is an average of little more than one thousand hours per month or about 95 hours per month for each of the thirteen Local 1 members who worked as operators.

The loss of work has had a significant impact on Local 1 that extends beyond the approximately 125 members who worked as Operators in 2005. First, mechanics no longer physically able to ply their trade cannot extend careers and enhance pensions and retirement annuities by working as operators. Second, loss of the hours credited to Local 1 members for working as operators will mean less money contributed to the Local 1 Annuity Fund, reducing the annuity benefits for all members at retirement. Third, the inability of some Local 1 members to continue to make a living working as operators is causing economic and emotional distress. Fourth, and most important from the perspective of integrity vulnerabilities, Local 1 operators no longer have an opportunity to engage in no-show job schemes and other related scams.

⁹ See, Exhibit 1, Agreement paragraph 8 and Exhibit C attached to and incorporated in the Agreement.

¹⁰ March 2005 is the earliest month for which work hour credit statistics are available in the Local 1 membership database. As these figures are offered for purposes of demonstrating the year over year decline in opportunities for operators to work, no effort was made to adjust the totals to exclude hours credited to members who may have been improperly classified in the database as operators even though they were credited with the hours for working in construction, service and repair or modernization.

Financial Difficulties and Challenges

TBG observed that Local 1 began experiencing cash flow problems in 2006. The local derives nearly all its income from member dues and assessments. By 2006 expenses were exceeding this income. Money that should have been transferred from the local's general business account to the Defense Fund accounts and money that should have been paid to the IUEC to pay *per capita* taxes were instead used to pay legitimate, regular and recurring operating expenses. Legal and monitoring expenses contributed to the problem. The local also had exposure to substantial financial liability in connection with sexual harassment and discrimination claims. With the general election of officers scheduled in June 2007, it was unpalatable for the leadership to go to the members for a dues increase.

Local 1 made several appeals to the IUEC for assistance that ultimately resulted in Daniel A. Winters & Co. being engaged by the IUEC to perform certain agreed upon accounting procedures with respect to Local 1's finances. The Winters "Agreed Upon Procedures" engagement has often been referred to by members as an "audit". Although the Winters engagement uncovered several accounting issues that have since been corrected, all of the local's money was properly accounted for and nothing was uncovered that suggests any of this money was misused. Based on our own review of Local 1's financial records TBG reached the same conclusion.

The Local 1 leadership installed after the June 2007 election disclosed the full extent of the local's financial challenges at the General Membership meeting in September 2007. They implemented cost cutting measures, which included laying off two Local 1 members who were working full-time for the local as maintenance men, and they contemplated selling the union hall in Perth Amboy, New Jersey to raise money. New policies were adopted affecting officer compensation and the dues structure was adjusted.

Combined with an increase in wages effective March 17, 2008, the new dues structure has produced a much needed increase in dues revenue. Local 1 is current in making transfers and disbursements as required. Defense Fund balances have been moved from interest bearing checking accounts to higher yielding insured certificates of deposit to increase investment income. To protect the local from financial liability for claims of harassment, discrimination or other misconduct by the local's officers that may arise in the future, Local 1 purchased Directors & Officers liability insurance.

Hard Fought Local 1 General Election June 2007

When TBG first began this monitoring engagement, we observed that a good deal of contentiousness attended the conduct of union business at both Executive Board Meetings and General Membership Meetings. Among the

explanations for this contentiousness are: the perception of some members that the local's leadership had unwisely and unnecessarily surrendered to the government by signing the Agreement; the run up to the June 2007 Local 1 General Election; and the personalities of the men contending for control of the local.

The June 2007 election of officers was hard fought and the result was protested by the losing slate of candidates. The winning slate, which was headed by Leonard Legotte, included several incumbents from the Raymond Hernandez administration. Hernandez announced several months earlier that he would not seek re-election. Hernandez supported and actively campaigned on behalf of Legotte's slate. The losing slate was headed by John Green, Jr., who ran for President/Business Manager, and Charles L. Novak, Jr., who ran for Day Secretary. Anthony Carudo ran as an independent. The election campaign featured flyers, mailers, websites (including video) and a number of "rackets" or candidate meet and greet events with food and refreshments at various locations. Some of the flyers and mailers exhibited a high level of graphic design and excellent production values. The slates engaged in negative campaigning that included publicizing union disciplinary charges and counter charges filed with Local 1 and with the International in what may have been plays for political advantage.

The current Local 1 officers were sworn in on July 12, 2007. They are: President/Business Manager, Legotte; Secretary/Treasurer, Riegger; Day Secretary, Dennis O'Neill; Vice Presidents/Business Agents McCourt, Thomas Moore, Riefenhauser and Stork. In addition, Lee Pirone was sworn in as Recording Secretary; Joe Houlahan, Steve Mazza, Kevin McClaughry, Greg Moschetti and Andy Schrettner were sworn in as Trustees; Bill Bulger, Denis Kilduff and Tom Whooley were sworn in as the Examining Board; Bob Mazza was sworn in as Warden; and Christopher Randazzo was sworn in as Correspondent.

The first General Membership meetings presided over by Legotte as Local 1 President/Business Manager were contentious as well. Nevertheless, TBG observed that all members in attendance at these meetings were encouraged to voice their opinions and each was afforded ample opportunity to argue for or against the proposals on the floor. With each succeeding General Meeting, participation by the faction opposed to the elected leadership has declined. There appears to be some level of acceptance that the loss of jurisdiction over the operation of so-called "dual purpose cars" is irrevocable and that it is unlikely there will ever again be full-time work for what we were told by the Day Secretary had once reached nearly 180 Elevator Constructor operators at the peak of construction activity.¹¹

¹¹ There were 42 names on the Operator Hiring List when TBG began this engagement as Independent Examiner at the end of March 2006. The number of members on the Operator Hiring List rose to a peak of 80 at the end of August through the middle of September 2006. The

Those who attended the monthly meetings vocalized their interest in worker safety, securing the local's financial situation, preparing for collective bargaining with the elevator manufacturers next year and protecting their work from incursions by non-union labor and by other unions claiming elevator constructors' work. At the September 2008 meeting several members sought out TBG to express their confidence and trust in the current leaders of Local 1.

Successful Rehabilitation

Throughout this engagement, TBG has been impressed with the commitment of the local's elected officers to administer the business of Local 1 for the greater benefit of the members. They continued to demonstrate this commitment through the orderly exchange of power after the June 2007 election and in the leadership they have shown in addressing the difficult financial issues discussed at some length elsewhere in this report. TBG is satisfied that Local 1's elected leaders are similarly committed to sustaining the reforms undertaken as remedial measures required by the Agreement.

DETAILED DESCRIPTION OF TBG ACTIVITIES, OBSERVATIONS, CONCLUSIONS AND RECOMMENDATIONS FOR THE THIRTY MONTHS ENDING OCTOBER 6, 2008

The following is a detailed description of TBG's activities, observations and conclusions about Local 1's success in implementing and/or sustaining the remedial measures specified in paragraphs 6 and 7 of the Agreement. TBG is pleased to report that Local 1 has met its obligations and achieved substantial compliance with the Agreement.

In this section of the report we will describe TBG's methodology and activities, and we will report in detail our observations and conclusions regarding Local 1's: financials; pending sexual harassment and EEOC claims; allegations of misconduct; and allegations that quota hire rules have been abused and that distribution of "patch work" has not been fair and equitable.

TBG METHODOLOGY and ACTIVITIES

TBG became familiar with the workings of Local 1 by: attending formal meetings of the Local's members and officers; establishing a presence in the Local's union hall at 47-24 27th Street, Long Island City, NY; interviewing Local 1 officers, members and retirees; engaging in informal meetings and conversations with

number of members whose names remain on the Operator Hiring List has declined since then, falling to 18 at the time of this writing.

Local 1 paid officers, elected officers and employees; reviewing financial records of Local 1 and Local 1 Realty Corporation; and maintaining a dialog, through telephone calls, email and face-to-face meetings with Local 1 officers, interested Local 1 members and retirees. TBG has also conferred with Local 1's accountants, legal counsel, criminal defense counsel and IUEC legal counsel. TBG regularly accessed work credit histories through remote log-on to Local 1's member database. On occasion, TBG interrogated on-line databases of public information and/or sent investigators into the field to verify or supplement information provided to the firm in confidence. TBG communicated frequently with the USAO EDNY, the USDOL and other law enforcement and regulatory bodies as appropriate. These activities were undertaken in furtherance of establishing and maintaining open lines of communication with and among all interested parties.

Through appearances of TBG staff at Executive Board and General membership meetings, frequent visits to the union hall and an announcement in the Local 1 newsletter, TBG advertised the firm's presence as Independent Examiner, our toll free telephone number (866-674-1824) and our availability and willingness to receive and investigate behavior that may undermine remedial measures required by the Agreement and/or allegations of misconduct that threaten the integrity of the union.

Local 1 Financials

How well the finances of a local are being managed is a measure of the effectiveness and the integrity of the local's leadership. The completeness and accuracy of the financial information disclosed to the membership affects members' perceptions about how well their leadership is managing the local. Therefore, TBG also monitored Local 1's finances. During this engagement TBG attended Trustees meetings and observed as the trustees reviewed the Local 1 financial statements for each quarter and the calendar years ending December 31, 2006 and 2007. TBG also reviewed the Local 1 general ledger for each of the quarters ending June 2006 through June 2008.¹² These reviews were

¹² The statements for the quarter ending September 30, 2008, will not be available until after the expiration of TBG's term as Independent Examiner. However, the Secretary/Treasurer provided the following information on the respective cash balances in each of Local 1's accounts as of September 30, 2008:

Death Benefit Fund	\$178,554
Defense Fund-Bank of America	747,983
Defense Fund-Bank of America CD	300,000
Defense Fund-Charles Schwab	400,000
Defense Fund-M&T Bank	432,675
Defense Fund-Sterling National	1,039,645
General Fund-Bank of America	410,162
Emergency Relief Fund-Bank of America	70,141
Picnic Acct for Scholarship Fund-BOA	12,287
Realty Corp Business Checking-M&T	88,833
Realty Corp Checking-Bank of America	66,240

performed by Robert C. Rehm, CPA, who is a member of TBG's staff. TBG observed that the financial records generally appear to be in order, and to accurately reflect the financial and business condition of Local 1.

TBG inspected the detailed general ledger for any anomalies in the recording of receipts or disbursements transactions. TBG verified that transfers between bank accounts were properly recorded on both ends of the transaction and we verified that checks disbursed from the operating account to other accounts such as the defense fund were properly deposited. No discrepancies were noted with respect to these transactions. In addition, TBG selected at random a number of deposits recorded in the general ledger from the general fund, death benefit fund and realty fund then compared them to the associated bank statements to verify that the deposits were made into the proper accounts. With respect to disbursements, TBG selected a number of transactions at random, reviewed the source documentation, verified the nature of the disbursement and traced each check to the bank statement. No discrepancies were noted with respect to these transactions. TBG also reviewed the payroll reports from ADP for several quarters and traced the activity to the general ledger. No discrepancies were noted with respect to the payroll. The TBG review did uncover a few insignificant classification errors that were brought to the attention of the Secretary/Treasurer for reclassification. All of these items have been corrected.¹³

Defense Fund

At the September 2007 General Membership Meeting, the Secretary/Treasurer distributed copies of the local's annual financial statement for the calendar year 2006. During his presentation of the financial statement, the Secretary/Treasurer disclosed to the members that approximately \$262,000 was due and owing to the Defense Fund¹⁴ and that Local 1 also was behind in paying about \$160,000 to the IUEC for *per capita* tax assessments. There was an outcry from members, some of whom announced that they suspected mismanagement, or worse, misappropriation of union funds by the leadership. TBG reviewed the Local 1

Realty Corp Money Market-Sterling National	300,559
Realty Corp-M&T	400,000
Scholarship Fund-Amalgamated	8,914
Special Picnic Account-Bank of America	7,823
Long Island City Bldg Mortgage-BOA	(1,491,851)
Realty Corp Loan-M&T	(491,667)

The mortgage on the Long Island City building matures on October 19, 2020. The Realty Corp loan taken from M&T in August 2008 matures in August 2013.

¹³ Specifically, these misclassifications involve some parking fees that were inadvertently posted to fuel costs and some fuel costs that were inadvertently posted to auto lease expense. The dollar amounts involved totaled less than \$200.

¹⁴ Distributions should have been made for the months April, May and June 2007, but were not. In addition, the 2006 financial statement overstated the amount due on the defense fund ledger by \$2,090. This discrepancy is attributable to a mistake that was made several years ago when the first transfer was made from the general fund to the defense fund. It was resolved and correcting entries were made in the ledger.

general ledgers for the general operating account, the defense fund, the emergency relief fund, the scholarship fund and Local 1 Realty Corporation. Based on this review we determined that all of these moneys were properly accounted for. After legitimate, regular and recurring expenses were paid from the General Fund, the balances in this account were insufficient to permit distribution of the moneys due to the Defense Fund and to the IUEC. TBG concluded that this shortfall was properly noted in Local 1's financial records, which correctly accounted for the amounts due and owing.

TBG has confirmed that Local 1 is current in transferring members' quarterly assessments to Defense Fund accounts.

Accounting Firm "Agreed Upon Procedures" Engagement

During 2007, Local 1 made several appeals to the IUEC for assistance in addressing the local's financial problems. These included requests for direct financial assistance in paying the cost of the Independent Examiner, and after the defeat of a dues increase proposed at the September 2007 General Membership Meeting, indirect financial assistance through imposition of a dues increase by the IUEC General Executive Board. Further, disciplinary charges were filed by two members alleging that, without approval of the membership, Local 1 paid officers had improperly: 1) taken a \$2,500¹⁵ ratification bonus at the conclusion of the lock-out in June 2005; and 2) taken a \$.75/hour annuity differential payment in their salaries. In response, IUEC General President Dana Brigham (Brigham) engaged Daniel A. Winters & Co.¹⁶ to perform certain accounting procedures with respect to Local 1's finances. Local 1 members generally referred to the Winters "Agreed Upon Procedures" engagement as an "audit".

The Winters "Agreed Upon Procedures" engagement, which covered the time period January 1, 2004 through September 30, 2007, was undertaken at IUEC expense with the support of the Local 1 President/Business Manager. Therefore, the so-called "audit report" and all of the Winters work papers are the property of the International, not Local 1.¹⁷

The Local 1 President/Business Manager and the Local 1 Secretary/ Treasurer met with IUEC General President Brigham, IUEC Assistant General President Tim Smith (Smith), IUEC General Secretary/Treasurer Kevin Stringer (Stringer), IUEC outside counsel Robert Matisoff, and Daniel Winters and Craig Winters,

¹⁵ Actually, the amount in question is \$2,250.

¹⁶ TBG notes that Winters prepares the LM-2 form filed annually by Local 1 with the USDOL, and that Winters has also reviewed Local 1's books and delivered other accounting services to Local 1 each year for many years.

¹⁷ According to the IUEC's outside counsel, Robert Matisoff, all the IUEC locals are being audited by the National Elevator Industry Benefit Plan (NEI or the Plan) as part of the new participation agreement to ensure that there is consistency among the locals regarding employer payments to the Plan funds, including payments by the locals as the employers of the locals' paid officers.

both of Daniel A. Winters & Co., at the IUEC's headquarters in Columbia, MD, on Friday, January 4, 2008. The meeting in Maryland lasted about three and one half hours. At this meeting the Local 1 President/Business Manager and the Local 1 Secretary/ Treasurer were told about the findings in the Winters draft report, but they were not allowed to read it. The Local 1 President/Business Manager and the Local 1 Secretary/Treasurer offered explanations and clarifications that Daniel Winters and Craig Winters agreed to incorporate in the report. It was explained by the Local 1 Secretary/Treasurer that the so-called "annuity differential" is the product of a convoluted process involving the interaction of the annuity plan rules and changes in the Internal Revenue Code provisions regarding 401(k) plans.

Brigham attended the Local 1 General Membership Meeting on Thursday evening January 17, 2008 to introduce Daniel Winters, who orally presented the highlights of his report to the membership, and to discuss the Winters report with them. There was no suggestion in the presentation by Winters, or in his report, of anything improper about the payments made to or on behalf of the Local 1 officers. The problems that were identified by Winters stem primarily from a lack of written authority regarding a few of these payments. Further, the then existing Local 1 policy documents governing officer compensation were described as "vague and lacking in specificity." Therefore, Brigham recommended, among other things, that Local 1's President/Business Manager appoint a Compensation Committee to review existing officer compensation practices and recommend a comprehensive set of written policies and procedures for adoption by the membership.

Although the Local 1 President/Business Manager and the Local 1 Secretary/ Treasurer were not allowed to read the Winters draft "audit report," the IUEC did make the report available to TBG for review in the firm's capacity as Independent Examiner. The findings expressed in the report were consistent with those made by TBG upon its review of Local 1's financial records. There was no suggestion in the report that union funds have been misappropriated. With respect to the Defense Fund assessments, Winters confirmed that Local 1 was delinquent in making proper disposition of the quarterly Defense Fund assessments. However, there was no suggestion by Winters that any of this money was used for an improper purpose. Winters confirmed that the money went to pay legitimate bills of the local. As noted above, TBG has confirmed that Local 1 is current in transferring members' quarterly assessments to Defense Fund accounts.

The Winters "Agreed Upon Procedures" engagement focused on compensation and other disbursements to or on behalf of Local 1 officers, and on Local 1 payments owed to the IUEC for per capita tax. Winters found that there were no improper payments to or disbursements on behalf of Local 1 officers. However, his report does describe a series of compensation policies and practices that evolved haphazardly over the years without a detailed paper trail. Winters told

TBG that this is not atypical of union locals, and even some national and international unions, that he has encountered in many years of accounting practice serving the union sector. The Winters report demonstrated the need for systematic revision of the officer compensation policies to harmonize historic officer compensation practices with policies and practices dictated by modern benefit plan structures and the tax code. Based on the Winters report, the leadership of Local 1 and the International agreed that Local 1 should empanel a Compensation Committee to review officer compensation and recommend a set of written policies and practices to the Local 1 membership. The stated objective of this Committee was to make officer compensation transparent for the membership.

Officer Compensation - Wage and Policy Committee

President/Business Manager Legotte appointed himself, Secretary/Treasurer Riegger, Joseph Houlahan, Patrick Austin and Thomas O'Brien to the Wage and Policy Committee. The Committee met several times. Together they agreed to recommend a compensation structure that was essentially the same as the compensation structure that would have been in place had the membership endorsed a comprehensive revision of the Local 1 Constitution and By-Laws in February 2007. A year later, when proposed at the February 21, 2008 General Membership Meeting as a stand alone policy on officer compensation, the structure recommended by the Committee was adopted by a voice vote of the members. Compensation of the paid officers is now tied directly to the wages paid to members under the Collective Bargaining Agreement (CBA) with the major employers. Officer salaries and benefits are computed based on fifty-five hours straight time per week at the construction journeyman rate. The President/Business Manager's salary is twenty-four percent (24%) over the construction journeyman rate. The other paid officers' salaries are seven percent (7%) over the construction journeyman rate. As required by the NEI Benefit Plans and the Local 1 Annuity Fund, contributions on behalf of paid officers now are based on the same number of work hours per week as the officers' salaries. There are no allowances for expenses. Legitimate expenses incurred by officers on behalf of the union are charged to Local 1 credit cards or reimbursed in the exact amount upon submission of expense vouchers supported by receipts.

The Winters report indicates that although there were occasional lapses, documentation is on hand to support the expense allowances and reimbursements paid to Local 1 officers. Local 1's performance in this regard was characterized by Winters as better than most labor union locals. TBG reviewed schedules 4 and 5 of the draft report (Disbursements to/on behalf of Officers) and confirmed this characterization, noting that no more than a few of the large sample of transactions in these schedules were flagged as lacking proper documentation.

The Winters report indicated that officers with automobiles supplied by Local 1 were not documenting work and personal use of the vehicles, or documenting personal use of the Local 1 EZ-Pass accounts as required by the IRS. TBG has confirmed that Local 1 officers have been completing detailed automobile use logs that comply with these requirements.¹⁸

Per Capita Payments to the IUEC

With respect to the per capita payments owed to the International, Winters documented that during the preceding year Local 1 had fallen behind in making proper disposition of per capita assessments collected from the members each quarter. TBG has confirmed that Local 1 is now current in paying per capita assessments to the International.

Another issue highlighted by the Winters report is how long Local 1 allows some individuals to work under a permit before insisting that they be sworn as full members subject to IUEC per capita tax. Local 1 has been told by the IUEC leadership that permit workers must be moved up to full membership, or their permits revoked, more quickly in compliance with provisions of the IUEC Constitution and By-Laws. Local 1 has taken steps to do so. In the first two quarters of 2008, ninety-nine permit workers were sworn-in as full members. It is appropriate to note that this takes a great deal of effort by members of the Examining Board. The local's information technology person programmed a set of automated queries that they use to generate reports from the membership database that identify permit workers who have been on the job for six months. The Examining Board contacts these individuals by mail and telephone to arrange for interviews, introductions to the general membership and to have them sworn-in. Their goal is to accomplish this within three months of "inviting" each permit worker to be interviewed. Getting permit workers to comply is often difficult, as some permit workers resist making the transition to full membership due to the upfront cost. Currently, to be sworn-in, each prospective member must pay \$825 in fees,¹⁹ and pay their next quarter's dues. After being sworn-in, new members are also required to contribute \$400 to the Defense Fund. They are required to pay this money in four installments of \$100 per quarter over each of the following four quarters. This \$400 Defense Fund contribution is in addition to their regular union dues and assessments

¹⁸ These detailed automobile use logs are submitted to and maintained by Local 1's bookkeeper, Margaret Walsh, under the supervision of Secretary/Treasurer Michael Riegger. TBG examined a small sample of the automobile use logs compiled since January 1, 2008 to verify that the logs are being completed and submitted as required.

¹⁹ The fees are: \$440 initiation fee; \$300 building fee; \$75 Emergency Relief and Death Benefit fee; and \$10 application fee.

Local 1 Finances on October 6, 2008

That Local 1 is now current in disbursing per capita payments to the International and transferring members' quarterly assessments to Defense Fund accounts is indicative of a marked improvement in the local's financial condition since September 2007. Some of this improvement is attributable to reduced operating costs. Some is due to a new \$500 thousand loan from M&T Bank negotiated by the Secretary/Treasurer.²⁰ However, this new loan and the improvement in the local's financial condition would not have been possible without an increase in dues revenue. At the October 2007 monthly meeting of the membership, the Constitution and By-Laws were amended to require that monthly dues be equal to twice the journeyman's hourly wage. Effective March 17, 2008, members' wages increased under the terms of the local's CBAs with employers. Wages of construction journeymen increased \$2.21 to \$48.19 per hour and the wages of Service/Mod journeymen increased \$1.66 to \$38.46 per hour. Despite this improvement in cash receipts, expenditures for professional fees to accountants and attorneys, and the cost of the Independent Examiner, continue to be high.²¹ Further, sexual harassment lawsuits brought by two former employees create some uncertainty about the financial health of Local 1 in the future.

Potential Liability for Alleged Sexual Harassment

A federal lawsuit by the former employees' alleging sexual harassment was dismissed for lack of jurisdiction. But they re-filed claims against Local 1 in state court based on New York and New York City law.²² Neither Local 1 nor the former Local 1 officers cited in the complaints has insurance to cover the cost of a judgment awarded to either plaintiff. Should either of the plaintiffs prevail and the court award a monetary judgment against Local 1, the local may have to assess each member to raise the money to pay the judgment.²³ In 2008 Local 1 began purchasing Directors & Officers (D&O) Insurance to protect its assets against similar claims in the future. This insurance, which Local 1 purchased from Ullico, provides the local with liability coverage up to two million dollars, with a twenty thousand dollar deductible for sexual harassment claims. The annual premium paid by Local 1 in 2008 is about twelve thousand dollars. Local 1 officers were offered the opportunity to purchase one hundred thousand dollars of individual liability coverage from Ullico for themselves. The premium for one year of this individual coverage is one hundred dollars.

²⁰ This five year business loan, which matures in August 2013, was taken by the Local 1 Realty Corp.

²¹ For example, in August 2008 Local 1 paid a \$10,000 retainer to a law firm engaged to defend the local against a sexual harassment suit filed by two former employees in a New York court.

²² Margaret Bender and Christina Guido v. Local 1 IUEC, Supreme Court for the County of Westchester (Index No. 10155/08)

²³ Local 1 account balances as of September 30, 2008, are listed in footnote 12 above. Limitations placed on use of the money in the Local 1 Defense Fund by the trust agreement that established the fund would preclude using any of this \$2,920,303 to satisfy a judgment.

For the purposes of this report, the relevant facts regarding the pending lawsuit may be briefly summarized. Two women who were employed by Local 1 have filed suit against the local alleging that they were victims of discrimination. The alleged misconduct predates TBG's term as Independent Examiner. The plaintiffs were employed in the office as Office Manager/Bookkeeper and Administrative Secretary respectively. One alleges that she was sexually harassed by one of the union's paid officers and subjected to retaliation by other paid officers for complaining about the sexual harassment. The other alleges that the union's paid officers retaliated against her because they perceived that she was assisting and supporting the co-worker who complained of sexual harassment. Both women were fired by Local 1 management.

The plaintiffs filed charges of discrimination against Local 1 with the Equal Employment Opportunity Commission (EEOC); one on July 15, 2005, and other on March 16, 2006. The EEOC issued each of them a Notice of Right to Sue on September 25, 2007.²⁴

The complaint the women filed against Local 1 in federal court²⁵ alleges that on May 10, 2005, the Office Manager/Bookkeeper was sexually assaulted by then Secretary/Treasurer Anthony Carudo while on a business trip in violation of Title VII of the Civil Rights Act of 1964 (Title VII),²⁶ and that the Administrative Secretary was retaliated against by then President/Business Manager Raymond Hernandez because of what he perceived to be her support for her co-worker's sexual harassment complaint. This retaliation is alleged to have taken the form of ill treatment and ultimately termination of the Administrative Secretary's employment, also in violation of Title VIII. In their complaint the women demanded reinstatement, with back pay and interest from the dates their employment was terminated, compensatory damages and attorneys fees and costs.

²⁴ This notice includes the following paragraph:

This notice concludes the EEOC's processing of the above-numbered charge. The EEOC found reasonable cause to believe that violation of the statute(s) occurred with respect to some or all of the matters alleged in the charge but could not obtain a settlement with the Respondent that would provide relief to you. In addition, the EEOC has decided that it will not bring suit against the Respondent at this time based on this charge and will close its file in this case. This does not mean that the EEOC is certifying that the Respondent is in compliance with the law, or that the EEOC will not sue the Respondent later or intervene later in your lawsuit if you decide to sue on your own behalf.

The notice goes on to instruct the complainant about the time limits for bringing suits in federal court based on the statutory rights alleged to have been violated.

²⁵ Margaret Bender and Christina Guido v. Local 1 IUEC, United States District Court for the Southern District of New York (07 CIV. 11428)

²⁶ 42 U.S.C. § 2000e *et seq.*

The women alleged that the conduct of Hernandez, Carudo and other paid officers of Local 1 also violated the New York State Human Rights Law²⁷ and New York City Law 59 of 1986 as amended by Local Rule 39 for 1991, §8-101 *et seq.* On their state and city claims the women each demand \$500,000 in compensatory and punitive damages.

Earlier this year the federal court granted Local 1's motion to dismiss the federal action for lack of jurisdiction, as Local 1 fails to meet the statutory threshold as an employer of at least fifteen employees. However, after dismissal of their federal lawsuit the women brought suit in state court.²⁸ New York courts have jurisdiction to enter judgment on their state and city claims because Local 1 does meet the state statutory threshold of an employer of at least four employees.

As the alleged acts of discrimination all took place before TBG was engaged as Independent Examiner, TBG did not independently investigate the claims of either the Office Manager/Bookkeeper or the Administrative Secretary. However, TBG did review the documents filed in this matter by the parties and the report of Joseph Licata, Esq., who was engaged by Hernandez to investigate the Office Manager/Bookkeeper's complaint that she was sexually assaulted by Carudo. Licata's report was inconclusive. TBG cannot offer an opinion on the merits of the claim. However, should one or both of the plaintiffs prevail there is at least the possibility of a substantial money judgment being awarded against Local 1.

Potential Liability for EEOC Claims

During this engagement TBG also tracked the progress of several claims filed with the EEOC by Local 1 members against Local 1. Four of these claims alleged that Local 1 discriminated against members who were no longer employed as operators. Two of these matters were concluded with a finding by the EEOC that the complainants had failed to establish a violation of the statute.²⁹ Two are still pending. In addition, the Court dismissed a third party complaint filed against the union by the employer of a Local 1 member who sued the employer for race and age discrimination.³⁰

²⁷ Laws of New York, Article 15 Executive Law §290 *et seq.*

²⁸ See ft nt. 22 above at Page 21.

²⁹ The exact language of the EEOC finding is as follows: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statute. No finding is made as to any other issues that might be construed as having been raised by this charge.

³⁰ Clifford Page v. B&G Elevator, et al., United States District Court for the District of New Jersey (Civil Action No. 07-172(FSH)). The Local 1 member, Clifford Page alleged that he was discriminated against by his employer, B&G Elevator, Inc., because of his race and his age. B&G is a Local 1 signatory employer, and as such is bound by the terms of the CBA. Page worked for B&G for about six years before his employment was terminated in 2007. Among Page's complaints was that B&G hired younger white males as mechanics instead of him. B&G is a Local 1 signatory employer, and as such is bound by the terms of the CBA. In September 2001, B&G wrote a letter to Local 1 requesting that the union refer Page for an opening the company had for

The two concluded matters that allege Local 1 discriminated against members who were no longer employed as operators involved claims by Ralph Clemente³¹ and Raymond O'Brien.³² Clemente charged that Local 1 and the IUEC discriminate against older Local 1 members and members with physical impairments and/or disabilities because: (1) these members are not being referred for operator work now that they can no longer work with their tools in the field as journeymen or helpers, and (2) their situation is exacerbated by the comparatively low benefits paid by the NEI Plans to members who retire early due to disability. The Clemente claim suggested that the Local 1 leadership intentionally mishandled negotiations with CAGNY and BCA to get rid of the operators. Clemente also alleged that the hiring list is regularly disregarded because employers pick who they want and avoid older workers. O'Brien also complained that Local 1 failed to refer him for work as an operator for reasons that were discriminatory and arbitrary.

The two pending matters that allege Local 1 discriminates against members who were no longer employed as operators involve claims by Brad Crawford³³ and Thomas Hughes.³⁴ The substance of their claims is essentially the same; that Local 1 is not referring them to work as operators now that they are no longer able to work with their tools in the field as journeymen or helpers. Each has demanded immediate retirement, with full medical benefits, with no penalty for early retirement.³⁵ On May 2, 2008, EEOC agents met with the President/Business Manager, the Day Secretary and the former Day Secretary to gather evidence from Local 1. As of this writing, there has been no decision by

a helper. This was apparently treated as request to make a quota hire to which B&G was entitled under the CBA. Although Page was a journeyman/mechanic, Page and Local 1's Day Secretary at the time, Joseph Nolan, agreed to refer Page to B&G as an apprentice/helper. This act of referring Page as a helper in 2001 was alleged by B&G to make Local 1 liable to Page and by extension liable to B&G for contribution and or indemnification. In an Order dated August 22, 2007, the Court dismissed the third party complaint against Local 1. During a mediation session on October 25, 2007, Page reached a settlement with B&G that required B&G to pay Page \$20,000, concluding the matter.

³¹ EEOC Charge No. 520-2007-03722. This matter was closed by the EEOC on December 18, 2007.

³² EEOC Charge No. 520-2007-01295. On December 21, 2007, the EEOC approved withdrawal of this complaint by O'Brien. The matter was formally closed by the EEOC on January 9, 2008.

³³ EEOC Charge No. 520-2007-01352

³⁴ EEOC Charge No. 520-2007-01301

³⁵ According to the Local 1 membership database, Crawford is 43 years old and Hughes 48 years old. Normal retirement age is 65. Members with the requisite credited time in service can opt to retire early. However, unless retirement is based upon a total disability, established by a Social Security Administration determination of total disability, the monthly benefit will be reduced. As described in the Pension Plan documents:

An Early Vested Pension may commence between the ages of 55 and 65. The amount of the Early Vested Pension is the Normal Retirement Pension reduced by one-half (½) of one (1) percent for each full calendar month between the date the Early Vested Pension commences and the first day of the month following your 65th birthday.

the EEOC on either claim. However, as the demands by Crawford and Hughes are more properly addressed by the trustees of the pension and health benefits plans, they have instituted suit against the NEI Benefit Plans. It appears that the EEOC will not act on the complaints against Local 1 while that matter is pending.

As is detailed elsewhere in this report, as a consequence of the collective bargaining agreements between Local 1 CAGNY and BCA expiring and Local 1 losing jurisdiction over so-called “multipurpose” or “joint venture” cars to Local 14, there is no work for Elevator Constructor operators other than short term “patch work.” Total work hours credited to Elevator Constructor operators have plummeted to less than 1000 hours a month for all Elevator Constructor operators combined. Whether or not negotiations with CAGNY and BCA could have been handled better to produce a more favorable result is a matter for conjecture. However, there is no evidence that the Local 1 leadership intentionally mishandled negotiations with CAGNY and BCA to get rid of the operators. Further, Local 1 aggressively pursued arbitration with Local 14 and filed unfair labor practices complaints against CAGNY and BCA in an effort to force them back to the bargaining table. With respect to the allegations that Local 1 discriminates against older journeyman members who are out of work because they can no longer withstand the physical rigors of working in the field with their tools, the leadership pointed out to the EEOC that the Local 1 Executive Board adopted a policy allowing journeymen operators to be classified to work as helpers for a year³⁶ to ease their transition back into the field.³⁷ The Trustees of the NEI Pension Plan considered, but did not adopt, changes in the plan that would have enabled some of the unemployed operators to retire earlier without an early penalty subtracted from their pension checks. As reported to the membership at a General monthly membership meeting, the requested change was apparently rejected because of the negative impact that doing so would have had on the financial soundness of the pension plan.

Clemente alleged that the hiring list is regularly disregarded because employers pick who they want and avoid older workers. The issue of “cherry picking” workers off the hiring lists is discussed at some length elsewhere in this report. Implementation of hiring list reforms required by the Agreement has had the unintended consequence of giving employers access to the hiring lists, which combined with the “quota hire” provisions of the CBA, enables them to employ or avoid employing certain individuals. For a more complete discussion of these issues see the sections of this report that deal with Quota Hires³⁸ and with *c. Implementing procedures to computerize and make available to all members the current and historical operator hiring lists, including job assignments.*³⁹

³⁶ This transition period is renewable for a second year with Board approval.

³⁷ TBG has observed that several members who were close to normal retirement age took advantage of this opportunity to get work as helpers, enabling them hang on a few months longer before retiring.

³⁸ Beginning on Page 26.

³⁹ Beginning on Page 38.

As to the general claim by O'Brien that Local 1 failed to refer him for work as an operator for reasons that were discriminatory and arbitrary, please see the section of this report that deals with *b. Implementing procedures to ensure that the operator hiring list is maintained in a fair and impartial manner and elevator operators are only hired from the operator hiring list.*⁴⁰

Allegations of Misconduct by Officers of Local 1

As described above, TBG advertised the firm's presence as Independent Examiner and our availability and willingness to receive and investigate behavior that may undermine remedial measures required by the Agreement and/or allegations of misconduct that threaten the integrity of the union.

From April through December 2006 TBG received eighteen (18) allegations of misconduct by officers of Local 1 that we deemed to merit further attention and/or inquiry. Each of the eighteen allegations was brought to our attention by current or former members of Local 1, with the possible exception of one allegation that was made in an anonymous letter. TBG communicated these allegations to the USAO EDNY and to the United States Department of Labor (USDOL). TBG reported to these law enforcement agencies on the progress and results of the inquiries that we undertook in pursuit of evidence that the alleged misconduct did or did not take place. As to one of the eighteen allegations, TBG did not conduct its own independent investigation, but deferred to the appropriate criminal law enforcement agencies. The lead agency investigating this incident could not substantiate the allegation and did not recommend criminal charges against anyone. The other seventeen allegations generally fall into one of the following categories:

- a. Local 1 officer(s) took advantage of the union's business relationship with vendor(s) for their own personal benefit;
- b. Local 1 officer(s) accepted money/things of value for own personal benefit in exchange for agreeing to forego enforcement of Local 1 members' contractual right to continue operating elevator cars during the 45 day move in period;
- c. Local 1 officer(s) extorted money/things of value for own personal benefit in exchange for helping Local 1 members circumvent the hiring list to obtain work on certain project(s);
- d. Local 1 officer(s) personally benefited from scheme(s) that had Laborers running the cars that employer(s) were paying Local 1 members to run;
- e. Local 1 officer(s) agreed to settle certain matters to avoid disclosure at trial/hearing of schemes that personally benefited Local 1 officer(s); and
- f. Local 1 officer(s) participated in no-show jobs scam(s).

The allegations also include "cooking the books," which was refuted by TBG's review of Local 1 financial records, intimidation in connection with Local 1

⁴⁰ Beginning on Page 35.

elections and claims that Local 1 officer(s) have gambling, drinking and or drug problems that impel them to commit the alleged acts of misconduct. Despite extensive evidence gathering activities, TBG was unable to substantiate these allegations. In the absence of credible evidence to support these allegations, no one has been charged with committing any of the improper acts that were alleged.

In the campaign season immediately preceding the Local 1 general election in June 2007 there were several charges and countercharges of misconduct that appear to have been alleged in pursuit of political advantage during the campaign. These allegations were made in complaints filed with the Secretary/Treasurer of Local 1 and/or the Secretary of the IUEC, initiating union disciplinary proceedings. TBG did not pursue these election related allegations, opting instead to observe and record how the leadership of Local 1 and the leadership of the IUEC handled them. As will be described at some length below in the section on "Implementing procedures to ensure that Local 1's elections are conducted in a fair, nondiscriminatory, open and democratic manner..." we conclude that the leaders handled these allegations appropriately.

TBG also received allegations that people admitted to Local 1 as so-called "quota hires" are/were a factor in deciding who has political control over the local and that so-called "patchwork"⁴¹ was not being distributed fairly among the unemployed operators. As will be described below, TBG concluded that neither of these allegations is supported by the evidence.

Quota Hires

The CBAs negotiated with the Elevators Manufacturers Association of New York (EMANY) and the other elevator manufacturers allow these signatory employers to bypass the Local 1 hiring lists to directly hire new workers according to a formula based on the number of Local 1 members they already employ. These are known as "quota hires." During this reporting period TBG investigated allegations that this CBA provision is being abused by the employers with the acquiescence, if not the connivance, of the Local 1 leadership and concluded that the allegations are not supported by the evidence.

TBG was particularly concerned about the suggestion that the Local 1 leadership used the quota hires provision in the CBAs to narrow political advantage. TBG was told that quota hires have been used as a patronage tool, circumventing the legitimate means of recruiting new members into the union, since at least as early as the John Green era. One source repeated a rumor that nearly three hundred people associated with a Local 1 officer have come into the union this

⁴¹ See discussion of "Patch work" and "patching the hatch" in ft nt. 7 above at Page 8.

way.⁴² The “common wisdom” underlying this claim is that at election time these quota hires will be loyal to the leaders who brought them into the union through a side door. The essence of the allegation is that these votes were vital to the electoral victories of the New Jersey faction in the last two Local 1 General Elections.⁴³

In March, TBG queried the Local 1 membership database remotely to test the validity of the “rumor”. Of about 2,700 active members in the database, TBG found that around 270, or ten percent, are classified in the membership database as having been quota hires.⁴⁴ Of these, about 170 members classified as quota hires reside in New York, nearly twice as many as the approximately 90 members classified as quota hires who reside in New Jersey. About a dozen members classified as quota hires reside in other states, principally Connecticut and Pennsylvania.

A spreadsheet was provided to TBG by Local 1 that summarizes the information about quota hires maintained in the Local 1 membership database.⁴⁵ TBG compared this spreadsheet with the paper files kept by the administrators of the National Elevator Industry Education Program (NEIEP), which is the apprenticeship program sponsored by Local 1. The NEIEP apprenticeship program is certified by the New York State Department of Labor (NYSDOL) and the New Jersey Department of Labor and Workforce Development (NJDLWD). The NEIEP administrators have segregated the files of the helpers, whether Local 1 members or people working on permits, who are NOT eligible to be registered as apprentices. The number of these individual paper files appears to correspond roughly to the number of names on the spreadsheet, thereby

⁴² According to this source members of the New York faction joke that the “Jersey guys” brought in so many voting members as quota hires that they could form “Freddie McCourt’s Old Bridge Elevator Company.”

⁴³ In the June 2007 general election the winning slate did garner a considerable portion of its support from members who voted in New Jersey. However, given the margin of victory for the winning slate, even if all ninety of the New Jersey residents classified as “quota hires” voted in New Jersey and voted as a block for the winning slate of candidates, their votes would not have been decisive. Although it is supposed that most of the members who voted in New Jersey reside there, it was pointed out to TBG the many New York residents work in New Jersey or otherwise find it more convenient to vote in Perth Amboy than in Long Island City. The Local 1 membership database does record where each member voted, Perth Amboy or Long Island City. However, the evidence did not justify the expense of analyzing the database to determine where each quota hire voted. There is no record of who each quota hire voted for.

⁴⁴ Both Raymond Hernandez and Anthony Carudo, former officers of Local 1, are each classified in the database as a “Quota Hire.” Neither was a direct hire “off the street.” Both, Hernandez and Carudo were requested off the journeyman hiring list by their current employers, Fujitec and Liberty respectively, shortly after they left office in July 2007. Hernandez resides in New Jersey. Carudo resides in New York.

⁴⁵ This report was extracted from the membership database on May 5, 2008. The report lists 250 members classified as quota hires. This apparent drop from the 271 figure calculated in March reflects both the recent expulsion of a number of individuals for failure to pay dues, and routine updating and correcting of membership information, which is performed by Thomas Cardiello as part of database maintenance operations.

validating the database count as a good approximation of the number of quota hires in Local 1.⁴⁶ TBG also examined a small sample of the files corresponding to names on the spreadsheet, confirming that these files were properly segregated from the files of registered apprentices.⁴⁷ Through conversation with the administrators of the NEIEP school TBG confirmed that only helpers entering the union through one of three “legitimate” routes are eligible for registration as apprentices with the NYSDOL and the NJDLWD. The three “legitimate” routes for a would-be elevator constructor to take to become a registered Local 1 apprentice are: the Helmets to Hardhats program for United States Armed Forces veterans; being organized with co-workers when a non-union employer is “signed up” with Local 1 to become a union shop; or being selected through a certified apprenticeship recruitment program. Workers recruited through any other route, including quota hires, are not eligible for registration in the NEIEP apprenticeship program. Although lack of apprenticeship registration has little or no impact on the cost to the employer of labor on private construction projects, it can have a significant impact on the cost of labor for public works projects, which are subject to federal and state prevailing wage laws. Every worker on a public works project who is not a registered apprentice must be paid the prevailing wage of a journeyman.

TBG was told that signatory employers can secure an economic advantage by bringing in new helpers from the street as quota hires instead of calling the union hall for Local 1 members. They can secure this economic advantage because for the first six (6) months new hires are on the job they are probationary employees for whom the employer is not required to pay benefits.⁴⁸ At the current contract rate, effective March 17, 2008, a probationary employee must be paid \$21.66 per hour. On a “mod job”, where elevator equipment in an existing building is replaced or “modernized”, a savings can be had of \$18.09 per hour over the pay package for a first year or “50% Apprentice”⁴⁹ who is paid benefits. TBG was told that this savings can “make or break a mod job.”⁵⁰ This nearly \$20 per hour cost advantage is an incentive for an employer to exploit the quota hires

⁴⁶ TBG did not conduct an exact count. Further, it appears that there are a number of out-of-date physical files that should be purged as the individuals to which they pertain are no longer affiliated with Local 1.

⁴⁷ The completed forms in the NEIEP files that were sampled by TBG show that none of the so-called quota hires to whom these segregated files pertain is registered with the New York State Department of Labor as an apprentice.

⁴⁸ There is no corollary economic advantage to bringing in journeymen, who would have to be paid the same wages and benefits as Local 1 journeyman.

⁴⁹ The current wage for a first year apprentice (\$21.66/hour), effective March 17, 2008, is 50% of the average of the construction mechanic’s wage (\$48.19/hr) and the service/mod mechanic’s wage (\$38.46/hour). The contractual package, wages and benefits, for a first year apprentice working on a mod job is \$39.75/hour.

⁵⁰ This is an especially important competitive factor, because Local 1 signatory employers compete for this modernization work with non-union shops and with union shop employers who have contracts with other locals, Local 3 of the Electrical Workers for example, who claim jurisdiction over at least some of the elevator modification work claimed by Local 1.

provision in the CBA to its fullest. However, for an employer that does any public works contracting, doing so is not without risk.

As noted above, every worker on a public works project that is not a registered apprentice must be paid the prevailing wage of a journeyman. This is described in a letter from Leonard Legotte (Legotte), President/Business Manager, to E. James Walker, Jr. (Walker), of EMANY dated July 25, 2007. In this July 25, 2007, letter Legotte points out that:

...the Office of Apprentice Training of the Department of Labor of the State of New York will not accept candidates in the apprenticeship program whose participation was not obtained by virtue of the advertising and solicitation program which the State of New York Department of Labor requires in securing a class of apprentices. Thus, persons who are hired by various employers under the employer's quota, provided for in the collective bargaining agreement, are not accepted as apprentices in the apprentice training program approved by the Department of Labor.

Legotte went on to say:

This means, for example, that on prevailing wage job (sic), on the Federal, State and City level, persons employed under the Employer's quota are not recognized as apprentices by agencies administering the prevailing wage program. Employers will be required to pay these individuals mechanic's rate.

TBG was told that the letter from Legotte to Walker was prompted by the discovery last year that a helper, who is a direct quota hire by an EMANY member, worked on a prevailing wage project in New York City and was paid the apprenticeship wage even though he was not a registered participant in the NEIEP apprenticeship program. When this violation of New York Labor Law §220 was discovered, the employer was required to pay this worker back wages and benefits at the considerably higher journeyman's wage rate. The EMANY employers incorrectly assumed that this quota hire was registered by NEIEP as an apprentice.

Since the July 25, 2007 letter from Legotte to Walker there have been no helpers hired "off the street" as direct quota hires.⁵¹ However, employers continue to use the quota hires provision in the CBA to cherry pick individual Local 1 members off "the bench." Cherry picking is discussed below in the section of this report on remedial action "*c. Implementing procedures to computerize and make available*

⁵¹ Two helpers were hired off the NEIEP recruitment list. They are Thomas Miskell and Thomas Coyle, who were hired by Kone on September 25 and November 6, 2007 respectively.

*to all members the current and historical operator hiring lists, including job assignments”.*⁵²

TBG concludes that the allegation that the quota hires provision of the CBAs is being abused by the employers with the acquiescence, if not the connivance, of the Local 1 leadership, is not supported by the evidence.

Allegations That So-Called “Patchwork” Is Not Distributed Fairly Among the Unemployed Operators

TBG received allegations that so-called “patchwork” is not being distributed fairly among the unemployed operators. As will be discussed at greater length below in the section of this report on remedial action “*b. Implementing procedures to ensure that the operator hiring list is maintained in a fair and impartial manner...*,”⁵³ TBG examined the evidence and concluded that the Day Secretary makes “patchwork” assignments in an open, fair and evenhanded manner.

Evaluating the Progress Made by Local 1 in Implementing and/or Sustaining Each of the Remedial Steps Required by the Agreement

Local 1 has met its obligations and achieved at least substantial compliance with all the terms of the Agreement. The following is a detailed description of TBG’s observations and conclusions about Local 1’s success in implementing and/or sustaining the remedial measures specified in the Agreement.

Paragraph 6 of the Agreement requires Local 1 to undertake a series of remedial measures to prevent recurrence of the criminal conduct prosecuted by the USAO EDNY. The remedial measures, specified in subparagraphs a, b, c and f, directly address the no-show jobs scheme by specifying reforms intended to ensure that members have fair access to work opportunities, that operators are paid for no more than the hours they actually work and that no one but duly elected or appointed officials of Local 1 hold themselves out to employers as representatives of the local. The remedial measures specified in subparagraph d address governance of the local. This subparagraph requires that steps be taken to ensure that Local 1 elections be fair, nondiscriminatory, open and democratic. Subparagraph e requires modernization of Local 1’s disciplinary practices. The details of the disciplinary reform are specified in Paragraph 7 of the Agreement and Exhibit B attached to the Agreement.

⁵² Beginning on Page 38.

⁵³ Beginning on Page 35.

- a. Implementing a procedure to effectively monitor the assignments and hours worked of elevator operators, to ensure that operators are only paid for hours for which they work or are entitled to vacation or holiday pay.***

Local 1 is obligated by the terms of the Agreement to implement a procedure to effectively monitor the assignments and hours worked by elevator operators to ensure that these operators are only paid for the hours they actually work or for which they are legitimately entitled to vacation or holiday pay. Local 1 is in substantial compliance with this requirement. By this we mean that Local 1 has put in place policies and procedures, and has adopted practices, that minimize the danger that the criminal conduct uncovered by the Government (as described in Exhibit A incorporated in the Agreement), or similar misconduct, will recur.

As a consequence of Local 1 losing jurisdiction over so-called “joint venture” or “dual purpose” cars to Local 14, there has been a precipitous drop in the operator work available to Local 1 members. TBG has observed that there is currently no work for Elevator Constructor operators other than short term “patch work.”

TBG closely followed the jurisdictional dispute between Local 1 and Local 14, each of which claimed the right to operate “joint venture” or “dual purpose” cars on New York City construction projects.⁵⁴ In April 2006, arbitrators from both the New York Plan for the Settlement of Jurisdictional Disputes and the National Plan for the Settlement of Jurisdictional Disputes ruled in favor of Local 14, extinguishing Local 1’s claim to shared jurisdiction over these multipurpose cars. Although Local 1 retains jurisdiction over cars used exclusively to carry personnel, Local 1’s CBAs with the general contractors expired and the general contractors have not designated any lifts as personnel only.⁵⁵

The loss of shared jurisdiction over work on “joint venture” or “dual purpose” cars has had a significant impact on Local 1 that extends beyond the approximately 125 members who worked as Operators.⁵⁶ First, mechanics no longer physically able to ply their trade cannot extend careers and

⁵⁴ Shortly after execution of the Agreement in October 2005, Local 14 challenged Local 1’s claim to shared jurisdiction over so-called “joint venture” or “dual purpose” cars that carry both freight/materials and personnel. On April 7, 2006, an arbitration panel upheld this assertion of jurisdiction by Local 14, reducing Local 1 jurisdiction to those cars designated as personnel only.

⁵⁵ The Local 1 collective bargaining agreements with the leading general contractor organizations in the New York metropolitan area, the Building Contractors Association, Inc. (BCA) and the Contractors’ Association of Greater New York (CAGNY), expired on June 30, 2005. There is currently no collective bargaining agreement with BCA and CAGNY members.

⁵⁶ As of April 23, 2007, there were 112 members categorized in the Local 1 database as Operator/Journeyman and 10 members listed as Operator/Apprentice. As of this writing, there are 27 and 6 respectively.

enhance pensions and retirement annuities by working as operators. Second, loss of the hours credited to Local 1 members for working as operators will mean less money contributed to the Local 1 Annuity Fund, reducing the annuity benefits for all members at retirement. Third, the inability of some Local 1 members to continue to make a living working as operators is causing economic and emotional distress. TBG observed that this distress was expressed openly at union meetings and that political factions developed within the union around how best to respond to this development. Fourth, and most important from the perspective of integrity vulnerabilities, loss of jurisdiction over “joint venture” or “dual purpose” cars to Local 14 means that going forward, there is little reason to fear that Local 1 members will be in a position to extort bribes from contractors, subcontractors and materialmen for lifting personnel, tools and equipment, materials and supplies above the first several floors of high rise structures under construction/renovation. Historically such corruption opportunities induced some people to “purchase” operator assignments, either for cash or by facilitating no-show job schemes and other scams.

In the first quarter of 2008 Local 1 members classified as Operator/Apprentice or Operator/Journeyman were credited with 3,293 hours as operators. Adjusted to exclude hours credited to members working in construction, service and repair, and modernization who are misclassified in the database as Operator/Apprentices or Operator/Journeymen, the total time members were credited for working as operators in the first quarter of 2008 totals 1787 hours. In the second quarter of 2008 operator work rebounded somewhat as Local 1 members classified as Operator/Apprentice or Operator/Journeyman were credited with working 5321 hours as operators. Adjusted to exclude hours credited to members working in construction, service and repair, and modernization who are misclassified in the database as Operator/Apprentices or Operator/Journeymen, the total time members were credited for working as operators in the second quarter of 2008 totals 3742 hours. This averages about 95 hours per month for each of the thirteen members who worked as operators during the quarter.

Each month signatory employers⁵⁷ report the number of hours worked by their Local 1 employees the previous month and submit the corresponding benefits payments to the National Elevator Industry Benefit Plans (NEI) in Newtown Square, PA.⁵⁸ This data is entered in NEI databases. The work hour data extracted from these reports is then transmitted electronically to Local 1. This also is done monthly. Member work hour data downloaded

⁵⁷ See list of signatory companies, employers that have entered into collective bargaining agreements with Local 1, at <http://iuec1.unionactive.com/docs/companies.htm>.

⁵⁸ These employers are also contractually bound to make corresponding monthly payments to the Local 1 Annuity Plan.

from NEI is entered in Local 1's member database⁵⁹ and it is regularly reviewed by the Day Secretary.⁶⁰ This information is available to other Local 1 officers over the Local's computer network.⁶¹

ERISA requires benefit plan trustees to monitor the hours reported for plan participants and periodically verify the accuracy of reported hours above reasonable levels. NEI has implemented a monitoring program that automatically identifies each IUEC member credited with more than 1000 hours in any given quarter. To identify IUEC members credited with an "excessive" number of hours and to verify that these members actually worked the hours credited to them, the NEI and the Local 1 Day Secretary screen work hour credits at least quarterly. As this screening process relies on data reported by signatory employers at the time these employers remit the benefits contributions required of them pursuant to collective bargaining agreements with the IUEC and IUEC locals, the work credit data available to Local 1 always trails the work activity by two or more months.

As described by Robert O. Betts, Jr., Executive Director, National Elevator Industry Benefit Plans,

The monitoring of Participants that earn in excess of 1,000 [hours] in a calendar quarter is done by the Pension Plan. Letters are mailed to Participants with over 1,000 hours in a calendar quarter and their employers requesting that they verify the hours reported were in fact worked. The Local is not involved in the Hours Verification process, although every Local does receive a report of hours worked by its members and members [working] in its jurisdiction each month.

This process of verifying hours credited is undertaken approximately a month and a half after the close of each Calendar Quarter. Follow up through mailed correspondence generally takes 30 to 60 days.⁶²

In addition, each quarter the Day Secretary and the Secretary/Treasurer jointly review the hiring lists and the work hours credited to members in the

⁵⁹ This information does not reach Local 1 for six to eight weeks after the relevant employment period.

⁶⁰ In April 2007, Dennis O'Neill replaced Gary Riefenhauser as Day Secretary. Riefenhauser was elected Vice President/Business Agent in March 2007 to complete the term of office vacated by the resignation of Edward Krull.

⁶¹ Beginning in September 2006, TBG has had remote online access to this database.

⁶² As described in the pension plan's operating procedures, each calendar quarter reports are processed to identify members with hours reported over 1000. A letter with an attached list of hours is mailed to both the member and to the employer requesting verification of the accuracy of the hours reported for the quarter. After 30 days a second request is mailed to unresponsive members and employers. After 60 days a final request is sent to unresponsive members by certified mail.

previous quarter as they examine dues payment delinquencies to ascertain whether or not there are members who are working who have not have paid applicable dues and assessments. The Day Secretary also reports work hour credit statistics to the President/ Business Manager no less than once each quarter.

Beginning in February 2008, the Local 1 officers with access to the membership database have had available to them an automated Microsoft Access database query that produces reports on Local 1 members who were credited with work hours in excess of each of several thresholds during a calendar year. These reports can be generated for the calendar years 2005 through 2007. By running these queries TBG was able to determine that there were forty-eight (48) Local 1 members credited with 3000 hours or more in 2007.⁶³ Eight (8) of these members were credited with 3500 hours or more and one (1) was credited with 4067 hours of work. TBG reviewed the work hour credit histories of each of these eight (8). TBG found that each worked for just one employer each during the year and that seven (7) of them worked in service or repair. The other member worked in construction. TBG then discussed these work credit histories with the President/Business Manager and the Day Secretary, who provided reasonable explanations for how each of these eight people were able to accumulate so many work hour credits each year.⁶⁴

During the reporting period that ended in November 2007, the Day Secretary brought to the attention of TBG two (2) instances of Local 1 members assigned to operate patch cars who are believed to have left work before the end of their shifts but who later claimed and sought payment for working full shifts.

In one instance, the employer terminated the offender and docked the individual for the unearned pay. The individual member did not challenge the employer's disciplinary action and did not request that a grievance be filed on his behalf. Therefore, Local 1 accepted the employer's conclusion and disciplinary action and did not investigate this matter independently.

⁶³ In 2006, there were forty-three (43) Local 1 members credited with 3000 hours or more. Eight (8) of these members were credited with 3500 hours or more and one (1) was credited with 4130 hours of work. This individual was credited with 4067 hours of work in 2007, and 2327 hours in the ten month period March through December 2005. The lock-out, which began with the expiration of the EMANY contract in mid March, was not resolved until mid June, effectively eliminating three (3) months of work opportunities.

⁶⁴ For example, the individual who was credited with 4067 hours of work in 2007, 4130 hours in 2006 and 2327 hours in the ten month period March through December 2005, worked all these hours servicing the elevators and escalators in one large Manhattan building that houses a hotel, offices and a theatre. According to the President/Business Manager and Day Secretary, this individual volunteers for all the available overtime. They described another individual who was credited with more than 3500 hours in 2007 as "the top elevator construction foreman in Manhattan." As such, this construction foreman is able to work mostly overtime shifts, dramatically increasing the number of work hours credited to him in any given period.

In the other instance, Local 1 was unable to obtain evidence to corroborate the allegation before the individual retired. The allegation was that the individual was attending a class at an educational institution when he was supposed to be on the job. Citing student privacy rights, the educational institution would not provide Local 1 with the individual's attendance records. With the education institution being unwilling to provide critical evidence and the individual no longer on the hiring list due to retirement, the Day Secretary and the President/Business Manager saw little to be gained in pursuing the matter further. TBG concurred in the judgment of the officers that without the school attendance records it would not be possible to sustain Local 1 disciplinary charges against the individual.

Conclusion: Local 1 is in substantial compliance. The NEI and the Local 1 Day Secretary screen work hour credits at least quarterly in an effort to identify Local 1 members who appear to have worked unreasonably excessive hours. Further, as a consequence of Local 1 losing jurisdiction over so-called "joint venture" or "dual purpose" cars to Local 14, there has been no work for Elevator Constructor operators other than short term "patch work." Tracking the work hours credited to Elevator Constructor operators during this reporting period shows: (1) not one Elevator Constructor operator has been credited with enough total work hours to engender suspicion; and (2) the trend in operators monthly total adjusted work hours is a downward trend. Importantly, as an additional consequence of this loss of jurisdiction to Local 14, there is little reason to fear that Local 1 members will be in a position to facilitate no-show job schemes and other scams involving operation of construction elevators and hoists.

b. Implementing procedures to ensure that the operator hiring list is maintained in a fair and impartial manner and elevator operators are only hired from the operator hiring list.

During the criminal scheme prosecuted by the USAO EDNY, the Local 1 hiring list was cloaked in secrecy, facilitating abuse of the system by making it more difficult for Local 1 members to question the integrity of the hiring process. Since the outset of our tenure as Independent Examiner, TBG has observed that separate hiring lists for Operators, Journeymen and Apprentices are prominently posted in the Local 1 union hall and updated by the Day Secretary at least weekly. Further, since October 2006, these hiring lists have been posted on the official Local 1 website that went into full operation that month. This official website enables Local 1 members to log in and access the three hiring lists over the internet.⁶⁵

⁶⁵ The address of the Local 1 website is: <http://www.localoneiuec.com>. Access to the lists is limited to Local 1 members through a logon arrangement that requires a user name and password.

Since the arbitrators' rulings in favor of Local 14 in April 2006, general contractors have not called Local 1 for operators and no Local 1 member has been sent to a new construction project as an operator, other than for "patch work." Further, the Local 1 leadership reports that general contractors are increasingly requiring the elevator manufacturers to build the cost of "patching" elevator shafts into their bids, shifting the responsibility for operating patch cars from the general contractors to the elevator manufacturers. These manufacturers, which include industry leaders such as Kone, Otis, Schindler and ThyssenKrupp, are increasingly assigning this patch work to their Local 1 member employees who are already on the job site rather than calling the Local 1 Day Secretary to assign additional Local 1 members to staff the patch cars.

As the few operator assignments still available to Local 1 members are coveted by those members who are out of work and who cannot work as mechanics or helpers, TBG was particularly sensitive to observing whether or not "...the operator hiring list is maintained in a fair and impartial manner and elevator operators are only hired from the operator hiring list." As will be discussed more fully below, TBG is satisfied that operator work assignments/referrals have been distributed fairly.

Currently, the Day Secretary is unable to assign members on the operators hiring list to anything other than short term "patch work."⁶⁶ TBG spoke/met with several Local 1 members on the Operators hiring list who alleged that the list is not administered in a fair and impartial manner because other "favored members" were offered patch work assignments that should have been offered to them, or that they have been skipped over in retribution for opposing the local's officers. These allegations are not supported by the evidence. Analysis of the work hours credited to each member on the Operators Hiring List and our review of the notes and other records kept by the Day Secretary in connection with calls from signatory employers seeking assignment of Local 1 members for patch work do not reveal a pattern of favoritism or a pattern of retribution. Regular inquiry by TBG⁶⁷ confirmed, through direct log-on access to the Local 1 membership database and at least twice monthly interviews of the Day Secretary, that the Day Secretary makes "patch work" assignments in an open, fair and evenhanded manner.

The Day Secretary's records show that "patch work" assignments reflect a combination of members' availability and ability to meet specific job assignment criteria articulated by the signatory employers calling the Day Secretary for workers. The most important of the job assignment criteria articulated by employers is employer specific safety training, which the Day Secretary said strictly limits who he can assign to a particular employer and/or

⁶⁶ See discussion of "Patch work" and "patching the hatch" in ft nt. 7 above at Page 8.

⁶⁷ TBG tracks changes in all three hiring lists weekly. These changes are discussed with the Day Secretary no less than twice each month and documented in memoranda to TBG files.

particular construction project. A recent change in New York law requires that every worker employed on a public work site be certified as having completed the "OSHA 10" course in construction safety and health,⁶⁸ further limiting the patch work opportunities available to some out-of-work members on the operators hiring list.⁶⁹

In May 2007, TBG recommended that a computerized database be developed that makes readily available to the Day Secretary information about each individual on the three hiring lists that indicates how each individual meets the criteria for particular potential job assignments. In the case of operators, this information would include: employers with whom the individual is "signed up"; employers from whom the individual has received safety and other training; and whether or not the listed member has an automobile for getting to work sites not served by public transportation. Although not strictly within the ambit of the Agreement, TBG recommended that for individuals on the Journeyman Hiring List and Apprentice Hiring List, the information should also include the listed member's area(s) of expertise (i.e., construction, repair, maintenance, modifications, escalators, etc.). Local 1's legal counsel cautioned that drawing distinctions such as these among journeymen and apprentices may run afoul of established labor law. He wrote, "It is my view that we are legally required to refer individuals in the order of their registration on the unemployment list and that we cannot pick and choose according to an individual's statement or our own view as to whether a particular elevator mechanic has a certain skill or qualification." He also pointed out that the Agreement refers only to the "operators hiring list" and "elevator operators."

In May and November 2007 TBG recommended that a computerized database be employed to formally track: (1) when and to which employers/projects Local 1 members are referred for work; (2) how long each of these work opportunities was expected to last at the time of the referral; and (3) how long each of these jobs did last. In response the President/Business Manager and the Day Secretary pointed out to TBG that there were then fewer than thirty (30) names on the operators hiring list and they predicted that retirements and pending expulsions for failure to pay union dues and assessments would reduce that number further.⁷⁰ In short, they argued, the precipitous decline in work hours available to operators and the concomitant decline in the number of members on the operators hiring list make a computerized database unnecessary.

With respect to patch work assignments, in May and November 2007 TBG recommended that a formal policy be adopted that excludes members from

⁶⁸ Laws of New York, Article 8, Labor Law §220-h, which became effective on July 18, 2008.

⁶⁹ Local 1 has been making OSHA 10 training available to its members through courses taught by certified instructors at its Long Island City, NY and Perth Amboy, NJ union halls.

⁷⁰ As of this writing there are 18 names on the Operators hiring list.

the patch work rotation who have earned enough hours to maintain their benefits until all the other members on the hiring lists have been afforded the opportunity for patch work to earn theirs. Local 1's legal counsel voiced concern about establishing "a policy involving the rotation of patch work so that members earn enough hours to maintain their benefits." In meetings held during the latest reporting period, the President/Business Manager and the Day Secretary forecast further declines in the amount of patch work available to Local 1 members, making it unlikely that any members on the operators hiring lists will be able to earn enough hours to maintain their benefits in the future, and thus making a formal policy unnecessary.

In May and November 2007 TBG recommended that the Executive Board develop and propose to the membership a policy that defines how much patch work a member can do before fairness requires that the member forfeit his/her place on the Operators Hiring List. There has been no assignment of a Local 1 member to long term employment as an operator since Local 14 won exclusive jurisdiction over so-called "joint venture" or "dual purpose" cars in April 2006. Based on the dramatic decline in the total adjusted work hours credited to elevator constructor operators over the past two years, the President/Business Manager and the Day Secretary argued that the proposed policy would be superfluous.

Conclusion: Local 1 is in substantial compliance. There has been no assignment of a Local 1 member to long term employment as an operator since Local 14 won exclusive jurisdiction over so-called "multi-purpose cars" in April 2006. The only elevator operator work available to members on the operators hiring list is "patch work." Employers seeking operators for "patch work" generally accept only workers who have completed their own employer specific safety training, which strictly limits who the Day Secretary can assign to a particular employer and/or particular construction project. The monthly adjusted total of hours worked by Local 1 members designated in the membership database as operators has declined markedly, reflecting the overall decline in opportunities for elevator constructor operators to find work of any kind. Regular inquiry by TBG confirmed, through direct log-on access to the Local 1 membership database and at least twice monthly interviews of the Day Secretary, that, taking in to account all these constraints, the Day Secretary continues to make "patch work" assignments in an open, fair and evenhanded manner.

c. Implementing procedures to computerize and make available to all members the current and historical operator hiring lists, including job assignments.

Local 1 is in compliance with its obligation under the Agreement to computerize current operator hiring lists and make them available to Local 1 members over the internet. Beginning in October 2006, Local 1 has made an

electronic copy of each hiring list accessible to the membership on the local's website.⁷¹ However, Local 1 has not computerized and made available to all members historical operator hiring lists, including job assignments.

Each hiring list, Apprentice, Journeyman and Operator, is a Microsoft Excel spreadsheet created on August 15, 2006 that is revised by the Day Secretary, at least weekly, to reflect changes in the three hiring lists. In October 2007, it was discovered that contrary to our earlier recommendation, no back-up copies were created to preserve the history of changes in electronic form as the hiring list spreadsheets were being updated. A procedure has since been implemented to do so. A back up copy of each hiring list spreadsheet is automatically saved every time there is a revision to the hiring list. However, this procedure does not preserve the historic hiring list information in a database format amenable to online searching and retrieval. Although hiring list histories are not routinely available to members, these back up computer files can be used to reproduce the three hiring lists on any given day since October 2007. However, Local 1 has not taken steps to implement a recommendation made in May and November 2007 that the collection of hardcopy hiring lists, which constitutes the history of hiring list changes, be scanned or otherwise preserved in an electronic form amenable to online searching and retrieval.

The President/Business Manager argued that creating a searchable database of historic hiring lists would be unduly expensive given that: (1) since October 2006 members have had the ability to log on and access current hiring lists through the local's website and to download, print or save each list; (2) one Local 1 member has requested historic hiring lists since the website went up; and (3) no member has been referred from the operator hiring list to a long term elevator operator assignment in nearly two years.

TBG tracks changes in all three hiring lists weekly. These changes are discussed with the Day Secretary no less than twice each month and the changes are documented in memoranda to TBG files. More important, the Day Secretary tracks movement on and off the hiring lists on a spreadsheet. The information on this spreadsheet is faxed to the NEI Benefit Plans to provide the Plans with updates on the employment status of each affected Local 1 member.⁷² This is done no less than weekly. Since April 2008, the information also has been uploaded to the membership database.⁷³ Using

⁷¹ The address of the Local 1 website is: <http://www.localoneiuec.com>. Access to the lists is limited to Local 1 members through a logon arrangement that requires a user name and password. However, as described below, employers are also obtaining access to the hiring lists.

⁷² The member information captured in this spreadsheet is: IEUC ledger number; social security number; name; employer; back to work date; lay off date; disability status; worker's compensation status; and data entry date.

⁷³ A copy of the database is automatically saved as a backup each time the data is altered. Although difficult and time consuming to accomplish, these backups could be used to reconstruct a detailed history of movement on and off the hiring lists in electronic form.

an automated query the Day Secretary generates reports on layoffs and job assignments during specified periods. Each month the Day Secretary has this tracking report available for inspection by the Executive Board at its regularly scheduled meeting as a supplement to his regular oral report on the number of members “on the bench.” This tracking report will enhance the ability of other elected officers to provide an additional measure of oversight with respect to the Day Secretary.

The President/Business Manager argued that following the TBG recommendations regarding tracking of job assignments in a searchable computer database will work to the disadvantage of members on the bench and is likely to sow dissension among Local 1 members. He also asserted that tracking referrals and job assignments in a database that is accessible to members over the internet will violate important privacy rights.

As an example of how tracking referrals and job assignments in a database that is accessible to members over the internet can violate important privacy rights, the President/Business Manager and Day Secretary both noted that occasionally Local 1 members referred off the hiring lists to employers fail the employers’ drug tests. The Day Secretary must then refer another member for the job and remove the member who failed the drug test from the hiring list until the member again tests clean.

As an example of tracking working to the disadvantage of workers on the bench, they both contend that employers are already obtaining access to the hiring list with the assistance of Local 1 member employees and using this information to avoid certain workers on the list or to cherry pick others off the list as one of the quota hires to which they are entitled under the CBAs.⁷⁴ For example, in some instances, the individual referred to an employer is rejected by the employer for lacking the training, skill or experience required for the particular assignment. Making it easier for employers to track members rejected by other employers would, in their view, exacerbate the problem of finding work for some of the union’s members.

Finally, the Day Secretary and President/Business Manager argued that any member with questions about job assignments can already come to the union hall to meet with the President/Business Manager, the Day Secretary and the Vice President/Business Agent for his geographic area to obtain an explanation. The Day Secretary proposed using the monthly tracking report discussed above as a resource in these meetings as appropriate.

Conclusion: Local 1 is in substantial compliance. Local 1 is in full compliance with its obligation under the Agreement to computerize current

⁷⁴ See, e.g., Section II, ¶ 3 of the EMANY collective bargaining agreement, which is attached to this report as Exhibit 2.

operator hiring lists and make them available to Local 1 members. Current Local 1 hiring lists for apprentices, journeymen and operators are available to members on the official Local 1 website, where they can be viewed and downloaded. These lists are updated at least weekly.

Since April 2006, when Local 14 won exclusive jurisdiction over so-called “joint venture” or “dual purpose” cars, there have been no long term assignments of Local 1 members as elevator operators. Most of the movement on the operators hiring list is attributable to retirements, transfers to the journeyman or apprentice lists and expulsions for failure to pay dues. Therefore, it is of limited utility to computerize and make available to all members historical operator hiring lists.

Local 1 has demonstrated to our satisfaction that computerizing operator job assignments and making operator job assignment information available to Local 1 members is not warranted under present circumstances. We agree with Local 1 leaders that tracking job assignments in a searchable computer database could work to the disadvantage of members on the bench and that tracking referrals and job assignments in a database that is accessible to members over the internet could violate important privacy rights.

The intent of this remedial measure is to foster transparency in the administration of the operator hiring list. Transparency in the assignment of work is fostered by posting all three current hiring lists on the local’s official website where the lists are available to members for downloading. Further, information about job assignments is tracked in reports sent regularly to the NEI Benefit Plans and entered into the Local 1 membership database, where it is accessible to elected officers who can exercise oversight over the Day Secretary through their positions on the Executive Board. Further, the leadership has pledged to make work assignment information available to members who inquire personally at the Long Island City union hall.

- d. Implementing procedures to ensure that Local 1’s elections are conducted in a fair, nondiscriminatory, open and democratic manner, as consistent with the Labor Management Reporting and Disclosure Act (LMRDA). Such procedures shall ensure that no candidate or member be intimidated in any way in connection with an election.***

On April 20, 2006, an election was held to select Local 1 delegates to the IUEC Convention. For the first time, Local 1 members could vote in either one of the Local’s two union halls, 47-24 27th Street, Long Island City, NY, or 340 Convery Blvd., Perth Amboy, NJ. Both the IUEC and the USDOL rejected a challenge voiced by John Green, Jr., to using the Perth Amboy union hall as a second polling place. About half the membership voted in this election, and about 1/3 of those that did cast their votes in Perth Amboy.⁷⁵ Votes were tallied

⁷⁵ 1382 members voted. 476 members voted in Perth Amboy.

on machines supplied by Election Machine Services.⁷⁶ TBG did not receive complaints challenging the validity of the election results.

Local 1 is governed by a Constitution and By-Laws (Constitution) that were last comprehensively revised in 1972. In March 2004 a Constitution and By-Laws Committee (Committee) was formed to review this Constitution and recommend changes to the membership. The Constitution requires that proposed amendments be read at three successive General Meetings of the membership before being voted on, and that two thirds of the members voting must accept the proposed amendments for them to become effective.

The Committee presented a Draft Constitution to the members in a 32 page printed booklet that was mailed to each member's home prior to the December 2006 General Meeting. A letter from Raymond Hernandez (Hernandez), then Local 1 President/Business Manager, and Anthony J. Carudo (Carudo), then Local 1 Secretary/Treasurer, that was included in the booklet described the process mandated for amending the Constitution, proposed a schedule for considering and voting on the proposed amendments, invited members to attend the meetings to raise questions, voice opinions and propose further revisions, and urged members to adopt the Draft Constitution.

TBG attended the monthly General Meetings held at the High School of Fashion Industries, 225 West 24th Street New York, NY 10011, on December 21, 2006, January 18 and February 15, 2007, and observed that the process by which the Draft Constitution was offered to and considered by the membership was a model of union democracy. Members were given ample opportunity to make comments, voice questions and to propose amendments to the Draft Constitution. This was done in an orderly and generally respectful fashion, with the debate focused on the substantive merits of the provisions under discussion.

At the February 15, 2007 General Meeting, the membership voted on the proposed Draft Constitution by secret ballot. TBG observed that the balloting was conducted fairly, that proper procedures were followed and the vote count was accurate. The three year effort to revise and update Local 1's Constitution and By-Laws culminated in rejection by the membership. The vote was 127 to accept and 137 to reject. About 10% of the members eligible to vote did vote.

On Tuesday, May 8, 2007, a special meeting was held at the Local 1 union hall in Long Island City, NY, for the nomination of candidates for all the elective offices of Local 1. Notice of the meeting was mailed to each member of the union at the member's address of record. The notice was mailed on April 18, 2007. Notice of the meeting was also posted on the local's website

⁷⁶ EMS, which provided election services to Local 1 in the John Green era, had 4 technicians at the two polling places. EMS charged Local 1 about \$5,000 to supervise the April 20, 2006 election. The EMS contact person is Jane Bonadio, 718-651-8822.

and posters were displayed in the local's Long Island City and Perth Amboy union halls announcing the place, date and time of the special meeting. Raymond Hernandez, then President/ Business Manager, presided. After calling the nominating meeting to order, Hernandez called for nominations from the floor for each of the nine (9) offices (eighteen officer positions) to be filled.⁷⁷ To nominate a candidate for the office, a Local 1 member first went to the front of the room, presented his/her union card to a delegation of officers who verified, using computer printouts, that the member was in good standing and then eligible to vote. Next, the member went to the microphone to announce the name of the Local 1 member he/she was nominating as a candidate for the office. Generally nominations were accompanied by a brief speech explaining why the nominator supported the nominee and urging fellow members to support the candidate as well. Each nomination was followed by a second, and then by the nominee's acceptance. The same verification procedure took place before the second and the nominee came to the microphone. Generally, nominees gave a brief acceptance speech describing why they were the best candidate for the office and asking the assembled members for their support. This cycle was repeated for each office, with Hernandez inviting additional nominations before proclaiming, "Going Once, Going Twice, Done!" and banging his gavel before moving on to the next office. There is no evidence that any member was discouraged or prevented from running for office or from nominating another member to run for office. After names had been placed in nomination for each office, Hernandez adjourned the meeting. All the candidates were then summoned to meet with Col. Jonathan R. Freed of Election Machine Service, Co., Inc. (EMS), to draw/select positions on the official ballot.

Three (3) candidates were nominated to succeed Hernandez as President/ Business Manager: Anthony Carudo, John Green, Jr., and Leonard Legotte. Going alphabetically, they were assigned Row A, Row B and Row C, respectively. Candidates for seven (7) of the eight (8) other offices were running on a ticket/slate with Green, Jr., or Legotte and were assigned to Row B or Row C accordingly. Carudo ran as an "independent." Christopher Randazzo was an "independent" unopposed for the position of Corresponding Reporter.

The Local 1 election campaign featured flyers, mailers, websites (including video) and a number of "rackets" or candidate meet and greet events with food and refreshments at various locations. Some of the flyers and mailers exhibited a high level of graphic design and excellent production values. The tickets engaged in so-called negative campaigning, which included publicizing union disciplinary charges and counter charges that were filed with Local 1 and with the International in what may have been plays for political advantage.

⁷⁷ President/Business Manager; four (4) Vice Presidents/Business Agents; Secretary/Treasurer; Day Secretary; Recording Secretary; five (5) Trustees; three (3) Examining Board members; Warden; Corresponding Reporter.

Hernandez filed charges against Green, Jr. and scheduled a trial before the Local 1 Executive Board on Tuesday, June 19, 2007, which was two days before the election, prompting Green, Jr. to seek an injunction in federal court. Before the court heard argument on the injunction, Hernandez acceded to the request by Green, Jr. for a postponement due to the unavailability of defense witnesses. Green, Jr. countered by filing charges against all the Local 1 paid officers.⁷⁸ In addition to filing the petition for an injunction, an attorney engaged by the "Row B" slate of candidates telephoned and corresponded in writing with Local 1, Local 1's legal counsel and TBG on numerous occasions, posing questions, raising objections and making demands on behalf of his clients with respect to the conduct of the election campaign and election. Objections and demands that were not answered to the satisfaction of the "Row B" slate of candidates are included among the twenty-eight (28) specifications advanced in the election protest described below.

On Thursday, June 21, 2007 Local 1 held its General Election to select union officers. TBG had observers stationed at both polling places; the union hall at Long Island City, NY, and the union hall at Perth Amboy, NJ. At least one TBG representative was at each location before the polls opened at noon and at least one remained at each location until after the polls closed at 8:00PM and the votes were officially tallied.⁷⁹

TBG observed that there were two EMS technicians at each site throughout the voting. There was always at least one EMS technician present with the three machines in each location. Further, TBG observed that representatives of all three candidates for President/Business Manager witnessed the EMS technicians open the back of each voting machine to check that the counters were all set at zero before the polls opened. TBG was present at both locations to witness the EMS technicians close the voting machines at exactly 8:00PM,⁸⁰ and in the presence of representatives of all the candidates open the backs to read off the counts, by row and position, for each candidate on each machine, beginning with the candidates for President/Business Manager and concluding with the candidates for Warden. TBG's unofficial tally corresponded to the official tally compiled by the EMS technicians.⁸¹

On June 25, 2007, John Green, Jr., the candidate for President/Business Manager who headed the "Row B" slate of candidates, wrote to Hernandez

⁷⁸ At this writing these charges and countercharges are still pending. Cross complaints by Kelly and Hernandez are still to be heard in Perth Amboy Municipal Court.

⁷⁹ Harlan Ettinger was present when the polls opened in Perth Amboy, and later traveled to Long Island City, where he was present when the polls closed and the votes were tallied. Robert Rehm was present throughout the voting and vote tallying in Perth Amboy. Charles Zammit was present throughout the voting and vote tallying in Long Island City.

⁸⁰ One machine at Long Island City, Machine No. 2, was closed several minutes early, at about 7:55PM, because the last voter to use it inadvertently jammed the handle while exiting. The other two machines continued to function and there was no one waiting to vote.

⁸¹ See Exhibit 3, a copy of the official tally sheet.

formally protesting the results of the election. Green's letter advanced twenty-eight (28) specifications of misconduct and/or error that he and his running mates contended affected the outcome of the election. The letter concluded, "We demand that a free and fair election be re-run, without interference from Local 1 and under the supervision of the Department of Labor."⁸²

Despite the protest by Green and his running mates, Legotte and the other officers-elect were sworn in by Hernandez on July 12, 2007. Shortly afterward, on July 13, 2007, Legotte wrote a letter to Green acknowledging his June 25, 2007 letter to Hernandez and scheduling a hearing on the election protest before the Local 1 Executive Board on Wednesday evening, September 5, 2007.

On Wednesday, September 5, 2007, the Executive Board convened as a special trial panel to hear the election protest. Legotte presided. The proceedings, which included opening statements, the taking of evidence and presentation of arguments on each of the twenty-eight specifications, were recorded verbatim by a stenographer.⁸³ After receiving evidence, and listening to the arguments of the protesting candidates, the Board excused the stenographer and TBG from the room. The Board deliberated in secret for about an hour. When the Board's deliberations were complete, Legotte called the stenographer and TBG back into the conference room. TBG was present when Legotte announced for the record in the presence of all the members of the Board that they had considered each of the specifications of the "Row B" election protest and found all of them to be without merit. The Local 1 Executive Board voted unanimously to deny the election protest. Although asked to do so by the election protestors, Dana Brigham, the IUEC General President declined to intervene,⁸⁴ and in late October John Green, Jr., filed a protest with USDOL seeking to have the election results overturned and the election re-run under the supervision of the Department.⁸⁵ After considering this protest, the USDOL declined to intervene because Green's "...complaint was not timely filed with the Secretary of Labor."⁸⁶

Having observed the June 2007 election and having listened to the evidence and arguments presented to the Local 1 Executive Board by the "Row B" slate candidates in support of their election protest, TBG concurs in the judgment of the Executive Board that neither alleged misconduct by candidates and their supporters, nor alleged voting irregularities affected the results of the election.

⁸² See Exhibit 4, a copy of Green's June 25, 2007 letter.

⁸³ Vickie Russo, CSR, Cross County Reporting.

⁸⁴ See Exhibit 5, a copy of Brigham's October 23, 2007, letter to Green.

⁸⁵ See Exhibit 6, a copy of Green's October 23, 2007, letter.

⁸⁶ See Exhibit 7, an unsigned copy of Ralph E. Gerchak's November 5, 2007, letter to Green.

There have been no elections of officers since June 2007. However, eight questions have been voted on by the membership at the monthly general membership meetings; most by secret ballot.

- At the Local's General Membership Meeting on Thursday, September 20, 2007, a secret ballot vote was held on a proposal by management to increase union dues. The proposal was defeated by a vote of 303 to 114. TBG was present in the auditorium at the High School of Fashion Industries 225 West 24th Street New York, NY 10011, to observe the meeting and monitor the voting. TBG observed that members were encouraged to voice their opinions and afforded ample opportunity to argue for or against the proposal. At the conclusion of the debate, polling took place in the auditorium. There were two lines, one on each side of the room, where members presented their union cards to establish their eligibility to vote. Each member's card was punched, the card number was noted on a list and the member handed a blank ballot. Members marked their ballots and placed them through the slot in the top of one of the two sealed ballot boxes. This process was overseen by Local 1 officers and election volunteers. At the conclusion of the vote, the two ballot boxes were unsealed at tables on the auditorium stage and the votes were counted by pairs of Local 1 officers in full view of the membership. The results were immediately announced to all present in the auditorium.⁸⁷
- Similarly at the Local's General Membership Meeting on Thursday, October 18, 2007, a secret ballot vote was held on three proposed amendments to the Local 1 Constitution and By-Laws. As in September, TBG was present in the auditorium at the High School of Fashion Industries 225 West 24th Street New York, NY 10011, to observe the meeting and monitor the voting. TBG observed that members again were encouraged to voice their opinions and afforded ample opportunity to argue for or against the proposed amendments. One of the proposals was amended from the floor. The original proponent protested that this amendment was out of order, but the President, who chaired the meeting, ruled that it was not and the amendment to the proposal was adopted by a voice vote.⁸⁸ At the conclusion of the debate on each of the three proposals, polling took place in the auditorium. The voting procedures were the same as observed in September with the exception that there were three (3) ballot boxes on each side of the stage, one for each question being put to a vote. The ballots were color coded to assist in directing voters to cast their ballots in the appropriate color coded box.

⁸⁷ In the past, the ballots have been counted twice to ensure accuracy. However, on September 20, 2007, the margin was so large that this was deemed unnecessary.

⁸⁸ The proponent of the original amendment has continued to argue on his website that the amendment to his proposal was out of order. However, he did not appeal the ruling of the chair or otherwise seek to challenge the result.

- TBG observed that consistent with past practice the votes were counted by pairs of Local 1 officers in full view of the membership and the results were immediately announced to all present in the auditorium. The members adopted two of the proposed amendments and rejected the third.⁸⁹ The members also adopted a resolution by voice vote authorizing the President/Business Manager to continue employing an organizer at Local 1 expense.
- On November 15, 2007 at the Local's monthly General Membership Meeting the general membership considered and approved by voice vote changes in the defense fund trust agreement. At the same meeting, the membership debated and defeated by voice vote a motion to rehire member Tim McGrath as the maintenance man for the union halls in Long Island City and Perth Amboy. TBG was present in the auditorium at the High School of Fashion Industries 225 West 24th Street New York, NY 10011, to observe the meeting and monitor the voting. There was full and open debate on the questions prior to each vote and TBG concurs in the judgment of the chair as to the relative strength of the support voiced for, or opposition voiced against, each of the measures.
 - On December 20, 2007 at the Local's monthly General Membership Meeting the general membership adopted amendments to Article XXIV of the Local 1 Constitution and By-Laws. These are the disciplinary provisions required by the Agreement. TBG was present in the auditorium at the High School of Fashion Industries 225 West 24th Street New York, NY 10011, to observe the meeting and monitor the voting. TBG observed that the proposed amendments to the Local 1 Constitution and By-Laws were presented to the membership at General Meetings in October and November according to the procedures prescribed in the Constitution and By-Laws. The proposal also was posted on the Local's website. Voting was conducted by secret ballot. There was full and open debate on the questions, voting by secret ballot was orderly, the votes were tabulated fairly, in full view of the membership, and the results were announced promptly and publicly.
 - On February 21, 2008, at the Local's monthly General Membership Meeting the general membership adopted by voice vote the new compensation structure for officers recommended by the Officers' Wage & Policy Committee. TBG was present in the auditorium at the High School of Fashion Industries 225 West 24th Street New York, NY 10011, to

⁸⁹ The proposal to increase the death benefit to \$25,000 and to fund the payment of death benefits through the purchase of insurance was adopted by a vote of 133-25. The Constitution and By-Laws specify that Executive Board members be paid one day's journeyman's wages for each Executive Board meeting they attend. The proposal to equate one days journeyman's wages to seven (7) hours was defeated by a vote of 94 to 67. The proposal to change the dues structure to require that monthly dues be equal to twice the journeyman's hourly wage was adopted by a vote of 124-37.

observe the meeting and monitor the voting. The structure adopted by the members is nearly identical to the compensation structure that was included in the comprehensive revision of the Local 1 Constitution and By-Laws that failed to pass a year earlier in February 2007. Several members noted the small turn out at the meeting (114 members were present) and asked that the vote be postponed until the following month. Nevertheless, the President/Business Manager called for a vote on the motion. TBG observed that there was full and open debate on the question prior to the vote and TBG concurs in the judgment of the chair that more support was voiced for the measure than opposition voiced against it.

There has been no suggestion by anyone that these proceedings were anything other than fair, nondiscriminatory, open and democratic. Nevertheless, mindful of the plea voiced by several members at the February 21, 2008 meeting to postpone a voice vote to give additional members an opportunity to be heard, TBG discussed with the President/Business Manager a number of initiatives that might increase attendance at general membership meetings. In response to a suggestion that the agenda be posted on the website at least several days in advance of the General Membership Meeting he pointed out that doing so would likely suppress attendance by enabling members to "pick and choose" which meetings to attend based on particular, narrow concerns rather than participating in debate on all the issues facing the union. Shortly after the President/Business Manager discussed membership attendance with TBG, he met with the Local 1 shop stewards and raised concern about disappointing attendance with them. He and they debated a range of initiatives, including incentives and punishments, to increase attendance at the monthly general membership meetings.

Conclusion: Local 1 is in compliance. TBG observed the election of officers in June 2007 and voting by the membership on eight questions at the monthly general membership meetings over a two year period. These elections/votes were fair, nondiscriminatory, open and democratic.

- e. ***Implementing a procedure to immediately investigate, bring charges against and discipline any Local 1 member for violation of the constitution of by-laws of Local 1 of the International. Local 1 also agrees to apply these same procedures to members and officers who violate any state, federal or Local law if such violation brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law. Under such circumstances, Local 1 agrees that such a violation by any Local 1 member is a serious matter that reflects on the integrity of Local 1, and shall be treated as such.***

A comprehensive revision of the Constitution and By-Laws having been rejected in February 2007, the membership was asked to vote in December 2007 on just the proposed revisions to the disciplinary provisions of the Local 1 Constitution and By-Laws required to satisfy the local's obligation under the Agreement to meet the requirements articulated in Exhibit B attached to and incorporated in the Agreement. As was described above, on December 20, 2007 at the Local's monthly General Membership Meeting, the members present adopted amendments to Article XXIV of the Local 1 Constitution and By-Laws. With the adoption of the Article XXIV disciplinary provisions by the requisite two thirds majority of the membership in attendance at the December 2007 General Membership Meeting, Local 1 is complying with this provision of the non-prosecution agreement.

TBG observed all the disciplinary proceedings conducted by the officers of Local 1 during the term of our engagement as Independent Examiner and we reviewed the verbatim transcripts and other records from the disciplinary proceedings conducted between execution of the Agreement in October 2005 and the beginning of our engagement.⁹⁰ The following are several examples:

Disciplinary charges filed in November 2005 by Fredrick McCourt, Jr., Local 1 Vice President/Business Agent (VP/BA), against Richard Vallario and Carl Magnussen were cited by Local 1 officers as a demonstration of their good faith efforts to sanction Local 1 members who monopolized work that could have been shared among several Local 1 members. More important in the context of the requirement in the agreement that Local 1 "ensure that operators are only paid for hours for which they work or are entitled to vacation or holiday pay," the questioning recorded in the transcript of the Vallario and Magnussen trials reveals that at least some of the Executive Board members who heard the cases suspected the two had not worked all the hours for which they were credited by Plaza Construction on a job at 26 Astor Place in Manhattan. As demanded by Local 1, the contractor removed Vallario and Magnussen from the job at the end of October 2005. Vallario and Magnussen reacted to their dismissals from the job by filing a complaint with the National Labor Relations Board (NLRB) charging Local 1 and Plaza Construction with unfair labor practices for removing them from the 26 Astor Place jobsite. The NLRB matter was settled in March 2006. The Local 1

⁹⁰ Beginning in April 2004, Local 1 held disciplinary hearings before the Executive Board and imposed sanctions on eleven members who were implicated in the criminal scheme prosecuted by the USAO EDNY. These are: Barthold, William C.; Carr, Terence P.; Coady, Michael J.; Costello, Raymond P.; Fusilli, Joseph L.; Gordan, Karen; O'Gara, Michael E.; Schmidt, Steven G.; Shannon, Robert E.; Tracy, William Jr.; and Walker, Frank. Since April 2004, another fourteen members were tried by the Executive Board for various offenses against the Local and/or other members. These are: Blevins, Steven; Casserly, Thomas; D'Allessio, Arnold; Gutkes, Chris; Magnussen, Carl; McCabe, William A. Jr.; Muresca, Anthony; Norton, Edward; O'Sullivan, Patrick; Paolicelli, Carmine; Paolicelli, Chris; Persaud, Steven; Tortorella, Anthony; and Vallario, Richard. As noted above, there were also charges and counter-charges filed during the Local 1 general election campaign in May and June 2007.

disciplinary charges against Vallario and Magnussen and the fines imposed on them after a trial by the Local 1 Executive Board on December 13, 2005, were rescinded as part of the settlement. Some Local 1 officers expressed frustration that the NLRB had not supported their efforts to discipline Local 1 members Vallario and Magnussen for engaging in what the Local's leaders judged to be improper conduct. However, TBG notes that the Vallario and Magnussen matters were settled, and that the results were not the product of a hearing and ruling by the NLRB.

TBG was present for and observed several Local 1 disciplinary hearings conducted by the Local 1 Executive Board. These included proceedings on April 18, 2006, and June 13, 2006, in which the Executive Board heard charges filed by members against other members alleging that the charged parties worked in violation of Local 1's collective bargaining agreement with the employer to the disadvantage of fellow union members.⁹¹

TBG was present on November 13, 2007, when the Board heard charges against Chris Gutkes, Sr., for operating a non-signatory elevator company while on withdrawal status from Local 1. The charges were filed by Terrence Carr, the IUEC organizer assigned to Local 1.⁹² Gutkes did not appear. Carr presented his case against Gutkes, and answered questions posed by members of the Board. At the conclusion of Carr's presentation, TBG was excused and did not observe the Board's deliberations. The Board deliberated for about thirty-five minutes. TBG was invited to return to the room and the presiding officer announced that Gutkes was found guilty of all charges. The Executive Board fined Gutkes \$5,000 on each of the four counts and voted to request that the withdrawal card issued to Gutkes by the IUEC be suspended and Gutkes expelled from Local 1.⁹³ Although detailed notes were taken by the Recording Secretary, there was no verbatim recording of these proceedings. Gutkes appealed the Board's decision to the IUEC General Executive Board, which in a letter dated May 5, 2008, found

...the charges were sufficiently specific and that Brother Gutkes was afforded a reasonable opportunity to defend himself against the charges. The Board further finds that Brother Gutkes's conviction was supported by sufficient evidence. Accordingly, the appeal is denied.

⁹¹ Charges filed against Patrick O'Sullivan by Ray Cerasola and charges filed against Anthony Muresca by Kevin King.

⁹² In March 2003, Terrence Carr waived indictment and entered a plea of guilty to making false statements in violation of 18 U.S.C. §1001 (a)(2) in connection with the government's investigation of no-show jobs schemes and unlawful labor payments. The plea was entered in the United States District Court for the Eastern District of New York.

⁹³ At the same meeting, the Board voted to reinstate Thomas Gutkes, a close relative who had been expelled from Local 1 for non-payment of dues and assessments.

The decision of the IUEC General Executive Board and the penalty imposed on Gutkes were announced to the Local 1 membership at the May 2008 General Meeting, on May 15, 2008.

TBG also was present on September 16, 2008, when the Executive Board convened as a disciplinary trial board to hear charges brought against Local 1 member Jeffrey Finan (Finan) by the Day Secretary. Finan was charged with lumping door buck work at a site in Manhattan under the guise of being a Local 1 signatory subcontractor. The President/Business Manager was the presiding officer. He conducted the proceeding according to the IUEC trial manual. A tape recorder was used to make a verbatim record of what transpired.⁹⁴ After establishing that Finan had been served with the charges at least ten days before the trial, the presiding officer read the ten charges against Finan and asked Finan to plead to each of them. Finan admitted that he was guilty of some of the charges against him but asserted that he was not guilty of the others. The presiding officer directed the complainant to present his evidence. After the Day Secretary described the evidence against Finan, the presiding officer gave Finan the opportunity to respond. Finan admitted that he had pretended to be a Local 1 signatory company to obtain the door buck work as a subcontractor of Schindler. He explained that he had done so in the hope and expectation that the money he earned on this job would allow him to establish a door buck installation business that would be a Local 1 shop. Finan described being thrown off the job when his deception was discovered and being fired by his then employer, Patrick Elevator. He is currently number 48 on the Journeyman hiring list. Finan acknowledged his personal responsibility for everything that happened as a result of his deception and he apologized to the Executive Board. At the conclusion of Finan's presentation the presiding officer established on the record that both the complainant and the accused were satisfied that they had had a full and fair opportunity to present their case to the Executive Board. The complainant, accused and TBG were excused from the room for the Board's deliberations, which took about twenty minutes. TBG and the Day Secretary were invited to return to the room and the presiding officer announced that Finan was found guilty of eight charges. The Executive Board fined Finan \$200 on each of the eight counts and an additional \$500 per charge to be held in abeyance to ensure his future compliance with the Local 1 Constitution and By-Laws. The decision of the Board, and the penalties imposed are to be presented to the general membership for their approval at the October 2008 monthly meeting.

TBG was present for and observed several "informal" sessions during which members were brought before the Local 1 Executive Board to be "counseled."

⁹⁴ The presiding officer informed Finan that an audio recording would be made and obtained Finan's consent on the record.

On of these counseling sessions occurred on February 13, 2007.⁹⁵ A Local 1 apprentice was called before the Board, confronted with allegations that he had been working as a mechanic at apprentice wages in violation of Local 1's collective bargaining agreement with the employer. This apprentice was told to stop doing so or face formal disciplinary proceedings that could result in fines and/or other punishments.

In what appears to have been a continuation of animosities that developed between them during Raymond Hernandez's term as President/Business Manager, Richard Vallario filed a formal complaint with the Secretary/Treasurer charging that Hernandez assaulted him outside the High School of Fashion Industries during the September 2007 general meeting. After several postponements requested by Vallario, the President/Business Manager Leonard Legotte scheduled trial of the charges before the Executive Board at the regular January 2008 Board meeting on Tuesday, January 15, 2008. Both parties were duly notified in accordance with both the IUEC and Local 1 Constitutions and By-Laws. Vallario called Legotte shortly before the January 15th meeting was to begin asking for another postponement because he would be working that evening. Legotte informed Vallario that working overtime was not an appropriate excuse for failing to appear and that the trial of his charges against Hernandez would proceed as scheduled. Hernandez appeared, with witnesses, to answer Vallario's charges. Legotte established on the record that both the complainant and the respondent had been duly notified of the proceeding and he informed the Board of his telephone conversation with Vallario. Despite the absence of evidence offered by the complainant against him, Hernandez presented testimony refuting the written charges. After due deliberation, the Executive Board found Hernandez not guilty.

Last year it was proposed that the IUEC hear and resolve a set of related Local 1 disciplinary complaints and cross complaints that would ordinarily be heard by the Local 1 Executive Board because the charges arose in the context of the Local 1 General Election and it was feared that any decision by the Local 1 Executive Board might appear tainted by self-interest.⁹⁶ After the USDOL declined to act on the election challenge made by John Green, Jr.,

⁹⁵ Michael Hassleman, had been "organized" into Local 1 in August 2005, when Kone, a Local 1 signatory, took over the maintenance contract at Saks Fifth Avenue from his previous employer and Hasselman was asked to stay on. The issue that caused Hassleman to be called before the Board arose when Kone assigned Hassleman to a service route and Hassleman volunteered to cover the route for the journeyman mechanic when the journeyman mechanic was unavailable. In November 2006 Hassleman was classified as a temporary journeyman. He became a full journeyman on March 17, 2008.

⁹⁶ Please refer to the [June 27, 2007 memorandum by Harlan I. Ettinger, Appropriate Forum for Resolution of Charges Filed by Raymond Hernandez Against John Green, Jr. and by John Green, Jr., Against Raymond Hernandez and Other Local 1 Officers](#), that was circulated among counsel for Local 1, the IUEC and the United States Attorney's Office.

and his Row B running mates⁹⁷ the IUEC General Executive Board agreed to accept jurisdiction over the charges. These charges are: 1) the contention by John Green, Jr., that the paid officers improperly took the “Lock-Out Bonus” paid to the members under the current CBA; 2) Mike Duffy’s contention that the paid officers have been improperly paid an annuity differential of \$.75/hour; 3) the contention by Ray Hernandez that John Green, Jr., is working non-union; and 4) the contention by Brian P. Kelly that Hernandez assaulted him during the General Election. The General Executive Board directed that a panel be appointed by the IUEC General President to receive evidence and make findings and recommendations to the Board.

On January 29 and 30, 2008, the panel appointed by IUEC General President Dana Brigham convened to hear three Local 1 disciplinary charges that could not be heard by the Local 1 Executive Board because of conflicts of interest.⁹⁸ The panel was composed of: Kevin Stringer, IUEC General Secretary/Treasurer, who served as the non-voting chairperson; IUEC Regional Vice President Ernie Brown (Business Manager of Local 18, Los Angeles, CA); IUEC Regional Vice President Jack Clower (Business Manager of Local 32, Atlanta, GA); and Donald Mitchell (Business Manager of Local 21, Dallas, TX). Proceedings before the panel took place in a meeting room at the Newark Airport Hilton Hotel in Elizabeth, NJ, and were recorded by a Certified Shorthand Reporter. TBG was present to observe.

On January 29, 2008, the panel took evidence from and heard arguments by Michael Duffy regarding his charge that Local 1 officers were improperly paid a \$.75/hour “annuity differential.” Local 1 Secretary/Treasurer Michael Riegger presented evidence and counter arguments on behalf of the respondent paid officers. It is important to note that Riegger was not an officer during the time period covered by Duffy’s complaint. It is also important to note that this issue was within the scope of the Agreed Procedures Engagement undertaken by Daniel Winters Associates for the IUEC, the so-called “audit” reported on above. The panel took the Duffy charges under advisement and later submitted a report of their findings and recommendations to the IUEC General Executive Board. In a letter dated February 5, 2008, Brigham informed Duffy and each of the defendants that the panel had recommended to the Board that “all of the accused be found not guilty of these charges...,” and that the Board had voted unanimously to adopt the findings and recommendations of the hearing panel. Brigham’s letter said:

Accordingly, it is the decision of the general Executive Board under Article XVIII, Sec. 9 that all of the accused charged by Brother

⁹⁷ See Exhibit 6.

⁹⁸ A fourth charge, by Brian P. Kelly, that he was assaulted by Raymond Hernandez during the Local 1 election, is being held in abeyance awaiting disposition of cross complaints for assault that are pending in Perth Amboy, NJ, Municipal Court.

Duffy (Brothers Leonard Legotte, Robert Stork, Frederick McCourt, Gary Riefenhauser, Anthony Carudo, Edward Krull and Raymond Hernandez) are hereby found not guilty of those charges, and those charges, related to the so-called annuity differential, are dismissed.

On January 30, 2008, the panel was scheduled to hear the charges filed by John Green, Jr., pursuant to Article XVIII, §8, against Raymond Hernandez and the other Local 1 paid officers alleging that the paid officers improperly took the \$2,250 "Lock Out Bonus" paid to the Local 1 members who had been locked out by EMANY (and the other employers covered by the CBA) upon ratification of the agreement that ended the 2005 Lock Out. The panel was scheduled to hear the charges brought by Hernandez against Green the following day, Thursday, January 31, 2008. However, before the hearing began, John Green, Jr. and Hernandez reached a settlement in which each agreed to drop the charges he had filed against the other during the heat of the June 2007 Local 1 general election campaign. In sum, Green and his Row B running mates withdrew the lock-out bonus charge in exchange for Hernandez agreeing to withdraw his charge that Green is a principal of/working in sales for a non-union shop competing with Local 1 signatory companies on eastern Long Island. The agreement between Green and Hernandez was memorialized in a writing that they each signed.

As required by the Agreement, the IUEC Constitution and By-Laws, and now by Article XXIV, Section 5, of the Local 1 Constitution and By-Laws, the decision reached by the Executive Board and the penalty proposed in each disciplinary proceeding since at least April 2006 has been announced to the membership at the next regularly scheduled monthly General Membership Meeting. In each case, TBG observed that upon the invitation of the officer chairing the meeting the membership ratified the decision of the Executive Board by a voice vote.

Conclusion: Local 1 is in compliance. With the adoption of Local 1 Constitution and By-Laws Article XXIV disciplinary provisions by the requisite two thirds majority of the membership in attendance at the December 2007 General Membership Meeting, Local 1 is complying with this provision of the non-prosecution agreement.

The disciplinary proceedings that TBG observed followed the procedures required by the Agreement. Further, the decision reached by the Executive Board and the penalty proposed in each disciplinary proceeding since at least April 2006 has been announced to the membership at the next regularly scheduled monthly General Membership Meeting as required by the local's constitution. This oversight by the membership will help to ensure that Local 1 disciplinary proceeding will continue to be fair and that there will be evenhanded application and implementation of the disciplinary provisions of Article XXIV.

- f. Bar any practice or procedure that allows any Local 1 member or other person who is not an officer or employee of Local 1, or an officially designated shop steward or organizer, to act in any way on behalf of Local 1 or its members in any way connected to Local 1 business.***

Conclusion: Local 1 is in compliance. TBG has received no reports, or otherwise obtained any evidence, that individuals other than officers, officially designated shop stewards and organizers or employees of Local 1 are holding themselves out as representing or acting on behalf of Local 1.

OVERALL CONCLUSION

Local 1 is in substantial compliance with each of the terms and conditions of the Agreement and in full compliance with most. As described above, full compliance with certain steps specified in the Agreement was rendered impractical by changes in circumstances that were likely not anticipated in October 2005 when the Agreement was executed.

Based on our observations over the past thirty months, TBG concludes that Local 1 has earned restoration of its full independence; to enjoy the responsibility and benefits of self-governance without outside oversight.

Local 1 was organized more than one hundred years ago. Its members are understandably proud of their history and traditions. They express pride in the role their local has played in the history of the trade union movement and in their part in building the New York City metropolis. Many are the sons and daughters of Local 1 members who preceded them, even to the third and fourth generation. We are satisfied that the current elected leaders are dedicated to this proud history and to securing a better future for the local and each of its members in compliance with union rules and applicable law. We wish them all well.

Respectfully submitted,

The Bradlau Group, LLP

By: 

George F. Bradlau
Principal

October 10, 2008


Harlan I. Ettinger
Managing Director

October 10, 2008



The Bradlau Group, LLP

**EXHIBITS
to
Final Report by Independent Examiner**

for

International Union of Elevator Constructors, Local 1

Submitted by:

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Date: October 10, 2008

Final Report to
Local 1 President/Business Manager and USAO EDNY
October 10, 2008

Exhibits

Exhibit 1 - The full text of the Non-Prosecution Agreement with attachments.

Exhibit 2 – Excerpt from the EMANY collective bargaining agreement (Section II, 3)

Exhibit 3 – Copy of official tally sheet June 21, 2007 election.

Exhibit 4 - Copy of June 25, 2007 letter from John Green, Jr. to Raymond Hernandez.

Exhibit 5 - Copy of October 23, 2007, letter from Dana Brigham to John Green, Jr.

Exhibit 6 - Copy of October 23, 2007 letter from John Green, Jr. to USDOL

Exhibit 7 - Unsigned copy of November 5, 2007, letter from Ralph E. Gerchak, USDOL to John Green, Jr.

Exhibit 1

AGREEMENT BETWEEN LOCAL 1 OF THE
INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS AND
THE U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK

LOCAL 1 OF THE INTERNATIONAL UNION OF ELEVATOR

CONSTRUCTORS ("Local 1"), by its undersigned attorney, pursuant to authority granted by its Executive Board, and the UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK (the "USAO"), enter into this Agreement (the "Agreement").

Except as specifically provided below, the Agreement shall be in effect for a period of thirty-six months from the date it is fully signed and executed.

1. Local 1 acknowledges that the USAO has been conducting a criminal investigation into allegations that Local 1: (a) aided and abetted and conspired to commit felony violations of the Taft-Hartley Act (29 U.S.C. §§ 186(a)(1), 186(b)(1) and 186(d)(2)); and (b) aided and abetted and conspired to commit mail fraud (18 U.S.C. § 1341) (the "Investigation").

2. Local 1 acknowledges and admits that, as set forth in detail in the stipulation annexed as Exhibit A and incorporated by reference, in or about and between 1989 and April 2002, certain past Local 1 officers and de facto representatives acting within the scope of their authority and for the benefit of Local 1: (a) did knowingly and willfully request, demand, receive and accept, and agree to receive and accept unlawful labor payments in excess of \$1,000 from employers of Local 1 members; and (b) used the United States mail for the purpose of executing a scheme to defraud (i) employers of Local 1 members and property owners, and (ii) Local 1 members by depriving them of the intangible right of the honest services of their officers and the right to the operation of an honest, fair and impartial hiring list. The past de facto

representatives and officers did this by setting up no-show jobs in order to obtain money to which they were not otherwise entitled, a portion of the proceeds of which were kept by the representatives and officers. These practices will collectively be referred to in this agreement as the "Unlawful Practices".

3. Local 1 accepts and acknowledges responsibility for the Unlawful Practices of its past officers and de facto representatives and its conduct set forth in Exhibit A. Local 1's acceptance of responsibility is further predicated upon, among other things: (1) its agreement to adopt the Remedial Actions, Policies and Procedures as described in paragraph 6 below; (2) its continuing commitment of full cooperation with the USAO, the Federal Bureau of Investigation, the United States Department of Labor, Internal Revenue Service and any other agency designated by the USAO (the "Investigative Agencies") as described in paragraphs 4 and 5 below; and (3) the other undertakings it has made as set forth in this Agreement.

4. In or about March 2004, Local 1 retained the law firm of Stillman & Friedman, P.C., to represent it in connection with the issues raised by the USAO's Investigation. Local 1 has shared certain information provided to Stillman & Friedman with the USAO and the Investigative Agencies, and has made documents and witnesses available without regard to claims of privilege. Local 1 acknowledges that its prior, ongoing and future cooperation are important factors in the USAO's decision to enter into the Agreement, and therefore, Local 1 agrees to cooperate fully with the USAO and the Investigative Agencies regarding any matter about which Local 1 has knowledge, which cooperation shall include providing privileged information to the extent described in paragraph 5(c) below.

5. Local 1 agrees that its cooperation, as agreed to in paragraph 4 above, shall include, but not be limited to the following:

- a. Completely and truthfully disclosing all information with respect to the activities of Local 1 and present and former members of Local 1 and its Executive Board, agents, officers and employees, concerning all matters about which the USAO or the Investigative Agencies may inquire including, but not limited to, the conduct set forth in Exhibit A;
- b. Assembling, organizing and providing all documents, records, or other tangible evidence in Local 1's possession, custody, or control as may be requested by the USAO or any Investigative Agency, including, but not limited to, documents related to the conduct set forth in Exhibit A. Whenever such data is in electronic format, Local 1 shall provide access to such data and assistance in operating computer and other equipment as necessary to retrieve the data;
- c. Not asserting claims of the attorney-client privilege or work-product doctrine as to any documents, records, information, or testimony requested by the USAO related to any investigation, provided that:
 - i. notwithstanding the provisions of this subparagraph (c), Local 1 may assert the attorney-client privilege or work product doctrine with respect to (A) privileged communications between Local 1 and Stillman & Friedman, P.C. that post-date March 15, 2004. The attorney client privilege also attaches to privileged communications between Local 1 and Mets & Schiro, LLP and Markowitz & Richman that post-date March 15, 2004 and that involve or relate to matters on which Local 1 retained Stillman & Friedman, P.C., or (B) any private civil litigation; and
 - ii. by producing privileged materials pursuant to this subparagraph (c), Local 1 does not intend to waive the protection of the attorney-client privilege or work product doctrine as to third parties;
- d. Making available its present officers, agents, employees and using

best efforts to make available former officers, agents and employees and current and former members to provide information and/or testimony as requested by the USAO or any of the Investigative Agencies, including sworn testimony or in court proceedings, as well as interviews with law enforcement authorities. Cooperation under this paragraph will include identification of witnesses who, to Local 1's knowledge, may have material information regarding the conduct set forth in Exhibit A;

- e. Providing testimony and other information deemed necessary by the USAO or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any criminal or other proceeding as requested by the USAO or any of the Investigative Agencies; and
- f. With respect to any information, testimony, document, record or other tangible evidence provided by Local 1 to the USAO, or a grand jury, consenting to any and all disclosures of such materials to such Investigative Agencies as the USAO, in its sole discretion, deems appropriate. With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, Local 1 further consents to (i) any order sought by the USAO permitting such disclosures; and (ii) the USAO's ex parte or in camera application for such orders.

6. Local 1 represents that its current Officers and its Executive Board have already taken or have agreed to take numerous remedial steps to address the concerns raised by the USAO and other law enforcement and regulatory bodies. These remedial steps, which Local 1 agrees are material aspects of this agreement, and as to which Local 1 agrees to make its best efforts to incorporate into its constitution or by-laws as permanent reforms (collectively, the "Remedial Actions, Policies and Procedures") include:

- a. Implementing a procedure to effectively monitor the assignments and hours worked of elevator operators, to ensure that operators are only paid for hours for which they work or are entitled to vacation or holiday pay.

- b. Implementing procedures to ensure that the operator hiring list is maintained in a fair and impartial manner, and that elevator operators are only hired from the operator hiring list.
- c. Implementing procedures to computerize and make available to all members the current and historical operator hiring lists, including job assignments.
- d. Implementing procedures to ensure that Local 1's elections are conducted in a fair, nondiscriminatory, open and democratic manner, as consistent with the Labor Management Reporting and Disclosure Act ("LMRDA"). Such procedures shall ensure that no candidate or member be intimidated in any way in connection with an election.
- e. Implementing a procedure, described more fully in paragraph 7, below, to immediately investigate, bring charges against and discipline any Local 1 member for violation of the constitution or by-laws of Local 1 or the International. Local 1 also agrees to apply these same procedures to members and officers who violate any state, federal or local law if such violation brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law. Under such circumstances, Local 1 agrees that such a violation by any Local 1 member is a serious matter that reflects on the integrity of Local 1, and shall be treated as such. Such charges may include but are not limited to:
 - i. Any action which brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law;
 - ii. Engaging in conduct unbecoming to a member of the Local;
 - iii. Engaging in conduct which unduly impedes the work of any Officer of the Local;
 - iv. Engaging in conduct that is disruptive of, interferes with, or induces others to disrupt or interfere with the Local's legal or contractual obligations, including this Agreement as well as strike and/or lockout misconduct;
 - v. Knowingly associating with members or associates of any

- organized crime family;
- vi. Misappropriation or embezzlement of funds or property belonging to the Local;
- vii. Committing any predicate or pattern act of racketeering as defined by applicable law;
- viii. Wronging a member or officer of the Local by any act or acts causing economic harm;
- ix. Physical abuse of officers or members of the Local in or near the meeting hall;
- x. Fostering decertification or other types of de-unionization;
- xi. Failure or refusal to adhere to or comply with the provisions of this Constitution and By-Laws and policies of the Local and the Constitution and policies of the International Union;
- xii. Engaging in employment contrary to or in violation of the terms and conditions of any Local collective bargaining agreement;
- xiii. Divulging of any of the confidential, proprietary or other secrets of the Local;
- xiv. Failure or refusal to abide by the provisions of any Local collective bargaining agreement;
- xv. Failure or refusal to abide by an oath taken at the time an individual becomes a member of the International Union or the Local;
- xvi. Failure or refusal to adhere to or comply with the decisions and orders of the officers of the Local;
- xvii. Attempting to unlawfully influence the operation of any employee benefit plan;
- xviii. Preferring charges against members or officers in bad faith or actuated by malice;
- xix. Engaging in such other acts and conduct which is inconsistent with the duties, obligations, and fidelity to a member of a Trade Union, and for violation of sound Trade Union principles.

- f. Bar any practice or procedure that allows any Local 1 member or other person who is not an officer or employee of Local 1, or an officially designated shop steward or organizer, to act in any way on behalf of Local 1 or its members in any way connected to Local 1 business.

7. Consistent with Article XXXIII of its Constitution and By-Laws, Local 1

agrees to present and support the attached Amendment (attached hereto as Exhibit B) not later than 120 days from the signing of this Agreement. In the interim, Local 1 agrees to prefer and process all charges for alleged violations of its Constitution and By-Laws, the International Constitution and for alleged violations of any state, federal or local law if such violation brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law, (as supplemented by and consistent with the International Constitution and Article XXIV of Local 1's Constitution and By-Laws) as follows:

a. Charges shall be filed with the Local's Recording Secretary within two (2) weeks of the alleged offense or within two (2) weeks of when an officer or member reasonably became aware of the offense. A member's failure to file charges does not constitute a breach of this Agreement; however, if an Officer or Executive Board member learns that a member has failed to prefer charges for a covered violation, the Officer or Executive Board member shall be obligated to prefer charges against the member who failed to bring charges. Within five (5) business days of receipt of the charges, the Recording Secretary shall serve them upon the accused via certified mail, return receipt requested; provided that it shall not be a violation of this Agreement if the Independent Examiner referred to in paragraph 9 in his discretion after consultation with the President/Business Manager agrees that charges need not be filed;

b. The charges shall be referred to the Local Executive Board and the Executive Board will try, hear and determine said charges. Nine (9) members of the Executive

Board must be present for the hearing to proceed. The President/Business Manager or his designee shall chair the hearing.

c. The hearing before the Executive Board shall be held not less than 10 nor more than 60 days (Saturdays and Sundays included) from receipt of the charges by the accused, unless adjourned for good cause.

d. The Executive Board shall render its decision in writing within seven (7) days of the close of the hearing. Thereafter, the Executive Board shall report its decision and the penalty, if any, to the Local's membership at the next regularly scheduled meeting. At least seven (7) days prior to the meeting at which the Executive Board is to report its decision, the accused shall be notified in writing by the Local's Recording Secretary that the decision will be presented. A copy of the Executive Board's decision will be made available to the accused at the meeting.

Subject to the provisions of subparagraph 7(a), Local 1 acknowledges that any member or officer of the Local who has direct or indirect knowledge of the commission of any of the offenses set forth in its Constitution and By-Laws, the International Constitution, or paragraph 6(e), above, by a member or officer, has a duty to prefer charges against such member or officer in writing.

8. Local 1 agrees that it has presented proposals during negotiations to signatory employers who employ its members as operators to modify their collective bargaining agreements so that said agreements require the signatory employers to equitably split the jurisdiction over joint venture elevator cars as defined herein (a "Joint Venture Car"), between

Local 1 and IUOE Local 14 which will result in one and only one individual receiving such wages for the operation of a Joint Venture Car at any given time. Upon agreement by the signatory employers (including those who are signatory to job-site agreements) who employ Local 1 members as operators, Local 1 agrees to include the language or substantially equivalent language (attached hereto as Exhibit C) into any relevant successor collective bargaining agreement. The term "Joint Venture Car" means any temporary elevator car capable of transporting persons and construction material for which both Local 1 and Local 14 claim jurisdiction.

9. Local 1 agrees and understands that an independent examiner (the "Independent Examiner") will be appointed by the USAO, in its sole discretion after consultation with the Investigating Agencies and Local 1, within 60 days of the date of this Agreement, to review and monitor Local 1's internal controls, hiring list and work assignment practices, labor practices, election procedures and its compliance with applicable laws and this Agreement. The Independent Examiner will take direction from, and be supervised by, the USAO as to all matters. At the discretion of the USAO, the Independent Examiner may be supervised by the United States Department of Labor, Office of Labor Management Standards ("DOL"). The Independent Examiner will have the power, rights and responsibilities set forth below.

- a. Jurisdiction, Powers and Oversight Authority. The Independent Examiner shall:
 - i. review and monitor Local 1's implementation of, and compliance with, the Remedial Actions, Policies and Procedures referenced in paragraphs 5 and 6, above;
 - ii. review, monitor and direct that charges be filed by the

President/Business Manager or any other Officer in connection with the disciplinary process discussed in paragraphs 6(e) and 7, above;

- iii. review and monitor all elections, with full access and input at every stage consistent with the LMRDA. (Local 1 also agrees that all elections during the period of this agreement may be reviewed and monitored by the DOL). Members will retain all rights to bring complaints to the DOL under Title IV of the LMRDA;
- iv. review and monitor Local 1's practices and procedures relating to its hiring list and assignment of work to its members; and
- v. review and monitor Local 1's practices and procedures relating to any strikes, pickets, rallies or lockouts.

b. Access to Information. The Independent Examiner shall have the authority to take such reasonable steps, in the Independent Examiner's view, as necessary to be fully informed about those operations of Local 1 within his or her jurisdiction. To that extent, the Independent Examiner shall have:

- i. full access to the matters described in paragraphs 5(a), (b) and (c), above.
- ii. the right to interview any officer, employee, agent, or member of Local 1;
- iii. the right to participate in any meeting concerning any matter within or relating to his or her jurisdiction; and
- iv. the right to establish a physical presence at Local 1's headquarters. Local 1 agrees to provide reasonable office space in this regard.

Local 1 agrees that all Local 1 officers, representatives, employees, attorneys and agents will be directed to cooperate fully with the Independent Examiner.

c. Confidentiality. The Independent Examiner shall take appropriate

steps to maintain the confidentiality of any non-public information entrusted to him or her and shall share such information only with the USAO or the Investigative Agencies. The USAO and the Investigative Agencies shall also take appropriate steps to maintain the confidentiality of any non-public information that they receive from the Independent Examiner; except they may use such non-public information to discharge their official duties.

- d. Reporting. The Independent Examiner shall report on a semi-annual basis to Local 1's President/Business Manager and the USAO concerning the state of Local 1's hiring list and work assignment procedures, compliance with applicable laws, the Remedial Actions, Policies and Procedures and this Agreement (each such report being referred to as the "Report"). After receiving each such Report, Local 1's President/Business Manager will promptly present the Report to Local 1's Executive Board for its review. At the discretion of the Independent Examiner and the USAO, the Independent Examiner may file additional oral or written Reports with the USAO without notice to Local 1. Local 1 agrees that the Independent Examiner, at the expiration of his or her term, will file a Final Report, which report will be made public; except that at the discretion of the Examiner and the USAO in consultation with Local 1, portions of the final report may remain confidential. All other Reports will remain confidential.
- e. Compensation. The Independent Examiner, and persons hired under his or her authority, shall be paid by Local 1 and compensated in accordance with their respective typical hourly rates. All invoices shall be submitted first to the USAO for review and approval after which they shall be forwarded to Local 1. Local 1 shall pay bills for compensation and expenses promptly, and in any event within 30 days of receipt.
- f. Indemnification. Local 1 shall provide an appropriate indemnification agreement to the Independent Examiner with respect to any claims arising out of the performance of the Independent Examiner's duties.
- g. Additional Authority. The Independent Examiner shall have the authority to take any other actions that are necessary to effectuate his or her oversight and monitoring responsibilities.

Any refusal by Local 1's then current officers, representatives, employees, attorneys or agents to render full cooperation to the Independent Examiner may constitute a breach of this Agreement, and Local 1 may be subject to prosecution as set forth in paragraphs 11-14 below. The decision as to whether Local 1 has refused to cooperate with the Independent Examiner for the purpose of determining whether Local 1 has breached this Agreement shall be in the sole discretion of the USAO.

10. In consideration of Local 1's remedial actions, acknowledgment of responsibility for the Unlawful Practices and the conduct set forth in Exhibit A and its willingness to comply with the above terms of this agreement, including its past, present and future cooperation, the USAO agrees that Local 1 will not be prosecuted for (a) the Unlawful Practices or the conduct set forth in Exhibit A or (b) any conduct arising out of or related to the March 17, 2005 through June 27, 2005 lockout of Local 1 members by the Elevator Manufacturers' Association of New York (the "Lockout").

11. Local 1 understands and agrees that should the USAO, in its sole discretion, determine that Local 1 has (a) deliberately given false, incomplete, or misleading information, (b) committed, or attempted to commit, any crimes, (c) failed to cooperate fully, as outlined in paragraphs 4 and 5, above, or (d) has otherwise violated any provisions of the Agreement, Local 1 shall thereafter be subject to prosecution for any federal criminal violation of which the USAO has knowledge, including a prosecution relating to the Unlawful Practices or Exhibit A or the Lockout. Local 1 agrees that any prosecutions relating to the Unlawful Practices or Exhibit A that are not time-barred by the applicable statute of limitations as of the date of this

Agreement may be commenced against Local 1 in accordance with this Agreement, notwithstanding the expiration of any applicable statute of limitations between the signing of this Agreement and the expiration of this Agreement. By this Agreement, Local 1 expressly intends to and does waive any and all rights in this respect. Such waiver is knowing, voluntary and in express reliance on the advice of Local 1's counsel.

12. Local 1 agrees that in the event that the USAO, in its sole discretion, determines that Local 1 has knowingly violated any provision of this Agreement, (a) all statements made by or on behalf of Local 1 to the USAO, the Investigative Agencies or the Independent Examiner at any time, or any testimony given by Local 1 before a grand jury, or elsewhere, whether before or after the date of this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the USAO against Local 1; and (b) Local 1 shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of Local 1 before or after the date of this Agreement, or any leads derived therefrom, should be suppressed.

13. The decision as to whether conduct and/or statements of any individual will be imputed to Local 1 for the purpose of determining whether Local 1 has violated any provision of this Agreement shall be in the sole discretion of the USAO. The parties further understand and agree that the exercise of discretion by the USAO or its designee under this paragraph is not subject to review in any court or tribunal outside the Department of Justice. However, for the purposes of this paragraph, no statement of any current or former member shall

be imputed to Local 1 unless such person is in fact acting on behalf of Local 1 or any of its Officers. In addition, no statement of an officer, executive board member, agent, attorney, or de facto representative, shall be imputed to Local 1 if the statement was made before or after that person held their office or position.

14. Should the USAO determine that Local 1 has committed a breach of any provision of this Agreement, the USAO shall provide written notice to Local 1's President/Business Manager as well as counsel, of the alleged breach and provide Local 1 with a two-week period in which to request a meeting to make a presentation to the USAO, or its designee, which shall be in a reasonable period, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing or has been cured. The parties to this Agreement expressly understand and agree that should Local 1 fail to request a meeting to make a presentation to the USAO, or its designee, within a two-week period, the USAO may conclusively establish that Local 1 is in breach of this Agreement.

15. Local 1 expressly agrees that it shall not, through its current officers, Executive Board, employees, attorneys and agents, make any public statement, contradicting its acceptance of responsibility or Exhibit A. Any such contradictory public statement by Local 1, its officers, Executive Board, employees, attorneys and agents, may constitute a breach of this Agreement, and Local 1 could thereafter be subject to prosecution as set forth in paragraphs 11-14 above. The decision as to whether any such contradictory public statement may be imputed to Local 1 for the purpose of determining whether Local 1 has breached this Agreement shall be in the sole discretion of the USAO. Upon the USAO's notifying Local 1 of any such contradictory

statement, Local 1 may avoid breach of this Agreement by publicly repudiating such statement within 72 hours after notification by the USAO. This paragraph is not intended to apply to any statement made by any Local 1 current or former employee, Officer, Executive Board member, agent, attorney or de facto representative who has been charged with a crime or other wrongdoing by any federal, state or local government or any agency thereof. Local 1 agrees that in the event that future criminal proceedings are brought in accordance with this Agreement, Local 1 will not contest the admissibility of Exhibit A in any such proceedings. Consistent with this provision, Local 1 may raise defenses and/or assert affirmative claims in any civil proceedings brought by private parties as long as doing so does not contradict the Statement of Facts (Exhibit A) or such representations.

16. Local 1 agrees that, if it merges all or substantially all of its operations as they exist as of the date of this Agreement during the term of this Agreement, it shall include in any merger agreement a provision binding the successor to the obligations described in this Agreement.

17. Local 1 agrees that, following expiration of this Agreement, Local 1 will continue to cooperate with the USAO and Investigative Agencies in connection with any proceeding relating to the Unlawful Practices or Exhibit A. Local 1's obligation to cooperate is not intended to apply where Local 1 is a defendant in any such proceeding.

18. Local 1 agrees that this Agreement, including Exhibits A, B and C, may be released to the public.

19. It is understood that this Agreement is binding only on Local 1 and the USAO, and specifically does not bind any other federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory agency. The USAO, however, will bring the Agreement and Local 1's cooperation and the Remedial Actions, Policies and Procedures to the attention of other federal agencies, state or local law enforcement agencies, and any licensing or regulatory authorities if Local 1 so requests. It is the intent of the parties to this Agreement that the Agreement does not confer or provide any benefits, privileges or rights to any individual or any entity other than the parties to this Agreement, and that nothing in the Agreement shall be construed as acknowledging that the Agreement, including Exhibit A and the evidence underlying the Agreement and Exhibit A, shall be admissible in any proceeding other than a proceeding brought by the USAO. The parties agree that other than in a proceeding between the USAO and Local 1 it is intended that its admissibility should be governed by applicable law.

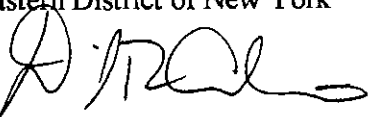
20. No promises, agreements or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless memorialized in writing and signed by all parties. This Agreement supersedes any prior promises, agreements or conditions

between the parties. To become effective, this Agreement must be signed by all signatories listed below.

Dated: Brooklyn, New York
October 3, 2005

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York

By:



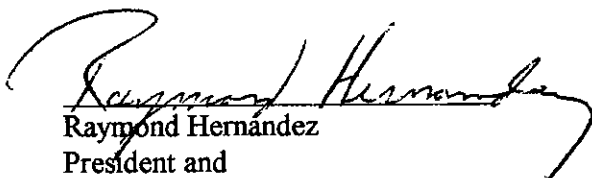
Daniel R. Alonso
Assistant United States Attorney

Approved:

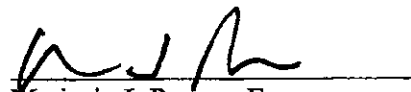


Eric O. Corngold
Chief Assistant U.S. Attorney

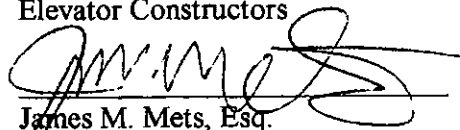
Agreed and consented to by:



Raymond Hernández
President and
Business Manager,
Local 1 of the
International Union of
Elevator Constructors



Marjorie J. Pearce, Esq.
Stillman & Friedman, P.C.
Counsel to Local 1 of the
International Union of
Elevator Constructors



James M. Mets, Esq.
Mets & Schiro, LLP
Counsel to Local 1 of the
International Union of
Elevator Constructors

Exhibit A

Unless a different time is specifically indicated below, from in or about and between 1989 to April 2002, the following occurred:

Local 1 of the International Union of Elevator Constructors ("Local 1") was a labor organization which, among other things, represented operators of temporary elevator cars ("Operators") at construction sites in New York City ("Job Sites") that were covered by the collective bargaining agreements ("CBAs") that Local 1 entered into with various construction contractors ("Contractors"), who were themselves working on behalf of real estate holders and developers (the "Developers"). Local 1 members elected officers who oversaw Local 1's business. Local 1's President and its three Vice-Presidents were the officers who functioned as Business Agents. Business Agents were salaried employees of Local 1. They acted as union representatives who, among other things, assured that the Contractors complied with the CBAs.

Certain Local 1 Business Agents delegated their responsibilities at certain Job Sites to Local 1 members who functioned as unelected, de facto business agents (the "Representatives"). At these Job Sites, the Representatives were responsible for ensuring that the Contractors complied with the CBAs, prepared and submitted to the Contractors the time sheets that are described below, collected paychecks from the Contractors for distribution to the Operators and resolved grievances between Local 1 and the Contractors. Among the Representatives were Matthew Joseph Downey, Anthony DeGennaro and William Barthold.

Pursuant to the CBAs, the Operators were paid wages at specified hourly wage rates for regular and overtime hours that they actually worked. Usually, Local 1 Representatives submitted time sheets to the Contractors each week which set forth the alleged regular and overtime hours that each Operator was claimed to have worked that week. The Contractors relied on these time sheets to determine accurately the amount of wages due to each Operator. The Contractors employed a Superintendent or other similar employee at each Job Site, whose duties included approving or disapproving the time sheets that Local 1 Representatives submitted.

Pursuant to the CBAs, for each hour that an Operator worked, the Contractor, in addition to paying the Operator wages, was required to make a contribution on the Operator's behalf to the National Elevator Pension Plan and Declaration of Trust ("Pension Plan"), the National Elevator Industry Welfare Plan ("Welfare Plan") and the International Union of Elevator Constructors Local 1 Annuity Plan ("Annuity Plan"). The offices of the Pension Plan and the Welfare Plan were in Pennsylvania and the offices of the Annuity Plan were in New Jersey. The Contractors paid contributions to the Plans based upon the same time sheets that the Contractors used to determine the wages that they paid to the Operators.

The Plans were subject to the provisions of Title I of the Employees Retirement Income Security Act of 1974 ("ERISA"). Periodically the Contractors, from their offices in New York City, mailed to the offices of each Plan in Pennsylvania or New Jersey, contributions to that Plan and a report stating the hours that each Operator allegedly worked and the benefit contributions made on behalf of that Operator to that Plan. The reports were required to be kept by the Plans pursuant to Title I of ERISA. Certain information contained in the reports was required to be disclosed by the Plans in Internal Revenue Service Form 5500, which was filed annually by the Plans and was required to be published pursuant to Title I of ERISA.

Pursuant to the requirements of the CBAs, Local 1 maintained a hiring list for out-of-work Operators. When Operators were laid off by a Contractor or otherwise became unemployed, they were supposed to place their names on this hiring list. When jobs became available at Job Sites, Local 1 officers were required to supply the Contractors with the names of Operators to hire for those jobs by taking the names off the hiring list in the order of the Operators' time out of work.

Certain Local 1 Business Agents and Representatives (collectively the "Corrupt Representatives"), none of whom were employed by or working on behalf of Local 1 at the time of the signing of the agreement to which this Exhibit A is annexed, together with certain Operators, agreed to commit and did commit the following illegal acts at numerous Job Sites:

- When jobs became available at a Job Site, the Corrupt Representatives supplied the Contractors with the names of the Operators to hire for these jobs without regard to the hiring list. The Corrupt Representatives ensured that only Operators who allowed them to receive a portion of the Operators' wages would be hired.

- The Corrupt Representatives received a portion of the Operators' wages in two different ways. Sometimes, one of the Corrupt Representatives obtained an Operator's paycheck from an employee of the Contractor, falsified the Operator's signature on the back of the paycheck, cashed the paycheck, provided a portion of the cash to the Operator and kept the remainder of the cash for himself and/or for distribution to other Corrupt Representatives. Sometimes, one of the Corrupt Representatives directed the Operator to cash his entire paycheck himself and to kick back to the Corrupt Representative a prearranged portion of the cash.

- The Operators' wages, out of which the Corrupt Representatives received a portion, were inflated. The Corrupt Representatives generated these inflated wages by submitting fraudulent time sheets at certain Job Sites

(the "Fraudulent Time Sheets") that falsely stated that the Operators had worked hours that they did not in fact work ("No-Show Hours"). At some Job Sites, the Corrupt Representatives, in order to induce the Contractors into paying wages for the No-Show Hours, bribed the Contractors' Superintendents in exchange for their approval of the Fraudulent Time Sheets.

Certain Contractors and all Developers were deceived into paying wages for the No-Show Hours. The Contractors would then issue paychecks, some of the proceeds of which were received, directly or indirectly, by the Corrupt Representatives, rather than by the Operators to whom the paychecks were written.

For each of the No Show Hours, the Contractors not only paid wages in the name of an Operator but also made contributions to the Plans on behalf of the Operator. The Operator retained the benefit of these contributions even for those No-Show Hours that resulted in wages that the Corrupt Representatives, rather than the Operator, ultimately received. The fraudulent scheme through which the Contractors and Developers were defrauded into paying wages and contributions for No-Show Hours, and into issuing paychecks, some of the proceeds of which were received by the Corrupt Representatives, was executed in part by mailings to the Plans which falsely stated that the operators had worked the No Show Hours, and which fraudulently failed to state that the Corrupt Representatives received some of the wages for these No Show Hours. The Corrupt Representatives caused these false and fraudulent mailings.

A number of the Operators (the "Bogus Operators") in whose name No-Show hours were paid were not in fact elevator mechanics, and had become members of Local 1 through the Corrupt activities of Local 1 Representatives and officers. The Bogus Operators, who did not in fact operate elevator cars, often had other full-time jobs, among them a tax accountant, a fire inspector and a full-time employee of a major university in Queens, New York.

The Corrupt Representatives engaged in the above illegal conduct, who were acting within the scope of their authority, included, among others, Business Agent/Vice-President Charles Novak and Representatives Anthony DeGennaro, Matthew Joseph Downey and William Barthold. The Job Sites at which the foregoing illegal conduct occurred included, among others, the Metropolitan Life Insurance Building, The National Center Foundation, The Marriott Hotel, Memorial Sloan-Kettering Cancer Center, The New York University Dormitories, Renaissance Plaza,

the Staten Island Judicial Center and Sotheby's. The unlawful conduct furthered, in part, the objectives of Local 1, as well as those of the Corrupt Representatives and the Operators who conspired with them. The Contractors were induced to pay wages in the names of Operators and to make contributions on behalf of the Operators to the Plans.

Thus, Local 1 aided and abetted and conspired with the Corrupt Representatives and certain Operators to commit violations of the Taft-Hartley Act, 29 U.S.C. §§ 186(b)(1) and 186(d)(2), and the mail fraud statute, 18 U.S.C. §§ 1341 and 1346. These violations continued throughout into April 2002. The amount of wages that the Contractors issued in the names and for the benefit of Operators, but that were in fact received by the Corrupt Representatives, exceeded \$ 1,700,000. Many additional millions of dollars were paid out by Contractors pursuant to this scheme.

EXHIBIT B

ARTICLE XXIV

CHARGES, TRIALS, AND APPEALS

Each member of the Local shall have the right to fair treatment in the application of Local rules and the law in accordance with the International Constitution and this Constitution and By-Laws. In applying the rules and procedures relating to union discipline, the essential requirements of due process of law (notice, hearing and judgment based on the evidence) shall be observed without requiring the technical formalities of a court of law or the rules of evidence. To that end, the Local adopts the following procedures:

SECTION 1: OFFENSES

After charges and trial on any of the following punishable offenses, in the manner and by the procedure set forth below, a member, if convicted, may be fined, suspended or expelled from the Local Union. The following are the punishable offenses:

- (1) Any action which brings or tends to bring the Local into disrepute with any bodies with which the Local is affiliated or which may bring or tend to bring the Local into disrepute with the public or into conflict with the law;
- (2) Engaging in conduct unbecoming to a member of the Local;
- (3) Engaging in conduct which unduly impedes the work of any Officer of the Local;
- (4) Engaging in conduct that is disruptive of, interferes with, or induces others to disrupt or interfere with the Local's legal or contractual obligations, including strike and/or lockout misconduct;

- (5) Knowingly associating with members or associates of any organized crime family;
- (6) Misappropriation or embezzlement of funds or property belonging to the Local;
- (7) Committing any predicate or pattern act of racketeering as defined by applicable law;
- (8) Wronging a member or officer of the Local by any act or acts causing economic harm;
- (9) Physical abuse of officers or members of the Local in or near the meeting hall;
- (10) Fostering decertification or other types of de-unionization;
- (11) Failure or refusal to adhere to or comply with the provisions of this Constitution and By-Laws and policies of the Local and the Constitution and policies of the International Union;
- (12) Engaging in employment contrary to or in violation of the terms and conditions of any Local collective bargaining agreement;
- (13) Divulging of any of the confidential, proprietary or other secrets of the Local;
- (14) Failure or refusal to abide by the provisions of any Local collective bargaining agreement;
- (15) Failure or refusal to support the jurisdictional claims of the Local;
- (16) Crossing an authorized primary picket line established by the Local or any affiliate of the International;

- (17) Failure or refusal to abide by an oath taken at the time an individual becomes a member of the International Union or the Local;
- (18) Failure or refusal to adhere to or comply with the decisions and orders of the officers of the Local;
- (19) Attempting to unlawfully influence the operation of any employee benefit plan;
- (20) Preferring charges against members or officers in bad faith or actuated by malice;
- (21) Engaging in such other acts and conduct which is inconsistent with the duties, obligations, and fidelity to a member of a Trade Union, and for violation of sound Trade Union principles.

SECTION 2: OBLIGATIONS

It is the duty of any member or any officer of this Local who has direct or indirect knowledge of the commission of any of the above punishable offenses by a member, to prefer charges against such member in writing.

SECTION 3: RIGHTS OF MEMBERS

Every member charged with a violation of this Constitution and By-Laws shall be given a full and fair hearing. The charged member is presumed innocent until proven guilty. To sustain charges, they must be proven by a preponderance of the evidence presented. The charged member can sit in meetings and remain in benefits until convicted of the charges.

All charges must be made in writing, stating with reasonable certainty what punishable offense under Section 1 of this Article was committed, the facts of the offense

charged and the time and place of the occurrence. When the punishable offense involves other sections of this Constitution and By-Laws or of the International Constitution or Local collective bargaining agreements, the appropriate section of the relevant Constitution and By-Laws or agreements should be specifically referred to in the charges.

The charges must be signed and dated by the member making the charge and filed with the Local's Recording Secretary. Any charges based upon alleged misconduct which occurred more than two (2) years prior to the filing of the charges shall be rejected by the Executive Board except for charges based on non-payment of dues, assessments or other financial obligations.

No member or officer shall be required to stand trial on charges involving the same set of facts as to which he is facing criminal or civil trial until his final court appeal is concluded. Under such circumstances, the sixty (60) day period to hold a hearing shall be extended until his final court appeal is concluded. Nothing in this Section shall prohibit Local 1 from investigating the underlying facts of such charges.

SECTION 4: HEARINGS

When the charges have been made, the matter shall be referred to the Local Executive Board and the Executive Board will try, hear and determine said charges. Nine (9) members of the Executive Board must be present for the hearing to proceed. The President/Business Manager or his designee shall chair the hearing.

No member of the Local Executive Board having a personal interest in the subject matter that is adverse to the charged party shall sit on the trial board. A request to disqualify an Executive Board member shall be presented to the Executive Board whose decision shall be by majority vote. The Executive Board member in question shall not be

eligible to vote. If an Executive Board member prefers the charges or is the charged party, he shall not sit on the trial board and the remaining members shall appoint a disinterested party.

The Executive Board shall set a trial date and the accused shall be served with a copy of the charges by the Local's Recording Secretary personally or by registered or certified mail, together with a notice of hearing, specifying the date and place where the accused shall be required to stand trial.

Except as set forth above with regard to civil and criminal matters, the hearing date shall not be less than ten (10) days nor more than sixty (60) days (Saturdays and Sundays included) from the date that the charges and notice of hearing are served upon the accused. When a member is served with charges and notice of hearing by registered mail, the letter shall be addressed to the last known address as shown on the books of the Local and this shall constitute due notice to the accused member.

Verbatim minutes, mechanical recording or accurate summaries of the evidence shall be kept, preserved and available for use in further proceedings. The method of recording shall be determined by the Executive Board.

The accused may appear in person and with witnesses to answer the charges preferred against him/her. He/she may select a member in good standing of the Local as counsel to represent him/her in the presentation of his/her defense. Only fellow union members in good standing can serve as his/her counsel at the hearing. He/she shall be entitled at all times during the conduct of the hearing, either personally or through his/her representative, to be present and be heard and shall be entitled to face the person filing such charges and any other witnesses testifying in support of the charges for the purpose

of cross-examination of such charging party or other witnesses either personally or through his/her representative.

SECTION 5: VERDICT AND PENALTY

After the close of the hearing, the Executive Board shall deliberate and a written decision must be made within seven (7) days of the close of the hearing. Thereafter, the Executive Board shall report its decision and the penalty, if any, to the Local's membership at the next regularly scheduled meeting. At least seven (7) days prior to the meeting at which the Executive Board is to report its decision, the accused shall be notified in writing by the Local's Recording Secretary that the decision will be presented. A copy of the Executive Board's decision will be made available to the accused at the meeting.

The Executive Board's decision shall contain the charges, findings of facts and conclusions. It shall also advise the accused of his/her appeal rights, if the verdict is guilty.

If the accused is found guilty by the Executive Board, the President/Business Manager or his designee shall pronounce the sentence and see that the sentence is enforced. If the member, after receiving the required notice, fails to appear at this meeting, the President/Business Manager or his designee shall still pronounce the sentence and the member shall be notified in writing of the Executive Board's decision.

If the accused is found guilty by the Executive Board, it shall have discretionary power to impose any penalty it finds appropriate including, but not limited to a reprimand, a fine not to exceed \$2,000 per sustained charge, expulsion, suspension of

membership, removal from office, denial to hold any office permanently or for a fixed period, or command to do or perform or refrain from doing or performing specified acts or any combination of the above.

If the Executive Board imposes a suspension, the member shall be denied all rights and privileges of membership including voice or vote in the Local. If the Executive Board imposes expulsion, it shall set an assessment, which is not to exceed \$2,000, against the member to indicate upon what terms the expelled member may again become a member in good standing. In addition, the Local may provide at the time the penalty is imposed that if more than 6 months elapses between the expulsion order and the date the member tenders payment of the assessment, an application for reinstatement, and the proper initiation fees, that the member shall be liable for up to six (6) months back dues, payable at the current rate. The member must pay the assessment, the back dues and the Local's initiation fee before becoming a member of the International Union and the Local. Such re-initiation shall become effective only with the approval of the Local.

If the accused member fails to appear after service of the charges and notice of hearing are made upon him/her, the Executive Board may proceed to hearing and a determination of the charges and report its decision to the Local's membership.

EXHIBIT C

1. The following language applies to new construction only and does not apply to hod hoist and patch car operations.
2. Local 1 agrees that it will not demand more than one operator on a car.
3. Except as provided herein, neither Local 1's nor any other Union's jurisdiction shall be expanded by this Agreement. For example, if there are height and/or square footage jurisdictional limits applicable to a Union, those limits shall not be modified by this agreement.
4. The operation of elevators, regardless of whether they are carrying material or personnel, shall be assigned to Local 1 and IUOE Local 14 ("Local 14") members pursuant to the following formula:
 - a. The operation of the first car on applicable new construction sites shall be assigned to Local 14; the second car to Local 1; the third car to Local 1; and the fourth car to Local 14.
 - b. The operation of all cars after the fourth car on an applicable new construction site shall be split evenly (50/50) between Local 1 and Local 14. The contractor shall determine how to evenly divide the work (e.g., every other week).
5. For the purposes of the formula set forth in paragraph 4, cars shall be counted from the first car placed into operation and continuing thereafter, even if cars have been taken out of service.

6. This agreement shall not expand any time limits applicable to when Local 1 operators and Local 14 operators are to leave a job site, except if modified by future collective bargaining agreements.
7. This agreement settles the issue of operating joint venture cars. By entering into this agreement, Local 1 and the signatory employers who employ Local 1 members as operators do not waive, withdraw, compromise or settle any other issue that has been raised or that may lawfully be raised during collective bargaining.

Exhibit 2

3. The Employer may, during any calendar year, hire from other sources the number of Employees set forth in the table that is applicable:

Average Number Employees Represented By IUEC On Company's Payroll During Preceding Year	Maximum Outside Hiring Current Calendar Year
0 to 10	1
11 to 20	2
21 to 50	3
51 to 75	4
76 to 125	5

Plus two (2) for each additional 125 Employees. During the life of this agreement, the Employer shall have the right to hire 5 more individuals per year than allowed under the above formulation.

4. The Union shall refer to the Employer only workmen whose names appear on the open employment list and in so doing shall be governed by the following criteria:

(a) If the Employer requests by name from the open employment list a workman, other than a probationary man, who has had previous employment with the Employer within the past two (2) years, that workman shall be referred by the Union to the Employer unless the workman is then working for another company or is unwilling to accept employment with the Employer.

(b) The Employer may select from the open employment list any workman other than probationary pursuant to paragraph 3 above.

(c) If the Employer does not request that a particular workman be referred to it to fill a particular vacancy as provided in sub-paragraph (a) above, the referral shall be by classes and priorities in the following order:

First: Workmen competent and experienced in the performance of work of their classification and who have had employment experience, other than probationary men, with any company party to this Agreement. The order of referral within this class of workmen, known as Experienced Class, shall be in the order of registration of the applicants on the employment list.

Second: Workmen competent and able to perform the work in the classification to be filled but who have had no previous employment experience with any Company party to this Agreement. The order of referral within this class of workmen shall be in order of registration of the applicants on the employment list.

5. The term Employer shall refer to the particular Company requesting an Employee.

6. Whenever a Employer decides to reduce its work force on any job, it shall select the Employees to be retained on the basis of competency, ability to perform the available work and length of all prior service with the Employer.

Exhibit 3

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS

LOCAL ONE

GENERAL ELECTION OF OFFICERS

THURSDAY, JUNE 21ST, 2007

47-24 27th Street, L.I.C., NY & 340 Convery Blvd, Perth Amboy, NJ

POLLS OPEN 12:00PM TO 8:00PM



OFFICIAL TALLY SHEET AND ELECTION RESULTS

	PRESIDENT/ BUSINESS MGR			VICE PRESIDENT/ BUSINESS AGENTS				SECRETARY/ TREASURER	DAY SECRETARY	RECORDING SECRETARY	BOARD OF TRUSTEES										EXAMINING BOARD				WARDEN	CRP										
	Tony CARUDO	John GREEN, Jr.	Lenny LEGOTTE	Bill BENNET	Guy CERBONE	Mike STANLEY	Charles YAEGER	Fred McCOURT	Bob STORK	Gary RUFENHAUSER	Tom MOORE	Eddie O'HARE	Mike RIEGGER	Charles NOVACK, Jr.	Dennis O'NEILL	Tom McMAHON	Lee PIRONE	Andrew FAVATA	Daniel KUHN	Brian LINK	Jim McKENNA	Tommy O'BRIEN	Steve MAZZA	Kevin McCLAUGHRY	Greg MOSCHETTI	Joe HOULAHAN	Andrew SCHRETTNER	John SHIELDS	Charlie WEBER	Bill BULGER	Dennis KILDUFF	Tom WHOOLEY	Eddie BELFIORE	Bob MAZZA	Christopher RANDAZZO	
TOTAL VOTES CAST																																				
N	106817	97	208	187	203	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	201	200	
	106813	203	204	205	196	186	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	
	106814	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241
NY TOTALS:																																				
J	106815	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235
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	106812	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	
NJ TOTALS:																																				
GRAND TOTALS:																																				

Exhibit 4

John Green Jr.
398 Landing Avenue
Smithtown, New York 11787

June 25, 2007

VIA FACSIMILE
(718) 767-6730
Raymond Hernandez
President/Business Manager
International Union of Elevator Constructors Local 1
47-24 27th Street
Long Island City, New York 11101

Dear Mr. Hernandez:

On behalf of the entire "B" Slate, this letter is to protest the recent election. Notwithstanding your statements that the election would be conducted in a free and fair manner, it is clear that your actions and the actions of the Row "C" slate deprived members of Local 1 of the leadership they deserve. In no particular order, you, Local 1 and/or the Row "C" candidates violated the Local 1 and/or IUEC Constitution and ByLaws and/or the LMRDA in the following ways:

1. The Instructor at the school in New Jersey, Dennis O'Neill and others were using the Local 1 training facility to campaign for Row "C" candidates;
2. Potential voters on the out of work list were disenfranchised because Local 1 would not or could not obtain enough work for these individuals to remit their union dues and Local 1 deliberately withheld their identities from the Row "B" candidates;
3. The Local 1 Constitution does not provide for dual voting locations and the membership never authorized having the New Jersey location;
4. Local 1 "organized" more than 80 new members on the eve of the election, without proper scrutiny from the Examining Board in an effort to inflate the Row "C" voter base;
5. Various Row "C" candidates campaigned on Union time, of which Local 1 was aware, but took no action, despite several communications from members of Local 1, including, without limitation, on the Friday before Memorial Day in Westchester;
6. The charges allegedly filed against John Green, Jr., for purportedly working non-union, were nothing but a campaign smear and were a flagrant abuse of Raymond Hernandez' office in order to sway the election;

7. Local 1 expended Union resources by soliciting (and paying for) "opinion" letters from the Union's Attorney and Accountant about the propriety of the incumbent officers' receipt of \$2,250.00 in "bonus" money from the Union, without membership authorization. These letters were used as campaign material on the Row "C" website and elsewhere.

8. Local 1 improperly authorized Row "C" candidates to utilize a report from the Federally appointed monitor as campaign material, without permitting the membership to review the report in its entirety;

9. Raymond Hernandez had unauthorized access to the membership list and sent a letter to each member of Local 1 denouncing John Green, Jr., and praising Lenny Legotte. Hernandez was not a bona fide candidate for any union office and he should never have had use of the membership list, pursuant to the LMRDA;

10. Raymond Hernandez used Union equipment, etc., to compose the above mentioned letter;

11. Raymond Hernandez campaigned for the Row "C" slate, while on Union time;

12. Lenny Legotte campaigned while on Union time, including, without limitation, by sending letters on Union stationery;

13. Anthony Carudo campaigned while on Union time, including, without limitation, by preparing website information, including a video, on Union property utilizing Union equipment;

14. Local 1 refused to comply with the legitimate document requests of the Row "B" candidates, a copy of which is enclosed herewith;

15. Row "C" candidates displayed a banner/sign on Union property on election day, giving the impression to Voters that Local 1 supported the Row "C" slate;

16. Raymond Hernandez sent a letter on or about June 8, 2007 to John Green, Jr., demanding that Green "cease and desist" from responding to an allegation Hernandez made about Green, in an effort to chill Green's free speech rights as a member of Local 1 and to influence the outcome of the election;

17. Local 1 denied Green access to the Union's books and records, despite his request to review the records in light of the "reasonable cause" letter Green sent to Hernandez about Local 1's unexplained financial situation;

18. Raymond Hernandez physically assaulted a Local 1 member (Brian Kelly, Jr.) Hernandez believed to be a Row "B" supporter at the New Jersey election site in an effort to intimidate supporters of Row "B" candidates from casting ballots;

19. Row "C" candidates campaigned from the steps of the Long Island City voting site, despite a warning from Warden, Greg Mochetti, that doing so was a violation of election rules;

20. The votes tabulated at the election machines in New Jersey were combined, rather than separately reported at the vote count;

21. The votes tabulated at the election machines in Long Island City reveal a large disparity in the support for the Row "B" candidates, notwithstanding the fact that voters were assigned randomly to the different machines. As an example, in the race for President-Business Manager, there was a difference of 55 votes (Machine 1: 269 – Machine 2: 214) between machines 1 and 2; conversely, the disparity in support for Legotte was 205-187, or a difference of only 18 votes. Tony Carudo's vote for these machines was 103-97, or a difference of 6 votes. It should be noted that one would have expected a larger disparity between in Machine 2 and Machine 3, where the votes cast were as follows: Machine 2: 522 votes; Machine 3: 496 votes. Nevertheless, Legotte "lost" Machine 2 by a total of only 9 votes (out of 522), but Legotte "lost" Machine 3 by a total of 50 votes (out of only 496). In summary, Green outpolled Legotte by 55 votes on Machine 1, 50 votes on Machine 3, but only 9 votes on Machine 2. Random chance cannot explain this statistical anomaly.

22. The total votes for President-Business Manager exceeded the votes cast for the other offices by an unreasonable amount:

President Business Manager:	2194
Secretary-Treasurer:	1871
Day Secretary:	1993
Recording Secretary:	1789
Warden:	1996

It is unusual, to say the least, for an office such as Warden to be within 200 total votes of the total President's vote, but the vote total for Day Secretary to fall more than 400 votes short of the President's total. One can only conclude, in conjunction with the Machine 2 "anomaly", that votes were either inflated, suppressed or both;

One cannot perform the same analysis for the New Jersey machines, as the votes were combined, defeating that analysis;

23. Row "C" candidates campaigned from the vestibule, in violation of the election rules, inside the voting location in New Jersey, during the rain storm, while Row "B" candidates remained outside;

24. Ray Hernandez verbally abused and intimidated Charles Novak, Jr., in the Union hall at the Long Island City voting location in an attempt to intimidate others who may have wanted to vote for Row "B" candidates;

25. Row "C" candidates campaigned well within the 100 foot radius in violation of election rules while Row "B" candidates remained outside the 100 foot perimeter;

26. Tom Donovan, a Superintendent for Schindler, on company time and with company resources, assisted Fred McCourt and Lenny Legotte in their campaign by bringing them in to a meeting allegedly convened to discuss safety issues, but whose real object was to campaign.

27. The votes were not "preserved" as required by the LMRDA.

28. The Tally Sheet and Election Results form printed by Election Machine Service Company (EMS) states that POLLS OPEN: 2:00 p.m. to 7:00 p.m. The actual start and finish times were noon to 8:00 p.m. Members of Local 1 may have been deterred from voting if EMS had informed them of the incorrect time of the election.

The election was decided by a very thin margin. Legotte was "elected" President-Business Manager by less than a five percent margin and with only 43% of the vote. Based on the above, it is clear that the violations of the LMRDA and the Local 1 and IUEC Constitution and ByLaws affected the outcome of the election. We demand that a free and fair election be re-run, without interference from Local 1 and under the supervision of the Department of Labor.

Fraternally,

John Green, Jr.

cc: Dana Brigham

General President
7154 Columbia Gateway Drive
Columbia, MD 21046
VIA FACSIMILE
(410) 953-6169

Kevin Stringer
General Secretary-Treasurer
7154 Columbia Gateway Drive
Columbia, MD 21046
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Harlan Ettinger, Esq.
The Bradlau Group, LLP
18 Washington Street, 2d Floor
P.O. Box 541
Morristown, NJ 07963
VIA FACSIMILE
(973) 656-0422

Exhibit 5



International Union of Elevator Constructors

Dana A. Brigham
General President

Timothy R. Smith
Assistant General President

Kevin P. Stringer
General Secretary-Treasurer

Vice Presidents

Thaddeus R. Tomei

Donald G. Mitchell

Gerald A. Cluff, Jr.

Ernie L. Brown

Frank J. Christensen

C. Jack Clower

Michael A. Conkin

James R. Biagini

HEADQUARTERS
7154 Columbia
Gateway Drive
Columbia, Maryland
21046
<http://www.iuec.org>

TELEPHONE
(410) 953-6150

FAX
(410) 953-6169

Affiliated with the AFL-CIO

October 23, 2007

Mr. John Green, Jr.
389 Landing Avenue
Smithtown, NY 11787

Re: Election Protest Appeal

Dear Sir and Brother:

This will acknowledge receipt of your letter of September 27, 2007, appealing the decision of the Local One Executive Board regarding your protest of the last election of officers in Local One.

While as IUEC General President I am empowered to hear and resolve appeals of election protests under the general powers of the General President described in Article VI, Section 1 of the IUEC Constitution, and have resolved such disputes in the past, in this case I am declining to rule on your appeal. Instead, from the date of your receipt of this letter you may consider yourself free to pursue whatever election remedies are available to you under the law, without first exhausting any available remedies under the IUEC Constitution.

The IUEC is taking this position because of the time that already has passed from date of the June, 2007 election, as well as the fact that the IUEC has been asked to consider and rule upon a number of charges and countercharges involving officers, candidates and issues that were involved in the last Local One election. In my judgment, in this instance it may be preferable to have the election and the disciplinary issues considered separately.

Fraternally,

Dana A. Brigham
General President

DAB/mrg



Exhibit 6

John Green Jr.
398 Landing Avenue
Smithtown, New York 11787

October 23, 2007

United States Department of Labor
Office of Labor-Management Standards
201 Varick Street
Room 878
New York, New York 10014

Dear Sir or Madam:

This letter is an appeal to the United States Department of Labor of the IUEC Local 1 election. The Local 1 Executive Board, comprised entirely of the opponents of the B Slate, denied the protest. An appeal is pending before the International, but no decision has been rendered. It is clear that the Local's actions and the actions of the successful Row "C" slate deprived members of Local 1 of the leadership they deserve. In no particular order, Local 1 and/or the Row "C" candidates violated the Local 1 and/or IUEC Constitution and By-Laws and/or the LMRDA in the following ways:

1. The Instructor at the school in New Jersey, Dennis O'Neill and others were using the Local 1 training facility to campaign for Row "C" candidates;
2. The Local 1 Constitution does not provide for dual voting locations and the membership never authorized having the New Jersey location;
3. Local 1 "organized" more than 80 new members on the eve of the election, without proper scrutiny from the Examining Board in an effort to inflate the Row "C" voter base;
4. Various Row "C" candidates campaigned on Union time, of which Local 1 was aware, but took no action, despite several communications from members of Local 1, including, without limitation, on the Friday before Memorial Day in Westchester;
5. The charges allegedly filed against John Green, Jr., for purportedly working non-union, were nothing but a campaign smear and were a flagrant abuse of Raymond Hernandez' office in order to sway the election;
6. Local 1 expended Union resources by soliciting (and paying for) "opinion" letters from the Union's Attorney and Accountant about the propriety of the incumbent officers' receipt of \$2,250.00 in "bonus" money from the Union, without membership

authorization. These letters were used as campaign material on the Row "C" website and elsewhere.

7. Local 1 improperly authorized Row "C" candidates to utilize a report from the federally appointed monitor as campaign material, without permitting the membership to review the report in its entirety;
8. Raymond Hernandez had unauthorized access to the membership list and sent a letter to each member of Local 1 denouncing John Green, Jr., and praising Lenny Legotte. Hernandez was not a bona fide candidate for any union office and he should never have had use of the membership list, pursuant to the LMRDA;
9. Raymond Hernandez used Union equipment, etc., to compose the above mentioned letter;
10. Raymond Hernandez campaigned for the Row "C" slate, while on Union time;
11. Lenny Legotte campaigned while on Union time, including, without limitation, by sending letters on Union stationery;
12. Anthony Carudo campaigned while on Union time, including, without limitation, by preparing website information, including a video, on Union property utilizing Union equipment;
13. Local 1 refused to comply with the legitimate document requests of the Row "B" candidates, a copy of which is enclosed herewith;
14. Row "C" candidates displayed a banner/sign on Union property on Election Day; giving the impression to Voters that Local 1 supported the Row "C" slate;
15. Raymond Hernandez sent a letter on or about June 8, 2007 to John Green, Jr., demanding that Green "cease and desist" from responding to an allegation Hernandez made about Green, in an effort to chill Green's free speech rights as a member of Local 1 and to influence the outcome of the election;
16. Local 1 denied Green access to the Union's books and records, despite his request to review the records in light of the "reasonable cause" letter Green sent to Hernandez about Local 1's unexplained financial situation;
17. Raymond Hernandez physically assaulted a Local 1 member (Brian Kelly, Jr.) Hernandez believed to be a Row "B" supporter at the New Jersey election site in an effort to intimidate supporters of Row "B" candidates from casting ballots;
18. Row "C" candidates campaigned from the steps of the New Jersey voting site, despite a warning from Warden, Greg Mochetti, that doing so was a violation of election rules;

19. The votes tabulated at the election machines in Long Island City reveal a large disparity in the support for the Row "B" candidates, notwithstanding the fact that voters were assigned randomly to the different machines. As an example, in the race for President-Business Manager, there was a difference of 55 votes (Machine 1: 269 – Machine 2: 214) between machines 1 and 2; conversely, the disparity in support for Legotte was 205-187, or a difference of only 18 votes. Tony Carudo's vote for these machines was 103-97, or a difference of 6 votes. It should be noted that one would have expected a larger disparity between in Machine 2 and Machine 3, where the votes cast were as follows: Machine 2: 522 votes; Machine 3: 496 votes. Nevertheless, Legotte "lost" Machine 2 by a total of only 9 votes (out of 522), but Legotte "lost" Machine 3 by a total of 50 votes (out of only 496). In summary, Green outpolled Legotte by 55 votes on Machine 1, 50 votes on Machine 3, but only 9 votes on Machine 2. Random chance cannot explain this statistical anomaly.
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President Business Manager:	2194
Secretary-Treasurer:	1871
Day Secretary:	1993
Recording Secretary:	1789
Warden:	1996

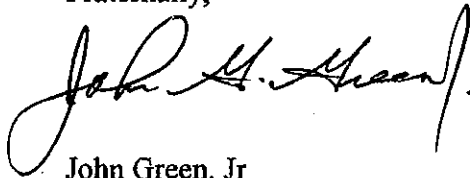
It is unusual, to say the least, for an office such as Warden to be within 200 total votes of the total President's vote, but the vote total for Day Secretary to fall more than 400 votes short of the President's total. One can only conclude, in conjunction with the Machine 2 "anomaly", that votes were either inflated, suppressed or both;

One cannot perform the same analysis for the New Jersey machines, as the votes were combined, defeating that analysis;

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23. Row "C" candidates campaigned well within the 100 foot radius in violation of election rules while Row "B" candidates remained outside the 100 foot perimeter;

The election was decided by a very thin margin. Legotte was "elected" President-Business Manager by less than a five percent margin and with only 43% of the vote. Based on the above, it is clear that the violations of the LMRDA and the Local 1 and IUEC Constitution and By-Laws affected the outcome of the election. We demand that a free and fair election be re-run, without interference from Local 1 and under the supervision of the Department of Labor. Thus, the "B" slate appeals the Local 1 Executive Boards decision dated September 18, 2007.

Fraternally,

A handwritten signature in black ink, appearing to read "John M. Green, Jr.", with a stylized, cursive script.

John Green, Jr

cc: Kevin Stringer
General Secretary-Treasurer
7154 Columbia Gateway Drive
Columbia, MD 21046
VIA FACSIMILE
(410) 953-6169

Harlan Ettinger, Esq.
The Bradlau Group, LLP
18 Washington Street, 2d Floor
P.O. Box 541
Morristown, NJ 07963
VIA FACSIMILE
(973) 656-0422

Exhibit 7

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
New York District Office
201 Varick Street, Room 878
Phone: (646) 264-3190
Fax: (646) 264-3191



November 5, 2007

Mr. John Green Jr.
389 Landing Avenue
Smithtown, NY 11787

Dear Mr. Green Jr.,

This is in response to your letter dated October 23, 2007, and received by the Office of Labor-Management Standards (OLMS) New York District Office on October 31, 2007 in which you seek to file a complaint with the Secretary of Labor regarding the June 21, 2007 local officer election.

The Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor enforces provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), including those that govern union officer elections. Section 402 of the LMRDA provides that a union member must invoke or exhaust the appeals procedures available under the union's Constitution and By-laws before filing a complaint with the Secretary of Labor. Section 402 further states that if a member does not receive a final decision within 3 calendar months after invoking available internal union remedies, the member may do either of the following:

1. File a complaint with the Secretary that must be received by the Secretary or her authorized agents within 1 calendar month after the 3 calendar month period has expired; or
2. Wait until the available remedies within the union have been exhausted even though this may take more than 3 calendar months. In this case, if the final decision is unfavorable, the complaint must be received by the Secretary or her authorized agents within 1 calendar month after the member has received the unfavorable final decision.

Based on a review of the IUEC Constitution and bylaws, Article VI, Section 1 states that: The General President shall take any action necessary to carry out the objectives of the IUEC, to protect the membership of the IUEC and to foster unionism, including, but not limited to, rendering decisions on disputes between local unions or between local unions and members or between members. All such decisions of the General President shall be subject to appeal to the General Executive Board but must be complied with pending appeal.

Further, Article XVIII, Section 13 indicates that: Any decision made by the General Executive Board shall be subject to appeal to the following convention, if so desired, provided such appeal is made within 60 days after notification of such decision mailed to the parties. The period of 60 days is to run from the date of mailing such decisions, but the decision shall be and remain effective for all purposes during the pendency of any such appeal and is to be carried out in any respect by all parties until the following convention decides the appeal, or otherwise determines and directs.

This office has reviewed the correspondence you submitted and has determined that your complaint was not timely filed with the Secretary of Labor. In particular, according to your correspondence your initial protest to the Local 1 President-Business Manager was received by the union via facsimile, on June 26, 2007. Having not received a final response by September 26, 2007, the end of the three calendar month period, a complaint to the Secretary of Labor should have been filed within one calendar month thereafter, or no later than October 26, 2007, in order to be considered timely. However, you did not file your complaint with the Secretary of Labor until October 31, 2007, which was five days after the filing deadline. A review of your correspondence reflects that you have not received a decision from the IUEC General Executive Board or a final decision from the IUEC National Convention. Therefore, if you do receive a final decision in the future, and it is unfavorable, you may file a complaint with the Secretary of Labor within one calendar month after receiving the unfavorable final decision.

I am enclosing a copy of the LMRDA and an OLMS pamphlet entitled *Union Officer Elections -A Complainant's Guide*. The procedures for filing a complaint with the Secretary of Labor are outlined on page 2 of this pamphlet.

As a result of the above information, the Secretary of Labor is unable to act on your complaint at this time.

Sincerely,

Ralph E. Gerchak
District Director

Enclosures

Cc: OLMS Division of Enforcement