

TO: IBT General President James P. Hoffa
FROM: Members of the Independent Review Board
RE: Trusteeship Recommendation regarding Local 107
DATE: February 25, 2010

I. RECOMMENDATION

The Independent Review Board ("IRB") recommends to the IBT General President that Local 107 be placed in Trusteeship pursuant to Article VI, Section 5(a) of the IBT Constitution. It appears that the Local is not being operated for the interests of members. Despite prior warning to the Local's officers of the problem, the Local officers and their agents appear to have continued a practice of influencing work assignments in the movie and trade show industries to favor family and friends over other members.¹

On October 21, 2009, the IBT's General Counsel advised that the Local was considering surrendering jurisdiction over the movie industry. On January 21, 2010, the Local's counsel met with the IRB's Chief Investigator to discuss the investigation. On January 25, 2010, Local 107 principal officer William Hamilton ("Hamilton") sent a

¹ In this report, the term "movie industry" includes movies, commercials, television shows and videos. The term "trade show industry" includes work at the Pennsylvania Convention Center, theaters, concerts and trade show and convention work at other venues.

letter to IBT General President James Hoffa stating that the Local's Executive Board had voted to cede its jurisdiction over the movie and entertainment industry to another Local. (Ex. 246)² Hamilton asked the General President's permission to pursue the matter with the Director of the IBT's Motion Picture and Theatrical Trade Division. (Ex. 246)

II. SUMMARY

In 1996, based upon an IRB recommendation, the IBT placed Local 107 in Trusteeship. In December 2000, shortly after the Local was released from the IRB-recommended Trusteeship, the IRB issued a report to both the IBT and the then and current Local 107 principal officer, Hamilton, summarizing deficiencies in the Local's work referral practices in the movie and trade show industries. The IRB's 2000 report stated that ". . . individuals who had ties to Local 107 officials joined the Local and, despite the absence of seniority, were sent to lucrative positions in the movie industry while there were unemployed Local 107 members seeking work." (Ex. 1 at 5) Subsequent to the IRB's report, in May 2001, the Local created written work referral rules for the movie and trade show industries.

² There was no mention of Local 107 surrendering jurisdiction over the trade show industry to another Local. (Ex. 246)

Subsequent investigation has established that these rules were not followed despite representations to the members, the National Labor Relations Board ("NLRB") and the IRB that they governed work assignments.

The pattern of nepotism and favoritism that existed at Local 107 before 2000, when the IRB issued the report described above, continued after the IRB's 2000 report. Relatives and friends of the Local's officers and the trade show steward and the Teamster movie captains continued to work in the movie and trade show industries while there were unemployed Local 107 members with better qualifications and experience, who did not work. The unenforced written rules appear to have been camouflage to conceal the continuation of the past practice.

The 2001 movie referral rules provided that the Local would supply employers with the entire "A" referral list of fifteen individuals with "the highest combination of years of experience in this industry and number of productions", and the corresponding resumes. (Ex. 2 at 2) The employers would select drivers from this list. (Ex. 2 at 2-3) Pursuant to these rules, once the "A" list was exhausted, the Local would provide employers with the entire "B" list, which included all other individuals "in industry

experience order", and their resumes for the employers to select additional drivers. (Ex. 2 at 3)

Sometime before March 2008, the written referral rules were amended to provide that there would be only one movie referral list. Employers would receive this list, along with resumes, and the employer would select drivers.³ According to these rules, placement on this single referral list was "based on the highest combination of: Driving Experience, CDL [commercial driver's license] qualifications, Industry experience, Specialty equipment." (Ex. 5 at 2) In the Local's October 2, 2008 response to an IRB document request, the Local was unable to provide any documents regarding how individuals were placed on the movie referral list. (Exs. 6 and 107) Moreover, although according to the written rules, driving and industry experience were factors determining an individual's placement on the single referral list, for the list of names included below the ten names on the "Movie A List", the referral document stated: "the below list is not [sic] seniority order." (Ex. 113)

³ When shown these undated rules during their 2009 IRB sworn examinations, neither Anthony Frasco, then the business agent for the movie and trade show industries, nor Hamilton were able to state when they were created. (Ex. 3 at 51-52; Ex. 4 at 31-33) These rules were provided to the IRB's Chief Investigator's office during the March 2008 books and records examination.

In any event, as discussed below, instead of providing the referral lists and resumes to the employers for selection by employers as the 2001 and subsequent rules both provided, the Local's business agent and Teamster movie captains, whose appointment the Local influenced and whose positions the Local negotiated the terms for in the collective bargaining agreements, decided who worked on movie productions, absent a specific request for an individual from an employer.

Symptomatic of the ties between work assignments and being in favor with Local officers, between at least 2000 and 2004, members who received discretionary work assignments in the movie industry through the Local, worked unpaid at principal officer Hamilton's home, including helping him move. In 2000, Hamilton, who at that time was involved in determining who worked on movie productions, assigned at least three individuals, who performed personal work for Hamilton, to work on the movie Unbreakable.

It appears that, even after the Local wrote the 2001 work referral rules and after a September 2003 settlement agreement with the NLRB which required the Local to post a notice stating "we will not fail to follow our established rules in the operation of our referrals for the film and video industry" (Ex. 178), the rules remained unenforced.

The Local officers despite these representations to the members, the NLRB and the IRB that the written rules were being followed took no action to ensure they were. Member complaints put them on notice that the rules were ignored.

Nepotism and favoritism continued to influence the Local's work referrals in the movie and trade show industries. For example, as detailed below, while there were out of work Local 107 members, the brother-in-law of Anthony Frasco ("Frasco"), then both the Local's Vice President and business agent for the movie and trade show industries, was referred to work, even though he was not a member of the Local. Then trade show steward Michael Conway's ("M. Conway") relatives, including one who joined the Local shortly after being released from prison, were referred to movie and trade show work while there were unemployed Local 107 members not receiving work. In June 2009, the Local paid \$38,750 to settle a complaint Local 107 member Frank Gizzi ("Gizzi") filed in November 2007 with the NLRB which alleged that the Local failed to refer him to movie work.

As discussed below, individuals with close ties to the Local's officers and stewards were referred to trade show industry work in violation of the requirement in the Local's written referral rules that an individual must be

current in his dues to be referred to work. For example, a nephew of M. Conway, then the trade show steward, received numerous work referrals in the trade show industry while he was suspended from the Local for non-payment of dues.

In approximately October 2008, while the IRB's investigation was ongoing, the Local allegedly surrendered to employers complete control over hiring members for jobs in the movie industry. According to Local officers, as of October 2008 the Local's role was limited to sending a summary of approximately 200 resumes in alphabetical order to production companies for the companies to choose drivers. No benefit to the Local's members in the Local surrendering control of the movie work referrals was apparent. As discussed below, the Local also allegedly surrendered control of work referrals in the trade show industry.

As a practical matter, it appears this was a strategy to insulate nepotism and favoritism in work referrals from review, much as the unenforced written rules were. Many production companies would not have any basis to know which workers to select. The evidence supports the conclusion that nepotism and favoritism continued to influence work assignments on movie productions after October 2008. For example, as detailed below, there were approximately 161

individuals with resumes submitted to the Local available for work in approximately July 2009. (Exs. 153, 188, 268)⁴ Yet, beginning in approximately July 2009, the principal officer's sister and the Vice President's brother-in-law, who had less experience and qualifications than most not selected, both worked for several months on a SONY movie production. (Exs. 70, 188, 268) In addition, apparently after Frasco recommended him to the Local 107 movie captain for the SONY movie, one of the Local's part-time Trustees, who had been laid off from his position at a freight company and had no prior movie experience, worked on the movie. Pursuant to the collective bargaining agreement for the SONY movie, the minimum weekly rate was \$2,500. There were other Local 107 members available to work on the SONY project. For example, Vincent Dodd ("Dodd"), who had been laid off from DHL before Hamilton's sister and who had a Class B commercial driver's license ("CDL"), which Hamilton's sister and Frasco's brother-in-law did not have, did not receive work on the SONY project.⁵

⁴ As of July 2009, 208 individuals had submitted resumes to the Local seeking work. (Ex. 188) Approximately 47 of these individuals worked on the movie The Last Airbender (Ex. 153), leaving approximately 161 individuals available to work. (Exs. 188, 153 and 268)

⁵ According to the Pennsylvania Department of Transportation, a Class A commercial driver's license is required to "operate any combination of vehicles with a gross combination weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of 10,000 pounds." (Ex.

Indeed, during the investigation, a document appears to have been created to falsely explain Hamilton's sister's work assignment. As detailed below, this document was given to the IRB in the investigation. It was an email from a person working on the SONY production requesting the principal officer's sister, Donna Hamilton ("D. Hamilton"), to work on the project. The document was dated one month after D. Hamilton had begun work and was also after the IRB made a document request to the Local for all employer requests for individuals to work. In response to the IRB's document request, the Local produced written requests for six other individuals, including a long-time close friend of the co-captain on the movie, but did not produce any employer request for D. Hamilton. All of these requests were dated before the member began work. D. Hamilton was laid off from a customer service position at DHL and did not have a commercial driver's license or any experience working as a driver. The apparently manufactured request was produced to the IRB at the conclusion of D. Hamilton's sworn examination in September 2009. It was dated over a month after she began work.

243) A Class B commercial driver's license is required to "operate any single vehicle with a gross vehicle weight rating of 26,001 pounds or more or any such vehicle towing a vehicle having a gross vehicle weight rating of not more than 10,000 pounds." (Ex. 243)

Although claiming that only the employers selected the members to work, the Local's officers admitted in certain circumstances, such as on some commercials, the business agent or movie captain continued to control who worked. For example, before the Secretary Treasurer's brother began to work on the lucrative SONY project in July 2009, either Secretary-Treasurer Shawn Dougherty ("S. Dougherty") or Frasco assigned S. Dougherty's brother to work on two short commercials after the brother, Kevin Dougherty ("K. Dougherty"), was laid off from a freight company.

The Local influenced who were captains and the captains in turn influenced the selection of members for work. The terms of employment for the captains were defined in the collective bargaining agreements the Local negotiated with the production companies. In September 2009, in response to an inquiry, the Local's Secretary-Treasurer informed a production company that Local 107 member Frank Conway ("F. Conway") was the only captain available to work on a project. The company made no request for any specific individual to be captain. After that, three of the four additional members who worked on that project included F. Conway's two sons and a former Local 107 officer.

III. INVESTIGATIVE FINDINGS

A. Background of Local 107

Local 107 is located in Philadelphia, Pennsylvania. As of December 7, 2009, it had approximately 2,429 members who were employed in various industries including freight companies and the movie and trade show industries. (Ex. 7)⁶ According to a December 7, 2009 Local 107 employer roster, the combined movie and trade show industries were the tenth largest employer of Local 107 members. (Ex. 7)⁷

Local 107 has had a history of ties to the Philadelphia La Cosa Nostra ("LCN"). On June 17, 1966, Local 107 business agent John Gorey and bookkeeper Rita Janda were murdered inside the Local's offices. (Ex. 248 at 1) Local 107 member Gregory Carchidi, who at the time was employed at the Local as a janitor and later was the trade show steward from approximately 1979 to 1996, was tried and acquitted of the homicides. (Ex. 248 at 2-3; Ex. 251 at 14-

⁶ In January 2009, Teamster Local 470 merged into Local 107. (Ex. 9) Former Local 470 officer Anthony Volpe, who retired in August 2009, is the cousin of former Local 107 trade show steward Michael Conway. (Ex. 10 at 6-7; Ex. 102 at 7; Ex. 75)

⁷ According to the December 7, 2009 Local 107 employer roster obtained from the IBT, 49 members were employed in the convention center and movie and commercial industries. (Ex. 7) It is likely that there were more members employed in those industries who were categorized as casuals on the employer roster. The employers who employed more Local 107 members than the combined movie, commercial and trade show industries were the following: DHL, 142 members; YRC, 132 members; Sears Roebuck, 126 members; US Food Service, 115 members; Penn Jersey, 93 members; New Penn, 92 members; UPS, 71 members; Wilmar, 59 members and Arkansas Best, 57 members. (Ex. 7)

15)⁸ In 1968, Local 107 member Robert DeGeorge was murdered outside Local 107's offices. (Ex. 254)

Michael Facchiano ("Facchiano") was the Local 107 Vice President and a business agent until his retirement in 1989. (Ex. 252 at 5) According to news reports, in February 1981, Facchiano was seriously wounded when he was shot multiple times in the Local 107 parking lot. (Ex. 247)⁹ On October 19, 1982, Facchiano and Joseph Cimino ("Cimino"), then the principal officer of Local 107, were observed at The Saloon, a restaurant in Philadelphia, with Salvatore Merlino, Lawrence Merlino and Philip Leonetti who have been publicly identified as members of the Philadelphia LCN Family. (Ex. 253; Ex. 258 at 63-64)

In 1991, the Independent Administrator permanently barred Cimino, then the President and principal officer of Local 107, from the IBT based upon Cimino's knowing association with Nicodamo Scarfo ("Scarfo"), the then boss of the Philadelphia LCN. (Ex. 8) According to Philip Leonetti, a protected witness and the former underboss of

⁸ Carchidi was removed as the trade show steward after the imposition of the 1996 IRB-recommended Trusteeship over Local 107. (Ex. 251 at 22; Ex. 34) Carchidi's co-defendants included Anthony DiPasquale and then Local 107 officer John Sullivan. (Ex. 248 at 1-3) DiPasquale was acquitted. (Ex. 248 at 3) News articles between 1998 and 2000 reported that DiPasquale had ties to the Philadelphia LCN. (Ex. 263) Sullivan's conviction was overturned on appeal. (Ex. 254)

⁹ According to news reports, earlier in February 1981, Facchiano had found an explosive device under his car. (Exs. 247 and 254)

the Philadelphia LCN, while Local 107 President, Cimino used his union position to arrange employment for organized crime members and associates referred to him. (Ex. 8 at 6-7) The Independent Administrator found that Cimino met with Scarfo and other members of organized crime at The Saloon. (Ex. 8 at 7) During one of these meetings at The Saloon, Scarfo told Cimino, "I'm the union, I run Local 107." (Ex. 8 at 7)¹⁰

On October 25, 1991, Thomas Ryan ("Ryan") replaced Cimino as the Local's principal officer. (Ex. 11) Based upon IRB-recommended charges, on August 20, 1996, Ryan was suspended from the IBT for five years for breaching his fiduciary duties and embezzling Local 107 funds. (Exs. 12-13) In February 1999, based upon additional IRB-recommended charges, Ryan was permanently barred from the IBT for violating the terms of his suspension. (Exs. 14-15)

More recently, on December 29, 2008, the IRB recommended that Local 107 chief DHL steward Peter Innaurato ("Innaurato") be charged with knowingly associating with Joseph Massimino ("Massimino"), a member and Underboss of the Philadelphia LCN. (Ex. 16) Innaurato

¹⁰ On October 16, 1991, District Court Judge David N. Edelstein affirmed the Independent Administrator's decision. United States v. IBT, 777 F.Supp. 1130 (S.D.N.Y. 1991). On May 27, 1992, the Court of Appeals for the Second Circuit affirmed the District Court's decision regarding Cimino. United States v. IBT, 964 F.2d 1308 (2d Cir. 1992).

had joined the Local in approximately May 1990 after being introduced to Cimino. (Ex. 17 at 5, 7-10; Ex. 239) In approximately 2000, Hamilton, the Local's principal officer, appointed Innaurato chief steward for DHL. (Ex. 17 at 13-14) Hamilton and Innaurato were friends and socialized outside work. (Ex. 17 at 31, 32-34, 36-40) For example, Innaurato testified that he had been to Hamilton's home approximately two dozen times, including for the holidays. (Ex. 17 at 33-34)

The evidence of Innaurato's purposeful association with LCN Underboss Massimino included their exchange of letters while Massimino was incarcerated. (Exs. 18-19)¹¹ In

¹¹ In a letter dated September 11, 2006 to Innaurato, Massimino wrote,

Tell Kelly I send my best and Billy to [sic]. Well buddy be cool and take care. When you get a chance drop me a line. If you need me I'm right here. Thanks buddy.

(Ex. 18) In response, in a letter dated September 30, 2006, Innaurato wrote to Massimino,

Like I said, tell me if I can do anything for you. I'll wait to hear from you and the idea that I'm your friend will keep me strong. My mom's feeling better, by the way. Thanks for always asking about her. Kelly & Billy & Johnny Garb told me to send you their best.

(Ex. 19) Innaurato testified that the "Kelly" referenced in the two letters was Local 107 member Joseph Kelly. (Ex. 17 at 41-43, 56) Kelly, who worked in the trade show and movie industry, joined the Local in April 1991 shortly after his January 1991 release from prison after serving a sentence for a federal drug trafficking conviction. (Ex. 20 at 4-7; Ex. 23) Massimino was one of Kelly's codefendants in that drug case. (Ex. 20 at 14) Kelly claimed that he did not meet Massimino until after Kelly was released from prison in approximately 1991. (Ex. 21 at 30-31)

order to resolve the IRB-recommended charge, on April 9, 2009, Innaurato entered into an Agreement pursuant to which he permanently resigned from all IBT positions, including IBT membership. (Ex. 22)

On June 22, 2009, the IRB recommended that Michael Conway, then the Local 107 chief steward for the Pennsylvania Convention Center ("PCC") and a movie captain, be charged with knowingly associating with Ryan, who had been permanently barred from the IBT. (Ex. 31) Between February 2002 and October 2008, there were at least 46 telephone contacts between M. Conway and Ryan. (Ex. 31 at 2) On December 10, 2009, after a hearing, the IBT General President suspended M. Conway from all IBT positions including IBT membership and any steward or union

Innaurato claimed that the "Billy" referred to in the letters was Local 107 member William Gervasi who worked at DHL. (Ex. 17 at 41, 43) Gervasi, whom Innaurato had introduced to Massimino approximately seven years prior to Gervasi's October 2008 sworn examination, denied sending regards to Massimino through Innaurato. (Ex. 24 at 9-10) Local 107 principal officer William Hamilton denied knowing Massimino. (Ex. 3 at 90)

Innaurato claimed that, although he mentioned "Johnny Garb" in his letter to Massimino, he did not know "Johnny Garb." (Ex. 17 at 42) Innaurato claimed that "Johnny Garb" saw Innaurato one day on the street and asked him to send regards to Massimino. (Ex. 17 at 42) It appears that the "Johnny Garb" referred to in Innaurato's letter was John Garbarino. (Ex. 25 at 58-59) In 2004, John Garbarino was arrested for illegal gambling with, among others, Antonio Capetillo. (Ex. 25 at 8-9) As discussed below, shortly after serving a sixty day sentence for illegal gambling, Capetillo joined Local 107. (Ex. 25 at 5-7) Capetillo worked in the movie and trade show industries. (Ex. 25 at 6, 15, 18-34) As discussed below, after joining the Local, Capetillo did not pay dues for almost two years even though he received work assignments in the trade show industry. (Exs. 26-28) It appears that Garbarino worked at the Pennsylvania Convention Center in October and November 2006. (Ex. 29)

representative positions for ten years. (Ex. 240) The matter is pending. In approximately September 2009, M. Conway's brother, Frank Conway, who also worked as a movie captain, was elected by the six members on the PCC seniority list to replace M. Conway as the PCC steward. (Ex. 32 at 103-104)

B. 1996 Trusteeship

On August 9, 1996, based upon an IRB recommendation, the IBT placed Local 107 in Trusteeship. (Exs. 33 and 34) The IBT's Trusteeship notice stated that the grounds for the Trusteeship included, among other things, that the net assets of the Local had decreased drastically between 1991 and 1995; despite the Local's poor financial condition, since at least 1991, the Local's officers, employees and Trustees had received sizeable bonuses; the Local officers made significant expenditures of Local funds for their personal benefit and for inadequately documented entertainment expenses. In addition, the Trusteeship notice stated that the Local failed to have even rudimentary financial controls, that officers and members of the Local had continuing contacts with organized crime elements and that some of the expenditures of Local funds benefited such persons. (Ex. 34) At the time the Trusteeship was imposed, current Local 107 principal

officer William Hamilton was the Local's Recording Secretary and a business agent and Frasco, who retired in November 2009 from his positions as the Local's Vice President and business agent for the movie and trade show industries, was a Trustee on the Local's Executive Board. (Ex. 35)

The Local was released from Trusteeship on October 31, 2000. (Ex. 36)

C. Local 107 Officers

1. President William Hamilton

Hamilton joined Local 107 in 1967. (Ex. 37) He was a shop steward for twenty years at McLean Trucking. (Ex. 66 at 4) In 1990, Hamilton was elected a Trustee on the Local's Executive Board and became a business agent. (Ex. 66 at 5-6)

Since the Local was released from Trusteeship on October 31, 2000, Hamilton has been Local 107's principal officer. (Exs. 36; Ex. 3 at 5; Ex. 38 at 4) In April 2008, Hamilton was appointed to replace Frank Gillen ("Gillen") as an International Vice President after Gillen was suspended for five years from office for testifying falsely during his IRB sworn examination when he denied having contact with former Local 107 principal officer Ryan who had been permanently barred from the IBT. (Exs. 41 and 42)

Hamilton has been the President of Joint Council 53 since August 2007. (Ex. 43; Ex. 3 at 6) Effective January 1, 2010, Hamilton became the principal officer of the Pennsylvania Conference of Teamsters where he had been Vice President since approximately 2009. (Ex. 3 at 6; Ex. 149)

In 2008, Hamilton was paid \$102,662 from Local 107, \$61,813 from the IBT, \$30,300 from the Pennsylvania Conference and \$19,200 from the Joint Council. (Exs. 45-48) His total salary from those entities was \$213,975 in 2008. (Exs. 45-48)¹²

Hamilton's son, Kevin Hamilton, is a Local 107 member employed at the Kimmel Center where he holds the only full-time position and is the steward. (Ex. 3 at 88-89; Ex. 201)¹³ Hamilton's sister, Local 107 member Donna Hamilton, received lucrative work on the SONY production in July 2009, after being laid off from DHL. (Ex. 50 at 10)¹⁴

2. Secretary-Treasurer Shawn Dougherty

¹² Since January 2001, Hamilton has been a Trustee of the Philadelphia Teamsters Health and Welfare and Pension Funds. (Ex. 49)

¹³ The other Teamster positions at the Kimmel Center were considered extra employees. (Ex. 201)

¹⁴ Between approximately 1997 and 2004, Hamilton's son, William, worked in the movie and trade show industry. (Ex. 56 at 15; Ex. 276) For example, in November 2001, Hamilton's two sons, William and Kevin, and his father, William, worked on the movie Signs. (Ex. 276) In addition, Hamilton's son, William, worked as a movie captain. (Ex. 4 at 13-14) Hamilton's son, William, died in May 2004. (Ex. 57; Ex. 50 at 8) After he retired from the Local, Hamilton's father worked on some movie productions. (Ex. 3 at 21, 88; Ex. 276) He died in March 2009. (Ex. 50 at 18)

Shawn Dougherty joined Local 107 in approximately January 1984. (Ex. 51) He worked for various Local 107 employers including Airborne Express, where he was a steward, and Ameriport Rail Yard. (Ex. 52 at 5-7) In June 2005, he was appointed a Trustee on the Local's Executive Board. (Ex. 53) After an election, Dougherty took office as Secretary-Treasurer in January 2006. (Ex. 54) In 2008, Local 107 paid Dougherty \$95,429. (Ex. 45)

Since approximately August 2009, S. Dougherty has been the business agent for the movie industry replacing Frasco. (Ex. 55 at 13) As discussed below, S. Dougherty's brother, Local 107 member Kevin Dougherty, worked on movie and commercial productions after being laid off from U.S.F. Holland ("Holland") in April 2009. (Ex. 58 at 7-8, 11-14) For example, after being laid off from Holland, in May and June 2009, K. Dougherty, who had no movie experience, worked on a television show, a short movie and two commercials before working for several months on the lucrative SONY movie beginning on approximately July 6, 2009. (Ex. 58 at 11, 15-16, 21-22) K. Dougherty acknowledged that either his brother or Frasco sent him to work on the commercials. (Ex. 58 at 15-16, 21)

3. Vice President Walter "Dan" Bosak

Walter "Dan" Bosak ("Bosak") joined Local 107 in April 1967. (Ex. 59) He was a Trustee on the Local's Executive Board from 1993 until the Local was placed in Trusteeship in 1996. (Exs. 35, 60-62; Ex. 63 at 7-8, 13-14) In 2000, then IBT Trustee Gillen appointed Bosak a business agent. (Ex. 40) In 2008, Local 107 paid Bosak \$94,750. (Ex. 45) After Frasco's retirement effective November 30, 2009, Bosak became the Local's Vice President. (Exs. 79 and 204)

Bosak's brothers, John and George Bosak, worked in the movie industry. (Ex. 63 at 5; Ex. 64 at 4-7; Ex. 237) The Local's former Trustee and dispatcher, John Dooley ("Dooley"), is Bosak's nephew. (Ex. 63 at 15; Ex. 67 at 7; Ex. 68) In addition, Local 107 member William McCleery ("McCleery"), who joined the Local in September 1997, is Bosak's nephew. (Ex. 69 at 8) As discussed below, McCleery was the co-captain on the 2009 SONY movie. (Ex. 70)

4. Recording Secretary Ed Slater

Ed Slater ("Slater") joined the Local in March 1986 and was employed at Mac Steel. (Ex. 71) He was elected a Trustee in 2000. (Ex. 40)¹⁵ After Frasco's retirement in November 2009, Slater became the Local's Recording Secretary and a business agent. (Exs. 79 and 204) As discussed below, Slater's brother-in-law, Thomas Maglio

¹⁵ In 2008, Local 107 paid Slater \$11,250. (Ex. 45)

("Maglio"), who was not a Local 107 member, worked on movie productions in Local 107's jurisdiction. (Ex. 72 at 7-9; Ex. 73)

5. Trustees

The Local's three Trustees were not full-time employees of the Local. (Ex. 45) Trustee Ted Mastrogiovanni joined the Local in 1974. (Ex. 74) According to his dues records, he was employed at Sears. (Ex. 74) He was elected a Trustee in 2000. (Ex. 40)

Trustee Michael Nugent ("Nugent") joined the Local in approximately August 1987. (Ex. 76) From approximately 1987 to 2004, Nugent worked for Red Star Express. (Ex. 77 at 4-5; Ex. 78) From September 2004 to approximately April 2009, when the company closed, Nugent worked at Holland. (Ex. 78; Ex. 58 at 8) Nugent was the steward at Holland. (Ex. 4 at 137) As discussed below, on May 6, 2009 shortly after Holland closed in late April 2009, Nugent, who had no movie experience, began to work on the SONY movie. (Ex. 70; Ex. 58 at 23)¹⁶

Trustee Everett Shaw was a member of Local 470 before it merged into Local 107 effective January 2009. (Ex. 249) Shaw, who joined Local 470 in October 2003, was employed at

¹⁶ Frasco told the Local 107 captain on the SONY movie that Nugent, who had a CDL A, was the best driver for center city Philadelphia. (Ex. 4 at 122-123)

DePaul Hauling. (Ex. 249) After Frasco's retirement effective November 30, 2009, Shaw was appointed a Trustee. (Exs. 79 and 204)

6. Former Vice President Anthony Frasco

Frasco joined Local 107 in September 1968. (Ex. 79; Ex. 80 at 5) He worked at Consolidated Freight for 17 years. (Ex. 80 at 5) Prior to the 1996 Trusteeship, Frasco was a Trustee on the Executive Board. (Ex. 35; Ex. 80 at 6) In 1999, Gillen, then the IBT Trustee of Local 107, appointed Frasco a business agent. (Ex. 81) When the Local was released from Trusteeship, Frasco was elected Vice President and continued as a business agent. (Ex. 40)

Frasco was the Vice President from 2000 until his retirement on November 30, 2009. (Ex. 4 at 4-7; Ex. 79) Prior to August 2009 when he gave up responsibility for those industries, Frasco was the business agent for the movie and trade show industries. (Ex. 4 at 7, 26) Sometime after August 2000, Frasco had replaced Hamilton as the business agent for the movies. (Ex. 232 at 18; Ex. 38 at 14; Ex. 3 at 7) As discussed below, Frasco's brother-in-law, Robert Kaznica ("Kaznica"), who was not a Local 107 member, worked in the movie and trade show industries after being laid off from his warehouse position where he was a

Teamster Local 929 member. (Ex. 83 at 6, 18) Kaznica also worked on the SONY movie in 2009. (Ex. 83 at 17, 23)¹⁷

D. The IRB's 2000 Report Regarding Deficiencies in Local 107 Work Referrals

In 2000, the IRB conducted the sworn examinations of approximately thirty-three Local 107 members who worked in the movie and trade show industries. (Ex. 1 at 4) In addition, the two IBT-appointed Local 107 Trustees, the assistant Trustee, Hamilton, Frasco, John Morrone, III ("Morrone, III"), then the movie transportation coordinator, and M. Conway, then the PCC steward, were also examined. Local 107's counsel, Thomas Kohn ("Kohn") represented the majority of the Local 107 members whose sworn examinations were conducted in connection with the IRB's 2000 investigation including Hamilton, Frasco and M. Conway. (See e.g. Exs. 38, 56, 63, 64, 80, 96, 97, 232, 233, 241)

On December 21, 2000, the IRB issued a report both to the IBT and to Local 107 principal officer Hamilton describing the deficiencies in the work referrals in the movie and trade show industries. (Ex. 1) At that time, the Local did not have any written rules governing work referrals. (Ex. 1 at 2-3) The IRB's report stated, "[t]he

¹⁷ By the time he worked on the SONY movie, Kaznica had joined Local 107. (Ex. 84)

absence of rules and their enforcement has resulted in repeated allegations of favoritism in work assignments." (Ex. 1 at 3) The IRB report stated that individuals with ties to Local 107's officers were referred to lucrative movie work and to work at the PCC while there were unemployed members looking for work. (Ex. 1 at 4-5)

By letter dated January 9, 2001, the then IBT General Counsel stated that the Local would implement written rules for referrals to work in the movie and trade show industries. (Ex. 85) In this letter, the IBT General Counsel stated that "reliable records will be kept and will be available for inspection." (Ex. 85)

The Local ignored this commitment. Frasco, who was the Local's business agent for the movie industry for many years, testified that he was not aware of any IRB report on the deficiencies in the referrals to movie and trade show work. (Ex. 4 at 7-8, 25-26) Similarly, S. Dougherty, the Local's Secretary-Treasurer since 2006 who took over as business agent for the movie industry in August 2009, testified that he never read the IRB's 2000 report regarding deficiencies in the Local's work referral practices. (Ex. 55 at 34)¹⁸ Hamilton testified that he

¹⁸ In connection with the IRB's investigation in 2000, in July 2000, S. Dougherty's sworn examination was conducted. (Ex. 52) At that time,

believed that the 2001 movie referral rules came about as a result of the IRB's report. (Ex. 3 at 48)

E. 2001 Movie Referral Rules

As a result of the IRB's December 2000 report regarding the deficiencies in the Local's movie and trade show referral practices, in May 2001, the Local created written referral rules for the movie industry and for the trade show industry. (Ex. 2) Robert Baptiste, Esq. ("Baptiste") assisted the Local in formulating these rules. (Ex. 2; Ex. 67 at 11-12) Kohn, who had represented the Local in 2000 and continues to represent it, and Hamilton were copied on Baptiste's letter sending these rules to the IRB. (Ex. 2) The officers made no effort to ensure these rules were enforced. As detailed below, these rules were not implemented.

Pursuant to these written referral rules, the Local created two movie referral lists: an A list and a B list. (Ex. 2) According to the rules, the A list would consist of fifteen individuals arranged in order of industry experience based upon "the highest combination of years of experience in this industry and number of productions."

S. Dougherty was seeking work in the movie and trade show industries. (Ex. 52 at 8-14, 33-34)

(Ex. 2 at 2) In addition to other requirements, such as possessing a current driver's license, in order to be eligible for placement on the A list, individuals must "have had full-time employment in the industry with at least (3) productions or sixty (60) days verifiable experience in the movie industry with an employer under contract with Teamsters Local 107." (Ex. 2 at 2)¹⁹

According to the 2001 rules, the B list would consist of "all other eligible individuals arranged in industry experience order." (Ex. 2 at 3) The minutes of the May 20, 2001 general membership meeting stated,

Pres. Hamilton then discussed the new guideline for the movie, theater and trade show work list. Under the guidance of Bob Baptiste and Tom Kohn, the Local has developed new rules which will distribute the work more fairly. Pres. Hamilton said because of the past trusteeship, work was given to the friends of the Trustee and that practice is long over.

(Ex. 271)

The 2001 rules also provided that individuals on the A or B movie lists must not be "on another "A" List with Local 107." (Ex. 2 at 2) At some point, the written movie referral rules published in May 2001 were modified to allow

¹⁹ The 2001 rules did not specify that individuals seeking referrals must have a commercial driver's license. However the 2001 rules required that such individuals must have a "current DOT medical certificate" which is applicable to individuals with commercial driver's licenses. (Ex. 2 at 2) The subsequent versions of the rules did not contain the DOT medical certificate requirement. (Exs. 5 and 87)

Local 107 members who were on an A list at another employer to be included on the A list for the movies. (Ex. 86 at 2; Ex. 2 at 2) As a result of this change, the individuals on the seniority list at the PCC were permitted to be included on the A list for the movie industry. When asked about this modification, Frasco, who was an officer and the business agent in charge of enforcing the rules, testified that he was not certain when or why the modification was made and that convention center workers always worked both movie and trade show work. (Ex. 4 at 27-30) Hamilton testified that he believed that this modification was made because the Local was concerned about discrimination suits. (Ex. 3 at 48-50)

According to the 2001 written referral rules,

[t]he Union will provide the employer with the entire "A" List and their resumes from which the employer will select and interview persons for possible employment. Once the "A" List is exhausted, the Union will provide the employer with the entire "B" list and their resumes.

(Ex. 2 at 3) The rules provided that, "[t]he Local Union Dispatcher shall maintain written records concerning all aspects of the operation of the referral service, including the time of referral calls." (Ex. 2 at 4) Dooley, the former Local 107 dispatcher, testified that he, Hamilton and Frasco worked with Baptiste to create the rules. (Ex.

67 at 11, 68) Hamilton was aware of the rules (Ex. 3 at 51-52), but never ensured that they were complied with. Frasco never put them into effect. In sum, they were window dressing to appear as if Local 107 was attempting to correct its referral practices while the practice of favoritism remained entrenched.

In practice, although the 2001 and subsequent referral rules provided that referral lists would be provided to employers for the employer to select drivers, the Local, either through the Local's business agents or the Teamster movie captain, actually controlled who worked on movie productions. The Local controlled who would be a movie captain. Former Local 107 dispatcher Dooley, who held that position from June 2000 to late 2002, testified that when he was the dispatcher, Hamilton, Frasco and Morrone, III, the then movie captain, selected who worked on movies. (Ex. 67 at 16-17)²⁰ During his October 2008 IRB sworn examination, Local 107 movie captain John Sullivan ("Sullivan") testified that under the referral rules, after individuals from the A list were called, Frasco gave him

²⁰ Dooley stopped being a dispatcher in late 2002. (Ex. 67 at 7, 9-10, 36; Exs. 91-92) In approximately April 2005, Dooley resigned as a Local Trustee in order to run against Hamilton in the election that fall. (Ex. 67 at 9; Ex. 93) Dooley testified that one of the reasons he decided to run against Hamilton was that family and friends of the Local's officers were being referred to work. (Ex. 67 at 30-31) Dooley lost the election.

the names of additional drivers to call. (Ex. 89 at 23, 7-9)²¹ F. Conway, who worked as a movie captain, acknowledged that "the Union would fill the job." (Ex. 90 at 23) In October 2008, M. Conway testified that ". . . Tony [Frasco] will tell you who he wants or he'll give you a list of guys. For awhile they had their own A list, so you went off of that, again, according to qualifications. . . ." (Ex. 102 at 42) M. Conway testified that "most times" Frasco would tell him who to pick from the list. (Ex. 102 at 42) During his October 2008 IRB sworn examination, movie captain Greg Cimino ("G. Cimino") testified that in 2008 "the Hall" gave him names of individuals to work on movies including on The Wrestler, Tenure and Transformers. (Ex. 94 at 46-48, 50, 52-59)²² For example, according to Cimino, the producer for Transformers did not make any requests for particular drivers. (Ex. 94 at 59) When asked

²¹ As discussed below, although in October 2008 movie captain Sullivan referred to an "A" list (Ex. 89 at 7-9, 23), the referral rules created sometime before March 2008, provided that there was a single movie referral list, not an "A" list and a "B" list as the prior rules had provided. (Exs. 2 and 5)

²² Cimino, who joined the Local in August 1983 and first worked as a movie co-captain in approximately 2003, is the son of Joseph Cimino, the Local's former principal officer who was permanently barred from the IBT in 1991 for knowing association with organized crime figures. (Ex. 8; Ex. 94 at 18; Ex. 95; Ex. 96 at 3, 8) Joseph Cimino died sometime prior to April 2000. (Ex. 97 at 41) According to G. Cimino, in 1991 he took a withdrawal card from the Local. (Ex. 96 at 4-6) In approximately August 1999, Cimino returned to active membership and began to work out of the Local's hiring hall. (Ex. 96 at 6-7; Ex. 98) He started working on the movie Unbreakable in April 2000. (Ex. 96 at 6-9)

how individuals were hired for the movies prior to the 2008 changes discussed below, principal officer Hamilton testified, ". . . I assume we just gave the captains their names and the qualifications, and that's how people were hired, I guess." (Ex. 3 at 60-61) In addition, in an October 2, 2008 letter to the IRB, the Local's attorney acknowledged that the Local had referred individuals to work before the Local allegedly surrendered that authority in approximately October 2008. (Ex. 6)²³

F. Joseph Cassella's NLRB Complaint

By letter dated September 30, 2003, in response to a complaint then Local 107 member Joseph Cassella ("Cassella") filed with the NLRB, the NLRB's Regional Director described a settlement agreement pursuant to which Local 107 was required to post a notice stating, in part, "WE WILL NOT fail to follow our established rules in the operation of our referrals for the film and video industry" and "WE WILL follow our established rules, which will be based on objective criteria, and any revision of these rules, for referring individuals to film and video industry work." (Ex. 178) Despite the representations made in the

²³ In his October 2, 2008 letter to the Chief Investigator, the Local's attorney stated, ". . . in that the Local has decided to cease referring individuals and will merely forward resumes to employers. . ." (Ex. 6)

notice to the members, the Local officers and employees continued to ignore the rules they had created.

In his complaint to the NLRB, Cassella alleged, among other things, that the Local's "referral system has been operated to provide favoritism and lack of uniformity in referral procedures and layoff procedures." (Ex. 178) According to the NLRB Regional Director's September 30, 2003 letter to Cassella, "[a]lthough the Union has failed to follow its established referral rules, there was insufficient evidence that you personally would have been referred to film industry work if the Union had acted in a nondiscriminatory fashion." (Ex. 178)²⁴ This letter was copied to both Kohn and Hamilton. (Ex. 178)²⁵

²⁴ The NLRB Regional Director's letter to Cassella further stated,

In this regard, the film producers that sought referrals from the Union's hiring hall during the relevant time period preferred or required that their drivers maintain an CDL-A license, a qualification that you do not have, and the Union referred employees with CDL-A licenses to those employers. Indeed the Union did not refer all of the employees on its referral lists who possessed CDL-A licenses for work on those films. Moreover, contrary to your assertion, the referral rules do not require the Union to refer employees on its lists in seniority order but only that the Union submit the seniority lists to the employers for selection of employees. The Settlement Agreement provides, inter alia, that the Union follow rules based upon objective criteria in the operation of its hiring hall.

(Ex. 178)

²⁵ It appears that after the Local agreed to post the notice, the NLRB declined to issue a complaint in the Cassella matter. (Ex. 178)

The minutes of the Executive Board meeting on August 26, 2003, the month before the NLRB Regional Director's letter described above, contained the following statement,

President Hamilton then discussed the on-going problems with the movie referral list and informed the board that a new set of rules were being illustrated in hopes that the new rules will be problem free and fair for all on the list. We are trying to avoid any more crap at the labor board. Everyone will be kept informed.

(Ex. 114) Although the Local in September 2003 was required to post a notice stating that it would not fail to follow its referral rules, as detailed below, subsequent to this, the Local continued to fail to follow its referral rules. The whole Executive Board was on notice.

G. 2001 Trade Show Industry Referral Rules

In May 2001, after the IRB's 2000 report, the Local also created written referral rules for the trade show industry. (Ex. 99) Pursuant to these rules, the Local created two referral lists for the trade show industry. (Ex. 99) The A list consisted of eight individuals "who have the highest combination of years of experience in this industry and the number of productions, events and shows." (Ex. 99 at 2) The A list was "arranged in industry experience order." (Ex. 99 at 2) The B list consisted "of all other eligible individuals arranged in industry experience order." (Ex. 99 at 3) Under the rules,

[t]he Union will refer individuals to the Convention Center from the "A" List in industry experience order before all other individuals. Once the "A" List is exhausted, the Union will refer to the Convention Center individuals on the "B" list in industry experience order.

(Ex. 99 at 3) As discussed below, the trade show referral rules explicitly provided that to be referred to work, an individual must be current in his Local 107 dues or service fees. (Ex. 99)

These trade show referral rules required the Local to maintain records of all aspects of referrals. (Ex. 99 at 4) As discussed below, the Local did not comply with this requirement. Frasco testified that records from the Health and Welfare or Pension Funds would reflect who worked in the trade show industry. (Ex. 4 at 38, 57)

As of April 30, 2008, the seniority list at the PCC consisted of six individuals. (Ex. 100) They were PCC steward Michael Conway, his brother Frank Conway, Michael Bell, John Griffith ("Griffith"), Joseph Voelker and Joseph Guglielmucci. (Ex. 100) The April 1, 2008 to March 31, 2011 Local 107 collective bargaining agreement with Elliott Lewis, which covered work at the PCC, provided "Teamster Local 107 (Union) shall be the supplier of all labor calls." (Ex. 101 at 1)

Former Local 107 dispatcher Dooley testified that after the members on the PCC seniority list were working, M. Conway, then the steward at the PCC, decided who worked. (Ex. 67 at 15) M. Conway, who was the PCC steward until approximately September 2009 when his brother replaced him, testified that he, as steward, would fill the labor calls at the PCC and other venues. (Ex. 102 at 24-25) The PCC steward was elected by the members on the PCC seniority list. (Ex. 32 at 103-104) In addition, Frasco testified that he also sent people to work in the trade show industry. (Ex. 4 at 58)²⁶

H. The IRB's Investigation

In March 2008, after receiving members' complaints regarding the Local's referral practices, the IRB conducted a books and records examination at Local 107. (Ex. 65) Starting in August 2008, the IRB also examined thirty-five members in the movie and trade show industries, including four members who worked as movie captains.²⁷ In addition, the sworn examination of Aaron Skalka ("Skalka"), the Local 399 Transportation Coordinator for the large budget SONY

²⁶ The Customer Satisfaction Agreement between the Pennsylvania Convention Center Authority and various labor unions, including Local 107, provided that Elliott Lewis Corporation, the company that employed the workers at the PCC, and trade show contractors may call individuals by name to work. (Ex. 169 at 2-3, 5)

²⁷ The members who worked as movie captains were the following: M. Conway, F. Conway, Sullivan and G. Cimino.

movie production filmed in Philadelphia in 2009, was conducted. Local 107 officers Hamilton, Frasco and S. Dougherty were also examined.

In response to an August 8, 2008 IRB document request for all referral lists for the period from January 2006 to August 2008, Local 107 attorney Kohn wrote, ". . . The Local is not able to provide copies of 'all versions of all referral lists' as requested, because as the lists change, copies of the old lists are not retained." (Exs. 103 and 104)

According to Frasco, for each movie since 2004, he kept a list of who worked on the movie. (Ex. 4 at 42-43, 67-68) The Local's records did not contain information regarding when an individual started to work or how long he worked on any production. (Exs. 105-106) Frasco acknowledged that his lists were not necessarily in the order of when someone started working on the movie. (Ex. 4 at 67-69)

Regarding records reflecting who worked at the PCC and other trade show venues, Frasco testified that only records from the Health and Welfare Fund or Pension Fund, which were not Local records, would indicate the amount of work someone received in the trade show industry. (Ex. 4 at 86) The Local did not maintain any such records despite the

specific requirement of its rules. (Ex. 99 at 4) Rather, in response to an IRB document request for all individuals who worked in the trade show industry between September 2005 and September 2008 (Ex. 107), the Local provided a printout from the Health and Welfare Fund which indicated only whether an individual worked in a particular month at the PCC and other trade show venues. (Ex. 108) The records the Local produced from the Health and Welfare Fund did not indicate the dates worked or the number of hours any individual worked in the trade show industry. (Ex. 108)

The Local's collective bargaining agreements in the movie and trade show industries required employer contributions to the Local 500 Severance Fund ("Severance Fund"). (Exs. 101, 109-110) Frank Vaccaro and Associates ("Vaccaro") administered the Severance Fund. (Exs. 101, 109-110) On February 20, 2009, based upon an IRB application, District Court Judge Loretta A. Preska issued a subpoena which required Vaccaro to produce records regarding Local 107 employer contributions to the Severance Fund as well as records reflecting the hours individuals worked. (Ex. 111) The subpoena also required Vaccaro to produce records from the Local 107 Vacation Fund, which was funded through payroll deductions from the pay of Local 107

members employed at the PCC and which Vaccaro administered.
(Ex. 111)

I. Modified Movie Referral Rules

Sometime prior to March 2008, when the IRB's books and records examination was conducted, the Local modified the 2001 written movie referral rules. (Ex. 5) No one at the Local knew when. While they recognized the document reflecting these amended rules, neither Hamilton nor Frasco were able to state when these rules were amended. (Ex. 3 at 51-52; Ex. 4 at 31-33)²⁸ These modified rules created a single movie referral list instead of the A and B lists the 2001 rules required. (Ex. 5) According to the modified rules,

[t]he individual placement [on the movie referral list] shall be based upon the highest combination of:

Driving Experience

CDL Qualifications

Industry experience

Specialty Equipment

(Ex. 5 at 2) The Local produced these written modified rules during the March 2008 IRB records examination in response to a request for the current movie referral rules. (Exs. 5 and 112) Although these rules provided for a

²⁸ The August 26, 2003 Executive Board minutes referenced a "new set of rules" (Ex. 114), but it was unclear whether these were the rules.

single movie referral list (Ex. 5), during the same March 2008 records examination, in response to an IRB request for the current movie referral list, the Local produced a document entitled "Production" which contained a "Movie A List" which included ten names. (Exs. 112-113) On the same document was another list of names grouped by license which stated "the below list is not [sic] seniority order." (Exs. 112-113)

The modified rules provided that "driving experience" and "industry experience" were two of the four factors which determined an individual's placement on the referral list. (Ex. 5) On the referral document the Local produced, there was a notation below the "Movie A List" which stated, "the below list is not [sic] seniority order." (Ex. 113) That list was grouped by license. (Ex. 113)

These new rules allowed the Local to stop maintaining records of "all aspects of the operation of the referral service, including the time of referral calls" as the 2001 referral rules had required. (Exs. 2 and 5) Instead, the modified rules stated, "[t]he Local union shall maintain written records concerning all refusals, including time and date of referral calls, replies and employer." (Ex. 5 at 2) As with the original record keeping requirements, these amended record keeping rules were also not followed. (Exs.

103, 250, 269 and 270) Frasco was aware of the new rules. He could not explain the reasons for the changes in the rules. (Ex. 4 at 30-35)

In an August 8, 2008 letter, the Chief Investigator asked the Local to provide all documents reflecting how it determined where each individual was placed on the movie referral lists, "including all individual calculations determining industry experience, driving experience, CDL qualifications, specialty equipment experience." (Ex. 103) The Local did not produce any documents responsive to this request. (Exs. 6, 104 and 107)

J. August 2008 Rules

On approximately August 27, 2008, several months after the IRB began an investigation of the Local's work referrals, the Local created new written referral rules for work in the movie industry. (Ex. 87) This was the third set since 2001. The previous two sets of rules had not been followed. Under this third set of rules, the Local created a regular referral list and a casual referral list. (Ex. 87) The August 2008 rules provided that the regular referral list, "shall consist of eligible and qualified individuals who have a demonstrable record of relying on employment in the motion picture and television production industries." (Ex. 87 at 3) These rules also provided that

the Local "shall maintain written records concerning all aspects of its referral service." (Ex. 87 at 5) As with the two prior sets of rules, the August 2008 rules also were not followed. The Local allegedly surrendered referral authority to employers in October 2008.

Pursuant to the August 2008 rules, the Local's Executive Board would determine how many individuals were placed on the regular referral list. (Ex. 87) Frasco testified that based upon the resumes individuals submitted to the Local, he tried to make a seniority list of approximately 30-40 individuals on it and then everyone else who had submitted a resume would be on a casual list. (Ex. 4 at 35-37, 40) As of August 27, 2008, there were 45 members on the regular referral list and 39 members on the casual referral list. (Ex. 115)²⁹ The August 2008 movie rules provided that the Local would provide the entire regular referral list to the employer and, if the employer requested additional referrals, the Local would provide the entire casual referral list. (Ex. 87 at 5) There was no requirement in the rules that the regular referral list be

²⁹ According to the minutes of the August 27, 2008 Executive Board meeting, the Executive Board approved the new referral rules. (Ex. 242) There was no mention of the Executive Board determining the number of individuals to be placed on the regular referral list. (Ex. 242) These minutes were read to the membership at the October 19, 2008 membership meeting. (Ex. 272)

exhausted before the casual referral list was sent to the employer. (Ex. 87 at 5)

On September 2, 2008, Frasco sent a letter to the Local's members regarding the new referral rules. (Ex. 116)

This letter stated in pertinent part:

[f]or many years, Local 107 has attempted to assist its members, and others, by cooperating with movie and other production companies in the referral of qualified individuals to productions throughout the Philadelphia area. In an effort to improve that service, on August 27, 2008, the Local Executive Board adopted a new set of referral rules ("Rules"). . . . As you will see when you review the Rules, the old "A" and "B" system has been replaced by two new categories: regular employees and casual employees.

(Ex. 116)³⁰ As discussed above, although in his letter Frasco referred to the "old "A" and "B" system" (Ex. 116), the rules the Local had produced six months earlier to the IRB, in March 2008, which the Local described then as the current rules, did not contain an "A" list or a "B" list. (Exs. 5 and 112) Rather, those rules provided for a single referral list. (Ex. 5) This confusion over which set of rules Frasco was replacing was a further indication that the Local's written rules were not followed and were window dressing to hide the practice of nepotism and favoritism influencing work assignments.

³⁰ In his letter to the members, Frasco stated, "[i]f you believe that you have not been ranked properly, there is an appeal procedure available, which is set forth in the Rules." (Ex. 116)

By letter dated September 17, 2008, the IRB asked the Local to produce records reflecting how individuals were placed on the August 2008 movie referral lists, including "all calculations determining an individual's industry experience and all documents regarding each individual's record of relying on employment in the motion picture and television production industries." (Ex. 107) In an October 2, 2008 letter responding to this request, Local 107 attorney Kohn explained there were no such records because the referral list was "merely an initial list" and "the intent was to fine-tune it as appropriate to more accurately reflect the industry experience. . ." (Ex. 6) In addition, Kohn wrote, ". . . in that the Local has decided to cease referring individuals and will merely forward resumes to employers, it never completed the task of finalizing a referral list or resolving protests to the proposed lists." (Ex. 6)

The August 2008 rules were only in effect for a little more than one month when, as discussed below, in October 2008 the Local unilaterally surrendered the authority to refer individuals to work in the movie industry. Frasco testified that after he put together the August 2008 lists, "all I got were complaints, and it was becoming more work,

and more of a headache, so I got out of that. I said, it's not working, I just couldn't do it." (Ex. 4 at 31)³¹

K. Movie Captains

The Local's collective bargaining agreements specifically included movie captains in the bargaining unit. (Exs. 109, 110, 142, 184, 191, 197) For example, the May 5, 2009 collective bargaining agreement for the SONY project stated,

The Producer recognizes Teamster Local 107 as the sole collective bargaining representative of all Captains, dispatchers, cinemobile drivers, chauffeurs and helpers employed in connection with the production of motion pictures, . . . , within the jurisdiction of Joint Council 53.

(Ex. 184 at 1) The Local's collective bargaining agreements also set the salary for the captains and co-captains. (Exs. 109, 110, 142, 184, 191, 197) For example, the SONY agreement provided that in 2009, the captain was paid \$3,350 per week. (Ex. 184 at 3)³²

In addition, the Local's collective bargaining agreements provided that the employer was required to make

³¹ It appears that the trade show referral rules remained the same in August 2008. However, as discussed below, it appears that the Local has begun to stop referring individuals to work in the trade show industry. (Ex. 55 at 26-38; Ex. 4 at 12-13)

³² Pursuant to the contract for the SONY project, in 2009 the co-captain and specialized equipment drivers were paid \$2,700 per week and drivers were paid \$2,500 per week. (Ex. 184 at 3)

contributions to the Health and Welfare and Pension Funds for all hours the captain worked in any one week. (Ex. 109 at 7; Ex. 184 at 7; Ex. 110 at 6-7; Ex. 142 at 7-8; Ex. 191 at 8-9; Ex. 197 at 3) Under the collective bargaining agreements, the employer benefit fund contributions for other Local 107 members could be paid at a daily or weekly flat rate. (Ex. 109 at 7; Ex. 184 at 7; Ex. 110 at 6-7; Ex. 142 at 7; Ex. 191 at 8; Ex. 197 at 8)

The collective bargaining agreement for the SONY project provided the following regarding the captain:

In connection with each motion picture, a Teamster Captain shall work under the direction of the Producer and perform in accordance with the Company's transportation requirements. The duties of the Teamster Captain shall be to organize and coordinate the transportation operation of the project and to arrange for the hire of equipment and extra equipment. Such duties shall not include driving, except for one transport of personnel at the beginning of the workday and another at the end of the workday. The Teamster captain shall be subject to and covered by the terms of this Agreement and shall be paid at the rates herein provided and on a daily basis, shall be the first to be engaged and last to be terminated. The time of such termination shall be deemed that time when the last driver leaves the location, studio or set.

A Captain shall have no authority to take strike action or any other action interrupting the Company's business, except as authorized by official action of the union. The Company recognizes these limitations upon the authority of the Captain and shall not hold the Union liable for any unauthorized acts.

(Ex. 184 at 2) Thus, if the union voted to strike, the contract recognized that as a Teamster, the captain would go on strike also.

Movie captain Sullivan testified that he handled members' grievances. (Ex. 89 at 14-15) Movie captain Cimino testified that if there was "something minor" involving a member, after speaking to Frasco, Cimino would represent the member by speaking with the producer to try to resolve the matter. (Ex. 94 at 24-26)³³ Cimino would not process the grievance as a management representative. Cimino testified that if the producer wanted to terminate a member and if he was not able to resolve it, he would call the union. (Ex. 94 at 18-19)

The collective bargaining agreements did not contain any specific provision for the selection of captains. (Exs. 109, 110, 142, 184, 191, 197)³⁴ The Local's movie referral list provided to the IRB in March 2008 identified Morrone, III as "transportation coordinator" and identified both Cimino and Sullivan as "Acting Captain - Coordinator". (Ex. 113) The list also stated that M. Conway and F. Conway have "also acted as Captain - Coordinator". (Ex. 113) On the

³³ M. Conway testified that he never handled a grievance. (Ex. 102 at 6)

³⁴ The general provisions in the movie collective bargaining agreements regarding hiring drivers are discussed below at pages 84-86.

Local's August 2008 referral list, there were five individuals whose names were in bold and had the notation "Captain" next to their names. (Ex. 115) These individuals were Cimino, Sullivan, M. Conway, F. Conway and McCleery. (Ex. 115)³⁵ The alphabetical list of members and summary of resumes that the Local produced to the IRB in July 2009, highlighted the same five names as captains. (Ex. 208)

During his October 2008 sworn examination, movie captain Cimino testified that in 2008 for the movie Tenure, Frasco asked him to come to a meeting with the producer. (Ex. 94 at 47) The producer had not requested Cimino to be captain prior to this meeting. (Ex. 94 at 48) After the meeting, Cimino was hired as the captain. (Ex. 94 at 47) Cimino testified that, absent a request from the producer, if Sullivan was available, Sullivan would be the captain on a production and if Sullivan was unavailable, Cimino would be the captain. (Ex. 94 at 48-49)

During his September 2009 sworn examination, Frasco misleadingly testified that, "[t]he production company will always pick their captain. They have - I would imagine they all talk; they know who they want before they come into Philadelphia." (Ex. 4 at 14) On the SONY project,

³⁵ Morrone, III, who was identified at the top of the March 2008 list as transportation coordinator, died in 2008. (Ex. 236)

transportation coordinator Skalka testified that he hired Cimino as the captain based upon a recommendation from Jeff Waxman who had worked with Cimino on Law Abiding Citizen.

(Ex. 207 at 19-21)³⁶

The Local limited who a production could select as captain. For example, as discussed below, for the Dr. Phil Show, in September 2009, S. Dougherty told the producer that the only available captain was F. Conway. (Ex. 55 at 29) In response, the producer sent an email to S. Dougherty which stated, "This email is to state that the Dr Phil CBS Production will work in compliance with the Teamster Captain #107 assigned to our production in Philadelphia September 15th and 16th 2009." (Ex. 193)

For another production, S. Dougherty sent an email dated September 1, 2009 to the producer stating that Local 107 members Sullivan and F. Conway were the only available captains. (Ex. 185; Ex. 55 at 47)

³⁶ On December 17, 2009, the NLRB refused to issue complaints two Local 107 members, John Morrone, IV and George Palladino, filed alleging that employers failed to hire them "at the behest of Teamsters Local 107 because [they] cooperated with" the IRB's investigation. (Ex. 245) In a December 17, 2009 letter, the NLRB Acting Regional Director stated that the Local did not have any involvement in the selection of the captain on the SONY project. (Ex. 245) In addition, the NLRB Acting Regional Director stated that on another project, S. Dougherty, the Local's business agent for the movie industry, told the producer that Sullivan and F. Conway were the available captains and indicated that the producer could hire who he wanted. (Ex. 245)

According to Local 107 counsel Kohn, the Local considered the captain to be a management position. (Ex. 273) The facts as noted above did not support this conclusion. Since the captain was part of the bargaining unit; his terms and conditions of employment and responsibilities were specifically set forth in the collective bargaining agreement; the Local determined the group from which the producers could select and the captains understood they represented members in handling grievances, the captain was not a management position.

It appears that the transportation coordinator, rather than the captain, was a management position. The position of transportation coordinator was not included in the definition of the bargaining unit in the collective bargaining agreements. (Exs. 109, 110, 142, 184, 191, 197) Nor was the salary for the transportation coordinator set forth in the collective bargaining agreements. (Exs. 109, 110, 142, 184, 191, 197)³⁷ Nor did the Local limit whom the producers could select as it did for captains. For example, Aaron Skalka, who was the transportation coordinator on the SONY project, negotiated his salary.

³⁷ For example, the collective bargaining agreement for Airbender stated that wage rates for the transportation coordinator would be "individually negotiated." (Ex. 109 at 3)

(Ex. 207 at 9)³⁸ Moreover, in 2008 on the movie Transformers, when the Local 399 transportation coordinator wanted to terminate Local 107 member Edward Coe ("Coe"), Cimino, the captain on the movie, tried to keep Coe employed. (Ex. 94 at 59-63)³⁹

L. Nepotism and Favoritism in Movie and Trade Show Work Referrals in 2007 and 2008

1. Overview

As detailed below, it appears that, because the 2001 and subsequent written referral rules were never followed despite the officers' representations they were and their being on notice that they were not, the Local's officers and its agents permitted nepotism and favoritism from which their families and friends benefited to continue to influence who received work assignments in the movie and trade show industries as it had prior to 2000. As a result of Local personnel ignoring the Local's written referral rules, individuals who were relatives of or who had personal ties to the Local's officers and movie captains

³⁸ Skalka testified that on the SONY project, the employer referred to him as a captain, but he was doing the job that traditionally was done by a transportation coordinator. (Ex. 207 at 6-7)

³⁹ Coe, M. Conway's son-in-law, was eventually terminated. (Ex. 94 at 60)

G. Cimino testified that in 2007 on the movie Lovely Bones, where he was the captain, after speaking with Frasco, Cimino and M. Conway, the co-captain, terminated Local 107 member Cintron for lateness. (Ex. 94 at 22-23)

worked on movie productions while Local 107 members, who had more experience and greater seniority with the Local, were not referred for work. Indeed, Frasco's brother-in-law Robert Kaznica, who was not a Local 107 member, was referred to work while there were unemployed Local 107 members.

Similarly, relatives of the PCC steward, M. Conway, were among the individuals who received the most work at the PCC in 2007 and 2008. (Exs. 117-120; Ex. 102 at 7, 12, 93; Ex. 135 at 8) According to the records of the Local 107 Vacation Fund, which was funded through payroll deductions based upon the number of hours Local 107 members worked at the PCC, in November and December 2008 the Vacation Fund issued 105 checks for 2007-2008. (Exs. 119-120; Ex. 102 at 13-14)⁴⁰ The six Local 107 members on the PCC seniority list, including M. Conway and his brother, Frank, were included in the top fifteen payments. (Exs. 100, 119 and 120) As steward, M. Conway controlled who was referred to work at the PCC. (Ex. 102 at 5, 21) Also among the largest fifteen checks were four for M. Conway's

⁴⁰ The Vacation Fund, which was only for individuals employed at the PCC, was funded by \$1.25 deducted from the member's pay for every hour worked. (Ex. 102 at 13-14) This amount was placed in the Vacation Fund. (Ex. 102 at 13) At the end of the year, the Vacation Fund issued checks to the members in the amount they had contributed to the Vacation Fund. (Ex. 102 at 13) The Vacation Fund year ran from November of one year to October of the next year. (Ex. 119)

relatives, who were not on the PCC seniority list. (Exs. 119-120) These were his nephews, Francis J. Conway, III and Domenic Fuscellaro ("Fuscellaro"), his cousin Mark Volpe ("Volpe") and his son-in-law Edward Coe ("Coe"). (Exs. 119-120; Ex. 102 at 7, 93; Ex. 135 at 8)⁴¹

Accordingly, six of the fifteen largest checks that year were issued to M. Conway and his relatives. (Exs. 119-120)

It also appears that, in explicit violation of the Local's written referral rules for the trade show and theater industries, M. Conway's nephew Fuscellaro and another individual, Antonio Capetillo, were referred to Local 107 work in the trade show industry when they were delinquent in dues payments or had not paid a service fee to the Local. The Local's written referral rules for the theater, trade show and convention center industries provided that, "individuals must be current on all dues, fine(s), assessments and fee(s) in order to register, sign a referral form and be referred out." (Ex. 99)⁴² Former

⁴¹ In 2008, the Local 107 Vacation Fund issued 105 checks which ranged in amount from \$3,742.22 paid to Michael Bell, one of the six members on the seniority list, to \$5.00. (Exs. 100, 119-120) In 2008, M. Conway received \$2,589.70; F. Conway received \$2,916.58; Frank Conway, III received \$1,260.95; Fuscellaro received \$1,259.71; Mark Volpe received \$1,205.35 and Coe received \$941.26. (Exs. 119-120) M. Conway's nephew Francis J. Conway, III is the son of Local 107 member Frank Conway, M. Conway's brother. (Ex. 102 at 7)

⁴² In addition, the trade show referral rules provided that if an individual became three months delinquent in dues or service fees, such individual would be removed from the referral list. (Ex. 99 at 3)

dispatcher Dooley testified that it was a violation of the Local's rules for an individual who was not current in his dues payments to be referred to work. (Ex. 67 at 26-27)

With respect to trade show work, Hamilton testified that, "I'm not sure we're that stringent, but the policy is, if you work a day, you should be paying dues." (Ex. 3 at 72) According to Frasco, if a trade show employee worked three days in a month, he was obligated to pay dues or a service fee. (Ex. 4 at 53-54)⁴³

Frasco testified that the majority of workers in the trade show industry stayed current in their dues. (Ex. 4 at 52-53) This was consistent with a review of the dues records for the 90 individuals who were on the PCC seniority list, on the August 2008 referral list or who received a Vacation Fund check in 2008. (Exs. 100, 115, 120 264-265) A review of the dues records for these 90 individuals for the period from January 2006 to January 2010, reflected that nine members were suspended for non-payment of dues at some point during that period. (Exs.

⁴³ According to Frasco, if an individual worked one day in the movie industry, he was required to pay dues or a service fee to the Local. (Ex. 4 at 51)

264-265)⁴⁴ Of those nine members who were suspended, only three, including Fuscellaro, a nephew of both M. Conway and F. Conway, received work in the trade show industry while they were suspended from membership. (Exs. 26-27, 108, 121-123, 264-265)⁴⁵

In violation of the written referral rules and the Local's policy as Frasco and Hamilton represented it, Fuscellaro received numerous work assignments in the trade show and concert industries while he was suspended from the Local for non-payment of dues. (Exs. 121-123; Ex. 124 at 6-7) As the trade show steward, M. Conway was responsible for ensuring that the individuals he referred to work were up to date in their dues payments. (Ex. 67 at 27-29; Ex. 4 at 57)⁴⁶

2. Frank Gizzi's NLRB Complaint

⁴⁴ Article X, Section 5(c) of the IBT Constitution provides that a member will be suspended at the end of the third month of being in arrears in dues.

⁴⁵ The other two members who received work in the trade show industry while they were suspended from membership were Antonio Capetillo and Edward Heyse. (Exs. 26-27, 108, 264-267) As discussed below, Capetillo received numerous work assignments while he was suspended. (Exs. 26-27, 108, 264) Heyse had one work assignment while he was suspended. (Exs. 264-267)

⁴⁶ When Dooley was the dispatcher, he gave delinquency lists to M. Conway in order for M. Conway to monitor who was delinquent in their dues. (Ex. 67 at 27)

Frank Gizzi joined Local 107 in 1959. (Ex. 128 at 4; Ex. 129) According to Gizzi, he has had a Class A CDL for many years. (Ex. 128 at 5-6) Gizzi retired in approximately April 2004. (Ex. 128 at 9) On or about August 3, 2007, Gizzi paid dues and returned to active Local 107 membership. (Ex. 128 at 14-15; Ex. 129)⁴⁷ Shortly thereafter, on approximately August 16, 2007, Gizzi was referred to work on the movie The Happening. (Ex. 128 at 14, 17, 26)⁴⁸ Gizzi worked on The Happening until approximately October 17, 2007. (Ex. 128 at 19, 26; Ex. 129)

At around the time that work on The Happening was ending, filming on the movie Lovely Bones was beginning. (Ex. 128 at 19) Gizzi had a drug screening test and was given an application to complete for work on Lovely Bones. (Ex. 128 at 25) He was not referred to work on that movie. (Ex. 128 at 41-42)

Of the approximately 44 Local 107 members who worked on The Happening, all but six went to work on Lovely Bones.

⁴⁷ Gizzi had returned to the Local for a brief period from January to March 2005 when he worked for George Young Company. (Ex. 128 at 11) He then went back on his pension. (Ex. 128 at 11)

⁴⁸ Gizzi testified that he reactivated his Local 107 membership in order to work on The Happening. (Ex. 128 at 16-17)

(Exs. 255-257)⁴⁹ It appears that four of the six Local 107 members who had worked on The Happening and did not work on Lovely Bones were unavailable to work on Lovely Bones.

(Exs. 255-257; Ex. 128 at 18-19, 44-45)⁵⁰ For example, Sullivan, who was the captain on The Happening, began to work as the captain on The Verdict immediately after The Happening. (Ex. 89 at 17-20)⁵¹ The two remaining Local 107 members who worked on The Happening and did not work on Lovely Bones were Gizzi and Robert Wagner, a Local 107 member employed at DHL at that time. (Exs. 255-257, 261)⁵² As noted below, individuals connected to Local insiders

⁴⁹ According to Vaccaro records, there were 54 individuals who worked on The Happening. (Ex. 257) Of these 54 individuals, 44 were Local 107 members. (Exs. 255-257, 259-261, 265)

The Vaccaro records showed that eight individuals, who were not Local 107 members and who worked on The Happening, did not work on Lovely Bones. (Exs. 255-257) These individuals were William Gill, Joseph Lamb, Thomas Maglio, Michael Kelly, Doug Wright, John Rowland, Donald Greenleaf and Jack Verseput. (Exs. 73, 255-257, 259) Gill had retired from Local 107 in November 2006. (Ex. 259) He did not pay dues or a service fee to Local 107 when he worked on The Happening. (Ex. 259) Similarly, Greenleaf had retired from Local 107 in February 2007. (Ex. 260) He did not pay dues or a service fee to Local 107 when he worked on The Happening. (Ex. 260)

⁵⁰ Local 107 captain Morrone, III got sick and stopped working on The Happening. (Ex. 89 at 17-20) In addition, according to Gizzi, one Local 107 member had failed a drug test with the production company for Lovely Bones and Local 107 member Joseph Kelly was unavailable. (Ex. 128 at 44-45)

⁵¹ Sullivan worked on The Happening from July 16, 2007 to November 2007. (Ex. 89 at 17-20) After Morrone, III, the original captain on The Happening, got sick, Sullivan replaced him as the captain. (Ex. 89 at 17-20)

⁵² According to the Vaccaro records, Wagner worked 112 hours on The Happening in August 2007. (Ex. 261)

received work on the movie Lovely Bones while Gizzi was seeking work.

On November 8, 2007, after complaining to Frasco about not being referred to work, Gizzi filed a complaint against the Local with the NLRB alleging that Local 107 had refused to refer him to work. (Ex. 130; Ex. 128 at 18-20, 47-48) Gizzi subsequently filed two amended complaints against the Local alleging that the Local had failed to refer him to work on specific movies including Lovely Bones and The Verdict. (Exs. 88 and 131) A cursory check by Local officers, who were on notice of the past abuses, into the allegations of the complaints would have uncovered that the Local was ignoring its rules.

Individuals with ties to the Local's officers and the movie captains were referred to work while Gizzi was seeking employment through Local 107. For example, relatives of PCC steward M. Conway, who was also the co-captain on Lovely Bones, who did not have CDL licenses at the time and who had less seniority in the Local than Gizzi, worked on Lovely Bones. These individuals included M. Conway's son-in-law, Ed Coe, and his two nephews, Frank Conway, III and Michael Conway, who also were the sons of movie captain, F. Conway. (Ex. 132; Ex. 133 at 4-5, 12-13; Ex. 134 at 8, 17-18; Ex. 135 at 29-30, 35) Coe had worked

on The Happening and then went to work on Lovely Bones.
(Ex. 135 at 35) In addition, as discussed below, M. Conway's cousin, Mark Volpe, who joined Local 107 in August 2007, shortly after being released from prison, worked on the movie The Verdict in December 2007 when Gizzi was fruitlessly seeking work. (Ex. 10 at 20-22; Ex. 136)

During an IRB sworn examination on August 6, 2008, Gizzi testified that, other than three four hour calls at the PCC in November and December 2007, he had not been called for work between October 2007, when he finished working on The Happening, and May 2008, when he began to work on the movie Marley and Me. (Ex. 128 at 26, 59, 68-70)⁵³ According to Gizzi, he was available to work during that period. (Ex. 128 at 34-36, 38, 44-45) His dues were paid during this period. (Ex. 129)

To settle Gizzi's NLRB complaint in June 2009, the Local paid Gizzi \$38,750. (Exs. 137-138) After being put on notice by the filing of the complaint in November 2007, Local officers continued to take no steps to ensure the Local's rules were being followed.

3. Robert Kaznica

⁵³ In May 2008, Gizzi was referred to work on the movie Marley and Me. (Ex. 128 at 59) Movie captain Sullivan called Gizzi to work and Gizzi worked approximately seventeen days on that movie. (Ex. 128 at 59-61)

Robert Kaznica is the brother-in-law of Frasco, the former Local 107 Vice President and movie and trade show business agent. (Ex. 83 at 7)⁵⁴ Kaznica was a member of Teamster Local 929. (Ex. 84; Ex. 83 at 6-7) In approximately December 2007, Kaznica was laid off from his position as a warehouse worker at Gourmet Baking. (Ex. 83 at 6-7; Ex. 84) Kaznica did not have a CDL. (Ex. 83 at 7, 13, 25)

Shortly after Kaznica was laid off from Gourmet Baking, on January 3, 4 and 7, 2008, he worked for Atlantic Film Service in Local 107's jurisdiction. (Exs. 126-127)⁵⁵ Also in January 2008, Kaznica worked for the First Philadelphia Labor Service, a trade show job. (Ex. 139) Although he worked in Local 107's jurisdiction, in apparent violation of the trade show written referral rules and what Frasco stated was Local policy, Kaznica did not pay dues or a service fee to the Local for January 2008. (Ex. 84) Similarly, in March 2008, Kaznica worked 23.5 hours for Elliott Lewis at the PCC. (Exs. 126-127; Ex. 32 at 23-24; Ex. 83 at 10) Kaznica did not pay dues or a service fee to Local 107 in March 2008. (Ex. 84; Ex. 83 at 15-16)

⁵⁴ Frasco retired from the Local on November 30, 2009. (Ex. 79)

⁵⁵ According to Vaccaro records, Kaznica worked 24 hours for Atlantic Film Service. (Ex. 127) Kaznica testified that he could not recall working for that company in January 2008. (Ex. 83 at 14-15)

In January and March 2008, there were longstanding unemployed Local 107 members seeking work, including Gizzi and Louis Cintron ("Cintron"). (Ex. 125 at 25; Ex. 128 at 67-69) Cintron joined the Local in May 1995 and had a Class A CDL. (Ex. 125 at 3-4, 14, 25-27) He testified that when he asked at the union hall why he was not getting work, ". . . they were pretty much just telling me there was no work. Meanwhile, you got guys that haven't been in the Union that long that were working, you got people who were friends of friends who work, and here I am sitting home, not working." (Ex. 125 at 3-4, 14, 25-27; Ex. 140)⁵⁶

In May 2008, Kaznica worked at the PCC and also for the company William Parker in Local 107's jurisdiction. (Ex. 139) That month, Kaznica paid a service fee to Local 107. (Ex. 84) A note on Kaznica's dues printout stated "PERMIT/FEE FRASCO 5/1/08 APPROVED." (Ex. 84)

In approximately May 2008, Frasco appointed F. Conway to be the captain on It's Always Sunny in Philadelphia ("Always Sunny"), a television series. (Ex. 90 at 19-20; Ex. 141) Frasco's brother-in-law Kaznica was the first

⁵⁶ According to Vaccaro records, between January and March 2008, Cintron worked 12 hours at Regional Performing Arts for the week ending February 8, 2008. (Ex. 262) Cintron paid dues in December 2007. (Ex. 140) In March 2008, he paid dues for January 2008 and then took a withdrawal card. (Ex. 140) He deposited his withdrawal card and returned to active membership in May 2008. (Ex. 140)

Teamster hired after Conway. (Ex. 83 at 20-21; Ex. 32 at 27-28)⁵⁷ Kaznica had never worked on a television or movie production before. (Ex. 83 at 20) Kaznica, who did not have a CDL, was appointed the co-captain for Always Sunny. (Ex. 32 at 27-28; Ex. 83 at 7) As co-captain, he was paid more than he would have been paid as a driver. (Ex. 142)⁵⁸

During his IRB sworn examination in October 2008, which was shortly after he worked on Always Sunny in June 2008, F. Conway testified that the union hall referred the drivers to work on Always Sunny in 2008. (Ex. 90 at 24)⁵⁹ Frasco, who was the business agent for the movies at that time, claimed that F. Conway selected Kaznica to work on Always Sunny. (Ex. 4 at 58-59)⁶⁰ Frasco claimed that Kaznica worked on that show because the list of workers was

⁵⁷ Kaznica testified that he took the position on Always Sunny because it was a short term job and he did not want a job that would last two or three months because of the long hours. (Ex. 83 at 18-19)

⁵⁸ The co-captain received higher pay than a regular driver. (Ex. 142) For example, in the 2009 collective bargaining agreement for Always Sunny, the co-captain received a daily rate of \$540 while a driver received a daily rate of \$500. (Ex. 142)

⁵⁹ According to F. Conway, in 2008 the producer for Always Sunny requested a couple of drivers, but those individuals were already working on other projects. (Ex. 90 at 23) F. Conway testified that many Local 107 members were working when Always Sunny was filming in 2008 and he had to use retired members and individuals who were not members working on work permits. (Ex. 90 at 23) Since the Local did not maintain referral lists and did not maintain records of when individuals worked on projects, there was no support in the Local 107 records for this claim.

⁶⁰ F. Conway testified that prior to Kaznica working on Always Sunny, they had worked together one time at the PCC. (Ex. 32 at 23-24)

exhausted. (Ex. 4 at 59) Since the Local did not maintain the referral lists or referral records, there was no support in the contemporaneous Local 107 records for this claim.

In contrast to his 2008 testimony, only a few months after Always Sunny was filmed in 2008, during his October 2009 sworn examination, F. Conway asserted that in 2008 the director of Always Sunny, Tom Lofaro, requested Kaznica to work based upon his resume. (Ex. 32 at 22-23) Given Kaznica's lack of experience and a commercial driver's license, as well as F. Conway's previous testimony, this was not credible. (Ex. 83 at 7, 13, 18, 20, 25)

In June 2008, Kaznica also worked setting up and taking down Cirque du Soleil. (Exs. 143-144; Ex. 83 at 15-16) Of the approximately 61 Local 107 members who worked on Cirque du Soliel in 2008, Kaznica had the fourth highest number of hours. (Exs. 143-144) Only three individuals, including M. Conway's cousin, Mark Volpe, and his nephew, Domenic Fuscellaro, had more hours than Kaznica. (Exs. 143-144)⁶¹ In June 2008, Kaznica also worked at the Electric Factory and at the PCC in Local 107's jurisdiction. (Ex.

⁶¹ According to records subpoenaed from Vaccaro and Associates, the administrator for the Local's Severance Fund, Kaznica worked 129.5 hours, Volpe worked 173.5 hours and Fuscellaro worked 137 hours on Cirque du Soleil in 2008. (Exs. 143-144) Local 107 member Joseph Guglielmucci, who was on the PCC seniority list, worked the most hours: 432.5. (Exs. 143-144)

139) In June 2008, Kaznica paid a service fee to Local 107. (Ex. 84)

Kaznica first paid dues to Local 107 on August 11, 2008 because he believed that he would be hired at Local 107 employer Mac Steel. (Ex. 83 at 10-11, 16; Ex. 84) Frasco, the business agent for Mac Steel, told Kaznica that the company was hiring. (Ex. 83 at 10; Ex. 4 at 7, 59-60) According to Kaznica, because business was slow, he was not hired at Mac Steel. (Ex. 83 at 21, 29) He took a withdrawal card from Local 107 on September 30, 2008. (Ex. 84) Kaznica testified that he was then out of work for eight to nine months. (Ex. 83 at 21-22)

Kaznica deposited his withdrawal card on June 26, 2009. (Ex. 84) Kaznica worked on a Kenny Chesney concert on June 27, 2009. (Ex. 83 at 24; Ex. 244) As detailed below, Kaznica began to work on the SONY movie project on July 8, 2009. (Ex. 70)

4. Mark Volpe

Mark Volpe is the cousin of former PCC steward M. Conway and the current PCC steward, F. Conway. (Ex. 10 at 6; Ex. 102 at 7; Ex. 90 at 5-6) Volpe was released from prison on July 9, 2007, after serving seven years and eight months for a rape conviction. (Ex. 10 at 10-11; Ex. 145) According to his dues record, on August 9, 2007, Volpe

transferred into Local 107 from Local 463, where he had been a member prior to his incarceration. (Ex. 136; Ex. 10 at 5-6) Volpe was on withdrawal from Local 463. (Ex. 136) The remarks section on Volpe's dues printout stated, "casual/convention center (Conway) Hamilton ok'd 8/07." (Ex. 136; Ex. 3 at 31)⁶² Volpe had a Class B CDL. (Ex. 10 at 9)

Even before Volpe joined Local 107, in July 2007 upon his release from prison, his cousin, then PCC steward M. Conway, referred Volpe to work at the Academy of Music within Local 107's jurisdiction. (Ex. 10 at 12-13) Volpe's first work at the PCC was in August 2007. (Exs. 147-148)

In December 2007, shortly after Gizzi filed the complaint with the NLRB alleging that the Local did not refer him to work, Volpe worked on the movie The Verdict. (Ex. 147; Ex. 10 at 20-21)⁶³ Volpe worked approximately 70

⁶² Hamilton testified that he did not know what that notation meant and he did not recall approving Volpe joining Local 107. (Ex. 3 at 31) Subsequent to Hamilton's sworn examination, the Local submitted an affidavit from the Local's Titan operator, Jackie Hopkins, regarding the notation. (Ex. 146) According to Hopkins, in August 2007, M. Conway told her that Volpe would be working as a casual at the PCC and needed to pay dues to Local 107, but was a member of another Local. (Ex. 146) Subsequently, Volpe called Hopkins and told her that he was on withdrawal from Local 463. (Ex. 146) According to Hopkins, she told Hamilton of her conversations with M. Conway and Volpe, and Hamilton said it was fine for Volpe to start paying dues as long as he transferred from Local 463 into Local 107. (Ex. 146)

⁶³ Gizzi's February 28, 2008 amended complaint filed with the NLRB alleged that the Local failed to refer him to work on The Verdict. (Ex. 88)

hours on that movie. (Ex. 147) Volpe had only been a Local 107 member for a few months when he was referred to work on The Verdict. (Ex. 136)

According to Vacation Fund records, in 2008, of the 105 checks issued to members, which were based upon the number of hours each member worked at the PCC, Volpe's check was the 14th largest. (Exs. 119-120)⁶⁴ In 2007, even though Volpe only joined the Local in August 2007 and the Vacation Fund period was from November 2006 to October 2007, of the 87 checks the Vacation Fund issued, Volpe's check was the 25th largest. (Exs. 117-118)⁶⁵

Volpe's work in 2008 included approximately six days work on the movie Happy Tears in May and June 2008. (Exs. 147-148) Volpe's cousin, M. Conway, was the captain on Happy Tears. (Ex. 102 at 71) M. Conway's son-in-law, Ed Coe, and his nephew, Fuscellaro, also worked on Happy Tears. (Ex. 102 at 72; Ex. 124 at 16)

5. Domenic Fuscellaro

Domenic Fuscellaro, a nephew of M. Conway and F. Conway, joined Local 107 on February 8, 2000. (Ex. 121; Ex.

⁶⁴ Volpe's 2008 Vacation Fund check was \$1,205.35. (Ex. 119) This represented approximately 964 hours work. (Ex. 120)

⁶⁵ Volpe's 2007 Vacation Fund check was \$239.08. (Ex. 117) This represented approximately 191 hours. (Ex. 118)

124 at 6, 7) Fuscellaro did not have a CDL. (Ex. 124 at 12) His first work through Local 107 was when his uncle, M. Conway, referred him to work for Tri State Staging, which provides staging equipment for events. (Ex. 124 at 6; Ex. 150)⁶⁶

For eight consecutive months between January 2006 and August 2006, Fuscellaro did not pay dues to Local 107. (Ex. 121) On July 25, 2006, he was suspended from the Local for non-payment of dues. (Ex. 121) Despite the requirement in the written trade show referral rules that individuals must be up to date in their dues or service fees in order to be referred to work (Ex. 99) and both Frasco and Hamilton confirming that was Local policy (Ex. 3 at 71-72; Ex. 4 at 53-54), during those eight months when he was delinquent, Fuscellaro received at least 28 work referrals in the industries where his uncle, M. Conway, was the steward. (Exs. 108 and 122-123) For example, in May 2006, Fuscellaro worked 84.5 hours for Elliott Lewis at the PCC where M. Conway was the steward. (Exs. 122-123) These hours included 29.5 overtime hours at the rate of \$33.04 per hour. (Exs. 101, 122-123)

⁶⁶ Fuscellaro, who was approximately twenty or twenty-one when he joined the Local, testified that his work through Local 107 was his first "real job." (Ex. 124 at 7)

Subsequently, in 2007, Fuscellaro also did not pay dues but still was referred to work in industries where his uncle, the union steward, controlled work referrals. (Exs. 121-123) Fuscellaro did not pay dues for eleven consecutive months from December 2006 through October 2007. (Ex. 124 at 9-10, 13-15; Exs. 121-122) On June 20, 2007, Fuscellaro was suspended from Local 107 membership for non-payment of dues. (Ex. 121)⁶⁷ During this eleven month period during which Fuscellaro did not pay dues, in violation of the referral rules, Fuscellaro was referred to at least 32 jobs in the trade show and theater industries. (Exs. 108, 122-123)⁶⁸

On November 27, 2007, Fuscellaro paid a \$300 re-initiation fee to the Local. (Ex. 124 at 13; Ex. 121)⁶⁹

⁶⁷ Frasco testified that at some point he called Fuscellaro about being delinquent in his dues. (Ex. 4 at 54-56) During his February 2009 IRB sworn examination, Fuscellaro denied that he had ever been suspended for non-payment of dues. (Ex. 124 at 9-10)

⁶⁸ For example, between September 7, 2007 and October 4, 2007, Fuscellaro worked 76.5 hours for Elliott Lewis at the PCC. (Exs. 122-123) These hours included 30.5 overtime hours at the rate of \$33.04 per hour. (Exs. 101, 122-123)

⁶⁹ Fuscellaro's dues printout included the following statement, "Hamilton approved 300.00 re-initiation fee plus 1 month to bring current to Nov 07." (Ex. 121) In an affidavit, Local 107 Titan operator Hopkins stated that on November 27, 2007, M. Conway called her to check on Fuscellaro's dues status. Hopkins asked Hamilton for his approval to allow Fuscellaro to pay a re-initiation fee. (Ex. 146) Hopkins stated that Hamilton approved Fuscellaro's payment of the re-initiation fee and only one month's dues. (Ex. 146) He did not pay back dues. (Ex. 146 at 3)

According to Vacation Fund records, in 2008, of the 105 checks issued to members, which were based upon the number of hours each member worked at the PCC, Fuscellaro's check was the 13th largest. (Exs. 119-120) In 2007, even though Fuscellaro had only paid dues for one month during the relevant twelve month period, of the 87 checks the Vacation Fund issued, Fuscellaro's check was the 17th largest. (Exs. 117-118, 121) Based upon the Vaccaro records, it appears that Fuscellaro worked approximately 343 hours at the PCC between November 2006 and October 2007, the time period the 2007 Vacation Fund check covered. (Exs. 121-123) Of those approximately 343 hours, Fuscellaro only worked approximately 67 while his dues were paid. (Exs. 121-123) For the other 276 hours, Fuscellaro was either delinquent in his dues payments (105 hours) or suspended for non-payment of dues (171 hours). (Exs. 121-123) In 2006, of the 85 checks the Vacation Fund issued to members who worked at the PCC, Fuscellaro's check was the 17th largest. (Exs. 151-152)

Fuscellaro testified that the first movie he worked on was Happy Tears in June 2008. (Ex. 124 at 16) His uncle, M. Conway, was the captain on Happy Tears. (Ex. 124 at 7, 14; Ex. 102 at 39, 70-71) In March 2009, Fuscellaro worked

on a commercial. (Ex. 156)⁷⁰ Also in 2009, Fuscellaro worked on the movie The Last Airbender ("Airbender"). (Ex. 153)

6. Ed Coe

Ed Coe is M. Conway's son-in-law. (Ex. 135 at 8) On October 22, 2001, Coe had been arrested for conspiracy to sell a controlled dangerous substance. (Ex. 155)⁷¹ According to New Jersey Department of Corrections records, Coe was sentenced to three and one half years and was incarcerated from December 18, 2003 to July 21, 2004. (Ex. 155; Ex. 135 at 10-11) According to Coe's dues record, he paid a partial initiation fee and dues to Local 107 on September 10, 2003. (Ex. 154; Ex. 135 at 7-8) It appears that on January 6, 2004, while Coe was incarcerated, the final payment for his initiation fee, which was paid in installments, was made. (Ex. 154) On the same day, Local 107 issued Coe a withdrawal card. (Ex. 154) Thus, he would have the right to be a member when released from prison, but since he was issued a withdrawal card, he would not owe back dues.

⁷⁰ From the Local's records, it appears that F. Conway, Fuscellaro's uncle, was requested to work on that commercial but F. Conway was unavailable. (Ex. 156)

⁷¹ Coe testified that he was arrested between ten and twelve times, mostly for juvenile offenses. (Ex. 135 at 10-11)

In July 2004, Coe was released from prison. (Ex. 135 at 11-12; Ex. 155) In October 2004, Coe deposited his withdrawal card and paid dues to Local 107. (Ex. 154) Coe did not have a CDL. (Ex. 135 at 16)

Prior to his incarceration, in 1997, Coe had done some work as a non-union casual at Tri State Staging which also employed Local 107 members. (Ex. 135 at 6-7) Coe testified that there was an agreement under which individuals who lived in Camden, New Jersey were able to work as non-union casual workers along with Local 107 members at Tri State Staging. (Ex. 135 at 5-7)

According to Vacation Fund records, in 2008, of the 106 checks issued to members, which were based upon the number of hours each member worked at the PCC, Coe's check was the 15th largest, representing approximately 750 hours. (Exs. 119-120) In 2007, of the 87 checks the Vacation Fund issued, Coe's check was the 14th largest. (Exs. 117-118) In 2006, of the 85 checks the Vacation Fund issued to members who worked at the PCC, Coe's check was the 13th largest. (Exs. 151-152)

From August 11, 2007 to October 13, 2007, Coe worked on the movie, The Happening. (Exs. 157-158) From October 26 to December 29, 2007, Coe, who did not have a CDL, worked on Lovely Bones. (Exs. 157-158; Ex. 135 at 16) His

father-in-law, M. Conway, was the co-captain on that movie. (Ex. 135 at 31-32) As noted above, Gizzi, who was seeking work, did not work on Lovely Bones. (Ex. 128 at 18-19, 44-45)

Between January and March 2008, when there were out of work Local members, Coe worked in the trade show industry and at the Regional Performing Arts Center. (Exs. 157-158) He worked approximately 119 hours during those months. (Exs. 157-158) Coe also worked on Happy Tears in 2008. (Ex. 135 at 30-31) His father-in-law, M. Conway, was the captain on that movie. (Ex. 135 at 31)⁷² Coe also worked on the movie Law Abiding Citizen ("LAC") and the SONY movie project in 2009. (Exs. 70 and 167)

7. Thomas Maglio

Maglio is the brother-in-law of Local 107 Trustee Slater. (Ex. 72 at 8-9; Ex. 4 at 70-71)⁷³ Maglio was a member of Local 14 M of the Graphic Communications Workers Union, which is part of the IBT. (Ex. 72 at 4-5) Maglio's Local 107 dues printout stated, "Casual/permit fee only (movie). Frasco Ok'd Slater's Brother-in-law." (Ex. 73)

⁷² In 2008, Coe was terminated from work on the movie Transformers because he had an altercation with the transportation coordinator from Local 399 in Los Angeles. (Ex. 135 at 18-30)

⁷³ Maglio's wife, Karen, worked for Teamster Local 500 as a secretary. (Ex. 72 at 8, 18; Ex. 161)

Absent the Local 107 abuses, there should have been no reason to record the familial relationship with the Local Trustee. When asked about this notation, Frasco testified, "I guess I okayed him to pay a service fee." (Ex. 4 at 72) Maglio did not have a CDL. (Ex. 277)

According to Maglio, Frasco contacted him and asked him if he wanted to work on a movie. (Ex. 72 at 7-8, 13, 18) According to Maglio, the first movie he worked on was The Happening. (Ex. 72 at 7-10) He drove one of the stars on that movie. (Ex. 72 at 10-12) Maglio worked on The Happening for 41 days from August 11, 2007 to October 13, 2007. (Exs. 159-160)⁷⁴ Maglio paid a service fee to Local 107 for August 2007. (Ex. 73) He should have also paid a service fee for September and October. (Ex. 4 at 51; Ex. 3 at 71-72)

Maglio began to work on the movie, Transformers during the week of June 7, 2008. (Exs. 159-160) He drove a water truck on Transformers. (Ex. 72 at 13-14) Cimino, the captain on Transformers, testified that the union gave him Maglio's name. (Ex. 94 at 78) Gizzi testified that he was available also for the movie Transformers as of June 3,

⁷⁴ In an undated letter to the Chief Investigator's office, Frasco stated that Maglio worked for approximately one month on The Happening because there were no Local 107 drivers available. (Ex. 162) There were no records kept at the Local which would support this claim.

2008. (Ex. 128 at 59-60) In 2009, Maglio worked on Airbender. (Ex. 153)⁷⁵

8. Rich Marino

Rich Marino ("Marino") joined Local 107 in July 2005. (Ex. 163) He was a friend of Local 107 member Kevin Hamilton and William Hamilton, Jr.. (Ex. 164 at 6-7, 9; Ex. 3 at 18-19)⁷⁶ Marino testified that he was also friendly with their father, the Local's principal officer. (Ex. 164 at 5) Since approximately 2005, Marino has had a Class B CDL. (Ex. 164 at 11)

When asked how Marino joined Local 107, Hamilton testified, Marino ". . . came around, started talking to us, a young guy, wanting to learn, and, you know, when we got busy, he got put to work." (Ex. 3 at 19) Marino's dues printout stated, "Hamilton approved permit fee/casual." (Ex. 163) Hamilton testified that he did not know what that notation meant. (Ex. 3 at 30) According to the Local's Titan operator, based upon the notation on Marino's dues record, in April 2005, Hamilton approved Marino paying a service fee to the Local. (Ex. 146)

⁷⁵ When asked why Maglio worked Airbender, Frasco testified that Maglio may have worked with Sam Mercer, the producer of Airbender, before. (Ex. 4 at 32, 70)

⁷⁶ William Hamilton, Jr. died in approximately May 2004. (Ex. 57)

Marino testified that his first work as a Local 107 member was at the PCC. (Ex. 164 at 4-5) Marino also worked on the movie, The Happening from approximately June 23, 2007 to October 27, 2007. (Exs. 165-166) He then went to work on Lovely Bones. (Exs. 165-166) Marino worked on Lovely Bones from approximately November 10, 2007 to December 29, 2007. (Exs. 165-166)

Between January and March 2008, Marino worked approximately 188 hours at the PCC, including approximately 77 overtime hours. (Exs. 165-166) Between January and March 2008, he also worked for Atlantic Film Service and at the Regional Performing Arts Center. (Ex. 165-166) As noted above, there were Local 107 members with more seniority in the Local, including Gizzi, who were available and looking for work between January and March 2008, who did not get referrals from the Local. (Ex. 128 at 67-69; Ex. 125 at 25)

In 2008 and 2009, Marino worked on the movie Airbender. (Exs. 153, 165-166) On November 20, 2008, the producer for that movie, Sam Mercer ("Mercer"), sent a letter to Hamilton requesting Marino and two other Local 107 members to work on Airbender. (Ex. 168) Mercer was a personal friend of Hamilton. (Ex. 4 at 66)

According to Vacation Fund records, in 2008, of the 105 checks issued to members, which were based upon the number of hours each member worked at the PCC, Marino's check was the 21st largest. (Exs. 119-120)⁷⁷ In 2006, of the 85 checks the Vacation Fund issued to members who worked at the PCC, Marino's check was the 15th largest. (Exs. 151-152)⁷⁸ In 2007, of the 87 checks the Vacation Fund issued, Marino's check was the 29th largest. (Exs. 117-118)⁷⁹ In 2007, Marino worked from June 23, 2007 to October 27, 2007 on The Happening and from November 10, 2007 to December 29, 2007 on Lovely Bones. (Exs. 165-166)

9. Antonio Capetillo

Antonio Capetillo ("Capetillo") joined Local 107 on August 25, 2005. (Ex. 26) Capetillo testified that he began to work at the PCC in March 2005, before he became a Teamster. (Ex. 25 at 16-17; Ex. 26) Local 107 member John Griffith, who was on the PCC seniority list and whose father was a friend of Hamilton and F. Conway, testified that he played basketball with Capetillo prior to Capetillo

⁷⁷ In 2008, Marino's Vacation Fund check was \$516.57. (Ex. 119) This represented approximately 413 hours. (Ex. 120)

⁷⁸ In 2006, Marino's Vacation Fund check was \$989.75. (Ex. 151) This represented approximately 791 hours. (Ex. 152)

⁷⁹ In 2007, Marino's Vacation Fund check was in the amount of \$231.56. (Ex. 117)