

DISTRICT COUNCIL CHARGE AND TRIAL PROCEDURES

1 Effective Date

The Charge and Trial Procedures stated herein are effective as of September 7, 2010. They may be amended only by operation of authority stated in the Stipulation and Order entered on June 3, 2010, in the matter of *United States v. District Council, et al.*, 90 Civil 5722 (RMB) (the “Stipulation and Order”), by Order of the Court, or on the consent of the parties to the Stipulation and Order (except the Benefit Funds).

2 Scope

A. These procedures shall apply to all matters within the authority of the Trial Committee of the District Council of New York City and Vicinity of the United Brotherhood of Carpenters and Joiners of America (“Trial Committee” and “District Council”) as defined herein. Such matters include all charges filed by the Review Officer appointed pursuant to the Stipulation and Order and all members of the District Council as defined by the Stipulation and Order (“members”).

B. Members may only file charges for matters authorized by Section 51 of the Constitution of the United Brotherhood of Carpenters and Joiners of America.

C. The terms “hearing” and “trial” are used synonymously herein.

3 The Trial Committee and Hearing Panels

A. Panels of the Trial Committee shall hear and judge all charges as provided for herein. The Trial Committee shall comprise a Chairman, Vice-Chairman and two (2) members from each local union of the District Council appointed through majority vote of the executive boards of each local union (subject to Paragraph 5.b.iii of the Stipulation and Order). Written certification of such appointments shall be provided by each executive board to the District Council and the Review Officer.

B. Said appointees shall provide an affidavit to the Review Officer before they may serve on the Trial Committee. The member must swear or affirm in said affidavit that as a member of the Trial Committee he (meaning *he* or *she* throughout this document) will conduct himself in a serious, fair, decorous and objective manner and in conformance with the Constitution of the United Brotherhood of Carpenters and Joiners of America, the Consent Decree in this matter, and the Stipulation and Order. The member must also further swear or affirm in said affidavit that he has never committed an act in violation of the Consent Decree or the Stipulation and Order and that he will disclose before sitting in any particular matter contemplated by these procedures whether he has a conflict of interest which would influence his ability to be fair and impartial in such matter.

C. Each matter before the Trial Committee shall be conducted by a hearing panel (“Panel”) comprising the Chairman or Vice-Chairman and five (5) Union members of the Trial Committee. Four other Union members of the Trial Committee shall be present at the hearing but shall only serve on a Panel if (1) “peremptory challenges” (*see infra*) are employed by a party or both parties at the start of a hearing or (2) a Union member of the Trial Committee selected for the Panel is unable to deliberate.

D. The Union members of a Panel shall be selected (from the full pool of Trial Committee members) by lottery conducted by the Trial Committee and supervised by the Chairman conducted within two days of the scheduled start of a hearing. Nine names shall be selected in the lottery and each shall serve on the Panel in the order of their selection. Each party has two peremptory challenges which may be exercised before the start of a hearing whereby he may remove two names without showing cause until five Panel members are seated. Union members of the Trial Committee discharged after being removed must leave the room and may leave the premises.

E. The Chairman shall preside during the sessions of the first duly-constituted Panel and the Vice-Chairman shall preside during those of the second. They shall thereafter alternate in this manner in performing the duties of the presiding officer (described *infra*) in subsequent panels.

F. Subject to any limitation described herein, each Panel will hear evidence in a hearing (which may be adjourned in the discretion of the presiding officer when necessary) and then privately deliberate and determine whether a member is guilty or not guilty of each charge and impose disciplinary penalties against any member found guilty of said charges, including fine, suspension, and expulsion. Penalties imposed for violations of the Constitution of the United Brotherhood of Carpenters and Joiners of America shall be as provided for therein. The presiding officer may not be present for deliberations but may instruct the Panel regarding procedure and the elements of the charge as provided for herein.

G. No more than one Panel shall sit on any given day unless a second Panel is continuing an adjourned matter and is composed of Trial Committee members different from those sitting in the other Panel active on such day. One Panel will be formed to sit for all matters scheduled to be presented on a given day, any of which may be adjourned as necessary once a hearing has begun.

4 Chairman and Vice-Chairman

A. The District Council and Review Officer have agreed that Walter Mack shall serve as Chairman and James Zazzali shall serve as Vice-Chairman of the Trial Committee. Each shall serve until resignation or until removed or replaced upon the operation of Paragraph 5.f.v of the Stipulation and Order, the agreement of the District Council and the Review Officer or for good cause presented upon a motion made to the District Court by the District Council after action by the Review Officer pursuant to Paragraph 5.f of the Stipulation and Order. Upon such resignation or removal, all Trial Committee records kept by the departing officer shall be forwarded to the remaining officer. Upon the appointment of a new Chairman, any records

received by the Vice-Chairman from the former Chairman shall be forwarded to the new Chairman.

B. The Chairman and Vice-Chairman shall perform duties and preside in proceedings as described herein. The Chairman and Vice-Chairman may substitute for each other upon their written agreement to do so. Each shall be compensated and reimbursed for reasonable expenses and the amount of such compensation and scope and amount of reimbursement shall be acceptable to the District Council and committed to a written agreement disclosed to the government and the Review Officer.

C. The Chairman and Vice-Chairman shall decline to preside in any matter which presents them with a conflict of interest and the remaining officer shall preside in such matter. A substitute presiding officer agreed upon by the parties to the Stipulation and Order (except the Benefit Funds) may be appointed to preside in any matter when both have a conflict.

5 Charges and Responses

A. The Review Officer, or the charging member (the “plaintiff”), shall file with the Chairman (via email, first-class mail or courier) a written, specific charge (which may contain multiple counts) against a member. The charge instrument shall be signed by the Review Officer or plaintiff as applicable and be referred to as the “complaint.” The Chairman shall log the complaint, assign a number to the matter, open a file for the matter, request the addresses of the accused member (the “defendant”) from the District Council (which shall comply with such request within two business days) and within three business days send the complaint with its matter number, a plea form (*see infra*) and a copy of these procedures (by mail or courier service which provides proof of delivery) to the address of the accused member kept on file with the District Council. The plaintiff shall include on the charge an email address by which the plaintiff may be contacted for all purposes related to the matter.

B. The complaint shall state the period of the alleged misconduct, and state facts related to the alleged misconduct sufficient to give reasonable notice of the conduct in question. For charges filed by the Review Officer, “misconduct” means conduct described in Section 5.f of the Stipulation and Order. The complaint shall be signed by the Review Officer or his designated representative, or in the case of a member bringing charges, by the plaintiff member.

C. A defendant must complete a plea form and return it to the Chairman within two weeks of delivery of the complaint. The plea form shall be created by the Chairman and shall be labeled “Plea Form.” It shall contain the caption for the matter; the number assigned to the matter and a clear direction to the accused that he must plead either guilty or not guilty to the charge and indicate his choice by checking an appropriate box on the form, signing the form and writing his Union ID number on the form and returning it by first class mail or registered mail to the Chairman at the address indicated on the form. The plea form shall also contain the email address of the Chairman and opposing party and may contain any other administrative direction or guidance deemed by the Chairman to be necessary for the efficient conduct of Trial Committee business.

D. Within three weeks of delivery of a copy of the complaint from the Chairman, a defendant who has pleaded not guilty may submit to the Chairman an affidavit with or without exhibits in response to any charge. The Chairman will distribute said submission to the Panel and it shall be considered with appropriate weight attached by the Panel and presiding officer as part of the record in a hearing. Such affidavit must be filed with the Chairman via email and copied to the plaintiff or Review Officer, depending upon who filed the charges. The original affidavit must be made available to a Panel upon request at the hearing.

E. If a defendant fails to return a plea form to the Chairman as required, he shall be deemed guilty as charged but may still appear on the hearing date to present evidence and arguments regarding the penalty to be fixed by the Panel.

6 Hearings

A. A hearing shall be scheduled by the Chairman to take place on the first available day thirty (30) days after filing of the charges but which will in no event be scheduled to take place later than sixty (60) days from the date when the charges were filed. The Chairman shall provide reasonable written notice of said schedule to the parties.

B. In a matter where a member has pleaded guilty via plea form, the hearing shall only involve the penalty phase of the matter.

7 Representation and Advocacy

A. The plaintiff and defendant may be represented before a Panel by a member of a local union affiliated with the District Council or by an attorney. Such parties shall bear their own costs. Representatives or counsel for parties shall file a notice of appearance with the Panel composed for a matter before proceedings are begun.

B. The Review Officer may be represented before a Panel by a designee. Any charge filed by the Review Officer may be presented by a District Council Advocate (“Advocate”) employed or engaged by the District Council provided that the Review Officer confirms such delegation in a written notice to the presiding officer in a matter. The District Council shall appoint such Advocate by September 3, 2010. Said appointment shall be subject to review pursuant to Paragraph 5.b.iii of the Stipulation and Order.

C. Upon the expiration of the term of the Review Officer, all charges relating to violations of the Consent Decree, federal or state law shall be brought by the Advocate. The Advocate shall be a member of the Bar of the State of New York and admitted to practice in the Southern District of New York.

8 Recordation of Proceedings and Preservation of Exhibits

A. The proceedings before the Hearing Panel shall be recorded and transcribed by a qualified court reporter. The expense of the court reporter shall be paid by the District Council.

B. The Trial Committee, under the auspices of the presiding officer, shall provide for the security of all exhibits admitted into the record of a proceeding until such time as a party waives appellate rights or said exhibits shall no longer be needed as part of any appeal. Thereafter, they may be disposed of by the Trial Committee thirty (30) days after a party is served with written notice (via email or first class mail) that said exhibits may be reclaimed by the party or be shredded after the thirtieth day such notice was served.

9 Witnesses

A plaintiff or defendant may request that a member of a local union affiliated with the District Council appear at a hearing as a witness. The plaintiff or defendant must submit the request in writing to the Chairman and provide the name and local union affiliation of the member requested to appear along with the date of the hearing. The request must be submitted no less than seven (7) days prior to the hearing and shall be forwarded to the senior executive officer of the District Council (whether Supervisor, Executive Secretary-Treasurer or other). The District Council must within one business day of receiving the request mail a letter via first class mail informing the member of the date, time and place of the hearing, and that his or her presence has been requested by the plaintiff or defendant to appear at the hearing. The District Council cannot compel any member to appear as a witness. The Review Officer's authority as provided for under Section 5(d) of the Stipulation and Order shall be applicable to these Procedures.

10 Requests for Adjournment of a Hearing

A party to a matter may request that a hearing date be rescheduled. Such request shall be granted once on a showing of good cause and thereafter may only be adjourned in the discretion of the presiding officer. All requests for such rescheduling must be submitted in writing via email or first class mail to the presiding officer of the Panel as soon as practicable and copied to any other party by similar means. The request shall describe the reason for the adjournment and suggest dates for the hearing to occur or be continued. The requester shall have conferred with the opposing party to determine the availability of the suggested dates. The presiding officer shall decide whether to grant the request or not, and advise the parties in writing of his decision. If the request is granted, the presiding officer shall set a date for the hearing to begin or resume which shall not be ten (10) days later than the original hearing date or the last day of the hearing prior to adjournment.

11 Location of Hearings and Attendance

All hearings conducted pursuant to these procedures shall be held on the 10th floor of the District Council, 395 Hudson Street, New York, New York, in the large east meeting room and shall be open to all members. The presiding officer of a Panel may consent to the use of another room or direct any persons using the room for another purpose to use it at a different time or use an alternative space. All hearings in which the Review Officer is a party shall be open to the public subject to reasonable security considerations and room occupancy limitations set by the City of New York.

12 Rules for the Conduct of the Hearing

A. As further described *infra*, the presiding officer shall sit as the judge in the hearing of a matter and shall have the authority and responsibility granted herein.

B. Unless otherwise stated herein, the hearing shall be conducted pursuant to and in accordance with the rules and procedures generally applicable to labor arbitrations as promulgated by the American Arbitration Association, and as provided for under Section 52J of the Constitution of the United Brotherhood of Carpenters and Joiners of America. Affidavits shall be received in evidence but will be accorded less weight than live testimony. Direct testimony may be accomplished via affidavit and accorded the same weight as live testimony if the affiant is available for cross-examination. Witnesses shall be placed under oath. Post-hearing briefs may be requested by the Panel before rendering a verdict if authorized by majority vote of the Panel while in session and on the record or authorized by the presiding officer upon the timely request of a party.

13 Authority of Chairman and Vice-Chairman

A. The Chairman and Vice-Chairman shall sit as presiding officer for a Panel and preside as judge at all hearings pursuant to these procedures. They shall alternate as presiding officer from Panel to Panel. The presiding officer shall rule on all issues of procedure, evidence, decorum and any other matter which requires a decision regarding procedure, evidence, and maintenance of a serious, fair and decorous environment. The presiding officer for a Panel shall have the authority to dismiss duplicative charges in a complaint and any charges not authorized by the Stipulation and Order or the Constitution of the United Brotherhood of Carpenters and Joiners of America. The presiding officer shall have the authority to dismiss a complaint which does not state a cause of action or fails to comply with any requirement stated herein. The presiding officer shall state on the record or provide a written statement for the record the basis for any such action. There shall be no appeal of dismissed charges to the United Brotherhood of Carpenters and Joiners of America.

B. Only Panel members shall vote on the guilt or innocence of a defendant. The presiding officer shall not vote but shall have the authority upon motion of a party to (1) enter a directed verdict when no reasonable Panel member could decide a matter in a contrary way or (2) enter a “judgment” notwithstanding any decision of a Panel when such decision is contrary to the weight of the evidence presented in a matter. The presiding officer shall instruct the Panel members in regard to their duties and the elements of a charge as may be requested by the Hearing Panel or deemed necessary by the presiding officer. Such instructions shall be rendered on the record and in the presence of the parties.

C. Any exception to any ruling of a presiding officer must be preserved on the record if it is to be taken as a material point argued on appeal.

D. If substantial evidence of incompetence of the Chairman or Vice-Chairman or other good cause are presented to the Review Officer during the Review Officer’s tenure, or to the Government or District Council after the Review Officer’s tenure, either may be replaced upon

the consent of the Review Officer or, after the Review Officer's tenure, the Government and the District Council.

14 Filing of Documents

A. All affidavits, letters, briefs, or other documents created for submission in a matter shall bear the caption and number of the matter and be filed by a party via email sent to the presiding officer with email copies to the opposing party (which shall also serve as proof of service).

B. Alternative filing methods may be authorized by the presiding officer in a matter upon a showing of necessity. All such documents must be served upon the opposing party by the filing party before they may be admitted into the record of a matter. If the presiding officer authorizes an alternative method of service, proof of such service must be presented to the presiding officer before the filed documents can be admitted into the record.

15 The Decision of the Panel; Certain Motion Rights

A. Upon the closing of the Review Officer's or plaintiff's case at a hearing, a defendant may move the presiding officer for any charge to be dismissed if the evidence presented is insufficient under the law or the UBC Constitution, as applicable, to sustain the charge. The presiding officer may grant such motion but must state the reason or reasons for doing so on the record or in a written statement for the record. Such dismissal shall be without prejudice.

B. Upon the closing of the record, in the absence of a directed verdict, the Panel shall then deliberate and reach a verdict by majority vote on the charges before the Hearing Panel.

C. Upon informing a defendant of its verdict and the penalty for conviction on a charge, a written confirmation of the vote and penalty with respect to each charge shall be provided to the parties. Each voting member of the Panel shall sign said written confirmation, which shall bear the caption of the matter, the matter number and the date. The presiding officer may rule on a motion for a directed verdict within two business days after the decision of the Panel is rendered.

D. A party may move at the time of the verdict or within two business days thereafter for the presiding officer to issue a "judgment" (a substitute verdict) notwithstanding the Panel's verdict as authorized herein or for equitable relief from an arbitrary and capricious or demonstrably excessive penalty. The presiding officer shall state on the record or provide in writing for the record within one week of the verdict the basis for any such action.

16 Settlement of Charges

A. The Review Officer or a plaintiff may agree to settle filed charges at any time prior to the issuance of a decision by a Panel and such settlement shall not be subject to any further review or consideration. The Review Officer may also settle prospective charges with any member rather than filing such charges with the Trial Committee.

B. Charges brought by a member may be settled only with the approval of the presiding officer of a Panel and only after notice has been provided to the Review Officer for review.

17 Appeals

A. A party to a matter conducted pursuant to these procedures may appeal a decision issued by the Panel or the presiding officer (where exception has been noted on the record of the proceedings) pursuant to Section 53 of the Constitution of the United Brotherhood of Carpenters and Joiners of America. If a timely appeal is not filed, the decision of the Panel (including any related or incorporated ruling of the presiding officer) shall be final and put into effect. Appeals of a not guilty verdict rendered by a Panel are not permitted.

B. It shall be the responsibility of the presiding officer of a Panel to timely provide the record of the underlying proceedings to the [UBC] Appeals Committee after receiving notice from the Appeals Committee that an appeal has been filed.

18 Preservation of Trial Records and Inspection

A. The District Council shall preserve electronic copies of the transcripts of all Trial Committee proceedings for a period of not less than three years. Any member within said period may inspect any such transcript for any reason during business hours and may make notes of any transcript for any lawful purpose.

B. Upon the completion of a matter, a party to a Trial Committee proceeding may ask the presiding officer via signed letter for an electronic copy of the transcript of the proceeding in which he was a party. The presiding officer shall promptly provide or direct the District Council to provide a bona fide requester with such copy.

C. The District Council shall keep an electronic record of all decisions of the Trial Committee and shall hold and preserve the written decision of the Trial Committee in each matter after having scanned and digitized said document for the electronic record. Any member may inspect said electronic record for any lawful purpose during business hours.

Dated: White Plains, New York

July 30, 2010

Dennis M. Walsh
Review Officer