

Association for Union Democracy, Inc.

104 Montgomery Street Brooklyn NY 11225 (718) 564-1114
www.uniondemocracy.org info@uniondemocracy.org



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Hon. Victor Marrero
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Dear Judge Marrero,

A group of carpenters from the New York City District Council of Carpenters (NYCDCC) has brought to the attention of the Association for Union Democracy (AUD) that the NYCDCC has proposed amending its bylaws. The group of carpenters asked AUD to review and comment on these proposed bylaws and to forward its comments to the Court. The District Council is governed by a 1994 Consent Decree that prohibits unilateral alteration of the by-laws. In the Decree, the Council admitted some past mob ties and committed to democratic procedures that would make formal government trusteeship unnecessary.

It is our understanding that the current proposal was delivered to the Council's local membership on July 14, 2017 and that rank-and-file members have been given 45 days to comment and either ratify or reject the proposals, which are many, in a 152-page document.

AUD, established in 1969, is the nation's only organization dedicated solely to the principles and practices of union democracy inside the North American labor movement. AUD has been in the forefront of many union democracy battles in many different unions. After reviewing the proposed changes to the bylaws we have several concerns. Our concerns are raised because some of the proposals move the NYCDCC away from the concept of union democracy as a bulwark against corruption, a concept embodied in the Consent Decree.

A democratic union is a necessary condition and potentially the most effective tool available for achieving the goal of eliminating racketeering and corruption in the labor movement. This was quite evident to the members of the New York State Organized Crime Task Force (OCTF). In 1985 this group of renowned experts was appointed by then Governor Mario Cuomo to investigate and propose appropriate responses to corruption and racketeering in the NYC construction industry. It wrote in its 1990 Final Report:

The third and most promising strategy is to nurture, encourage and support union democracy. In essence, labor racketeering involves the exploitation of rank-and-file workers for the benefit of corrupt union officials and employers.... As far back as the 1940s, the American Civil Liberties Union and other reformist groups argued that unions which respect their members' rights, which have fair and competitive elections, and which make the leadership accountable to the rank-and-file, will be resistant to racketeer domination. Indeed, Congress adopted this strategy for attacking labor racketeering when it passed the Landrum-Griffin Act in 1959.... The power wielded by construction union officials makes it very difficult for honest workers to assert their economic interests and regain control of their unions. Government policy must therefore give highest priority to assisting honest workers in obtaining their rights and wresting control of their unions from racketeers. (New York State Organized Crime Task Force, *Corruption and Racketeering in the New York City Construction Industry: Final Report to Gov. Mario M. Cuomo*, New York: New York University Press, 1990 pp. 177-78.)

AUD's concerns with the current bylaw proposals are procedural and substantive. The first problem with the proposed amendments is that they blatantly ignore the amendment process specified in the bylaws. The Executive Secretary Treasurer (EST) of the NYCDCC apparently, created a "bylaws working group" under his authority, made up of the Council's Vice President and his top employees and assistants. Though the process began in 2015, we are told that the locals' rank-and-file first saw the proposed amendments in July 2017, via the massive document. This process is simply not in accordance with the spirit, or the letter, of the current bylaws, which demand that amendments must come from at least three of the locals. The bylaws require that the locals initiate amendments precisely to prevent the leadership from ambushing the rank-and-file.

The bylaws propose amending the Council's existing bylaws amendment process itself, in Section 35. The current bylaws clearly place the initiative for amendments in its eight local unions and their members (Section 35B: "A proposed change must be submitted in writing by at least one third of the Local Unions affiliated with the District Council provided that the Resolutions Committee consisting of three or more members have reviewed and approved the resolution..."). The bylaws amendment then goes to the Executive Committee (EC) for review.

The July 14 proposal would create a process that also provides for amendments to be initiated directly from the District Council's Executive Committee. The Executive Committee consists of the three top council officers and a delegate chosen by each of the eight locals in a secret ballot of its members.

We believe that this change is unwise. It gives additional power and authority to the top officers, especially the already powerful Executive Secretary Treasurer, and leaves the local membership left as just a potential rubber stamp of the process.

The proposed amendments place direct power in the hands of the Executive Committee, while at the same time the Executive Committee itself has been redefined and made less accountable (Section 12(A) Executive Committee, p 60). The proposal would remove the EC from the oversight of the Council's representative Delegate Body. Currently the EC is a subcommittee of the Delegate Body and it would instead report only to the top officers. When read together, these two proposed changes to the bylaws amendment process in effect takes power away from the local members and places it in the hands of the top officers.

The bylaws proposal would eliminate the requirement that no more than 50 percent of the Delegates representing any Local Union may, while holding office, be employees of the District Council (Section 16(A) page 89). If anything, the proposal should have made a change in the opposite direction. Allowing members of the representative Delegate Body to also work for the Council, in effect for the EST, weakens the representation of the Local Union's rank and file and enhances the power of the Executive. It is analogous to having members of the United States Congress, a representative body, also being employees of the White House.

The bylaws proposal eliminates the two-term limit for the office of the EST (Section 6 Officers of the Council page 42). This paves the way for the further consolidation of power in the hands of the (same) EST.

The proposed bylaws extend the terms of the top officers (Executive Secretary Treasurer, President, Vice-President, Warden, and Trustees) from three to four years (also Section 6 Officers of the Council p. 42). The rationale provided is that four-year terms are used in all of the other United Brotherhood of Carpenters (UBC) Regional Councils. But the NYCDCC is not like the other UBC Regional Councils. It has direct election of its top officers because of its reliance on union democracy as a bulwark against corruption and racketeering, per the Consent Decree. There is no reason to move away from three-year terms. Keeping the term at three years obviously gives the membership a more frequent chance to express itself regarding the performance of the top officers and allows for running against the incumbents more often, thus enhancing union democracy. As the late Prof. Clyde Summers, co-founder of AUD and one of the leading experts on union democracy law and the Landrum-Griffin Act of 1959 noted "The central point is that the usefulness of union elections is not measured solely by the frequency with which the incumbents are unseated....The usefulness of elections lies rather in the frequency with which they are contested and the fullness and accuracy with which they measure the level of discontent." (Clyde Summers, "Democracy in a One-Party State: Perspectives from Landrum Griffin," *Maryland Law Review* 43(1) (1984): 107). Thus, more frequent elections allow for more frequent referenda on the top officers' performances.

These bylaws proposals, taken together, put excessive power in the hands of the top officials at the expense of membership rights. This is, in our opinion, is a violation of the spirit of the Consent Decree.

We do hope that you will review and consider our letter, offered in hopes for a more democratic and therefore stronger NYCDCC. Should you have any reason to contact AUD, its Executive Director, Kurt Richwerger, can be reached at 718-564-1114, or via email at krichwerger@uniondemocracy.org.

P.S. The attached signatures from members of the various District Council Locals were given with the understanding that they would be kept in confidence, because of concerns of retaliation.

Sincerely,

A handwritten signature in black ink that reads "Kurt C. Richwerger". The signature is written in a cursive style.

-Kurt Richwerger

Executive Director

Cc: Benjamin Torrance, Chief Appellate Attorney & AUSA, Civil Division, US Attorney's Office, SDNY