UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

90 Civ. 5722 (CSH)

DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, et al.,

Defendants.

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GOVERNMENT'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR RECONSIDERATION

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– Of Counsel –

Plaintiff United States of America (the "government"), by its attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully submits this reply memorandum of law in support of the government's motion for reconsideration of the Court's Memorandum Opinion and Order dated January 12, 2006 (the "Order").

In its response to the government's motion, the District Council does not dispute that there is a link between contractor corruption and organized crime. Mem. in Opp. to Govt.'s Mot. for Recons. ("Def.'s Br.") at 1–11. Nor does the union argue that the job referral rules at issue were merely collateral to the anti-corruption (and anti-organized-crime) goals of the Consent Decree; or that the government, in negotiating the Decree, would have surrendered its remedies in exchange for the Decree's safeguards if those safeguards could be vitiated unilaterally by the union. Instead, the District Council maintains that the government did not properly put its facts before the Court. For the reasons that follow, that contention should be rejected.

Reconsideration Is Appropriate

The District Council first argues that the government's motion for reconsideration is based on evidence not previously submitted, and is therefore improper. Def.'s Br. at 5–7. That contention fails for several reasons.

First, the District Council misstates the law. The union argues that the Court may not consider any facts not previously presented with the government's motion. However, reconsideration may be granted where "new evidence has become available *or* there is a need to correct a clear error or prevent manifest injustice." *Hemstreet v. Greiner*, 378 F.3d 265, 269 (2d Cir. 2004) (emphasis added; internal quotation marks and alteration omitted); *accord Virgin Atlantic Airways, Ltd. v. National Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). The

Court, therefore, has far more latitude to consider the government's arguments than the District Council suggests.

The rules limiting submission of new facts are particularly inappropriate here, since the Court on its own accord concluded that there is no link between contractor corruption and organized crime. Neither party argued in its motion papers that such a link does not exist; even now, the District Council does not maintain that such a link is not present. All of the factual material that the union now contends is improperly submitted concerns the existence of that connection between contractor corruption and organized crime. To demonstrate to the Court that it erred in reaching such a conclusion *sua sponte*, the government pointed to publicly available reports to show that such a link exists generally, and to evidence previously submitted to the Court to demonstrate that there is evidence in this case specifically of such a connection. All of this is in response to the Court's suggestion that contractor corruption and organized crime are not connected, a suggestion that the government could not have anticipated from the parties' prior submissions. The evidence of that connection should therefore be considered by the Court on the merits.

The District Council also criticizes the government for citing evidence submitted in connection with the motion regarding the tenure of former Independent Investigator Walter Mack. That motion, however, was closely related to the government's contempt motion, both in time and subject matter, as both concerned the operation of the Consent Decree's job referral rules and the union's efforts *vel non* to ensure that those rules are enforced and that carpenters are referred to jobs fairly and without improper influence. The motions, too, were directly connected by the testimony of District Council president Peter Thomassen. The Court, therefore, was in no way required to "search the entire record in 90 Cv. 5722." Def. Br. at 7. In any event, the Court

itself apparently had no objection to doing so, as the Order relied on statements from the trial in this case (Order at 3–4), although neither party cited any evidence from that trial in the initial briefing on the instant motion.

Remedies May Be Appropriately Reconsidered

The District Council argues that the government improperly asks the Court to reconsider the remedies sought by the government, as remedies may not be considered before liability. Def.'s Br. at 10–11. This, however, mischaracterizes the government's argument. The Court began its discussion of whether the union was required to notify the government of changes to the job referral rules by describing one of the government's proposed remedies—voiding the provisions of collective bargaining agreements that conflict with the job referral rules—as "startling," a conclusion that apparently informed the remainder of the Court's analysis of the Consent Decree. Order at 21. In its motion for reconsideration, the government argued that had the Court considered the other remedies the government proposed—which would not require abrogation of collective bargaining agreement provisions—the Court might have reached a different conclusion as to the Consent Decree's meaning and effect. Gov't Br. at 10–12. Nothing in this argument requires the Court to consider remedies before liability; in fact, the government argues precisely that the Court erred by doing so.

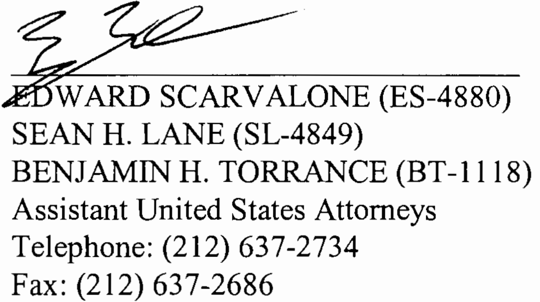
Conclusion

For all of the reasons above, the Court should reconsider the Order.

Dated: New York, New York
March 28, 2006

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: 

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