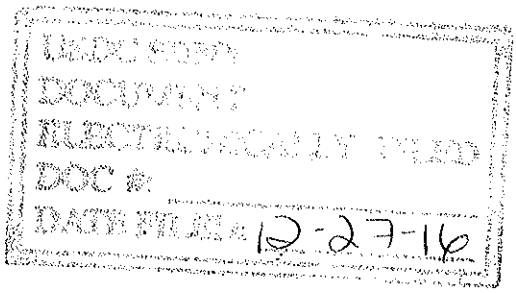

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	88 Civ. 4486 (LAP)
	:	
-against-	:	ORDER
	:	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.	:	
	:	
Defendants.	:	
	:	

LORETTA A. PRESKA, United States District Judge:

Before the Court is the Government's motion to enforce judgment *Final Order of February 17, 2015*, [ECF No. 4525], dated November 3, 2016. The International Brotherhood of Teamsters ("IBT") responded to the Government's motion on November 18, 2016, [ECF No. 4550], and the Government replied on November 30, 2016, [ECF No. 4556].

The Government has moved for an order compelling the IBT to comply with document requests propounded by the Independent Investigations Officer ("IIO") related to ongoing investigations of high-ranking officers of the IBT. In return, the IBT contends that the IIO's document requests were overly broad and that the IIO issued contradictory and confusing instructions to the IBT. Because the Court finds the IBT's arguments lacking a

basis in law under the controlling Final Order, the Government's motion is granted.

The present dispute stems from the IIO's investigations into the receiving of payments and other things of value from IBT employers and vendors by union officers, including Ken Hall, General Secretary-Treasurer of the Union, William C. Smith III, Executive Assistant to the General President, Nicole Brener-Schmitz, formerly the IBT's Political Director, and John Slatery, the IBT Benefits Department Director. (Mot. to Enforce Judgment 1, Nov. 3, 2016, ECF No. 4525.) In connection with this investigation, the IIO submitted notices of examination directing the IBT to produce certain email records. (Id. at 2.) On March 4, 2016, the IIO requested Ken Hall's emails for the period March 1, 2013 to June 30, 2013, and May 1, 2014, to June 30, 2014, William Smith's emails for the period January 1, 2013, through the date of service, and Nicole Brener-Schmitz's emails for the period January 1, 2013, through the date of service. (Id. at 2.) On March 11, 2016, the IIO requested John Slattery's emails for the period June 30, 2014, through the date of service. (Id.).

Over the next several months, the IBT and IIO engaged in extensive and protracted negotiations over the nature and scope of the document requests; they also held one in-person meeting on July 20, 2016, which the IBT's representatives

surreptitiously recorded. (Id.; IBT's Opp. 7, Nov. 18, 2016, ECF No. 4550.) While the IBT did produce several thousand emails responsive to the IIO's requests, (IBT's Opp. 4-5, Nov. 18, 2016, ECF No. 4550), the IBT nonetheless withheld 17,334 emails it deemed unresponsive and 15,278 emails it claimed are privileged. (Mot. to Enforce Judgment 3-4, Nov. 3, 2016, ECF No. 4525.) The IBT's privilege log made only a perfunctory attempt to describe the content of the withheld emails and in numerous instances declined to identify the basis for the claim of privilege. (Id. at 4.)

The IIO's far-reaching authority to conduct investigations of the IBT is well-established. First, the Final Order makes clear that the IIO's authority is co-extensive with the previously existing Investigation Review Board ("IRB"). (Final Order ¶ 30). This Court has held that the IRB's investigative authority is "sweeping" and "defies enumeration." United States v. IBT, 803 F. Supp. 761, 791-92 (S.D.N.Y. 1992), aff'd in relevant part, 998 F.2d 1101 (2d Cir. 1993). Second, as the Government notes, the IIO's power to examine IBT documents is expressly enumerated in the Final Order, which states in pertinent part: the IIO's investigative authority "shall include, but not be limited to, the authority to cause the audit or examination of the books of the IBT or any affiliated IBT body at any time to the extent that the [IIO] may determine

necessary." (Final Order Ex. D at ¶ B.2.a.). The Final Order notably does not provide any exception for documents deemed either unresponsive or privileged by the IBT; indeed, the only limitation contemplated in the text of the Final Order is that the IIO must determine that a review of the records is necessary to the performance of its investigation. Finally, the Final Order makes clear that the IIO has the same "authority that the General President, General Secretary-Treasurer, and General Executive Board are authorized and empowered to exercise pursuant to the IBT Constitution." (Final Order ¶ 30.) Since the IBT's Code of Conduct specifically provides the union with the "right to read all e-mail communications" sent through the IBT's email system, (Decl. of Charles M. Carberry 9-10, Nov. 30, 2016, ECF No. 4557, Ex. 1), the IIO also enjoys this right.

It is therefore clear to this Court that the Final Order does not authorize the IBT to withhold the tens of thousands of emails at issue from the IIO. The IBT's objection to the document requests as overly broad, pursuant to Federal Rule of Civil Procedure 26, is irrelevant because the Court of Appeals has instructed that the Final Order must be strictly construed as a contract. United States v. IBT, 998 F.2d at 1106 ("Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms, and therefore the scope of a consent decree must be discerned within

its four corners, and not be reference to what might satisfy the purposes of one of the parties to it."). Even if the Court were inclined to agree that the IIO's instructions have been unduly contradictory, the Court finds the IIO's documents requests to be perfectly clear at this stage in the dispute and consistent with the Final Order's broad grant of authority to the IIO. Further, after reviewing the IIO's *ex parte* declaration describing the IIO's current investigation, the Court is satisfied that the document requests are necessary for the IIO to carry out its investigation of the high-ranking IBT officials identified above.

The Court therefore reaffirms the Final Order's sweeping grant of authority to the IIO and holds that the IBT may not *sua sponte* elect to withhold whatever documents it deems unresponsive to the IIO's requests. Furthermore, while the IIO has permitted the IBT to withhold privileged documents in previous investigations, the Government asserts—and the IBT does not dispute—that the IIO is under no obligation to do so. The Court finds that the plain text of the Final Order authorizes the IIO to require the IBT to produce privileged documents when doing so is necessary to the performance of its investigation. Additionally, the Court has reviewed the privilege logs that the IBT provided to the IIO. (Decl. of Charles M. Carberry, Nov. 3, 2016, ECF No. 4527, Exs. 13-16.) To the extent that the IBT's

withholding privileged documents from the IIO has become "practice" under the Final Order, the Court finds that the IBT's privilege logs are wholly inadequate for failure to identify either the privilege asserted or the subject matter of the documents and therefore holds that the IBT has waived attorney-client privilege. (See SEC v. Yorkville Advisors, LLC, 300 F.R.D. 152, 167-68 & n.7 (S.D.N.Y. 2014) (collecting cases finding waiver of privilege is appropriate remedy where privilege logs fail to provide sufficient information).)

Finally, the IBT argues in favor of withholding documents because the IIO Chief Investigator, Charles Carberry, is a partner at Jones Day, a firm that purportedly represents clients adverse to the IBT. The Court is unpersuaded. Mr. Carberry has been a partner at Jones Day since 1987 and has investigated IBT corruption since 1989 as the Investigations Officer, then as the IRB's Chief Investigator, and finally as counsel to the IIO. (Gov. Reply Mem. 10, Nov. 30, 2016, ECF No. 4556.) At a minimum, the IBT should have raised this concern during negotiations for the exit of the Consent Decree and entry of the Final Order. The IBT's reliance on New York Rule of Professional Conduct 1.10 regarding imputation of conflicts of interest is perplexing here since the IBT is not a client of either Mr. Carberry or the Jones Day firm. Further, the IBT is well aware that information it produces to the IIO is kept

confidential by the IIO, unless the IIO decides to bring charges for union misconduct. (Transcript of July 20, 2016, Meeting Between the IIO and Union Counsel 10-12 (provided separately to the Court for *in camera* review, see ECF No. 4554).) The Court is therefore satisfied that no conflict of interest exists that should prevent the IBT from producing the requested documents to the IIO.

For the foregoing reasons, the Court grants the Government's motion to enforce judgment and orders the IBT to produce all documents requested in the March 4 and March 11 notices of examination, including the 15,278 emails deemed privileged and the 17,334 emails deemed unresponsive by the IBT, but excluding those documents concerning Ken Hall's negotiations with UPS that the IIO does not seek, within two weeks of the date of entry of this Order. The Court requests that counsel for the IBT assure that adequate preservation orders remain in place, given the delay in making this production.

SO ORDERED.

Dated: New York, New York
December 27, 2016

Loretta A. Preska

LORETTA A. PRESKA
United States District Judge