

**OFFICE OF THE ELECTION ADMINISTRATOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**IN RE: STEFAN OSTRACH and  
JACK MANDARO,  
  
Protestors.**

Protest Decision 2000 EAD 29  
 Issued: October 2, 2000  
 OEA Case Nos. PR081603NA,  
 PR082301AT, PR082501AT and  
 PR03102WE

Stefan Ostrach, a member of Local Union 206 and treasurer of the Tom Leedham Rank & File Power Slate (the “Leedham campaign”), filed two pre-election protests on behalf of himself and the Leedham campaign pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”) against the Hoffa 2001 Unity Slate (the “Hoffa campaign”). Ostrach contends that the Hoffa campaign’s distribution by facsimile to local unions and other IBT subordinate bodies of communications concerning the distribution and solicitation of slate accreditation petitions in August 2000 for the Hoffa campaign constitutes an impermissible use of union resources in violation of Article VII, Section 11(c) of the *Rules*. Among other remedies, the Ostrach protests seek “disallow[ance]” of all of the Hoffa slate petitions.

Jack Mandaro, secretary-treasurer of Local 95, filed two pre-election protests pursuant to Article XIII, Section 2(b) of the *Rules* against the Hoffa campaign. His protests allege a violation of Article VII, Section 11(c) of the *Rules* through the facsimile transmission to Local 95 of accreditation petitions for individual candidates on the Hoffa slate and “updates with respect to the progress of [petition] signature gathering.”

Neither the Ostrach nor Mandaro protests allege that the Hoffa campaign sent any slate petitions by facsimile to IBT local unions and other subordinate bodies, nor was evidence offered by any party that the facsimile transmission of Hoffa slate petitions occurred.

The distribution of individual candidate accreditation petitions was the subject of prior decisions of the Election Administrator in 2000 EAD 8 and 24 and of the Election Appeals Master in 00 EAM 2. An appeal from the decision of the Election Administrator in 2000 EAD 24 is now pending before the Election Appeals Master. Those decisions resolve that portion of the Mandaro protests that challenge the facsimile distribution to subordinate bodies of individual candidate accreditation petitions.

For the reasons stated below, we find that the remaining conduct of the Hoffa campaign found here violates Article VII, Section 11(c) of the *Rules*, as well as the provisions of Section 401(g) of the Landrum-Griffin Act, which are incorporated in Article XII of the *Rules*. Also for the reasons set forth below, we decline the request of the Leedham campaign (through protestor Ostrach) that we remedy the Hoffa campaign’s violation of Article VII, Section 11(c) and Article XII of the *Rules* by the disallowance of their slate petitions. Instead, we order the remedy set forth at the conclusion of this decision.

### **Findings of Fact**

*Faxes admittedly sent by the Hoffa campaign – manner of transmission.* On August 25, 2000, the Election Administrator requested that the Hoffa campaign provide certain information related to these protests. The Hoffa campaign responded on September 6, 2000. In its response, the Hoffa campaign provided three Hoffagrams identified as “Issue 1 August 2000”, “Issue 2 August 2000”, and “Issue 3 August 2000” (collectively the “August Hoffagrams”). Copies of the August Hoffagrams submitted by the Hoffa campaign are attached to this decision as Appendices A, B and C. These are the same Hoffagrams as attached to the protests filed by Ostrach.

In its September 6, 2000 response, the Hoffa campaign stated that the August Hoffagrams were transmitted by facsimile to those IBT subordinate bodies whose facsimile numbers are listed on Appendix D hereto, which is a master list of fax numbers maintained and supplied by the Hoffa campaign. The September 6, 2000 letter contained the representation of counsel for the Hoffa campaign that “I have been informed that the Hoffagrams were faxed to all Teamster subordinate bodies in the International.” The Hoffa campaign further states that the August Hoffagrams are the only materials that it has transmitted by facsimile to IBT subordinate bodies since August 1, 2000.

The Hoffa campaign’s September 6, 2000 response also stated that “[t]he Hoffa campaign is unaware as to which subordinate bodies maintain campaign literature tables or racks. The Hoffa campaign is also unaware as to which subordinate bodies have adopted policies governing the distribution of campaign material.” Todd Thompson, the Hoffa campaign’s volunteer campaign manager, also stated in a subsequent interview with the staff of the Election Administrator that the Hoffa campaign was not aware of which IBT subordinate bodies, if any, maintained campaign literature tables or had policies governing the distribution of campaign literature.

On September 13, 2000, the Election Administrator requested further information from the Hoffa campaign concerning these protests. The Hoffa campaign replied on September 22, 2000. The Election Administrator had asked the campaign why certain IBT subordinate bodies with fax numbers were not included on the master list of fax numbers produced by the campaign in the form of Appendix D hereto.<sup>1</sup> The campaign’s September 22 response identified two reasons for the exclusion:

---

<sup>1</sup> The IBT publishes a “Roster” listing its subordinate bodies, their addresses, principal officers, phone numbers and fax numbers (if any). Twenty-two local unions and one joint council with fax numbers printed in the April 1, 2000 Roster are not included on the Hoffa campaign’s master list of fax numbers used by it to send the August Hoffagrams to IBT subordinate bodies. (Separately, twenty-nine locals and three joint councils have no fax numbers printed in the Roster. Three of these locals have fax numbers printed on Appendix D. Seven other locals have fax numbers on Appendix D different from their fax number in the Roster. Appendix D contains fax numbers for 492 local unions and 40 joint councils, including 8 joint councils listed under the same fax number as a local. Two of the locals on Appendix D do not appear in the April 1, 2000 Roster, and are presumably new locals.)

October 2, 2000

The reason that some subordinate bodies are not listed, I have been informed, is two-fold. The Campaign did not fax materials to obvious opposition bodies and, secondly, if a Teamster official held more than one position, e.g., president of a local union and head of a joint council, materials were not faxed to both offices.

The campaign's volunteer campaign manager repeated this in a subsequent interview with the staff of the Election Administrator.<sup>2</sup>

Further, upon request of the Election Administrator, counsel for the Hoffa campaign identified Locals 174, 206, 325, 610, 722, and 1150, and Joint Councils 13 and 87 as those that were excluded from the Appendix D fax master list because they were "obvious opposition bodies."<sup>3</sup> (Counsel also identified eight pairs of local unions and joint councils as bodies that have the same principal officer and (with one exception) share the same fax number. Each pair is listed on Appendix D and is indicated as such in the far left column of that document. For example, the notation "0020/JC 44" on Appendix D indicates Local 20 and Joint Council 44,

---

<sup>2</sup> As to the second of these two reasons, the staff of the Election Administrator compared the fax numbers of the eight local unions and eight joint councils jointly listed with one fax number on Appendix D. Our examination of the IBT's April 1, 2000 Roster revealed that, contrary to the belief of the Hoffa campaign's counsel, as indicated by his statement concerning the Hoffagrams "not being faxed to both offices", all but one of these paired locals and joint councils shared the same fax number. (In the one instance where a local and joint council jointly listed on Appendix D had separate fax numbers, the number on Appendix D is the fax number of the local union.)

<sup>3</sup> The candidates on the Leedham slate as stated in its August 8, 2000 Declaration of Affiliations with a Slate form were Tom Leedham from Local 206, Ashley McNeely from Local 2000, John Metz from Local 610, Willie Smith, Jr. from Local 413, Cliff Chetnik from Local 325, Mark Serafinn from Local 722, Tom Gilmartin from Local 559, Bob Hasegawa from Local 174, Maria Martinez from Local 556, Howard Rempfer from Local 439, Willie Hardy from Local 667 and Jeff Cederbaum from Local 1150. Leedham, Metz, Chetnik, Serafinn, Gilmartin, Hasegawa, Rempfer and Cederbaum are all listed in the April 1, 2000 Roster as the principal officers of their locals. Willie Smith is the secretary-treasurer of Local 413. None of the locals of these officers have fax numbers printed on the Hoffa campaign's master fax number list. (Appendix D) (Metz is also the principal officer of Joint Council 13, which likewise is not listed on Appendix D.) Fax numbers for Locals 556, 667 and 2000 do appear on that list. However, Local 556 was under trusteeship by the International Union during most of August 2000, and Maria Martinez was not a local officer. (See 2000 EAD 25.) At Local 667, Willie Hardy is not an officer, executive board member or staff member of his local, and does not work at the local union office at which the local's fax machine is located. Ashley McNeely, the Leedham slate candidate from Local 2000 (which represents Northwest Airline employees nationally), is on the staff of the local, but is based in Honolulu. The local's headquarters and the fax machine with its number listed on Appendix D are in Bloomington, Minnesota. (Dotty Malinsky, a candidate on the Hoffa slate, is a member of Local 2000, and is an International Vice-President.) Lastly, Joint Council 87 has no fax number listed in the April 1, 2000 Roster, while all joint councils with fax numbers listed in the Roster are included on Appendix D (either individually or jointly with a local), save Joint Council 13. Counsel for the Hoffa campaign stated that the campaign could not presently provide an explanation for the exclusion from Appendix D of other locals that have a fax number in the Roster. (The locals having fax numbers as to which no explanation for exclusion was provided by the Hoffa campaign appear to be Locals 9, 296, 413, 420, 439, 444, 534, 559, 582, 617, 680, 918, 1081, 1224, 1717, and 1880, three of which are discussed above in this footnote with reference to the Leedham slate. We note that Local 534's fax number is a non-dedicated line, and this may explain its exclusion.)

October 2, 2000

which (according to the Roster) share fax number 419-243-6270 and are both headed by Lester A. Singer. Each of the eight paired locals and joint councils listed on Appendix D received the August Hoffagrams at their shared fax machine, with the exception of Local 783 and Joint Council 94, where the Hoffagrams were sent to the Local's fax number.)

As to each of the August Hoffagrams, Hoffa campaign manager Thompson stated that no fax cover sheet or other documents accompanied the Hoffagrams reproduced as Appendices A, B and C hereto.<sup>4</sup> Further, Thompson admitted in his interview that the Hoffa campaign had never offered to reimburse local unions for the cost of any local union copying of any of the campaign literature faxed to them, including any copying that might be done so as to allow multiple copies of the campaign literature to be placed on local union campaign literature distribution tables.

*Faxes admittedly sent by the Hoffa campaign – survey by Election Administrator staff.* After receipt of the initial Ostrach protest, the Election Administrator directed his staff to conduct a survey of randomly selected IBT locals concerning this matter. Ninety-three randomly selected locals were successfully contacted.<sup>5</sup> Of these, all but three were listed on Appendix D.<sup>6</sup> We can summarize their responses as follows:

- Thirty-two locals admitted that they had received the August 2000 Issue 1 Hoffagram by facsimile.
- Forty other locals either denied receiving the August 2000 Issue 1 Hoffagram by facsimile or were unsure whether they had received it in that manner.<sup>7</sup>
- Sixteen of the contacted locals either stated that it was likely that they had received the August 2000 Issue 1 Hoffagram by facsimile or were unsure whether

---

<sup>4</sup> During the investigation which culminated in our decision in 2000 EAD 8, Thompson acknowledged that the campaign materials which were the subject of that decision were also sent out without any fax cover sheets or any documents other than those discussed in that decision. Thompson reaffirmed this during our investigation of this matter. (On September 22, 2000, despite the Hoffa campaign's admission during the *Schaffer* investigation that "the items set forth in Mr. Schaffer's [protest] were indeed faxed to most of the locals throughout the country," the Hoffa campaign stated that it did not fax the June 10, 2000 "Dear Teamster" letter referred to in the *Schaffer* protest in PR071301NA and in 2000 EAD 8. The Hoffa campaign now states that it instead faxed subordinate bodies a second copy of its June 10, 2000 "Dear Teamster Leader" along with the "Jim Hoffa wants your help" flyer referred to in the *Schaffer* protest and in 2000 EAD 8. The campaign states that this second copy of the June 10, 2000 "Dear Teamster Leader" letter was also accompanied by two petitions, one in blank and the other printed with Mr. Hoffa's name on it, but with the name of the candidate and the position sought not vertically aligned. None of these parenthetical details affects the resolution of the instant protest, nor the result reached in *Schaffer*, given the conditional accreditation of Mr. Hoffa's candidacy on the basis of slate petitions.)

<sup>5</sup> The IBT's Roster lists 538 affiliated local unions and 43 affiliated joint councils.

<sup>6</sup> Of these three locals, two have no fax number listed in the April 1, 2000 IBT Roster. One has an undedicated fax line listed there.

<sup>7</sup> Included in these forty locals are the two surveyed locals with no fax numbers listed in the IBT roster.

October 2, 2000

they had received this particular Hoffagram by facsimile, while at the same time conceding that they had received other Hoffa campaign materials by facsimile.<sup>8</sup>

- Three locals stated that they did not receive the August 2000 Issue 1 Hoffagram by facsimile at the local, but that it was instead sent to the home of one of their officers or staff.<sup>9</sup>
- One local stated that it had refrained from receiving Hoffa campaign materials via facsimile because its principal officer was a candidate for International office on the Hoffa slate.<sup>10</sup>
- One local would not cooperate.

Among these ninety-three locals, virtually all of those that admitted facsimile receipt of the August 2000 Issue 1 Hoffagram conceded that the facsimile had been or would have been retrieved from the fax machine by a clerical employee, officer or staff member during paid union time. The locals that admitted receipt of this facsimile transmission virtually all reported that the document was or would have been given to the local's principal officer during paid union time for review. With but three exceptions, those locals that conceded that such a review had or would have occurred stated that after review, the principal officer either had or would have destroyed the document or filed it, and that it was not distributed to or shared with anyone.<sup>11</sup> Each local union that admitted to receipt of the facsimile denied that it had been copied or otherwise reproduced for distribution to the membership, either on a campaign literature table or otherwise. Five locals stated that they had campaign literature tables at their local union halls, while one local stated that it allowed campaign materials to be placed on its bulletin board. Two other locals reported that they had such tables in past elections, and two were not sure if they would allow campaign materials to be placed on their table or rack containing general union literature. However, none of the locals that were contacted placed the August 2000 Issue 1 Hoffagram on a campaign literature table or bulletin board at the local.

*Faxes admittedly sent by the Hoffa campaign – content.* The three August Hoffagrams are each one page in length. Issue 1 is entitled "Hoffa Unity Slate Petition Drive Enters Final Stage." As do all the August Hoffagrams, it lists the candidates on the Hoffa slate. It discusses the fact that there are three weeks left in the Hoffa campaign's accreditation petition drive, directed to qualifying the Hoffa slate for "battle page" space in the October 2000 issue of *The Teamster*. It states that the campaign "has produced a new one-page Slate Petition to simplify

---

<sup>8</sup> Of that number, all are listed on Appendix D, except for the local with the undedicated fax line.

<sup>9</sup> In each such case, the local union's fax number is listed on Appendix D.

<sup>10</sup> That local's fax number is listed on Appendix D.

<sup>11</sup> Two of the locals that admitted receipt of the August 2000 Issue 1 Hoffagram stated that it was copied by the local's clericals on the union's copier and distributed to the local's business agents, in the same manner as all other facsimiles received by the local. One local which stated that it was likely that it had received the August 2000 Issue 1 Hoffagram stated that in that case it would have been taken by the principal officer from the local, copied during non-work time by the officer at his own expense, and given to interested business agents, who would have been admonished not to distribute the copies to members while on union time.

October 2, 2000

the process.” It further states that “Hoffa Unity Slate supporters should now use only the one-page Slate Petition for their individual region.” It directs readers to the campaign’s office and/or website for copies of the slate petition. It states that the petitions are legal size, and that supporters should “go out and purchase legal size paper to print out the documents from the website.” Further instructions on how to circulate petitions, gather signatures and transmit signed petitions to the Hoffa campaign’s headquarters are included, and readers are reminded that petitions must be received by the Hoffa campaign by August 25, 2000. At the bottom of the Hoffagram appears the following in bold face italic type: “Union resources may not be used to copy this document. Campaign literature may be distributed by a local union only in a nondiscriminatory manner through the use of a literature table open to all candidates.”

Issue 2 of the three August Hoffagrams is entitled: “Attention All Hoffa Supporters[.] Hoffa Slate Campaign Wins Major Victory in Petition Challenge[.]” The Hoffagram then goes on to discuss the Election Appeals Master’s decision in 00 EAM 2 (*Schaffer*). The Hoffagram states “this decision means that most, if not all, of the petitions will be accepted when we turn them in to the Election Officer. In the meantime, all supporters are encouraged to continue circulating the one-page Slate Petition so we can assure that all Hoffa Unity Slate candidates become accredited. This will enable us to get the maximum number of pages for the October Teamster magazine.” The bold face, italicized language appearing on Issue 1 of the August Hoffagrams also appears on this document.

Issue 3 of the three August Hoffagrams is titled: “Attention All Hoffa Supporters[.] Hoffa Unity Slate Close to Signature Goal; Supporters Urged to UPS Next Day Air Petitions[.]” This Hoffagram urges readers to send signed petitions to campaign headquarters in the manner indicated and “thanks each and every member for their hard work and effort to make this petition drive such a huge success.” The bold face, italicized language appearing on Issue 1 of the August Hoffagrams also appears on this document.

No other Hoffagrams were faxed by the Hoffa campaign to local unions during August 2000. No cover sheets or other documents accompanied the fax transmissions of these Hoffagrams.

*Faxes claimed by Ostrach to have been faxed by the Hoffa campaign.* Attached to the protest in Case No. PR083102WE are two one-page documents that the Leedham campaign claims were transmitted by the Hoffa campaign to certain IBT locals in the Midwestern United States. Copies of the documents are attached hereto as Appendices E and F. Each document is on plain, no-letterhead paper. The documents are in memorandum form and addressed simply to “Officers.” Both are dated “8/17/00.” Both state “Re: SIGNED PETITIONS.” The first of the two documents is entitled “Important Memorandum.” The second is entitled “CORRECTED Memorandum.” The first document says: “PLEASE NOTE PETITIONS ARE DUE IN D.C. THURSDAY 8/24/00 NOT FRIDAY[.]” The second memorandum states: “CORRECTION PETITIONS ARE DUE IN CAMPAIGN OFFICE 6811 W. ROOSEVELT RD. THURSDAY 8/24/00 NOT FRIDAY[.]”

The Hoffa campaign maintains a campaign office staffed by volunteers at 6811 W. Roosevelt Rd. in Chicago, Illinois. According to a campaign volunteer that is responsible for the operation of the office, the office has a telephone and a fax machine. This volunteer and the

October 2, 2000

Hoffa campaign generally deny any knowledge of Appendices E and F, and they deny that they were faxed by the Hoffa campaign to any local unions. The evidence provided by the Leedham campaign is that these documents were received by at least one local union in the Midwest by facsimile. However, the fax machine logs of the local did not indicate the source of the fax transmission of these documents, and the source does not appear on the face of the documents themselves. The Election Administrator has requested that the Hoffa campaign provide it with copies of the telephone bills for the telephone and fax telephone line for its Roosevelt Road office for August 2000. As of the issuance of this decision, some bills have been provided, but the telephone bills for the last half of August 2000 are not yet available.<sup>12</sup>

### **Analysis and Conclusion**

For the reasons discussed below, we conclude that the Hoffa campaign's conduct here violates the provisions of the *Rules* that prohibit the use of union resources for campaign purposes. We do not, however, approve the remedy sought by the Leedham campaign, also for the reasons discussed below. Our analysis proceeds in three parts. In Part 1 we analyze those principles of federal law and the *Rules* which govern the resolution of this case. In Part 2 we apply those principles to the facts of this case. Finally, in Part 3 we address what remedy is appropriate on the facts of this case.

#### *1. Applicable Principles.*

Article VII, Section 11(c) of the *Rules* states the basic prohibition against use of union resources for election campaign purposes:

Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.

Article XII of the *Rules* incorporates several provisions of the LMRDA that bear on the use of union resources for campaign purposes. It provides in pertinent part:

The following sections of the Labor-Management Reporting and Disclosure Act of 1959, as amended ("LMRDA"), 29 U.S.C. Sections 401-531 (1988) are incorporated into and made a part of these *Rules*:

---

<sup>12</sup> The Election Administrator has decided to sever the Leedham campaign's protests concerning the alleged fax transmission of Appendices E and F, pending further investigation. That aspect of the Leedham campaign's protest will be resolved in a later decision. We have taken this step, rather than refraining from issuing a decision on other issues, due to the need to decide this case and the appropriateness of the Leedham campaign's request that the Hoffa campaign's slate accreditation petitions be invalidated sufficiently prior to the deadline for the press run of the October 2000 issue of *The Teamster* to allow an opportunity for appeal from this decision. As discussed below, we have denied the Leedham campaign's requested remedy. Moreover, and for the same reasons as discussed below in Part 3, we would still deny that remedy even if we were to find that Appendices E and F were faxed by the Hoffa campaign to certain IBT local unions.

\*\*\*

- LMRDA Section 401(c) (distribution of campaign literature; prohibition against discrimination in use of membership list; inspection of membership list; safeguards to insure fair election);  
\*\*\*
- LMRDA Section 401(g) (prohibition on use of union or employer assistance in campaigning); \*\*\*

LMRDA Section 401(g) provides that:

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in any election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary to the holding of an election.

29 U.S.C. §481(g). LMRDA Section 401(c) provides in pertinent part that labor organizations:

shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor or against any candidate with respect to the use of lists of members, and whenever such labor organization[ ] or its officers authorize the distribution by mail or otherwise to members of campaign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution.

29 U.S.C. §481(c).

Section 401(g)'s prohibition of use of union resources is sweeping, and the federal courts have held that there is no *de minimus* exception to this prohibition. "The legislative history of the Act does not indicate that Congress intended to place a limit on the amount that a union might lawfully spend to aid a candidate for office or that it meant to encourage troublesome factual disputes over how much (or little) money constitutes a '*de minimus*' amount; and the language of the provision itself is clear and unambiguous. It provides in terms that 'no moneys' of a union shall be spent to promote the candidacy of any person for union office." *Shultz v. Steelworkers Local 6799*, 426 F.2d 969, 972 (9<sup>th</sup> Cir. 1970)(rerun election ordered), *aff'd on*



October 2, 2000

*other grounds*, 403 U.S. 333 (1971). *Accord*, *Donovan v. Metropolitan Council of Carpenters*, 797 F.2d 140, 145 (3d Cir. 1986) (“An expenditure of any size may constitute a violation”); *Brock v. UAW*, 682 F.Supp. 1415, 1428-29 n. 15 (E.D. Mich. 1988)(rerun election ordered), *vacated as moot*, 889 F.2d 685 (6<sup>th</sup> Cir. 1989); *Donovan v. UAW Local 719*, 561 F.Supp. 54, 57 (N.D. Ill. 1982)(rerun election ordered).

As a result of these principles, Section 401(g) violations have been found when union facilities or resources have been used to store campaign literature or to prepare and duplicate such literature.<sup>13</sup> Similarly, the use of union clerical staff to type campaign materials or the expenditure of union funds to finance even small campaign trinkets, such as pens, violates Section 401(g).<sup>14</sup> Decisions under the IBT’s election rules have faithfully followed these principles.<sup>15</sup>

With respect to the distribution of campaign literature, however, Section’s 401(g)’s strictures must be viewed in light of the campaign literature distribution provisions of Section 401(c). Thus, as expressed by the United States Department of Labor:

The Act imposes the duty on the union and its officers to comply with all reasonable requests of any candidate to distribute his campaign literature to the membership at his expense. When the organization or its officers authorize distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions must be made for any other candidate, if he requests it.

...

29 CFR §452.67.<sup>16</sup>

The Labor Department’s regulations make clear that Section 401(c)’s provisions for campaign literature distribution are invoked when a candidate makes a *request* for campaign literature *distribution at the candidate’s expense*. Thus, 29 CFR §452.69 provides that “[e]ach candidate must be treated equally with respect to the expense of such distribution. Thus, a union must honor a candidate’s *request for distribution where the candidate is willing and able to bear*

---

<sup>13</sup> See *Hodgson v. Mine Workers*, 344 F. Supp. 17 (D.D.C. 1972); *Usery v. Stove, Furnace & Allied Appliance Workers*, 547 F.2d 1043 (8<sup>th</sup> Cir. 1977); *Shultz v. Steelworkers Local 6799*, *supra*, 426 F.2d at 972-73.

<sup>14</sup> See *Hodgson v. Mine Workers*, *supra*; *Brock v. UAW*, *supra*, 682 F.2d at 1429; *Shultz v. Steelworkers Local 6799*, *supra*.

<sup>15</sup> See *Kitchen*, P139 (October 23, 1995)(fax transmission of campaign letter and accreditation petition from one local union to another); *Olson*, P172 (November 1, 1995) (“The use of the union telephone was limited to conversations of short duration. Only a modest deviation from Mr. Mack’s customary duties were caused by the calls. The use of union telephone equipment to assist in campaigning during work time, even when such activity is not consequential in terms of time, however, violates the *Rules*.”)

<sup>16</sup> The regulation also provides that “[i]n order to avoid charges of disparity of treatment among candidates, it is advised that a union inform all candidates in advance of the conditions under which distribution will be made and promptly advise them of any change in those conditions.”

*the expense of such distribution.*” (Emphasis supplied.)<sup>17</sup> This Labor Department regulation also states that “labor organizations have an affirmative duty to comply with all reasonable *requests* of any candidate *to distribute* campaign literature (*at the candidate’s expense*) [and that] a union rule refusing all such distributions would not be proper, even though applied in a nondiscriminatory fashion.” *Id.* (Emphasis supplied.)

The *Rules* are consistent with Section 401(c) and (g) and the Labor Department’s regulations.

Thus, as previously noted, Article VII, Section 11(c) of the *Rules* generally prohibits the use of union resources for campaign purposes. Section 11(c) states one exception, *viz.*, when, under provisions adopted by an IBT affiliate and made known in advance in writing to all candidates, union resources are made available equally to all candidates with the proviso that the candidates will reimburse the union at fair market value for the assistance provided. Similar prohibitions against use of union resources for campaign purposes are stated in Article XI, Section 1(b)(3) and (6) of the *Rules*.

Article VII, Section 7 of the *Rules* is the analog to LMRDA Section 401(c)’s literature distribution provisions. It provides:

7. Candidate Literature and Mailings

(a) The following rules shall govern the publication and distribution of candidate literature:

(1) Each candidate *shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the Union, at the candidate’s expense.* This means: (a) each candidate is entitled to a reasonable number of mailings, whether or not any other candidate makes such request(s); (b) when the Union authorizes distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions and costs shall be made for any other candidate, if requested; and (c) the Union need not distribute any candidate’s campaign literature if that candidate is not able

---

<sup>17</sup> 29 CFR §452.69 also states that a union may, if it chooses, bear the cost for distribution of candidate campaign literature, provided that such subsidization is afforded equally to all candidates. *See also* 29 CFR §452.73, which concerns the prohibitions of Section 401(g) against use of union resources for campaign purposes, and provides that a union can, without violating Section 401(g), “assum[e] the cost of distributing to the membership on an equal basis campaign literature submitted to the union by the candidates pursuant to the [distribution] rights granted by section 401(c)...” However, Article VII, Section 11(c) of the *Rules* makes that option unavailable for IBT locals even where equal access to assistance is afforded, since it requires, without exception, that candidates reimburse local unions at fair market value for any assistance provided.

and willing to pay for the reasonable costs of such distribution.

(2) The Union shall honor requests for distribution of literature to only a portion or segment of the membership, as determined by the candidate, unless the Union can show such distribution is impracticable.

(3) The Union shall honor requests for distribution of literature by any lawful class or type of mail or postage, including, to the extent permitted by postal regulations, utilization of any non-profit organization bulk-rate permit of the International or Local Union or any other subordinate body of the Union utilized by the Local Union. All literature distributed through use of the nonprofit organization bulk-rate permit shall clearly state that it is campaign literature, the contents of which are not endorsed by the Union.

(b) Any request for distribution of literature shall be made by the candidate to the Secretary-Treasurer of the Union in writing. The request shall specify the portion of the membership that is to receive the mailing and an instruction as to the class or type of mail or postage desired. The request shall be accompanied by at least one (1) copy of the literature (if the candidate wishes it to be duplicated by the Union) or by a number of copies sufficient for distribution (if the candidate duplicates the literature him/herself), or by a number of sealed envelopes, containing the literature, sufficient for distribution (if the candidate duplicates the literature and stuffs the envelopes him/herself).

(c) *Each candidate shall pay, on a reasonable basis, for the actual cost of distribution, including stationery, duplication, time required to do the work and postage for mailing,*

(d) In complying with requests to mail literature, the Union shall use the current names and addresses that are on file for all relevant members in good standing. Mailing labels shall be prepared through the least expensive system available to the Union.

(e) The Union shall exercise all reasonable efforts to ensure that each candidate's campaign literature is processed and distributed in a complete and prompt manner.

(f) The Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's literature on the basis of its contents.

(g) The Union shall adopt procedures for complying with candidates' requests for distribution of literature and shall specifically advise all candidates of those procedures. The Union shall arrange for a mailing service to process and

distribute candidates' literature, and for such mailing service to receive the literature directly from the candidate. The mailing service shall not discriminate for or against any candidate.

(Emphasis supplied.)

As does LMRDA Section 401(c), Article VII, Section 7(b) makes clear that the provisions of the *Rules* for campaign literature distribution are invoked only when a candidate makes a *request* for campaign literature *distribution to the membership at the candidate's expense*. Thus, Section 7(a)(2) and (3) and 7(b), (d) and (g) of Article VII of the *Rules* each refer to "requests" by candidates to the union for such campaign literature distribution. Article VII, Section 7(b) provides that "[a]ny requests for distribution of literature shall be made by the candidate to the Secretary-Treasurer of the Union in writing."<sup>18</sup> And read together these provisions make it clear what these requests must seek: distribution of a candidate's campaign literature to the union's membership at the candidate's expense. Thus, several elements are required to invoke the Section 401(c)-based exception to the Section 401(g)-based prohibition against the use of union resources for campaign purposes. First, the exception is invoked only when a *request* is made by the candidate. Second, that request must seek *distribution by the union of campaign literature*. Third, that request must seek distribution of such literature *to the membership*. And finally, the requested distribution must be *at the candidate's expense*.

Thus, the Election Officer's decision in *Committee to Elect Ron Carey*, P512 (March 28, 1991), addressed *requests* by candidates for *distribution of campaign literature to the union's membership*, and speaks to such *requests* as invoking the right of a candidate, ultimately founded on LMRDA §401(c), to seek such distribution. In that case, the Election Officer considered the propriety of the Durham/Mathis slate's "bulk distribution of campaign literature to IBT Local Unions with the *request* that the literature *be distributed by the Local Unions to IBT 'leaders, stewards and members.'*" (Emphasis supplied.) The campaign had sent locals a memorandum with certain of its campaign materials that said, "we hope you will distribute [the literature] to Teamster Union leaders, stewards, and members of your local union." However, as the Election Officer found, "[n]o instructions were included in the mailings regarding the manner in which the literature was to be distributed" to union leaders, stewards and members, nor was there any "set procedure followed by the Local Unions regarding the distribution of the Durham/Mathis literature." The protest did "not allege that the literature was distributed by the Local Unions in any particular manner."<sup>19</sup>

---

<sup>18</sup> The *Rules* define "Union" as referring both to the International and its affiliated subordinate bodies, "unless explicit distinction is made." *Rules*, p. 10. The above quoted declarative sentence in Article VII, Section 11(b) is followed by a discussion of how requests for mailings of candidate campaign literature must be made. Given its context, it is unclear whether the first sentence of Section 11(b) requires requests for candidate distributions generally to be made in writing to the union's secretary treasurer, or whether this requirement only applies to requests for mailing of literature. But it is clear that campaigns must request campaign literature distribution and that such requests must be for distribution to the membership at the campaign's expense.

<sup>19</sup> Unlike here, in *Committee to Elect Ron Carey* the Durham /Mathis campaign sent multiple copies of its campaign literature to locals (between 100 and 2000 copies per local).

October 2, 2000

The Election Officer held that “the Election Rules are not violated when a candidate *asks* a Local Union to distribute campaign literature [because t]he distribution of campaign literature is an appropriate means of apprising Union members about the candidates and the issues on which they will be voting and is encouraged under the Election Rules.” (Emphasis supplied.) However, quoting Article VIII, Section 6(a)(1) of the Election Rules’ provision that “each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the Union, *at the candidate’s expense*” (emphasis supplied), and Article VIII, Section 10(c)’s provision that “all candidates [must be] notified in advance of the availability of [union] goods and services,” the Election Officer held that:

all Local Unions that distributed Durham/Mathis literature must provide similar distribution for any other candidate, group of candidates or slate *that makes a similar request*. A failure by a Local Union to honor *requests* for the distribution of campaign literature in the same manner, and to the same extent, that it distributed the Durham/Mathis literature will constitute a violation of the Election Rules.”

(Emphasis supplied.)

The Election Appeals Master’s recent decision in *Schaffer*, 00 EAM 2 (August 17, 2000), is consistent with the foregoing. Thus, the Election Appeals Master acknowledged the validity of the analysis of the Election Rules contained in *Buck*, P919 (November 5, 1996), *aff’d* 96 EAM 274, where “[t]he Election Officer ... drew a distinction between materials intended by candidates for distribution within the premises of the Local Union and materials intended by candidates for distribution outside the premises of the Local Union.” 00 EAM 2, pp. 6-7. The Election Appeals Master quoted with approval the following discussion in *Buck*:

The Election Officer will require all candidates sending literature to IBT locals for distribution to advise them, in writing, that campaign literature may be distributed only in a non-discriminatory manner through the use of a literature distribution table open to all candidates. The Election Officer recognizes that the Hoffa Campaign, and perhaps other campaigns as well, has sent literature to supporters in a local union for distribution outside the confines of the local union. The Election Officer finds that literature destined for this type of distribution must be sent to a supporter’s home address or to a campaign address. In that way, all questions about the storing of campaign material and other improper uses of union resources will be avoided.

00 EAM 2, p. 7, quoting *Buck*, *supra*, at p. 9. As the quoted discussion shows, the transmission of campaign material to a local union is valid when that transmission has as its purpose the *local’s further distribution of that material to the membership*.

The Election Appeals Master’s decision in *Schaffer* also establishes his approval of another limit imposed by the *Rules* on transmission of campaign materials to local unions. Thus, as held by the Election Appeals Master, the above-quoted language from *Buck* also requires that campaigns refrain from sending campaign materials to local unions which are intended “for distribution outside the confines of the local union...” and holds “that literature destined for this

October 2, 2000

type of distribution must be sent to a supporter's home address or to a campaign address." 00 EAM 2, p. 7. Based on this holding, the Election Appeals Master affirmed that portion of the Election Administrator's holding in *Schaffer*, 2000 EAD 8 (August 1, 2000), which ruled that, because election accreditation petitions were by their nature intended for "distribution outside the confines of the local union", they were improperly sent by facsimile transmission to local unions:

All that need be established under *Buck* is that the nature and purpose of the campaign materials transmitted were consistent with the circulation at large of accreditation petitions beyond the confines of the Union premises. The record here is unmistakably and irrefutably clear that that was both the purpose and the consequence of the broadcast faxing done by the Hoffa campaign. Accordingly, the protest was properly granted and this part of the Decision is affirmed.

00 EAM 2, p. 9. This holding is again consistent with the foregoing analysis of LMRDA Section 401(c) and (g), and the provisions of the *Rules* that are their analogs. Campaign literature can be sent to local unions by election campaigns, provided that the candidate requests that the literature be distributed to the membership by the local union, at the campaign's expense, and provided further that the materials that are sent to the local union are intended for campaign literature table distribution and are not intended "for distribution outside the confines of the local union." 00 EAM 2, p. 7, quoting *Buck*.<sup>20</sup>

We now apply these principles to the facts before us.

## 2. *The Present Case.*

For the reasons we now discuss, we find that the three August Hoffagrams to local unions were not campaign materials sent to local unions with the request that they be distributed to the local union's membership, at the Hoffa campaign's expense, via campaign literature tables maintained by local unions. Because the campaign caused the use of union resources to promote the Hoffa slate candidacies by facsimile transmission of these documents to local unions, and because that use of union resources was not privileged by the campaign literature distribution provisions of the *Rules* and the LMRDA, we find that the facsimile transmission of these three documents in August 2000 was contrary to Article VII, Section 11(c) and Article XII of the *Rules*, as it incorporates Section 401(g) of the LMRDA. We set forth our reasons for this conclusion in this part of our decision.

We start, however, by rejecting a major contention of the Leedham campaign's protests. That campaign argues that the three August Hoffagrams are facially inappropriate for transmissions to local unions under the Election Appeals Master's holding in *Schaffer*, 00 EAM 2, *supra*. The campaign notes that the facsimile transmission by the Hoffa campaign of election accreditation petitions was held improper in the Election Appeals Master's *Schaffer* decision, and argues that the August Hoffagrams must also be held improper because their purpose was to

---

<sup>20</sup> Candidate requests for local union mailings of campaign materials are, of course, covered by the provisions of Article VII, Section 7 of the *Rules* quoted at pages 10-11 above. The decision of the Election Appeals Master in *Schaffer* does not address those provisions.

October 2, 2000

instruct Hoffa campaign supporters concerning both the solicitation of petition signatures and the manner in which completed petitions should be returned to the campaign's offices.

As discussed above in Part 1, however, the Election Appeals Master's invalidation of the transmission of election accreditation petitions to local unions in *Schaffer* was based upon the finding that, by their nature, the election accreditation petitions themselves were not transmitted to local unions for campaign table distribution, but were instead transmitted to local unions for distribution "beyond the confines of the Union premises." 00 EAM 2, p. 9. The same conclusions cannot be reached from a facial analysis of the three August Hoffagrams.

As held in 00 EAM 2, election accreditation petitions, by their nature, are destined for distribution beyond the confines of the local union. This is because the purpose of such petitions is that they be signed by the membership, and because, in order to accomplish this, such petitions must be circulated among the membership at their workplaces and homes. That is why the Election Appeals Master held in *Schaffer* that the "record here is unmistakably and irrefutably clear that that was both the purpose and the consequence of the broadcast faxing [of the accreditation petitions] done by the Hoffa campaign." 00 EAM 2, p. 9.

The same conclusion cannot be drawn from the face of the three August Hoffagrams. Thus, while they concern the subject of election accreditation petitions, they are not documents that require membership signatures, and are for that reason not documents that on their face appear inappropriate for campaign literature table distribution. Instead, these documents urge members to support the Hoffa campaign and are informational in nature, and inform supporters of the Hoffa campaign about a legitimate campaign activity: the solicitation of membership support through petition signature solicitation. In sum, on their face the three August Hoffagrams are legitimate pieces of campaign literature which, if they were destined for distribution on local union campaign literature tables, could properly be sent to local unions. We accordingly reject the Leedham campaign's argument that these documents are facially inappropriate for facsimile transmission to local unions under the Election Appeals Master's holding in *Schaffer*.

Our finding of a violation of Article VII, Section 11(c) and Article XII of the *Rules* is not based on the nature of the three faxed documents themselves. Rather, we find based on the investigative record here both that the three August Hoffagrams were not intended by the Hoffa campaign for local union campaign literature table distribution to the union's membership, and that they were not so distributed. We thus conclude as a result of the facts found through our investigation that "the purpose and consequence of the broadcast faxing by the Hoffa campaign...", *Schaffer*, 00 EAM 2, at 9, was the distribution of the August Hoffagrams to the *officers* of IBT local unions and other subordinate bodies (rather than their memberships), for the purpose of informing such officers about information important to the Hoffa slate campaign, in order to promote the candidacy of the Hoffa slate candidates. And based on these findings we conclude that the fax transmission of the August Hoffagrams does not come within the Article VII, Section 7 exception to the rule of Article VII, Section 11(c) against the use of union resources for campaign purposes.

We base this finding about the purpose and consequences of the fax transmission of the August Hoffagrams on the record developed by our investigation considered as a whole.

First, we rely upon the fact that in an interview with the staff of the Election Administrator, the volunteer campaign manager of the Hoffa campaign admitted that the Hoffa campaign had never requested any local union that received the three August Hoffagrams to place copies of those documents on any campaign literature table.<sup>21</sup> Moreover, the volunteer campaign manager admitted in the same interview that the Hoffa campaign also never informed any local union that it would pay any copying expenses entailed in placing copies of the three August Hoffagrams on campaign literature tables.<sup>22</sup> We conclude that the conduct of the Hoffa campaign in this regard is inconsistent with a request for campaign literature table distribution of the three August Hoffagrams.<sup>23</sup>

Second, we rely upon the fact that Appendix D, the Hoffa campaign's master fax number list, shows that the three August Hoffagrams were faxed to most IBT joint councils, in addition to most IBT local unions. Joint councils typically cover a much broader geographic area than IBT local unions, and have a jurisdiction that includes numerous locals. For example, according to the IBT's April 1, 2000 Roster, Joint Council 3 covers the states of Colorado (7 locals), Wyoming, New Mexico (1 local), Montana (2 locals), Utah (1 local), and parts of Idaho (2 locals); Joint Council 9 covers North and South Carolina (3 locals each); and Joint Council 73 covers northern New Jersey (25 locals). Each received the three August Hoffagrams. Yet joint council offices are not frequented by members (as distinct from officers of IBT subordinate bodies) to anywhere near the same degree as local union offices, and if, as our investigation revealed, few IBT locals have campaign literature tables, it is even less likely that such literature

---

<sup>21</sup> The volunteer campaign manager admitted that no fax cover sheet or other document was faxed with any of the three August Hoffagrams stating such a request. And the volunteer campaign manager also admitted in this interview that no other request for literature table distribution of the three August Hoffagrams was made to local unions, whether in writing or orally.

<sup>22</sup> The volunteer campaign manager also admitted that such offers had not been made with respect to any of the faxed materials that are the subject of the earlier *Schaffer* protests.

<sup>23</sup> After conceding that no such requests for campaign literature table distribution had been made, the volunteer campaign manager referred to the language printed at the bottom of each of the August Hoffagrams stating: "Union resources may not be used to copy this document. Campaign literature may be distributed by a local union only in a nondiscriminatory manner through the use of a literature table open to all candidates." We do not accept the campaign manager's claim that this warning constitutes a request for campaign literature table distribution, at the expense of the candidate or otherwise. Thus, none of the local unions contacted in the Election Administrator survey of 93 local unions treated it as such. (See, pp. 4-5 above and p. 17 below) Moreover, the Hoffa campaign never offered to pay the copying expenses of any local that might reproduce the materials for campaign literature table distribution, and took no steps to determine whether any such copying occurred, and what the expenses of such copying were.

In such circumstances, we reject the claim that the mere reproduction of the warning required by *Hall*, PR106 (June 8, 1998), shields a campaign from any claim of improper use of union resources. The *Hall* warning is not a talisman. It is a prophylactic device adopted by the Election Officer so that local unions receiving campaign literature would understand the limits placed by the *Rules* on campaign literature distribution. Its use by a campaign does not preclude the finding of a violation where, as here, the campaign uses union resources to transmit campaign material that is not intended for campaign literature table distribution to the membership at all. And here, for the reasons discussed in text, that conclusion is warranted by the investigative record.



October 2, 2000

distribution tables are present at joint council offices.<sup>24</sup> Moreover, the Hoffa campaign's volunteer campaign manager conceded that the campaign has no information indicating that joint councils maintain campaign literature distribution tables. And, when asked what was the Hoffa campaign's purpose in faxing the August Hoffagrams to joint council offices, the campaign manager simply stated that it was the campaign's "hope that they get the information, and do whatever they can do with it under the *Rules*." From the foregoing, we infer and find that the purpose of the Hoffa campaign's facsimile transmission of the August Hoffagrams to joint councils was not joint council distribution of that literature to the *membership* on campaign literature tables. Instead, we find that the intended audience for the August Hoffagrams sent to joint councils was the officers of joint councils themselves.

Third, we rely upon the fact that the Hoffa campaign concededly did not list on Appendix D (its master fax number list) local unions that it deemed to be "obvious opposition bodies." We asked the Hoffa campaign to identify which locals were excluded for this reason. (*See* p. 3 above.) In addition, as indicated at note 3 above, we compared Appendix D to the local union numbers listed for candidates who signed the Leedham campaign slate declaration form filed with the Election Administrator. This comparison shows that these locals were largely left off the Hoffa campaign fax distribution master list. We rely upon these facts as further support for the inference drawn here that the intended audience for the three August Hoffagrams was the officers of the local unions to which the faxes were sent. Simply put, it was the perceived unreceptiveness of a local's officers that determined if a local was excluded from the fax distributions.

Fourth, we rely upon the findings summarized at pages 4-5 above from the survey conducted by the staff of the Election Administrator as part of its investigation of these protests.<sup>25</sup> Our survey shows that virtually all of the local unions that admitted to receipt of the first August Hoffagram conceded that it was or would have been reviewed by the local union's principal officer, even if just to determine what to do with the incoming message. (Many locals denied receiving the document or stated that they were unsure if they had received it, even though the large majority of these locals were listed on Appendix D.) More significantly, each local union that admitted to receipt of the facsimile denied that it had been copied or otherwise reproduced for distribution to the membership, either on a campaign literature table or otherwise. This result obtained even at the few locals that stated they had campaign literature tables at their local union halls. *Thus, none of the locals that were contacted placed the August 2000 Issue 1 Hoffagram on a campaign literature table or bulletin board at the local.* Based upon these facts, we conclude that local unions that received the August Hoffagrams did not understand the Hoffa

---

<sup>24</sup> To be sure, it is the case that IBT members do visit joint council offices. We do not mean to suggest otherwise. However, local union halls by their nature experience a greater frequency of visits by members. And if, as our survey data indicates, campaign literature distribution tables are not often found at local union halls, it is a legitimate inference that such literature tables are to be found even less frequently at joint council offices.

<sup>25</sup> While the foregoing evidence concerning both the Hoffa campaign's failure to request campaign literature table distribution and the campaign's targeted audience both concern the Hoffa campaign's "purpose" in its fax transmission of the August Hoffagrams, the evidence from our survey shows its "consequences." As the Election Appeals Master indicated in *Schaffer*, "both the purposes and the consequences of the broadcast faxing done by the Hoffa campaign..." *id.* at p. 9, are relevant to our inquiry.

October 2, 2000

campaign to have requested their distribution by the locals to their membership, either through a campaign literature table or otherwise. The consequence of the fax transmissions was simply not the consequence that falls within the protection of Article VII, Section 7 of the *Rules*: the distribution to the membership at a campaign literature table and at a candidate's expense of campaign materials sent by the candidate to one or more local unions. Instead, the consequence of the fax transmissions here was identical to the improper purpose found above: the distribution of campaign information to subordinate body officers only, through the forbidden use of the union resources of each such subordinate body.

In making this finding, we stress that using a local union's resources as a conduit for distribution solely to union officials is improper for the same reason that using the union as a conduit for the distribution of campaign materials "beyond the confines of the Union premises", *Schaffer*, 00 EAM 2, at 9, violates the *Rules*. In each case, the violation arises from the fact that the campaign information does not come within the exception to Article VII, Section 11(c) applicable to use of union resources for the distribution of campaign material: the exception that permits local unions to distribute campaign materials to the local union's membership at the request of a campaign, and at the candidate's expense, through campaign literature tables open equally to all candidates.

In the one situation, as held by the Election Appeals Master in *Schaffer*, the violation arises because the materials are destined for distribution beyond the confines of the local, but yet the local's resources have been used as a conduit for that information. In the other situation, that presented here, the violation arises because the materials are not destined for distribution beyond the local's officers at the local, but are instead meant to convey campaign information only to them. In both cases, the violation occurs because the transmission of the materials has neither the purpose nor the consequence made legitimate by the *Rules*: the transmission of the materials to the subordinate body where the purpose and consequence of the transmission is campaign literature table distribution of the campaign materials to the membership at the candidate's expense.

We further reject any argument that the facsimile transmissions of campaign materials here are legitimate because they are directed to subordinate body officers in their capacity as members. It is true, of course, that Article VII, Section 7(b) provides for the distribution by the union at a candidate's expense of campaign literature to designated portions of the union's membership. Nevertheless, we do not believe the purpose of this provision is to permit campaigns to fax campaign materials to the subordinate bodies' officers alone, where the effect of such permission would be to allow campaign materials to be faxed (or mailed, or e-mailed) to officers at their local union or joint council with impunity, while in the process causing union resources to be used upon receipt of the materials. We also reject any such claim because we believe it to be contrary to Article VII, Section 11(c) and Article XII of the *Rules*, under which the campaign literature table exception to the prohibition of use of union resources for campaign purposes has been elaborated.

In sum, while a local union's or joint council's officers may have a real interest in campaign materials for candidates, the *Rules* require that such campaign materials intended for them, rather than the membership as a whole through campaign literature tables, be sent to the officers at their homes or to campaign addresses. Since that did not occur here, and since the

three Hoffagram fax transmission considered here caused the expenditure of union resources by 516 subordinate bodies on the three occasions when they were received by those bodies, we have concluded that the protests in this case have merit under Article VII, Section 11(c) of the *Rules*, as well as the provisions of Section 401(g) of the Landrum-Griffin Act, which are incorporated in Article XII of the *Rules*.

Accordingly, the protests are GRANTED.

3. *Remedy.*

The Leedham campaign seeks invalidation of all Hoffa slate petitions even though there is no evidence that those petitions were transmitted by the Hoffa campaign in a manner that offends the *Rules*. We need not pause long in rejecting this suggested remedy, since its rejection is required by the decision of the Election Appeals Master in *Schaffer*, 00 EAM 2, *supra*. There, the disallowance of election accreditation petitions was allowed as a remedy only as to those petitions which were improperly transmitted to local unions, or copied from those improperly transmitted to local unions. Since no such improper transmission of slate petitions occurred here, the suggested remedy must be rejected. The holding of the Election Appeals Master in 00 EAM 2 leaves no other alternative.

We also reject the claim of the Leedham campaign and the Teamsters for a Democratic Union that the Hoffa campaign's conduct here represents contempt of the Election Appeals Master's decision in *Schaffer*.<sup>26</sup> There, the Election Appeals Master's holding was limited to the Hoffa campaign's improper distribution of election accreditation petitions to local unions. The distributions here are of a different nature, and our finding of a violation of Article VII, Section 11(c) rests not on the facial nature of the faxed materials themselves, but on the purpose and consequences of the fax transmissions as borne out by our investigation. We accordingly reject any claim that the Hoffa campaign is in contempt of the order in *Schaffer* in this case.

We note that in other cases where union resources have been used to improperly transmit campaign literature a monetary remedy has been ordered. *See, e.g., Kitchen, P139, supra*. Here, however, we will limit the remedy as to these violations to a cease and desist order and the requirement of a notice by which the Hoffa campaign will inform subordinate IBT bodies of the terms of that cease and desist order. We leave to future cases, if any, the question of whether additional remedies, including monetary payments, should be ordered.

We thus order the Hoffa campaign to cease and desist from any future violation of the *Rules* with respect to the use of union resources in the distribution of campaign materials. Further, we order the Hoffa campaign to fax a copy of the attached notice to each IBT subordinate body no later than five (5) days after receipt of this decision. Within one (1) day after so faxing the notice, the Hoffa campaign shall file an affidavit with the Election Administrator demonstrating compliance with this decision.

---

<sup>26</sup> This conclusion is equally applicable to the order of the Election Administrator in *Schaffer* on remand. 2000 EAD 24, *supra*, which is currently pending before the Election Appeals Master on review.

***Ostrach***, 2000 EAD 29

October 2, 2000

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy  
Election Appeals Master  
Latham & Watkins  
Suite 1000  
885 Third Avenue  
New York, New York 10022  
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, c/o International Brotherhood of Teamsters, 25 Louisiana Ave., NW, Washington, DC 20001, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

*William A. Wertheimer, Jr.*

William A. Wertheimer, Jr.  
Election Administrator

cc: Kenneth Conboy  
2000EAD29

## **NOTICE TO ALL LOCAL UNIONS**

The Election Administrator has determined that the Hoffa slate violated the *Election Rules* by its fax transmission of certain campaign materials to most IBT local unions throughout the United States and Canada. In issuing this decision, the Election Administrator has ordered the Hoffa slate to cease and desist from any future violation of the *Rules* with respect to the use of union resources in the distribution of campaign materials.

---

James P. Hoffa  
Candidate for General President and head of  
the Hoffa 2001 Unity Slate

***This is an official notice prepared and approved by William A. Wertheimer, Jr., Election Administrator for the International Brotherhood of Teamsters.***

*Ostrach*, 2000 EAD 29

October 2, 2000

**DISTRIBUTION LIST VIA FAX AND UPS NEXT DAY AIR:**

Patrick Szymanski  
IBT General Counsel  
25 Louisiana Ave. NW  
Washington, DC 20001  
Fax: 202.624.6884

Bradley T. Raymond  
Finkel, Whitefield, Selik, Raymond,  
Ferrara & Feldman  
32300 Northwestern Highway  
Suite 200  
Farmington Hills, MI 48334  
Fax: 248.855.6501

J. Douglas Korney  
Korney & Heldt  
30700 Telegraph Road  
Suite 1551  
Bingham Farms, MI 48025  
Fax: 248.646.1054

Barbara Harvey  
645 Griswold  
Penobscot Building  
Suite 1800  
Detroit, MI 48226  
Fax: 313.963.3572

Tom Leedham  
18763 South Highway 211  
Molalla, OR 97038  
Fax: 503.824.3484

Hoffa 2001 Campaign  
P.O. Box 2829  
Alexandria, VA 22301  
Fax: 202.454.5294

Betty Grdina  
Yablonski, Both & Edelman  
1140 Connecticut Ave. NW  
Washington, DC 20036  
Fax: 202.463.6688

Stefan Ostrach  
110 Mayfair Lane  
Eugene, OR 97404  
Fax: 541.607.4484

Jack Mandaro  
IBT Local 95  
7294 Merrimac Trail  
Williamsburg, VA 23185  
Fax: 757.229.2868