

August 23, 1995

VIA UPS OVERNIGHT

Chuck Crawley
703 Wynd
Pasadena, TX 77503

Ron Carey, General President
International Brotherhood of Teamsters
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Washington, DC 20001

Gene Giacumbo
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Sea Bright, NJ 07760

John Sullivan
Associate General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Richard A. Hammond, President
Teamsters Local Union 988
P.O. Box 7693
Houston, TX 77270

**RE: Election Office Case Nos. P-027-LU988-PNJ
P-040-LU41-PNJ**

Gentlemen:

Related pre-election protests were filed with the Election Office pursuant to Article XIV, Section 2(a) of the ***Rules for the 1995-1996 I.B.T. International Union Delegate and Officer Election ("Rules")***.¹ On May 16, 1995, the Election Officer received a protest (P-

¹These "reach-back" protests were filed within the thirty-day period following the final promulgation of the ***Rules*** on April 24, 1995. They allege violations occurring prior to the issuance of the ***Rules***. The ***Rules***, at Article XIV, Section 2(a), state:

Protests regarding violations of the [Labor-Management Reporting and

027-LU988-PNJ) from Chuck Crawley, a member of Local Union 988, charging that the use of union resources to reimburse Mr. Giacumbo for his travel expenses incurred in connection with making a speech was impermissible. On May 23, 1995, the Election Officer received a protest (P-040-LU41-PNJ) from Paul Heiman, a member of Local Union 41, similarly asserting that the use of union resources to facilitate Mr. Giacumbo's travel to Local Union 41 in connection with a speech delivered at a Local Union meeting was prohibited.

In responding to the charge in P-027-LU988-PNJ, Local Union 988 takes the position that Mr. Giacumbo's address was not a campaign speech, but rather a report pertaining to the activities of the International Union concerning significant issues of the day. Mr. Giacumbo, Local Union 988 contends, never asked anyone to vote for any particular candidate. Local Union 988 further points out that payment of the expenses for Mr. Giacumbo was approved by the Local Union Executive Board pursuant to a previous resolution ratified by the membership to "invite guest speakers to address the members" for the purpose of creating exposure to a "wide range of information" and diverse political viewpoints within the union. Pursuant to this policy, Local Union 988 has recently invited and hosted appearances by Mr. Thomas Salinas, an International Representative and supporter of Mr. Carey, and Vice President C. Sam Theodus. Invitations have similarly been extended to current Vice Presidents Doug Mims and John Riojas. IBT Trustee Robert T. Simpson, Jr. and James P. Hoffa have been invited. In the future, Local Union 988 states that it will continue to provide its membership with first-hand reports of divergent political positions by inviting International Vice President Mario Perrucci, union-activist and Hoffa supporter Dan Darrow, and Mr. Carey himself.

In P-040-LU41-PNJ, Local Union 41 states that Mr. Giacumbo's speech was not a campaign speech and addressed topics of interest to Local Union members.

These protests were investigated by Regional Coordinator Peter V. Marks, Sr.

On the morning of June 11, 1994, International Vice President Gene Giacumbo, at the invitation of Local Union 41, attended a regularly scheduled meeting of that membership in Kansas City. Mr. Giacumbo is an International Vice President of the IBT and a political opponent of General President Ron Carey and his administration. After the completion of the customary union business, Mr. Giacumbo addressed the members present. Local Union 41 paid the travel expenses incurred by Mr. Giacumbo in connection with his appearance.

Mr. Giacumbo delivered a second speech in response to an invitation from Local Union 988 in Houston. The occasion was the regular membership meeting of September 18, 1994. Local Union 988 provided Mr. Giacumbo with a round-trip coach air ticket and a hotel room for one night.

A transcript of Mr. Giacumbo's June 11 speech to Local Union 41 was provided to the Election Officer. The investigation further revealed that Mr. Giacumbo delivered, with the exceptions noted below, virtually the same speech to both Local Unions. There is no dispute that Local Union 41 paid Mr. Giacumbo's travel expenses and that Local Union 988 paid Mr. Giacumbo's travel and hotel expenses.

Article VIII, Section 11(c) and Article XII, Section 1(b) both prohibit the use of union funds, facilities and equipment to assist in campaigning unless the union is reimbursed at fair market value and equal access to such assistance is provided to all candidates. Here the issue of union-financing is raised by the Local Unions' payment of International Vice President Giacumbo's travel and other expenses.

Article VIII, Section 5 specifically governs candidate access to membership meetings. Local Unions do not have to permit candidates to speak at membership meetings for the purpose of campaigning; however, if a candidate is permitted to speak, equal access must be provided to other candidates running for the position for which such campaigning was permitted.

An analysis under each of these sections of the **Rules** rests upon whether the communication by Mr. Giacumbo at each of these Local Union meetings constituted "campaigning" such that these sections become applicable. This inquiry must begin with the determination of whether or not a subject of the communication was a "candidate" at the time of the communication. Upon a finding of "candidate" status, the Election Officer proceeds to determine whether the communication was used to "support or attack" an individual in his candidate capacity. Sullivan, P-053-LU391-EOH (July 10, 1995); Ruscigno, P-067-LU20-EOH (July 19, 1995); Martin, P-10-IBT-PNJ (August 17, 1995).

In order to determine candidate status within the meaning of the **Rules**, the Election Officer first determines if and when a member is "actively seeking nomination or election," including a declaration or announcement of candidacy or other statement of intent to seek a delegate, alternate delegate, or International officer position. The Election Officer further reviews the Campaign Contribution and Expenditure Reports ("CCER") that are required by Article XII, Section 2(a) to ascertain if and when the member has accepted any contributions or expended any funds in furtherance of his or her candidacy. The Election Officer also reviews

other indicia of candidacy which may be revealed by the investigations conducted through her office. Martin, supra.

The Election Officer has previously found Mr. Carey to be a candidate from and after October 1994. Thus, Mr. Carey was not a candidate when Mr. Giacumbo delivered these speeches. There is no evidence that Mr. Giacumbo was a candidate in June or September of 1994. Mr. Hoffa, however, was a candidate.²

In both speeches, Mr. Giacumbo directed the focus of his prepared remarks to events and issues which are of legitimate concern to union members and unrelated to the election. In so doing, however, Mr. Giacumbo employed rhetoric undeniably harsh in tone. He discussed the fiscal difficulties that exist within the International Union, but blamed these difficulties on Mr. Carey's fiscal irresponsibility and his refusal to permit the trustees an opportunity to "review the books." He mourned the abolition of the Area Conferences as an ultimate reduction in service to the Local Unions, and branded this action as a "step backwards" from union democracy. He accused Mr. Carey of replacing the Area Conference structure with unelected personnel not accountable to the members. He stated his opposition to a dues increase proposed by Mr. Carey, and equated the very suggestion with "giving another ten dollars to a drunk." He described Mr. Carey as a "vampire" who has "done nothing but suck our blood." Mr. Giacumbo criticized the Consent Order and the work of the Independent Review Board as being inconsistent and ineffective, and marked Mr. Carey as a puppet of an anti-union federal government. He asserted that Mr. Carey was a poor negotiator and tied that to allegations of a link between Mr. Carey and organized crime. He charged that Mr. Carey has orchestrated a witch hunt to force his political opponents "out of the union" on trumped up internal charges while he amassed a personal fortune in real estate. Finally, he devoted significant time to citing examples in support of his view that the International officers are ill-chosen and inexperienced, but utilized terms which variously portray them as inactive, stupid, inattentive, unreasonably provincial and pompous political conspirators, oblivious to the difficulties facing the Union.

Mr. Giacumbo's remarks also contained several direct references to past and future election activity. He characterized the last International election as an "anomaly" and stated that the present administration is supported by only a small constituency. He stated:

²The CCER filed by Mr. Hoffa for the period January 1, 1992 through May 20, 1995 indicates Mr. Hoffa accepted contributions beginning March 1994. The Election Officer's finding of candidacy beginning at this time is based upon this information.

As I said to you before this election - my election as well - cause I coat-tailed in with Ron Carey, is a historical accident. But I don't know - I think when you're training a puppy and you have accidents - and you clean him up - sometimes you have to probably rub the puppy's nose in it a little bit. But you clean it up and you go on with life. I think we're looking towards some change in the next two years because I certainly haven't found any solution with the government intervention - those so called "watch dogs" - they've been rather apathetic. And I'll speak to that in a moment. I was sort of hoping - in fact I see some pleasant hats out there that perhaps, oh, someone like a ticket sort of like a Hoffa-Durham ticket might get together and actually come in and clean this up next time around.

During a question-and-answer session following the speech to the membership of Local Union 988, a member asked Mr. Giacumbo what could be done to improve the union. Referring to the "Hoffa" hat worn by the member, Mr. Giacumbo stated that the answer was "on his head."

The distinction between a campaign speech and other forms of verbal communication is important. It directly affects how incumbent officers, like Mr. Giacumbo, may use the powers of his office and the financial resources of the union. Camarata v. Int'l Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), aff'd, 108 L.R.R.M. 2924 (D.C. Cir. 1981). Accord, Donovan v. Metro. Dist. of Carpenters. It directly affects the extent to which "union members are free to discuss union policies and criticize the leadership without fear of reprisal" in a "vigorous debate" that must take on increased importance as an election approaches. United Steelworkers of America v. Sadlowski, 457 U.S. 102, 112 (1982). The balance between protected speech and impermissible campaigning must be carefully struck. Restrictions on speech must not be read so broadly as to restrict the right and responsibility of union officers to conduct union business. Nor should the **Rules** prohibit opponents of those officers from criticizing those policies.

Clearly, such an analysis has advantages for both incumbents and the opposition. A union officer certainly derives a benefit from the attention and publicity connected with the conduct of official union business. But the opposition is empowered to place blame on the incumbents when those policies fail. When negotiations result in a less advantageous collective bargaining agreement, when a strike is broken by management, when money is short and dues increases are proposed, or if recent organizational modifications fail to achieve their intended goal, incumbent officers may shoulder the blame. The Election Officer has substantial discretion to "ensure that the upcoming elections are free, fair and informed." U.S. v. Int'l Bhd. of Teamsters, 931 F.2d 177, 187 (2nd Cir. 1991).

The substantial majority of Mr. Giacumbo's remarks can be tied to relevant union business. Sheldon v. O'Callaghan, 335 F.Supp. 325 (S.D.N.Y. 1971). As General President, the activities of Mr. Carey, whether complimented or criticized, are newsworthy to union members. Mr. Carey was not a candidate at the time of the speeches and Mr. Giacumbo,

though uncomplimentary and often personal, were within his free-speech rights.

Although only a small portion of his complete orations, Mr. Giacumbo made several direct references to the election, the election process and to the possible candidacy of Mr. Hoffa. Mr. Giacumbo was not a candidate at the time the speeches were delivered.

In the context of the principles referred to above, the investigation of this matter fails to disclose a sufficient basis for a violation. The speeches were delivered far in advance of the 1995-96 International delegate and officer elections. Nominations for candidates for International office, for example, will not be made until the International convention in July of 1996. Neither Local Union 41 nor Local Union 988 have delegate elections scheduled for the fall of 1995.

In Sullivan, P-053-LU391-EOH (July 10, 1995), the Election Officer considered an April 19, 1994 speech that focused primarily on a specific and current intra-union issue, the abolition of the Area Conferences. During that event, a Joint Council president stated, "We're going to march to the 1996 Convention and we're going to take care of the problem and throw this damned mob out." Because the rally took place at a time so far attenuated from the election process, that protest was denied.

Mr. Giacumbo's discourses were blunt and negative, but generally confined to union matters of general concern. The references to the election process are comparable to those considered in Sullivan, supra. In the context of the latitude that must be afforded both incumbents and opponents to conduct union business and to critically comment on the conduct of union business, and especially in the context of the dates upon which the speeches were delivered, his limited remarks about the elections do not constitute campaigning within the meaning of the **Rules**.

Based on the foregoing, these protests are DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.
Mudge, Rose, Guthrie, Alexander & Ferdon
180 Maiden Lane, 36th Floor
New York, NY 10038
Fax (212) 248-2655

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202)

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624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Election Appeals Master Kenneth Conboy
Peter V. Marks, Regional Coordinator