

September 27, 1995

VIA UPS OVERNIGHT

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& Gene H. Bond
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Rockford, IL 61114

Ron Carey, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
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Ted Sherman, Secretary-Treasurer
Teamsters Local Union 325
5533 Eleventh Street
Rockford, IL 61109

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

Re: Election Office Case No. P-050-LU325-EOH

Gentlemen:

This pre-election protest was filed pursuant to Article XIV, Section 2(a) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** by Dirk P. Ohlson, Terry Randall and Gene H. Bond, all members of Local Union 325.¹ It is alleged that Local Union Secretary-Treasurer Ted Sherman violated the ***Rules*** by (1) making negative comments relating to General President Ron Carey and his administration at membership meetings and elsewhere, (2) permitting William T. Hogan, Jr. to speak critically of Mr. Carey at the December 11, 1994 membership meeting, (3) posting a petition advocating the preservation of the area conferences, and (4) distributing leaflets recommending that the membership vote against a proposed dues increase sponsored by the Carey administration.

¹This "reach-back" protest was filed within the 30-day period following the final promulgation of the ***Rules*** on April 24, 1995, and alleges 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 Disclosure Act, as amended] (including violations of the IBT Constitution) allegedly occurring prior to the date of issuance of the ***Rules*** and protests regarding any conduct allegedly occurring with the first twenty-eight (28) days after issuance of the ***Rules*** must be filed within thirty (30) days of the date of issuance, or such protests shall be waived.

Specifically, the protesters accuse Mr. Sherman of improperly criticizing Mr. Carey in the handling of the Central States Pension Fund, his activity concerning the merger of local unions, the alleged failure of the International union to provide certain educational materials, the handling of the Overnite organization campaign, Mr. Carey's practices concerning use of the strike fund, and for proposing a dues increase. Mr. Sherman does not contest that leaflets seeking to influence the membership to vote against the proposed dues increase were distributed at a general membership meeting in the Spring of 1994. Similarly, Mr. Sherman agrees that in April of 1994, a petition against eliminating the Area Conferences was placed on a table in the union hall.

Mr. Hogan is president of the Joint Council to which Local Union 325 is affiliated. The protesters and Mr. Sherman are in substantial agreement as to the contents of Mr. Hogan's speech on December 11, 1994. His introduction made no mention of his own candidacy or the candidacy of any other member for International office or delegate. Mr. Hogan did address the issue of the salary he was receiving as principal officer of Local Union 714 in Chicago, Illinois. His compensation had recently been the subject of criticism by the local press. Mr. Hogan criticized the involvement of the federal government in the operation of the International union. He set forth a number of examples which, in his opinion, demonstrated the failure of the current administration to properly conduct the business of the International union, including: financial matters, elimination of the area conferences, operating the Washington, D.C. headquarters "like a prison," and the Carey administration's support of President Clinton.

After the speech, Mr. Ohlson and Mr. Randall approached Mr. Sherman and said, "We've got a campaign going on. We need to hear both sides."

"When are you going to wake up," Mr. Sherman reportedly replied. "The International is going down the tubes. There's a bunch of mine workers running the thing." According to the protesters, Mr. Sherman agreed that a Carey proponent should also be invited to speak.

Several weeks later, Mr. Gerald Zero appeared before a general meeting of the membership and defended the conduct of the Carey administration. At the time, Mr. Zero served as an International representative.

The protest was investigated by Election Office Staff Attorney Tara Levy.

The **Rules**, at Article VIII, Section 11(c) and Article XII, Section 1(b), 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. Under Article VIII, Section 5, all candidates must be accorded equal access to union facilities when a Local Union permits any one candidate to campaign.

These regulations apply only when "campaign" activity is present. The existence of "campaigning" is ascertained by applying a two-part analysis. The inquiry begins by establishing whether or not a subject of a communication was a "candidate" at the time of the communication. If "candidate" status exists, the Election Officer determines whether or not the communication was used to "support or attack" a candidate within the meaning of the **Rules**. Whether or not a communication supports or attacks a candidate is determined by measuring it

against the tone, timing, content and context in which the communication was made. Martin, et al., P-010-IBT-PNJ et seq. (August 17, 1995).

The Election Officer has previously ruled that Mr. Carey became a candidate in October of 1994. Martin, supra. Mr. Hogan became a candidate in May of 1992. Epperson et al., P-034-LU41-SCE et seq. (August 22, 1995). Mr. Sherman was not a candidate at the time of the alleged events.

The Election Officer concludes that the remarks of Mr. Sherman did not constitute “campaigning.” Although certainly not complimentary of Mr. Carey’s administration, Mr. Sherman’s remarks all pertained to matters of legitimate concern to union members, such as union finances. Union officers must be free to discuss these topics in order to properly discharge their duties. Union members may not be restricted from expressing their support or opposition to the manner in which union officers conduct themselves with respect to the subject areas challenged by this protest. See generally, United States v. Int’l Bhd. of Teamsters, 931 F.2d 177, 187 (2d Cir. 1991).

The Election Officer further concludes that although Mr. Hogan was a candidate, his speech on December 11, 1994 did not constitute “campaigning.” He is president of the Joint Council to which Local 325 is affiliated. His remarks were limited to the types of issues in which affiliated members of Joint Council 25 are involved. Mr. Hogan’s salary had recently come under attack. A portion of his speech was therefore dedicated to justifying and explaining that salary. His comments regarding the financial status of the union, its posture in national politics, and the internal structure are all germane to the regular functions of the union. See, Sheldon v. O’Callaghan, 335 F. Supp 325 (S.D.N.Y. 1971); Crawley, P-027-LU988-PNJ (August 23, 1995); Fischer, et al., P-090-IBT-PNJ/PGH, et seq. (September 7, 1995).

Union funds were used to circulate the petitions seeking to prevent the abolition of the Area Conferences. The **Rules**, at Article VIII, Section 11(c), specifically prohibits union-financed campaign activity. The Election Officer has previously concluded that the question of whether or not the Area Conferences should be abolished or preserved is “a legitimate source of concern among the members.” Jacob, P-072-JC42-EOH (August 3, 1995); Sullivan, P-053-LU391-EOH (July 19, 1995). In Jacob, supra, the Election Officer stated:

Soliciting opposition to proposals of the IBT leadership clearly constitutes a form of expression guaranteed to all union members. See, In re: Sullivan, 95-Elec.App.-2 (KC), (July 14, 1995); United Steelworkers v. Sadlowski, 457 U.S. 102, 112 (1982); Salzhandler

v. Caputo, 316 F.2d 445, 448-49 (2nd Cir. 1962), *cert. denied*, 375 U.S. 946 (1963).

Id. at p. 2. The use of union funds to circulate the petition is, therefore, not a violation of the ***Rules***.

For the foregoing reasons, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Julie E. Hamos, Regional Coordinator