

December 12, 1995

VIA UPS OVERNIGHT

Darryl Sullivan
2059 Richmond
Arlington, TX 76014

James Jacob
1377 Sassaquin Avenue
New Bedford, MA 02745

Michael Ruscigno
302 Summit Avenue
Jersey City, NJ 07306

James P. Hoffa
2593 Hounds Chase
Troy, MI 48098

Anthony Rumore, President
Teamsters Joint Council 16
265 W. 14th Street, Room 1201
New York, NY 10011

Alfred O. Panek, President
Teamsters Joint Council 37
1872 N.E. 162nd Avenue
Portland, OR 97230

Lawrence Brennan, President
Teamsters Joint Council 43
2801 Trumbull Avenue
Detroit, MI 48216

James E. Wilkerson, Sr., Sec.-Tres.
Teamsters Local Union 14
305 Wall Street
Las Vegas, NV 89114

Philip E. Young, President
Teamsters Local Union 41
4501 Van Brunt Boulevard
Kansas City, MO 64130

Robert R. McClone, Secretary-Treasurer
Teamsters Local Union 631
307 Wall Street
Las Vegas, NV 89102

T. C. Stone, Secretary-Treasurer
Teamsters Local Union 745
1007 Jonelle Street
Dallas, TX 75217

Frank J. Wsol, Secretary-Treasurer
Teamsters Local Union 710
4217 S. Halsted Street
Chicago, IL 60609

Tony Cannestro, President
Teamsters Local Union 769
8350 N.W. 7th Avenue
Miami, FL 33150

Lester A. Singer, President
Teamsters Local Union 20
435 S. Hawley Street
Toledo, OH 43609

R. V. Durham, President
Teamsters Local Union 391
3100 Sandy Ridge Road
Colfax, NC 27235

Steven H. Burrus, Secretary-Treasurer
Teamsters Local Union 995
300 Shadow Lane
Las Vegas, NV 89106

Wayne A. Rudell
Rudell & O'Neill
8325 E. Jefferson
Detroit, MI 48214

Paul Alan Levy
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009

Hugh J. Beins
Beins, Axelrod, Osborne & Mooney
1341 G Street, N.W.
Suite 700
Washington, DC 20005

Lewis N. Levy
Levy, Goldman & Levy
3660 Wilshire Boulevard, Sixth Floor
Los Angeles, CA 90010

Gerry M. Miller
Previant, Goldberg & Uelmen
1555 N. River Center Drive, Suite 202
Milwaukee, WI 53212

Re: Election Office Case No. P-052-LU14-SCE

Gentlemen:

This pre-election protest was filed May 24, 1995 pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-96 IBT International Union Delegate and Officer Election* (“*Rules*”) by Michael Ruscigno, a member of Local Union 138, Darryl Sullivan, a member of Local Union 745, and James Jacob, a member of Local Union 251.¹ The protesters allege that James P. Hoffa, a candidate for general president, financed campaign appearances with prohibited employer and union contributions. The protesters further allege that certain union-financed publications impermissibly supported Mr. Hoffa’s campaign.

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 protest regarding any conduct allegedly occurring within 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.

The protest was investigated by Regional Coordinator Bruce Boyens.

I. Mr. Hoffa as an "Employer"

The protesters allege that at the same time that he has been campaigning for general president, Mr. Hoffa, by virtue of his employment as an attorney, was an "employer" within the meaning of the **Rules**. The protesters argue that Mr. Hoffa's campaign activities are therefore employer contributions prohibited by the **Rules**. Pursuant to the **Rules** definition, an employer is an "individual . . . that employs another, paying monetary or other compensation in exchange for that individual's services." The **Rules** expressly state that "'employer' is not limited to an employer which has a collective bargaining agreement with the union or which is the subject of an organizing campaign by the Union."

The Election Officer has determined that Mr. Hoffa became a candidate for general president in March 1994. Crawley, Case No. P-027-LU988-PNJ, et seq. (August 23, 1995). Joint Council 43 and Mr. Hoffa state that Mr. Hoffa has been an employee of Joint Council 43 since July 1, 1993. Mr. Hoffa and the law firm with whom he was formerly associated deny that he practiced law at any time after August 31, 1993. Protesters claim that Mr. Hoffa entered an appearance in McDuffey v. Michigan Conference of Teamsters Welfare Fund 872 F.Supp 402 (E.D. Mich. 1994). However, the case, as reported in the official reporter, shows Kevin O'Neill as counsel for the Michigan Conference, not Mr. Hoffa. To further support this allegation, protesters also allege that Mr. Hoffa appeared in court in Ann Arbor as local counsel for the Central and Southern Conferences. The protesters do not provide the case name or the date of the appearance. The protesters also cite the Michigan Bar Journal Directory as listing Mr. Hoffa with the telephone and fax number of the Rudell & O'Neill law firm. The Election Officer notes that even when not practicing law, Mr. Hoffa remains a member of the Michigan Bar and is listed under his home address in the Bar Journal Directory. The protesters therefore have offered no evidence that Mr. Hoffa, as an attorney, employed any other person at any time relevant to their protest. There is thus, no evidence that Mr. Hoffa has violated the **Rules** prohibiting employer contributions.

II. Prior Determinations by the Election Officer

The Election Officer has previously ruled upon certain allegations made by the protesters. To support their allegations, the protesters have offered no evidence that was not previously examined by the Election Officer.

The protesters allege that Mr. Hoffa used union funds to campaign at the Jesse Acuna Defense Fund rally sponsored by Local Unions 14, 631 and 995 in Las Vegas, Nevada on March 25, 1995. Considering the same allegation in Pope, et al., Case No. 046-JC7-EOH, et seq. (October 12, 1995), aff'd, 95 - Elec. App. 35 (KC) (November 14, 1995), the Election Officer found insufficient evidence that Mr. Hoffa campaigned at the rally. The protesters allege generally that Joint Council 37 has improperly used its newspaper, *Oregon Teamster*, to support candidates for delegate and International office. Allegations by the same protesters that certain issues of the *Oregon Teamster* violated the **Rules** were considered in Ruscigno, Case No. P-065-JC37-EOH, aff'd, 95 - Elec. App. - 7 (KC) (August 14, 1995), where no violation was found. The protesters allege generally that Local Union 20 has used its newspaper, *Team and Wheel*, to

improperly support candidates for delegate and International office. In Ruscigno, Case No. P-067-LU20-EOH (July 19, 1995), the same protesters alleged that certain issues of *Team and Wheel* violated the **Rules**. The Election Officer examined these and found no evidence that the local union publication contained campaign material in violation of the **Rules**.

The uncontradicted finding by the Election Officer in Crawley, *supra*, concerning the date Mr. Hoffa became a candidate bars two allegations protesters make here. Protesters object to the March/April 1993 issue of the Local Union 391 newspaper, *Voice of 391*, alleging it contained material improperly supporting Mr. Hoffa.² A union-financed publication does not violate the **Rules** unless the subject of the publication was a candidate on the date of the publication. See Ruscigno, P-067-LU20-EOH, *supra*. In Crawley, *supra*, the Election Officer determined that Mr. Hoffa did not become a candidate until March 1994. In the absence of any evidence that Mr. Hoffa was a candidate at the time, it follows that the March/April 1993 publication cannot support Mr. Hoffa or his candidacy.

The protesters also allege that Local Union 745 financed a campaign appearance by Mr. Hoffa in August 1993. The finding that Mr. Hoffa's candidacy began March 1994 also bars this allegation.

III. Remaining Allegations

The remaining allegations involve alleged funding of Mr. Hoffa's appearances by Local Unions 41, 710, and 769. The protesters do not specify when Mr. Hoffa allegedly campaigned at Local Unions 41 and 710 and have submitted no evidence concerning these allegations. Without evidence of campaign activity regulated by the **Rules**, there is no **Rules** violation.

Finally, protesters allege that Mr. Hoffa used union funds to campaign at a rally held by Local Union 769 in Miami on February 16, 1995. The Election Officer found that Mr. Hoffa campaigned at that event in Evans, P-030 -LU769-SEC (September 27, 1995). Mr. Hoffa admits that union funds were used for his travel to Miami for the rally, but argues that his appearance was incidental to his trip to Bal Harbour, Florida to attend the AFL-CIO Executive Board meeting. The Election Officer found in Gilmartin, P-032-LU245-PNJ (December 12, 1995), that Mr. Hoffa's trip to Bal Harbour was related to his employment by Joint Council 43.

²Objections by the same protesters to other issues of *Voice of 391* on the grounds that the paper improperly opposed the candidacy of General President Ron Carey and Local Union 391 President R. V. Durham were rejected in Jacob, Case No. P-071-LU 319-EOH (September 7, 1995), *aff'd*, 95 - Elec. App. - 19 (October 3, 1995).

Article VIII, Section 11(b) provides:

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, officers and employees (and other members) of the Union may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business is not, however, violative of this section.

The Election Officer decides whether campaigning is incidental to regular union business by making a factual determination as to whether the member would have participated in the official union function if the campaign event did not occur. Riga, Case No. P-107-LU576-CSF (January 22, 1991), aff'd, 91 - Elec. App. - 60 (February 6, 1991). Mr. Hoffa has documented that his employer, Joint Council 43 President Lawrence Brennan, was invited to the Bal Harbour meeting, that Mr. Brennan requested that Mr. Hoffa represent the joint council at the meeting and report back on activities there, and that Mr. Hoffa provided the requested report to Mr. Brennan. The Election Officer therefore concludes that Mr. Hoffa would have traveled to Florida even if he did not attend his campaign rally in Miami. It follows that his appearance in Miami, which the Election Officer previously found to be campaigning, was incidental to regular union business and could have been financed by union funds without violating the **Rules**.

IV. Allegations Added After Protest Filed

Certain allegations were first raised by the protesters in letters to the Election Officer dated in September and October 1995, months after this protest was filed on May 24, 1995. By letter dated September 25, 1995, protesters allege that Mr. Hoffa used union funds to make appearances in the San Francisco area on September 22, 1995. In their October 17, 1995 letter, the protesters allege that in elections for local union officer of Local Unions 104 and 705, Mr. Hoffa campaigned for candidates who were allegedly members of the "Real Teamster Caucus," and that his campaign activity had the foreseeable effect of furthering his own campaign for International office. By letter dated October 18, 1995, protesters allege that Mr. Hoffa used union funds to campaign during a Miami TV show on February 16, 1995. In the same letter, protesters allege that union funds were used by Mr. Hoffa to campaign at a picket line set up by Local Unions 63 and 208 on January 20, 1995; and to finance a campaign appearance at a rally for Jesse Acuna in El Monte, California on January 21, 1995.

Also in the October 18, 1995 letter, protesters claim that Mr. Hoffa's current employer, Joint Council 43, has made a campaign contribution by permitting Mr. Hoffa to campaign during hours when he is working for the joint council. By letter dated October 24, 1995, protesters objected to Mr. Hoffa's eligibility to be a candidate by alleging that he is a part-time employee of Joint Council 43. In the same letter, protesters first raise that Mr. Hoffa campaigned on behalf of candidates for office in Local Union 705 on March 12, 1995. In a letter dated October 27, 1995, protesters allege that in 1994, Joint Council 43 doubled the salary it paid to Mr. Hoffa in order to contribute to his campaign.

In In Re: Pope, 95 - Elec. App. - 35 (KC) (November 20, 1995), aff'g Pope, supra, the Election Appeals Master stated that "the Election Officer is under no duty to make factual findings about alleged conduct that is brought to her attention in the course of her investigation and not identified in the protest itself." This policy is important to the fair and expeditious resolution of protests. A continuous supplementation of an original protest would require constant service of new charges on the charged party in order to fairly adjudicate new matters raised. The purpose of submissions of the parties is to produce evidence and argument on the original allegations. While the line between supporting evidence in an original protest and a new allegation may sometimes be difficult to draw, the Election Officer finds that the allegations raised in letters received in September and October of 1995 constitute new allegations rather than evidence in support of the original protest. Notwithstanding the Election Officer's inherent authority under the **Rules** to investigate and remedy conduct violative of the **Rules** even without a protest, she declines to consider allegations made by the protesters here that were not stated in their original protest.³

Based on the foregoing, 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.
Latham and Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

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
Bruce Boyens, Regional Coordinator

³The Election Officer's ruling that she declines to consider these allegations is not a ruling on the merits of any of these allegations.