

July 28, 1995

VIA UPS OVERNIGHT

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Arlington, TX 76014

Teamsters Joint Council 7
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Public Citizen Litigation Group
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Washington, DC 20036

Michael Ruscigno
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Jersey City, NJ 07306

RE: Election Office Case No. P-066-JC7-EOH

Gentlemen:

A pre-election protest was filed 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 The protesters, Darryl Sullivan, a member of Local Union 745, James Jacob, a member of Teamsters Local 251, and Michael Ruscigno, a member of Local Union 138, allege that Joint Council 7 utilized the *Northern California Teamster* to support the candidacy of Chuck Mack for International office and attack and oppose current General President Ron Carey in a manner which violates the ***Rules***.

¹This “reach-back” protest was filed within the thirty 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 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.

In support of their protest, the protesters refer generally to unspecified issues of the *Northern California Teamster*, a Union-financed publication, which allegedly support the candidacy of Mr. Mack. They specifically cite articles in the April, 1994 issue which criticize Mr. Carey's plan to close the regional conferences and portray the member's rejection of the dues increase as being critical of Mr. Carey; and the August, 1994, issue which contains an editorial accusing Mr. Carey of attacking his political opponents.

Joint Council 7 responds by challenging the protesters' standing and the timeliness of the protest and state Mr. Mack is not a candidate within the meaning of the **Rules**.²

The **Rules**, at Article VIII, Section 8(a), provide the following prohibition, "No publication or communication financed, directly or indirectly, by a Union may be used to support or attack any candidate or the candidacy or any person . . ." Section 8(a) also sets forth specific illustrations of improper support of a candidate by a Union-financed publication.

A Union-financed publication cannot violate the **Rules** unless the subject of the printed matter was a "candidate" at the time it is published. Ruscigno, P-067-LU20-EOH (July 19, 1995).³

It does not appear that Mr. Carey was a candidate within the meaning of the **Rules** at the time the protested publications were published. There is no evidence that Mr. Mack was a candidate for delegate or International office when the protested publications were published.

²The **Rules** apply to any alleged violative conduct occurring prior to date of their issuance and the protest is timely. *See Note 1.* Pursuant to Article XIV, Section 1, any member may file a protest.

³Under the **Rules**, "candidate" is defined as:

[A]ny member who is actively seeking nomination or election for any Convention delegate position or International Officer position. The term includes any member who has accepted any campaign contribution as defined by the **Rules** or made any expenditure, where the purpose, object or foreseeable effect of the contribution or expenditure is to influence the election of that member to any such position.

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Furthermore, the protested material was of interest to the membership, and the publications make no mention of the IBT election or the candidacy of any union member and are too remote from the 1996 International Officer elections to be considered campaign activity. The Joint Council may express opinions on the manner in which incumbent officers conduct affairs of the union. See, 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).

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.
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: Election Appeals Master Kenneth Conboy