

August 10, 1995

VIA UPS OVERNIGHT

James Jacob  
1377 Sassaquin Avenue  
New Bedford, MA 02745

Teamsters Joint Council 3  
3245 Eliot Street, Lower Level  
Denver, CO 80211

Darryl Sullivan  
2059 Richmond  
Arlington, TX 76014

Larry Strutton, Publisher  
*Rocky Mountain News*  
400 West Colfax  
Denver, CO 80204

Michael Ruscigno  
302 Summit Avenue  
Jersey City, NJ 07306

Paul Alan Levy, Esq.  
Public Citizen Litigation Group  
1600 20th St. NW  
Washington, DC 20009

RE: Election Office Case No. P-073-JC3-EOH

Gentlemen:

This pre-election protest was filed pursuant to Article XIV, Section 2(a) of the *Rules for the 1995-96 IBT International Union Delegate and Officer Election ("Rules")*.<sup>1</sup> The protesters, James

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<sup>1</sup>This "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

Jacob, a member of Local Union 251, Darryl Sullivan, a member of Local Union 745, and Michael Ruscigno, a member of Local Union 138, allege that an article in the publication *Colorado Labor*, *Rocky Mountain News* constitutes an impermissible use of a Union-financed publication or, in the alternative, that the publication of the article amounts to an employer campaign contribution forbidden under the **Rules**.

The investigation was conducted by Election Office Staff Attorney Helene Boetticher.

The protesters admit that they have never seen a copy of the publication *Colorado Labor*, *Rocky Mountain News*. They base their allegations on an editorial which appeared in the April, 1994 issue of *Rocky Mountain Teamster*, the official publication of Joint Council 3.<sup>2</sup> At the end of this editorial, it states "*Reprinted from Colorado Labor, Rocky Mountain News.*" No copy of this publication was ever provided to the Election Officer. Also, the protesters failed to provide the date on which the protested material was published.

In fact, the investigation has disclosed that no such publication exists. The excerpt printed in the *Rocky Mountain Teamster* most likely came from the column "Colorado Teamster" which appears in the publication *Rocky Mountain News*, a Denver-based daily Scripps-Howard publication funded through subscription and advertising sales. The column, written by James Hansen,<sup>3</sup> appears each Saturday and has been published for several years.

The re-printed editorial criticizes Mr. Carey for his dues increase campaign, his plan to abolish the Area Conferences, and his "autocratic tactics," and describes the attempts of Western Conference

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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.

<sup>2</sup>The protesters do not allege any violation of the **Rules** by the publishers of the *Rocky Mountain Teamster* in the instant protest. Allegations concerning the Union-financed publication were filed in a separate protest which has already been decided by the Election Officer. See, Jacob, P-062-JC3-EOH (July 28, 1995).

<sup>3</sup>Mr. Hansen is a Teamster member and is involved in writing and editing some issues of the *Rocky Mountain Teamster*. He is not employed by the *Rocky Mountain News* but submits his weekly column on a freelance basis.

Joint Council Presidents to stop the Conference's abolition.

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. Consideration of these illustrations are, however, unnecessary as the protested publication, if it is indeed the *Rocky Mountain News*, is clearly not financed by the Union.

The protesters also allege that the publication amounts to a prohibited employer campaign contribution under the **Rules**.<sup>4</sup> As the Election Officer made clear in her decision regarding the *Rocky Mountain Teamster*, Mr. Carey was not a candidate within the meaning of the **Rules** at the time the editorial was re-printed in Joint Council 3's publication in April 1994. *Id.*, See also, Ruscigno, P-065-JC37-EOH (July 21, 1995). Consequently, at the unspecified time when the column was originally published, Mr. Carey could not have been a candidate. The protested publication of the "Colorado Labor" column in the *Rocky Mountain News* does not support or attack the candidacy of Mr. Carey in 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

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<sup>4</sup>Article XII, Section 1(b)(1), of the **Rules** states:

No employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object, or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. No candidate may accept or use any such contribution. These prohibitions are not limited to employers that have contracts with the Union; they extend to every employer, regardless of the nature of the business, and include, but are not limited to, any political action organization that employs any staff, any nonprofit organization, such as a church or civic group that employs any staff; and any law firm or professional organization that employs any staff. These prohibitions extend beyond strictly monetary contributions made by an employer and include contributions or use of employer stationery, equipment, facilities and personnel.

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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

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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  
Jonathan Wilderman, Regional Coordinator