

October 28, 1996

VIA UPS OVERNIGHT

James Sweeney
23 Brentwood Parkway
Brentwood, NY 11717

Timothy Cassella
31-24 Steinway Street
Astoria, NY 11102

James P. Hoffa
2593 Hounds Chase
Troy, MI 48098

Brian Maxwell
142 Argyle Road
Stewart Manor, NY 11530

Genesis Distribution System
65 Railroad Avenue
Richfield, NJ 07657

Landenmeyr Munroe
301 Veterans Boulevard
Rutherford, NJ 07070

Martin Wald
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103

Ron Carey Campaign
c/o Nathaniel K. Charny
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

Bradley T. Raymond
Finkel, Whitefield, Selik, Raymond,
Ferrara & Feldman, P.C.
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334

Re: Election Office Case Nos. P-1029-RCS-NYC
P-1051-RCS-NYC
P-1069-RCS-MGN
P-1087-RCS-NYC

Gentlemen:

Pre-election protests were filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* alleging that campaign stickers supporting Ron Carey, IBT general president and a candidate for reelection, have been affixed to employer property, in violation of the *Rules*. In P-1029-RCS-NYC, Local Union 817 member James Sweeney alleges that on September 26, 1996, he saw Carey stickers on two trucks, one belonging to the United Parcel Service ("UPS") and the other belonging to Genesis Distribution Systems ("Genesis"). In P-1051-RCS-NYC, Local Union 817 member Timothy Cassella alleges that on October 2, 1996, he saw a Carey sticker on a truck belonging to Landenmeyr Munroe. In P-1069-RCS-MGN, James P. Hoffa, Local Union 614 member and a candidate for general president, alleges that on or about October 7, 1996, "numerous Carey campaign stickers were observed on and proximate to UPS's Livonia, Michigan facility." In P-1087-RCS-NYC, Local Union 817 member Brian P. Maxwell alleges that on October 11, 1996, he saw a Carey sticker on the inside of one of the back doors of a truck belonging to UPS. The Election Officer consolidated these protests for decision and remedy due to the fact that they raises similar questions under the *Rules*.

The protests in P-1029-RCS-NYC, P-1051-RCS-NYC and P-1087-RCS-NYC were investigated by New York City Protest Coordinator Barbara C. Deinhardt. The protest in P-1069-RCS-MGN was investigated by Regional Coordinator William A. Wertheimer, Jr.

Mr. Sweeney (P-1029-RCS-NYC) submitted four photographs to the Election Officer, which he states were taken on September 26, 1996. Two of the photographs show a UPS truck bearing New York license plates, which he saw at New York City's South Street Seaport at approximately 2:00 p.m. A small "Carey '96" sticker is affixed immediately below the rear license plate. The other two photographs show a Genesis truck bearing New Jersey license plates, which Mr. Sweeney saw on Columbia Street in Brooklyn, New York, at approximately 5:00 p.m. A Carey bumper sticker is affixed to the front bumper.

Mr. Cassella (P-1051-RCS-NYC) submitted three photographs to the Election Officer, which he states were taken on October 2, 1996. All three photographs show a Landenmeyr Munroe truck bearing New Jersey license plates, which he saw at 444 W. 16th Street in New York City, at approximately 6:00 p.m. One of the photographs shows a Carey bumper sticker affixed to the left side of the rear door.

Mr. Maxwell (P-1087-RCS-NYC) submitted three photographs to the Election Officer, which he states were taken on October 11, 1996. All three photographs show a UPS truck bearing New York license plates, which he saw at 21st Street and Sixth Avenue in New York City at approximately 4:30 p.m. A Carey bumper sticker is affixed to the inside of the truck's left rear door.

The Election Officer has addressed isolated appearances of campaign stickers on employer-owned trucks in two prior decisions: Hoffa, P-922-LU707-NYC et seq. (October 7, 1996) and Knox, P-1006-SFD-MGN (October 14, 1996). Under Article VIII, Section 11(a) of the *Rules*, "All Union

members retain the right to participate in campaign activities, including the right to . . . support or oppose any candidate . . .” However, that right is not a license to affix stickers to employer property. As the Election Officer has stated, “[t]he **Rules** protect campaigning as a personal right of IBT members and require that it be exercised that way.” Phelan, P-711-LU550-NYC (April 23, 1996), aff’d, 96 - Elec. App. - 184 (KC) (May 6, 1996).

Thus, nothing in the **Rules** authorizes members to affix campaign material to employer-owned trucks as alleged in these protests. See Feeley, P-874-LU817-MGN (September 17, 1996). The placement of Carey campaign material on employer trucks as shown in the photographs submitted to the Election Officer has the effect under the **Rules** of causing those employers to make improper contributions to the Carey campaign in violation of Article XII, Section 1(b)(1).¹ The affixing of campaign material to employer trucks also has the potential for creating a false impression of employer endorsement, which would violate the same section.

The Election Officer acknowledges that isolated incidents of campaign stickers being affixed to employer trucks and other property are difficult to monitor under the **Rules**. Where evidence has shown local union involvement or a concentration of incidents at an employer or work site, that factor facilitates a remedy. See, e.g., Feeley (evidence of local union involvement in pervasive affixing of stickers at work sites; remedy ordered against local union and against campaign of slate containing local union’s president); Maney (several local unions sponsored trucks in parade, on which stickers appeared; remedy ordered through joint council). The remedies ordered by the Election Officer are targeted at the removal of improperly affixed stickers, at educating members as to what the **Rules** do and do not allow, and at preventing further occurrences.

With respect to isolated incidents by unknown members, the Election Officer has undertaken general educational and preventive measures, such as supplying copies of the **Rules** to all local unions and joint councils and, with respect to International officer campaigns, instructing them to take “appropriate measures to discourage persons who campaign on your behalf from defacing property with campaign material.” Willett, P-863-LU331-PNJ (August 16, 1996) (remedy ordered in response to incidents of vandalism, including the defacing of property with campaign stickers). Where appropriate, a remedy in a more targeted matter may also be expanded for broader educational and preventive purposes. See Maney (incidents involving some local unions in joint council remedied by ordering notice sent to all local unions in joint council).

¹This section 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.” Knowledge on the part of the employer is not an element of this violation. See Feeley, *supra*; Maney, P-956-IATSE-NYC et seq. (October 2, 1996), aff’d, 96 - Elec. App. - 251 (KC) (October 15, 1996).

The immediate priority in isolated stickers cases, however, is the removal of improperly affixed stickers. As the Election Officer stated in Hoffman, P-1050-LU817-NYC (October 28, 1996), “[i]mmediate removal ends any potential impact of the improper campaigning.” Thus, upon the filing of a protest, the Election Officer will send a notice to the employers involved that explains the employer contribution violation under the **Rules** and requests immediate removal of any campaign stickers and signs affixed to employer property. In the normal case, the Election Officer will then consider the protest as to the employers to be resolved.

Accordingly, the Election Officer will send notice to Genesis and Landenmeyr Munroe that they should not permit campaign material to be affixed to their trucks. The Election Officer reviewed UPS’s compliance with that aspect of the **Rules** in Hoffa and finds that no further remedy with respect to UPS is required.

Under Article XII, Section 1(b)(9) of the **Rules**, International officer candidates “are strictly liable to insure that each contribution received is permitted under the **Rules**.” Therefore, the Carey campaign is strictly liable for the improper receipt of contributions from UPS, Genesis and Landenmeyr Munroe.

The Election Officer expects International officer campaigns, when they receive notice of protests involving campaign material improperly affixed to employer property, to take their share of responsibility for ensuring that such materials are removed promptly.

For the foregoing reasons, the protest in P-1029-RCS-NYC is RESOLVED with respect to UPS and Genesis Distribution Systems, and is GRANTED with respect to the Carey campaign. The protest in P-1051-RCS-NYC is RESOLVED with respect to Landenmeyr Munroe and GRANTED with respect to the Carey campaign. The protest in P-1087-RCS-NYC is RESOLVED with respect to UPS and GRANTED with respect to the Carey campaign.

Mr. Hoffa (P-1069-RCS-MGN) submitted four photographs to the Election Officer, which he states were taken at the UPS facility in Livonia, Michigan on October 7, 1996. Two of the photographs show Carey campaign stickers on “No Parking Tow Away Zone” signs on the outside of the facility’s fence. The sticker on one of the signs is partially torn away. The other two photographs show Carey campaign stickers affixed to no-parking signs² attached to utility poles outside the facility fence.

The Election Officer has addressed the affixing of campaign material to public signs and utility poles in Hoffa, P-1034-JC1-CLE et seq. (October 17, 1996) and Braga, P-795-LU439-CSF (June 19, 1996). As the Election Officer stated in Braga, “[u]nion members who choose to post campaign materials on public utility poles or public signs existing along public streets or sidewalks

²These signs are of the international type, showing a P within a slashed, red circle.

are not engaging in conduct which is either protected or sanctioned by the *Rules*.” Whether or not such actions fall under proscriptions in state and/or local law is outside the purview of the *Rules*.

For the foregoing reasons, the protest is P-1069-RCS-MGN is DENIED.

When the Election Officer determines that the *Rules* have been violated, she “may take whatever remedial action is appropriate.” Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process.

The Election Officer will send notices to Genesis Distribution Systems and Landenmeyr Munroe as noted above.

The Carey campaign shall cease and desist from accepting improper campaign contributions in the form of campaign material improperly affixed to employer property. Upon notice of campaign material on employer property, the Carey campaign shall promptly investigate the incident and take steps to ensure that such materials are promptly removed.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1996).

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 & 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 N. Capitol Street, Suite 855, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

James Sweeney et al.

October 28, 1996

Page 6

Barbara Zack Quindel

Election Officer

cc: Kenneth Conboy, Election Appeals Master
Barbara C. Deinhardt, New York City Protest Coordinator
William A. Wertheimer, Jr., Regional Coordinator