

July 27, 1995

**VIA UPS OVERNIGHT**

R.E. Middleton, President  
Teamsters Local Union 848  
9960 Baldwin Place  
El Monte, California 91731

James P. Hoffa  
2593 Hounds Chase  
Troy, Michigan 48903

Ron Carey, General President  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, D.C. 20001

John J. Sullivan, Associate Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, D.C. 20001

**RE: Election Office Case Nos. P-105-IBT-PNJ (July/August *Teamster* Magazine)  
P-106-IBT-PNJ**

Gentlemen:

Related pre-election protests were filed pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")***.

R.E. Middleton, President of Local Union 848, filed a protest (P-105-IBT-PNJ) alleging that General President Ron Carey has utilized the July/August issue of *Teamster*, the magazine of the IBT, for personal campaign purposes, in violation of the ***Rules***. Mr. Middleton did not cite any specific articles in the July/August *Teamster* magazine.

Subsequently, James P. Hoffa filed a protest (P-106-IBT-PNJ) alleging that Mr. Carey misused funds of the IBT, also based upon the content of the July/August issue of *Teamster*. In his protest, Mr. Hoffa cites a picture of General President Carey on page 1; an article entitled

“The Future of Teamster Reform located on pages 2 and 3; an article on page 16 which describes a rally which occurred in Kankakee, Illinois; and an article on page 17 which describes a rally which occurred in Detroit, Michigan.

The IBT maintains that neither the July/August issue of *Teamster*, taken as a whole, nor the four items specified in the Hoffa protest violate the **Rules** and, in support, the IBT presents an analysis of both the facts and the case law which it asserts as applicable to the matters alleged.

Regional Coordinator Peter V. Marks, Sr., conducted the Election Officer’s investigation.

Because both protests raise similar factual and legal claims, they were consolidated by the Election Officer.

## I. Background

The *Teamster* (formerly *The New Teamster* and *The International Teamster*) is the official magazine of the IBT. Currently, the Union publishes eight issues per year. This Union-financed publication has a circulation of 1.7 million. It is received by IBT members in the United States, members of the press, subscribers, and by those who receive complimentary copies of the publication.

The July/August issue of *Teamster* contains 27 pages of text (including the back cover). It includes twenty-six separate stories and columns, as well as reports prepared and issued by the Election Officer and the Independent Review Board, and two pages of letters to the magazine from IBT members. Twenty-three pictures are included in the magazine.

## II. Standards for Review Under the **Rules**

The *Rules* provide, in Article VIII, Section 8, the following prohibition:

(a) No publication or communication financed, directly or

indirectly, by a Union may be used to support or attack any  
candidate or the candidacy of any person . . .

The **Rules** continue by setting out various criteria to be used in determining whether a union-financed publication has violated this general prohibition.

The Election Officer finds both Mr. Carey and Mr. Hoffa were candidates when the July issue of *Teamster* was published.<sup>1</sup> Thus, the Election Officer must determine whether the union-financed publication was used to either “support or attack” either candidate.

In her analysis under Article VIII, Section 8(a), the Election Officer is guided by cases applying Section 401(g) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (“LMRDA”). Section 401(g) of LMRDA contains similar prohibitions on the use of union or employer assistance in campaigning and is incorporated into the **Rules** pursuant to Article XIII.

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<sup>1</sup>Under the **Rules**, “candidate” is defined as:

[A]ny member who is actively seeking nomination or election for any Convention delegate or alternate 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.

The LMRDA prohibits union assistance only if the activity supported by such assistance promotes the candidacy of a person in a union election subject to Title IV of the LMRDA.<sup>2</sup>

To ascertain whether a communication constitutes promotion of a candidate in violation of Section 401(g), the courts have looked to the “tone, content and timing” of the communication. See, Donovan v. Postal Employees, 566 F. Supp. 529, 533 (D.D.C. 1983); Usery v. Int’l Org. of Masters, Mates & Pilots, 528 F.2d 946, 949 (2d Cir. 1976).

The courts have clarified Section 401(g) with regard to timing. For example, in Dole v. Fed’n of Postal Police, 744 F. Supp. 413, 420 (E.D.N.Y., 1990), the court drew a distinction between a newsletter distributed over seven months before nominations and thus removed from the “heat of the [ ] election campaign,” and one distributed within two months of the election. The court also provided direction in evaluating the timing of a communication:

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<sup>2</sup>The regulations promulgated by the U.S. Department of Labor at 29 C.F.R. §452.75 interpret 401(g) as follows:

The provisions of section 401(g) prohibit any showing of preference by a labor organizations or its officers which is advanced through the use of union funds to criticize or praise any candidate. Thus, a union may neither attack a candidate in a union-financed publication nor urge the nomination or election of a candidate in a union financed letter to the members. Any such expenditure regardless of the amount, constitutes a violation of section 401(g).

Considered under the totality of the circumstances, otherwise permissible statements may take on a different hue when viewed against the backdrop of an election campaign. And while a union-financed publication may cover “factual notices or statements of interest to members,” and “newsworthy activities of an incumbent [or challenger] running for office,” the line between reporting such facts and activities and between promoting or attacking a candidate can be fine. Thus even “coverage of newsworthy activities of the incumbent” may be so excessive as to render it campaign literature on behalf of the incumbent.

Id., at 418 (citations omitted).

In Camarata v. Int’l Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), the court rejected the plaintiff’s claim that a union publication constituted prohibited campaign material, and noted that the material was not published “at a time proximate to the election as to which relief is sought.”

Decisions of the 1991 Election Officer also provide guidance in determining whether a union-financed publication has violated the prohibition by supporting or attacking a candidate. See, Morris, P-1013-LU429-PHL (October 29, 1991), in which the Election Officer examined whether “the newsletter, taken as a whole, provides support to [a] particular candidate.” In Durham P-250-IBT, (February 5, 1991), the Election Officer utilized a newsworthiness test in examining whether or not the subject matter of the article “affect[s] a significant number of the IBT membership.”

The Election Officer is cognizant that Mr. Carey, as the incumbent General President, remains the institutional leader of the IBT. As such, he is often an important participant in many matters of interest to the membership and, therefore is more likely to have his participation in such matters the subject of inclusion in a magazine's reports to the membership. As the Court stated in Sheldon v. O'Callaghan, 335 F. Supp.325, 328 (S.D. N.Y. 1971), quoting Yablonski v. UMWA, 305 F. Supp. 868, 871 (D.D.C. 1969):

It is not unusual for the publication to publish pictures of incumbent officers in the performance of their related activities. [Such coverage of an incumbent officer] is not "excessive coverage, column-wise and pictorially, given to defendant . . . in relation to the coverage of other matters" contained in the [ ] magazine.

See, Donovan v. Metro. Dist. Council, 797 F.2d 140 (3rd Cir. 1986), citing Yablonski v. UMWA, 305 F. Supp.868 (D.D.C. 1969). In conformance with applicable case law, the Election Officer recognizes, in applying the "tone, content and timing" test to a union-financed communication, that so long as a published report on the activity of an incumbent "is addressed to the regular functions, policies and activities of such incumbents as officers involved in matters of interest to the membership, and not as candidates for reelection, there is no violation of [the Act]" Id., at 145, citing Camarata, 478 F. Supp. 321 at 330.

### III. Application of the **Rules** to the Allegations of the Protests

Mr. Middleton alleges that the July/August *Teamster*, taken as a whole, violates the **Rules**. Mr. Hoffa alleges that the portions of the July/August issue violate criteria contained in Article VIII, Section 8(a). Specifically, Hoffa cites a "mandatory" picture of Mr. Carey on page one; an article entitled "The Future of Teamster Reform" on pages two and three that lists

the "Ron Carey Slate 'Accomplishments;'" and articles and photographs on pages sixteen and seventeen of a K-Mart rally and a newspaper union rally in which Mr. Hoffa claims all references to himself were intentionally deleted.

Unlike earlier protests regarding the *Teamster* magazine, the July/August issue coincides with the beginning of the delegate election process. Nomination meetings for 19 IBT Local Unions representing members in the seasonal food industry began July 5, 1995 and will continue through September 10, 1995. See, **Rules**, "Timetable of Events." The July/August *Teamster* was received by members on or about July 7, 1995. Additional delegate nominations and elections will be held in the Fall.<sup>3</sup> It is also recognized that under the **Rules** the vast majority of Local Unions (approximately 520) will not elect delegates to the Convention until the period of January through April 1996.

A general review of the content of the entire July/August issue of *Teamster* indicates that of the 26 stories contained in the issue, Mr. Carey is mentioned in six items, generally in reporting an event or action taken in his capacity as General President of the IBT. Of the 23 pictures contained in the issue, only one is of Mr. Carey. The Election Officer finds, therefore that the July/August issue, taken as a whole, does not provide support for Mr. Carey's candidacy in violation of the **Rules**. See, Morris, P-1013-LU429-PHL (October 29, 1991).

The Election Officer now turns to the articles and pictures specifically cited by Mr. Hoffa in his protest.

The picture of Mr. Carey on page 1, while prominently located, is neither larger nor more

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<sup>3</sup>Approximately 36 Local Unions will be holding their election of delegates and alternates to the IBT Convention between September and December 1995.

attractive than pictures of Mr. Carey appearing in prior issues of *Teamster*. Additionally, the photograph relates to national negotiations for a master car hauler agreement (negotiations in which Mr. Carey has taken an active role). It is, therefore, both a newsworthy event and one to which Mr. Carey has a direct connection in the course of carrying out his duties as General President. The picture, therefore, is not violative of the ***Rules***.

Mr. Hoffa also complains of two stories describing rallies in which IBT members participated. The first was a rally occurring in Kankakee, Illinois, against K-mart and the second was held in front of the offices of the Detroit News to protest activities of both Detroit daily newspapers. Mr Hoffa states he attended both rallies and participated as "a major speaker," and complains that neither article mentions his presence, an exclusion alleged by Mr. Hoffa to be a deliberate attempt to deny him coverage in the magazine. However, each of the stories in question is quite small, one containing 51 words and the other 55. The pictures are of rank and file members and neither story mentions Mr. Carey nor the name of any of the individuals who spoke or attended either rally. It cannot be said that the failure to report on Mr. Hoffa's as a speaker at these events is in violation of the ***Rules***.

The Hoffa protest also specifically mentions an article contained on pages 2 and 3, entitled "The Future of Teamster Reform" and subtitled "Why You Should Take Part in Choosing Delegates to the 1996 International Union Constitutional Convention." The article begins with three short introductory paragraphs:

Every Teamster has a stake in the upcoming elections to choose local union delegate to the 1996 International Union Convention.

The Convention can make changes in the Teamsters International Union Constitution.



That means the delegates will have the poser to continue the clean-up of our union -- or to undo the reforms of the past three years and turn back to clock.

The article then proceeds with a bullet point listing of the accomplishments of General President Carey and the General Executive Board of the International Union under the broad topics of "Fighting Corruption" and "Cutting Waste and Outrageous pay for officials." After the heading "Fighting Corruption," the article reads:

The Teamsters Constitution now gives the General President and the General Executive Board who you elect the authority to clean up corruption.

Using that authority, General President Ron Carey or the General Executive Board have . . .

The bullet point listing beneath this heading directly attributes to Mr. Carey and his administration such accomplishments as fighting Mafia influence and establishing the Teamsters Ethical Practices Committee.

Under the heading "Cutting Waste and Outrageous Pay for Officials," the introduction again attributes advances in this area directly to "General President Carey or the General Executive Board." Thereafter, the bullet point listing includes returning more than \$11 million per year to Local Unions and allowing Local Unions to save hundreds of thousands of dollars per year.

Each of these sections end with a question. For example, under "Fighting Corruption," the following question is presented in bold headline type: "Do you want the 1996 Convention to protect or undermine the authority of the elected General President and General Executive Board to fight corruption?" Similarly, after "Cutting Waste and Outrageous Pay for Officials,"

the reader is asked, also in bold headline: “Do you want the 1996 Convention to protect or undermine the authority of the elected General President and General Executive Board to cut waste and outrageous pay for officials?” Thus, the article connects Mr. Carey and the accomplishments of his administration to the upcoming delegate elections.

Certainly this article is a call to the general membership to participate in the upcoming elections for delegate to the 1996 International convention. And if the article had simply urged such participation and cited the important issues that would be debated, the Election Officer would have found it to be within the latitude afforded the Union in reporting and editorializing about important union activities. The article went beyond this permissible breadth, however, and incorporated references to Ron Carey and his accomplishments at a time when delegate elections, although few in number, were underway.

Furthermore, these accomplishments were praised in the context of the importance of running for delegate. Since Mr. Carey needs five percent of the delegates to nominate him at the Convention, the article encourages members to become a delegate so they can vote to nominate Ron Carey.<sup>4</sup> The linking of the accomplishments of Mr. Carey with the urging of members to become convention delegates makes this article more akin to material which might be found in a campaign flyer for Mr. Carey than in a news report or an editorial item. The Election Officer finds this article crossed the fine line between reporting and campaigning, and, therefore, is a violation of Article VIII, Section 8(a) of the **Rules**.<sup>5</sup> See, Postal Police, 744 F.

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<sup>4</sup>See, Kilmury, Case P-843-JC56-MOI (October 9, 1991) where the Election Officer found that the reprint of an article in a union publication which did not focus on any particular candidate, was in violation of the Rules, because “the foreseeable affect of that article is to influence the election of these candidates.”

Supp. 413, 418.

The protest is GRANTED as to “The Future of Teamster Reform” article which appears on pages 2-3 of the July/August issue of *Teamster* and DENIED in all other respects.

IV. The Remedy

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 has found that the inclusion in the July/August *Teamster* of an article written with the content and in the tone of “The Future of Teamster Reform” which appears on pages 2-3 is improper at this point in the election process when the election of delegates is underway in some Local Unions. The protesters have requested the remedy of equal space and equal prominence to other candidates in a subsequent issue of *Teamster*. The Election Officer, however, recognizes that it is still quite early in the International Officer and delegate election process, and that accredited candidates will have access to the *Teamster* to present their views in the October/November 1995 and March 1996 issues. Nominated candidates will have their campaign material appear in each of the September, October and November 1996 issues of the magazine.

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<sup>5</sup>The picture on page 3 which accompanies the story, however, is not a violation of the **Rules**. It is a long-range view of the podium and delegates attending a session of the 1991 IBT Convention and does not feature or include Mr. Carey or members of the current General Executive Board.

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To remedy this violation, the IBT is directed to publish in the next edition of the *Teamster* the "Notice to Members" attached to this decision as Exhibit A. The notice shall be not less than one full page in length. The notice shall be located on either page one or two of the magazine and shall be subject to the prior review and approval of the Election Officer as to the manner of its presentation, including the size and variety of type face by which it is presented.

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  
Regional Coordinators

**EXHIBIT A**

**TO ALL MEMBERS OF  
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
FROM ELECTION OFFICER BARBARA ZACK QUINDEL**

The Election Officer has the authority of supervise all phases of the International Union delegate and officer elections. These elections, including the campaigning process, are governed by the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*.

The July/August issue of *Teamster* magazine contained an article entitled "The Future of Teamster Reform" on pages 2-3. The stated purpose of the article was to advise the membership of the International Union of the importance of the upcoming election for delegates and alternate delegates to the International convention to be held by each IBT Local Union. The article contained references praising the accomplishments of General President Ron Carey who is running for re-election. The delegate election process began in July, 1995, for several Local Unions in the seasonal food industry. Because the article was

published at a time when the delegate election process had begun, the Election Officer found this article to be campaigning in violation of the **Rules** and ordered that this Notice be placed in the *Teamster*.

The *Teamster* magazine is certainly permitted to report and discuss its views on events and programs of the Union. In doing so, it may report on officers who are involved, so long as such coverage is not excessive and does not inappropriately connect their action with an appeal to the members to re-elect them. Neither the International Union nor Local Union financed publications can be used to campaign on behalf of candidates for delegate or International office. In future months, and in accordance with the **Rules**, space will be set aside to print campaign material of the individual candidates for International office. But this material is separate and apart from the articles, pictures and reports published by the International Union.

All members of the IBT are encouraged to participate in the process of selecting delegates to the 1996 International Convention. The Convention and the process of electing the delegates and alternate delegates to represent each Local Union in attendance are important union business and deserve your attention. Whatever your views regarding the future of the IBT, you are strongly urged to take part in the election process.

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BARBARA ZACK QUINDEL  
Election Officer

