

November 1, 1996

VIA UPS OVERNIGHT

Michael J. Tobin, Deputy Trustee
Teamsters Local Union 295
435 Hudson Street, 4th Floor
New York, NY 10014

Airborne Express
30-30 60th Street
Woodside, NY 11377

William Boe, Dir. of Labor Relations
Airborne Express
3101 Western Avenue
Seattle, WA 98121

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

Re: Election Office Case No. P-1056-RCS-NYC

Gentlemen:

Michael J. Tobin, deputy trustee of Local Union 295, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* alleging that a group of 20 to 30 unknown persons wearing Carey jackets campaigned improperly at an Airborne Express ("Airborne") terminal on October 3, 1996, by putting Carey bumper stickers on at least 10 Airborne trucks leaving the terminal and by placing a Carey poster on the side of the terminal.

The Election Officer's investigation identified several members of the group. All denied putting campaign material on Airborne trucks or seeing other members of the group do so.

New York City Protest Coordinator Barbara C. Deinhardt investigated this protest.

The alleged events took place outside the Airborne terminal in Woodside, New York. Mr. Tobin was not a witness. He states that he based his protest on information received from Airborne Shop Steward Steve Amato, Jr. and District Field Service Manager Jeff Sidorski.

According to Messrs. Amato and Sidorski, the group of 20 to 30 Carey supporters campaigned at the terminal on the morning of October 3. Mr. Amato states that members of the group lined up on the driveway outside the Woodside facility in order to hand out literature and bumper stickers to drivers as they pulled out. He also states that when some drivers resisted,

members of the group started taunting drivers by yelling "Carey" and criticizing general president candidate James P. Hoffa. Mr. Amato also contends that a few members of the group began slapping bumper stickers on the Airborne trucks. He states that he removed "ten or so" stickers himself and that there were more that he did not remove.

Mr. Sidorski states that as trucks began to leave the terminal at about 8:20 a.m., five members of the Carey campaign group stood immediately outside the terminal and tried to talk to drivers. He also states that 20 or so members of the group stood about 300 feet away from the terminal at a traffic light where drivers stopped. Mr. Sidorski states that persons in the group at the light were slapping stickers on trucks and that he walked down to the group twice to ask them to stop unsuccessfully. He estimates that 15 to 20 trucks were affixed with stickers. He further states that at approximately 8:15 a.m., he first noticed a Carey poster that had allegedly been taped to a cement post near the bay door to the terminal.

At one point, Mr. Sidorski asked Airborne Dispatcher Nick Blaine to radio drivers to stop and check their trucks for stickers and remove them. Mr. Blaine states that a few drivers came back to the yard to take stickers off their trucks. He also states that he heard a few drivers radio each other to say that members of the Carey group had put stickers on their trucks.

The investigation revealed that the members of the pro-Carey group were from different local unions within Joint Council 16. The Carey campaign identified them as a "strike force" of core supporters in that area. On many mornings, they visit a different facility in order to campaign. The exact composition of the group varies from morning to morning.

The Election Officer's investigator spoke with three members of the strike force who were present at Airborne's Woodside facility on October 3: Local Union 807 employee/members Gene Maney, Pat Connell and Bob McDonald. Mr. Maney described their activity as handing literature and stickers to drivers stopped at the traffic light and putting stickers on telephone poles across the street. All three members of the group deny putting stickers on Airborne trucks or seeing anyone else in their group do so.

It is well-established that "[n]othing in . . . the **Rules** authorizes members to affix campaign material to employer-owned trucks . . ." Hoffa, P-992-LU707-NYC (October 7, 1996); Hoffa, P-1048-LU572-CLA (November 1, 1996); Knox, P-1046-LU337-MOI et seq. (October 30, 1996). Such activity also has the effect, under the **Rules**, of causing the employer to make an improper campaign contribution, in violation of Article XII, Section 1(b)(1), even if affixing the sticker was unauthorized,¹ as well as potentially creating a false impression of employer endorsement that would also violate that section. Furthermore, 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, affixing a campaign sticker or sign to an employer truck results in a violation of the **Rules** by the candidate who the member intends to support.

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.

The Election Officer credits the statements of Messrs. Amato, Sidorski and Blaine and finds that members of the Carey strike force that campaigned at Airborne's Woodside facility on October 3 affixed Carey campaign stickers to Airborne trucks. In making this finding, the Election Officer does not discredit the statements of Messrs. Maney, Connell or McDonald that they did not see such activity themselves. The Election Officer notes that Mr. Amato stated that "a few" members of the group engaged in the improper activity.

The Election Officer finds, nevertheless, that the improper activity was a serious violation of the **Rules**, in that it caused Mr. Amato to walk out twice to remove stickers from trucks and caused several trucks to return to the terminal to have stickers removed. The **Rules** seek to accommodate the legitimate interest of employers in not having campaign activity interfere with the work of their employees, and that interest was unnecessarily and improperly disrupted in this matter.

With respect to Airborne, the Election Officer considers this protest to be resolved, in view of the company's prompt action to remove stickers from its trucks, as well as its efforts to stop the activity of affixing stickers. See Aguilar, P-1080-LU848-CLA (October 31, 1996); Hoffa (P-1048). "Immediate removal ends any potential impact of the improper campaigning." Hoffman, P-1050-LU817-NYC (October 28, 1996); Sweeney, P-1029-RCS-NYC et seq. (October 28, 1996).

With respect to the Carey campaign, the Election Officer's order of remedy in Willett, P-863-LU331-PNJ (August 16, 1996), directed all International officer candidates "to take appropriate measures to discourage persons who campaign on [their] behalf from defacing property with campaign material." The Election Officer emphasized this obligation in several subsequent matters. See, e.g., Feeley, P-873-LU817-MGN (September 17, 1996); Sweeney, P-1058-LU807-NYC (October 28, 1996); Knox. The affixing of stickers to employer trucks by members of the Carey campaign's "strike force" in the Joint Council 16 area shows that the Carey campaign has not adequately met its obligation.²

For the foregoing reasons, the protest, with respect to Airborne, is RESOLVED, and with respect to the Carey campaign is GRANTED.

²The Election Officer further notes that all local union officers, stewards and business agents within Joint Council 16, as a result of the remedy ordered in Maney, P-956-IATSE-NYC et seq. (October 2, 1996), aff'd, 96 - Elec. App. - 251 (KC) (October 15, 1996), received a notice from the Election Officer reaffirming the impropriety of affixing campaign stickers to employer property and specifically instructing them to stop such activity if they see it.

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 orders the following:

1. The Carey campaign shall cease and desist from accepting campaign contributions in the form of campaign stickers and other material affixed to employer property.
2. Within three (3) days of the date of this decision, Ron Carey and the Carey campaign shall execute and distribute the attached “Notice to Carey Campaign Supporters” to all of the campaign’s principal workers in the area of Joint Council 16, including all members of its “strike force” involved in this matter. Within five (5) days of the completion of distribution, the Carey campaign shall file an affidavit with the Election Officer demonstrating compliance with this order. The Carey campaign shall attach a list of recipients to the affidavit.

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,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Barbara C. Deinhardt, New York City Protest Coordinator

NOTICE TO CAREY CAMPAIGN SUPPORTERS

The Carey campaign is issuing this notice to clarify your role in making sure that members do not misuse employer property and resources during the International officer election.

The *Election Rules* protect campaigning as a personal right of members.

Employer resources or property do not belong to members and cannot be used by them to campaign.

Putting International officer campaign material on employer property, or using employer resources in order to campaign, violates the *Election Rules*.

You are hereby instructed to stop such activity if you see it and to remove any International officer campaign material from employer property when you find it.

Date

Ron Carey
for the Carey Campaign

Approved by Barbara Zack Quindel, IBT Election Officer.