

November 19, 1996

VIA UPS OVERNIGHT

Robert Schauer
11916 Swiss Valley Road
Peosta, IA 52068

David Baker, President
Teamsters Local Union 421
1435 Central Avenue
Dubuque, IA 52004

Richard Brook
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

James P. Hoffa Campaign
c/o Bradley T. Raymond
Finkel, Whitefield, Selik, Raymond,
Ferrara & Feldman, P.C.
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334

Re: Election Office Case No. P-1251-LU421-MOI (CORRECTED)

Gentlemen:

Robert Schauer, a member and trustee of Local Union 421, 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 Local Union 421 President David Baker violated the ***Rules*** by using local union resources and stationery to issue a letter to members that had substantial improper campaign content, including the following: (1) personal candidate endorsements by local union Executive Board members; and (2) overall tone and content supporting the candidacy of James P. Hoffa. Mr. Schauer lodges his protest against Local Union 421, Mr. Baker and the Hoffa campaign.

Mr. Baker responds that his communication was necessary to eliminate confusion created by a Carey campaign mailing.

This protest was investigated by Regional Coordinator Michael D. Gordon.
On or about November 9, 1996, Local Union 421 received a mailing from the Carey

campaign, which read, in part:

ATTENTION
FELLOW 421 MEMBERS
Your ballot will arrive soon.
VOTE FOR
YOUR FUTURE!
RE-ELECT THE
RON CAREY SLATE

It is not disputed that this mailing was campaign material, which is apparent on its face. In the lower right-hand corner, the flier states, "Paid for by Local 421 Members and Members of the Executive Board in favor of the re-election of Ron Carey."

On November 12, 1996, Mr. Baker mailed a response to Local Union 421 members with his signature, using local union resources and on local union stationery. It began:

RECENT MAILER IMPLIES LOCAL #421
ENDORSEMENT FOR IBT INTERNATIONAL
OFFICERS ELECTION
FLYER CLARIFIED BY ROLL-CALL POLL OF LOCAL 421
EXECUTIVE BOARD

Mr. Baker's communication continued by stating that the Carey campaign mailer alleged that Local Union 421's Executive Board supported "a certain candidate in the IBT Officers Election," which necessitated "swift and immediate clarification" in view of the mail-out of International officer election ballots on November 8, 1996. That clarification was the listing, by name and position, of the five Executive Board members supporting the Hoffa campaign and the two members supporting the Carey campaign, according to a poll of the board. Mr. Baker states that the Executive Board has made no official endorsement and that "[t]he information contained in this communication is intended solely to set the record straight as a result of the mailer sent out by the Carey camp."

The Election Officer finds that Mr. Baker and Local Union 421 violated the **Rules** by using local union resources and letterhead to mail a communication to members that had clear campaign content. Article VIII, Section 11(c) provides,

Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.

The Election Officer notes that the Carey campaign mailer cited above did not violate the **Rules**. Article VIII, Section 11(b) specifically allows that "[a]n endorsement of a candidate may be made by a Union officer or employee, but solely in his/her individual capacity." The legend in the lower right-hand corner of the Carey campaign mailer constitutes such an

endorsement, albeit anonymous, by some members of the Local Union 421 Executive Board.¹ The publication of that endorsement in campaign literature was proper, under the **Rules**.

It violated the **Rules** for Mr. Baker, in response, to publish personal campaign endorsements using local union resources and letterhead. He and other Local Union 421 Executive Board members were free to endorse the Hoffa campaign in their personal capacities and to make such endorsements known using their own resources, or to have such endorsements published by a campaign. As the Election Officer stated in Phelan, P-711-LU550-NYC (April 23, 1996), aff'd, 96 - Elec. App. - 184 (KC) (May 6, 1996), “[t]he **Rules** protect campaigning as a personal right of IBT members and require that it be exercised that way.” The **Rules** do not, however, permit the use of local union resources for communicating campaign material, as noted above.

Mr. Baker’s intent “solely to set the record straight” does not excuse the improper use of local union resources. Local Union 421 has a legitimate interest in avoiding the appearance that the local union or its executive board, as such, have improperly endorsed a candidate.² Upon examination of the Carey campaign mailer, the Election Officer does not find that it made such an endorsement. If it had, however, the proper response by the local union would have been limited to a statement that no such endorsement exists. While Mr. Baker’s communication contained such a statement, it violated the **Rules** by going on to state personal campaign endorsements by individual Executive Board members.

For the foregoing reasons, the protest is GRANTED.

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 effect of Mr. Baker’s communication was to support Mr. Hoffa by publishing a statement that a poll of Local Union 421’s Executive Board showed majority support for his candidacy. The Election Officer orders the following:

¹The Election Officer does not read the legend to claim endorsement by all Executive Board members, as Mr. Baker alleges.

²Article VIII, Section 11(b) also provides, “The Union or a Local Union as such or the General Executive Board or an Executive Board of a Local Union as such may not endorse or otherwise advance a candidacy . . .”

1. Local Union 421 and Mr. Baker shall immediately cease and desist from using local union resources to send campaign material to members.

2. The Hoffa campaign shall reimburse Local Union 421 for all costs associated with the production, copying and mailing of Mr. Baker's communication. That reimbursement amount shall be \$556 (\$.40 multiplied by 1,390 letters sent). The Hoffa campaign shall make the payment to Local Union 421 within three (3) days of the date of this decision. Within two (2) days of making such payment, the Hoffa campaign shall file an affidavit with the Election Office showing compliance with this order, including a copy of the check.

3. Within two (2) days of the date of this decision, Local Union 421 shall execute and post the attached "Notice to Local Union 421 Members" on all bulletin boards at Local Union 421 work sites and on the bulletin boards at the local union offices. Within three (3) days of posting the Notice, Local Union 421 shall file an affidavit with the Election Officer demonstrating compliance with this order.

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
Michael D. Gordon, Regional Coordinator

NOTICE TO LOCAL UNION 421 MEMBERS

You recently received a mailing signed by me, which stated the personal preferences of Local Union 421 Executive Board members in the International officer election. The Election Officer has found that my letter was an improper use of local union resources.

Under the ***Election Rules***, local union officers and employees are permitted to endorse candidates in their personal capacities. Officers and employees can use such personal endorsements in advertisements by those individuals or campaigns.

Local union resources may not be used for campaigning. Therefore, it was improper under the ***Election Rules*** for me to issue a letter using local union resources, that included the personal endorsements of Executive Board members.

Date

Dave Baker, President
Teamsters Local Union 421

This is an official notice which must remain posted through December 10, 1996 and must not be defaced or altered in any manner or be covered with any other material.

Approved by Barbara Zack Quindel, IBT Election Officer.

