

December 2, 1996

VIA UPS OVERNIGHT

Roy L. Atha
1220 Selma Road
Springfield, OH 45505

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

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

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

Re: Election Office Case No. P-1284-RCS-CLE

Gentlemen:

Roy L. Atha, secretary-treasurer of Local Union 654, 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 violations of the *Rules* with respect to three publications that "constitute improper use of union funds and assets to campaign on behalf of Ron Carey and the Carey slate . . ." The publications are: (1) a Carey campaign flyer entitled, "Don't let corruption back in our Union," which bears the return address of the IBT and was mailed under bulk-mail permit #1854; (2) a postcard signed by Mr. Carey and sent by the IBT relating to the IBT's "Save Our Overtime" campaign, which reminded members to vote in the U.S. national elections; and (3) the November 8, 1996 issue of *The Teamster Leader*, which Mr. Atha alleges contains "articles supporting Carey slate themes, particularly an issue addressing Carey's dispute with Central States Trustees" while failing to address "Carey's refusal to democratically select trustees for the National Teamster's 401(K) (sic) Plan."

This protest was investigated by Regional Coordinator Joyce Goldstein.

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With respect to the Carey campaign's "Don't let corruption back in our Union" flyer, the Election Officer addressed the use of the IBT's return address on campaign mailings bearing the St. Louis bulk-mail permit #1854 in Atha, P-1241-RCS-CLE et seq. (November 25, 1996). As explained in that decision, the St. Louis bulk-mail permit is registered to a mailhouse processing the Carey campaign mailings under Article VIII, Section 7 of the **Rules**. U.S. Postal Service regulations require the use of the IBT's address in Washington, D.C. as the return address for the mailing to use the IBT's non-profit, bulk-mail rate. Therefore, such use is not an improper use of union resources, for purposes of the **Rules**.

The postcard protested by Mr. Atha relates to the IBT's successful participation in an effort to defeat proposed national legislation that would have hurt the ability of members to receive overtime pay. The message thanks members for sending an "overwhelming number of response cards," advises members that "we helped stop this assault on workers and their families," and in a postscript, states, "Don't forget to vote Nov. 5."

Article VIII, Section 8(a) of the **Rules** states that a union-financed publication or communication may not be "used to support or attack any candidate or the candidacy of any person." In reviewing union-financed communications for improper campaign content, the Election Officer looks to the tone, content and timing of the publication. Martin, P-010-IBT-PNJ et seq. (August 17, 1995) (decision on remand), aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995). The Election Officer also considers the context in which the communication appeared.

The Election Officer has stated on numerous occasions that union officers have a "right and responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern." Martin, supra (quoting Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), aff'd, 108 L.R.R.M. (BNA) 2924 (D.C. Cir. 1981)). The postcard in question refers to an IBT national legislative campaign and encourages members to

participate in national elections. “The union and its president need not forego an active role in the national election process because of its proximity to the union’s own election.” Hoffa, P-1181-IBT-EOH (November 18, 1996). See Moerler, P-1152-IBT-CLA (November 20, 1996); Hoffa, P-925-IBT-MGN (September 20, 1996), aff’d, 96 - Elec. App. - 244 (KC) (October 3, 1996). The Election Officer finds that the postcard concerns legitimate union business and does not involve campaigning.

Lastly, Mr. Atha protests the November 8, 1996 issue of *The Teamster Leader*, based on his allegations that it contains pro-Carey campaign content and biased reporting. The Election Officer notes that she reviewed the issue under the pre-publication review procedure established by Article VIII, Section 8(e) of the *Rules* and found that it did not contain improper campaign content. The protester has not presented a reason for the Election Officer to change that decision.

Mr. Atha alleges that the issue “includes articles supporting Carey slate campaign themes, particularly an issue addressing Carey’s dispute with Central States Trustees” and that “[t]he publication fails to address Carey’s refusal to democratically select trustees for the National Teamster’s 401(K) (sic) Plan.” The protester submitted copies of two articles. The cover article, entitled, “Teamsters Send Both Parties a Message for 1997,” reports on labor’s involvement in the recent national elections. It covers voter registration efforts, the successful effort to unseat certain “Gingrichites” from the House of Representatives, and labor’s impact in getting other candidates to “run[] away from their 1995-1996 extremist agenda” on labor. The article claimed success due to “a strong grassroots campaign by our union and many other organizations,” and it previewed continuing national legislative efforts. The other article, entitled, “Central States Employer and Union Trustees Jointly Claim Poverty,” responds to a mailing sent to IBT members covered by the Central States Pension Fund (“Fund”), which was itself part of a continuing controversy over the management of the Fund.

As noted above, the Election Officer examines the tone, content and timing of union-financed publications to determine whether they contain improper campaign content. The Election Officer has found that reporting on the IBT’s involvement in U.S. national legislation and elections, unrelated to the International officer election, is a legitimate communication of interest to members. With respect to the cover article protested by Mr. Atha, the Election Officer notes that there is no reference to the International officer election and that Mr. Carey’s name is mentioned only once at the end of the article, where he is quoted as saying that the IBT’s legislative strategy will be the same “no matter what party is in power.” The Election Officer finds no connection between that article and the International officer election.

The Election Officer also finds that the article on the Fund addresses legitimate union business of interest to members and does not contain campaign material. Earlier stages of the debate have been discussed in prior decisions. In Moerler, P-1171-IBT-EOH (November 6, 1996), the Election Officer found that an article in the November/December 1996 issue of *The Teamster*, in which Mr.

Carey called for Fund trustees to resign, concerned legitimate internal union debate and did not constitute improper campaigning. In Mims, P-1190-LU728-CHI (November 8, 1996), the Election Officer also found that a "1996-Special Bulletin" issued by the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds, which responded to *The Teamster* article, likewise did not constitute improper campaigning.

The article in question in the November 8 issue of *The Teamster Leader* is another response in the same debate. The protester has not proposed new or different grounds for characterizing it as campaigning. Mr. Atha states that the article supports "Carey slate campaign themes," but the Election Officer has recognized that "policy issues within the union are frequently adopted as campaign issues in the campaigns of the International officers." Szymanski, CONV-9-IBT et seq. (July 16, 1996). IBT officials and members are not thereby prevented from continuing to discuss them. With respect to Mr. Atha's allegation that the article does not cover the selection process for "trustees for the National Teamster's 401(K) (sic) Plan," the **Rules** do not require union-financed communications to treat opposing ideas or opinions or to include all potentially relevant material. Moerler; Volpe et al., P-828-IBT-MGN et seq. (July 11, 1996), aff'd, 96 - Elec. App. - 218 (July 23, 1996).

For the foregoing reasons, the protest is DENIED.

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

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Election Officer

cc: Kenneth Conboy, Election Appeals Master
Joyce Goldstein, Regional Coordinator