

December 4, 1996

VIA FACSIMILE & UPS OVERNIGHT

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C. Sam Theodus, President
Teamsters Local Union 407
3150 Chester Avenue
Cleveland, OH 44114
Fax (216) 391-7353

Re: Election Office Case No. P-1307-LU912-EOH

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* ("Rules") by Joe Fahey, president of Local Union 912, against James P. Hoffa, a candidate for general president, and the Hoffa campaign. Mr. Fahey alleges that the production and dissemination of a forged letter intended to appear to be signed by Ron Carey, incumbent general president and a candidate for reelection, constitutes a violation of the *Rules* because its intent is to materially mislead voters.

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

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In support of his allegations, Mr. Fahey submitted a copy of the protested letter, which purports to state that Mr. Carey believes that, because of high voter turnout, he will most likely lose the election. The letter appears to be on Carey campaign stationery with the closing "Fraternally" in a different typeset than the body of the letter, followed by Mr. Carey's signature. The Carey campaign states that this letter is an obvious forgery and denies producing it.

During the investigation, the protester further alleged that the protested letter was reproduced using resources of Local Union 407 and was distributed at a local union membership meeting.

Local Union 407 denies using its resources to reproduce the letter. The local union admits the letter came in on its facsimile machine and was probably put in the box of Sam Theodus, president of Local Union 407.¹ Mr. Theodus admits receiving the letter and that he showed it to a couple of people. He states that he never saw it on a table at the back of the meeting and that he does not know who made copies.

The Election Officer has consistently refused to censor or restrict communications generated as a result of the campaign. The protester in this case argues that the Election Officer should interfere with communications that are forgeries intended to mislead members, not only in regards to the truth of the communication's content, but also in regard to the actual author of the communication.

In this case, the letter does not materially injure the election process by misrepresenting the communications of the Election Officer. The Election Officer reiterates her determination that the most effective remedy for the exercise of free speech by one side

¹Mr. Theodus is also a candidate for International vice president on the Hoffa slate.

is the exercise of free speech by the other. The Election Officer notes that the Carey campaign has vocally denounced the production and distribution of the forged letter. The letter itself does not violate the *Rules*.

In his protest, Mr. Fahey accuses the Hoffa campaign of either producing the protested letter or, under the strict liability standard, receiving a benefit from it for which it was liable. As stated above, because the production of the letter did not violate the *Rules*, it is not necessary to determine if the Hoffa campaign produced and/or distributed the letter.

In regard to Local Union 407, there is no evidence that union resources were used to reproduce the letter. Alex Adams, a witness supplied by the protester who is member of Local Union 407, stated that many copies of the letter were on a table at the back of the room near the exit during the meeting along with other literature. Mr. Adams states that the letter was also on a literature distribution table in the hall. Mr. Adams admits that Mr. Theodus offered Mr. Carey's supporters the opportunity to set up a literature table, but they never did. In these circumstances, even if the letter was set out for distribution, the local union did not violate Article VIII, Section 5(a)(4) of the *Rules*.

Accordingly, 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, D.C. 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
Barbara C. Deinhardt, New York City Protest Coordinator