

December 5, 1995

**VIA UPS OVERNIGHT**

Gene Giacumbo, Vice President  
International Brotherhood of Teamsters  
15 Village Road  
Sea Bright, NJ 07760

Richard Volpe, Secretary-Treasurer  
Teamsters Local Union 550  
6 Tuxedo Avenue  
New Hyde Park, NY 11040

Tom Gilmartin, Jr., Vice President  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

Gene Moriarty, Trustee  
Teamsters Local Union 669  
Labor Temple, 890 Third Street  
Albany, NY 12206

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

James P. Hoffa  
2593 Hounds Chase  
Troy, MI 48098

William T. Hogan, Jr., Secretary-Treasurer  
Teamsters Local Union 714  
6815 W. Roosevelt Road  
Berwyn, IL 60402

Robert Gleason, Secretary-Treasurer  
International Longshoremen's Association  
17 Battery Place, Room 1530  
New York, NY 10004

Susan Davis  
Cohen, Weiss & Simon  
330 W. 42nd Street  
New York, NY 10036

**Re: Election Officer Case Nos. P-210-IBT-NYC  
P-213-IBT-NYC  
P-215-JC43-NYC**

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")* by Gene Giacumbo, Richard Volpe and Tom Gilmartin, Jr. At the time of filing, Mr. Giacumbo was an International vice president.<sup>1</sup> Mr. Volpe is a member of Local

Union 550. Mr. Gilmartin is an International vice president and a candidate for reelection on the Ron Carey slate. The protests allege similar facts and raise related issues. Thus, the Election Officer consolidated them for decision.

Protesters Giacumbo (P-210-IBT-NYC) and Volpe (P-213-IBT-NYC) allege that Mr. Gilmartin conducted improper surveillance of an event held to raise funds for the campaign of James P. Hoffa, a candidate for International president.<sup>2</sup> Mr. Gilmartin contends that the Sheraton Towers Hotel of New York City improperly contributed to Mr. Hoffa's campaign by distributing flyers announcing Mr. Hoffa's fundraiser and selling tickets (P-215-JC43-NYC). He further alleges that New York City's Downtown Athletic Club inappropriately contributed to the Hoffa campaign by allowing a discounted price for the room in which the fundraiser was held. Mr. Gilmartin also claims that Joint Council 43, Joint Council 25 and Local Union 714 made improper contributions to Mr. Hoffa's campaign by paying his expenses.

The IBT answers on behalf of Mr. Gilmartin by denying that he intimidated any member who attended the fundraiser and further asserts that his investigation of the fundraiser was activity protected by the *Rules*. Mr. Hoffa replies that he arranged to pay the Sheraton Towers Hotel to distribute the flyers and sell the tickets out of the proceeds of the event. He states that the Downtown Athletic Club did not afford him a special discount on services rendered and that all his expenses in New York City were paid for by his campaign.

The protests were investigated by New York City Protest Coordinator Barbara Deinhardt.

The investigation disclosed that Mr. Gilmartin, in addition to his positions as International vice president and business manager of Local Union 559, is the Ethical Practices Administrator for the IBT. As such, he is responsible for reviewing and investigating all member complaints involving alleged ethical violations under the IBT Constitution.

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<sup>1</sup>Subsequent to the filing of this protest, Mr. Giacumbo was suspended from office and union membership for a period of six months by a ruling of the Independent Review Board.

<sup>2</sup>In an unrelated allegation, Mr. Giacumbo asserts that a member of the Election Office staff treated requests for copies of protest decisions in a discriminatory manner. This aspect of his protest was previously addressed by the Election Officer in a letter to the Election Appeals Master dated October 26, 1995, and copied to Mr. Giacumbo.

On the evening of October 24, 1995, Mr. Gilmartin was in New York City attending the AFL-CIO convention as a representative of the IBT. A flyer appeared under his hotel room door which announced that the Hoffa campaign was sponsoring a fundraising event at the Downtown Athletic Club that evening. Mr. Gilmartin approached the Bell Captain at the Sheraton Towers to ask about tickets and was referred to the theater desk. There he discovered that tickets to the fundraiser could be purchased for \$250.00 and that the hotel would forward the money to the Hoffa campaign.

Mr. Gilmartin determined to attend the event "to see if any other employers were helping them out." He stated his opinion was that the "Sheraton was doing Hoffa a favor by selling the tickets and I wanted to see if the Downtown Athletic Club was doing him any favors." Mr. Gilmartin contacted Gene Moriarty, a trustee of Local Union 966 and a supporter of Mr. Carey in the upcoming election, and arranged for Mr. Moriarty to accompany him to the fundraiser.

The Election Officer specifically finds that Mr. Gilmartin attended the fundraiser in his capacity as Ethical Practices Administrator or under color of that position. In his statement during the investigation, Mr. Moriarty supports this conclusion:

He [Gilmartin] told me he had a flier about the Hoffa event - he was concerned that union funds were being used to finance the event and that he wanted to go down there as Ethical Practices Administrator to check it out. (As Ethical Practices Administrator, he is head of the Ethical Practices Committee that hears and investigates all kinds of internal union complaints).

Mr. Moriarty and Mr. Gilmartin arrived at the Downtown Athletic Club at about 8:30 p.m. They proceeded to the "Heisman Room" on the thirteenth floor, where the fundraiser was being held, to "see what kind of crowd was there; to see if we recognized anyone." A participant at the fundraiser spotted Mr. Gilmartin and said, "Come on in, you're in the right place." Mr. Gilmartin "chuckled," then replied that perhaps they were in the wrong place and returned to the main floor.

Outside the main entrance of the Athletic Club, Mr. Gilmartin made written notes of the license plate numbers displayed on several vehicles. Once settled in the lobby, Mr. Gilmartin and Mr. Moriarty resolved to observe "who would come in and out in terms of officers or employers." There is no evidence that any employers appeared. Still, Mr. Gilmartin wrote down the names of persons entering and the exiting the elevator, inquiring of Mr. Moriarty concerning the identities of persons whose names he did not know. Mr. Moriarty also reported that Mr. Gilmartin "was concerned about whether these people had a valid reason for being in New York."

During this time, several union members noticed Mr. Gilmartin and his note-taking activities. A series of conversations took place with various union members as they left the elevator. The subjects of these discussions generally included internal union politics and various other issues of local concern. The interactions were sometimes friendly, sometimes hostile and sometimes a combination of both. When John Modio, vice president and business agent of Local Union 182, asked Mr. Gilmartin if he was "spying on us," Gilmartin responded

with laughter.

During several of these conversations, Mr. Gilmartin and others utilized provocative language. A discussion concerning the "job-loss problem in wholesale" occurred with Terrence Majka, the recently reelected president of Local Union 182. They disagreed regarding the propriety and level of assistance given by the International union. After soliciting from Mr. Majka a statement that he was supporting Mr. Hoffa's candidacy, Mr. Gilmartin referred in a profane manner to Mr. Majka's lack of intelligence and his presence in New York City to support Mr. Hoffa. He predicted that the delegate election in Mr. Majka's local union would ultimately favor Mr. Carey and made additional remarks concerning Mr. Majka's lack of influence at the International union. Mr. Moriarty referred to Mr. Majka's narrow victory in the recent local election and repeated an apparent rumor that this election "may be looked into."

The nature of this exchange upset Tom Thayne, a member of Local Union 693. He overheard much of the conversation between Mr. Gilmartin and Mr. Majka and analogized his awareness of Mr. Gilmartin's presence to "employer surveillance of employees" at a union rally or organizing drive. Mr. Thayne was well aware of Mr. Gilmartin's position on the Ethical Practices Committee, as were other members who passed through the lobby. It was Mr. Thayne's concern that Mr. Gilmartin would use his position on the Ethical Practices Committee to target Mr. Thayne and others who attended the fundraiser with internal union charges. Mr. Majka believed he was being deliberately provoked by Mr. Gilmartin in order to entrap him into an act which could form the basis for an internal union charge. In response to a direct objection to his presence, Mr. Gilmartin reminded his challenger that "[N]ow I'm the administrator of the Ethical Practices Committee."

Later that evening, Mr. Gilmartin contacted a manager of the Downtown Athletic Club and pretended to be interested in sponsoring an event similar to the Hoffa fundraiser. Mr. Gilmartin states that he was informed that money could be saved "if we get a sponsor like Gleason."

This reference was to Robert Gleason, Secretary-Treasurer of the International Longshoremen's Association. Mr. Gleason had been asked by Sam Lopez, a person not affiliated with the IBT, whether he knew of any place in New York City where the Hoffa campaign could stage a fundraiser. Ultimately, Mr. Gleason recommended the Downtown Athletic Club, where he is a member. Mr. Gleason took no part in making the arrangements. All details were arranged through Luigi D'Angelo, Director of Food and Beverage at the facility. Mr. Gleason was listed as the "sponsor" of the event because of his initial interaction with Mr. D'Angelo. Mr. D'Angelo presented credible evidence and documentation that the Hoffa campaign paid an amount which was neither more nor less than that charged for comparable events.

Mr. Hoffa has demonstrated that his expenses in New York were paid by his campaign. The hotel maintains a policy permitting its bellmen to sell tickets to and distribute information concerning events which take place on the premises. The bellmen commonly earn a service fee in exchange for their efforts. The willingness of these hotel employees to distribute

and sell the tickets to the fundraiser was a result of a similar arm's length arrangement made directly with the Hoffa campaign.

The *Rules*, at Article VIII, Section 11(a), guarantee to members the "right to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions." This basic right, so essential to the goal of a free election, is reinforced in Article VIII, Section 11(f) which prohibits "[R]etaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules*."

These rights, and the safeguards designed for their maintenance, are fundamental to the conduct of a fair and open election. A fair and open election is the "central purpose" of the Consent Decree. See United States v. IBT (Yellow Freight), 948 F.2d 98 (2nd Cir. 1991, as amended, February 14, 1992), vacated as moot, \_\_\_ U.S. \_\_\_, 113 S.Ct. 31 (1992). Any act which constitutes coercion, interference or harassment of any member in the exercise of these essential rights is forbidden. Surveillance is certainly one of those acts. In Pollack, P-008-LU732-NYC (October 29, 1990), aff'd, 90 - Elec. App. - 8 (November 7, 1990), the prior Election Officer was required to determine the propriety of the conduct of certain Local Union 732 officials who, subsequent to being forcibly ejected from a meeting of the Teamsters for a Democratic Union ("TDU"), used union funds to rent the room across the hall. From that vantage point, these officers actively observed members on their way in and out of the TDU meeting. A presence was maintained in the lobby on the floor where the meeting rooms were located and in the hallway leading to the TDU meeting. The prior Election Officer concluded:

IBT members have the right to gather and discuss issues concerning the election of delegates and alternate delegates to the International Convention free from interference. Similarly, I find that the actions of the local officials in subjecting IBT members attending the TDU meeting to surveillance or creating the appearance of surveillance to be violative of the Election Rules. Such surveillance or the appearance of surveillance is destructive of the fundamental safeguards of . . . free and fair elections outlined in the Consent Decree and the Election Rules.

Mr. Gilmartin violated Article VIII, Section 11(f) when he camped in the lobby of the Downtown Athletic Club on the evening of October 24, 1995, and conspicuously engaged in making a record of the names of persons attending Mr. Hoffa's fundraising event and the license plate numbers of vehicles. This conduct is particularly pernicious because he did so under color of his position on the IBT's Ethical Practices Committee. While there is no evidence that Mr. Gilmartin was assigned to observe the comings and goings of Mr. Hoffa's guests by the IBT, he nevertheless used his position on the Ethical Practices Committee to harass the supporters of Mr. Hoffa.

The IBT takes the position that Mr. Gilmartin's conduct in observing the persons attending Mr. Hoffa's fundraiser and recording their names and license plate numbers was as legitimate as his subsequent inquiries of hotel and club personnel as to the arrangements for the

services performed in connection with the event. As a union member, the IBT argues, Mr. Gilmartin is “absolutely privileged” to file protests and to collect evidence in support of his allegations. As evidence that Mr. Gilmartin’s “purpose was a legitimate one,” the IBT cites to the documents submitted by him which he obtained from the various service providers and the fact that Mr. Gleason has been named as a defendant in a RICO lawsuit.

It is certainly true that Mr. Gilmartin has a right to file protests with the Election Office, and that his right is absolutely privileged. The Election Officer has consistently held that the privilege protects a member from discipline or other adverse action when causally connected to the filing of a protest. Crawley, P-098-LU988-PNJ (June 30, 1995). See also, In Re: Puglisi, Case No. P-1074-LU64-ENG (November 25, 1991), aff’d, 91 - Elec. App. - 242, aff’d, 88 Civ. 4486, slip op. (S.D.N.Y. 1992); In Re: Shrader and ABF, Case No. P-561-LU171-MID, aff’d, 91 - Elec. App. - 124 (SA); In Re: Petre and Didio, Case No. P-1036-LU810-NYC, aff’d, 91 - Elec. App. - 238 (SA) (January 23, 1992).

It is equally true that Mr. Gilmartin has the responsibility to submit evidence in support of any protest he files. However, Mr. Gilmartin’s position is not sustainable. The “absolute privilege” to file protests has been used to abate discipline proceedings, discriminatory conduct, internal union charges and even the filing of civil suits for libel or slander. However, it has never been applied to justify conduct, which in and of itself, is in violation of the **Rules**. Conducting surveillance or the appearance of surveillance on the activities of an opposing candidate and his supporters violates Article VIII, Section 11(f). Such activity is not excused by the claim that it is necessary in order to successfully investigate events which might become the subject of a future protest. Moreover, all of the evidence submitted by Mr. Gilmartin was obtained during times which were unrelated to the violative conduct and was further not connected to his presence at the Downtown Athletic Club.

Finally, the Election Officer concludes that neither Mr. Gleason, the Sheraton Towers Hotel, the Downtown Athletic Club, Joint Council 25, Joint Council 43 or Local Union 714 improperly contributed to the campaign of Mr. Hoffa. Mr. Gleason merely suggested that his club was an appropriate location. This tangential involvement does not constitute a contribution. Both the bellmen at the Sheraton Towers Hotel and Mr. D’Angelo of the Downtown Athletic Club demonstrated the Hoffa campaign received no special treatment. No evidence was presented that any joint council or local union financially participated in the event.

For the foregoing reasons, the protests in P-210-IBT-NYC and P-213-IBT-NYC are GRANTED; the protest in P-215-JC43-NYC is DENIED.

The Election Officer is empowered to remedy violations of the **Rules** by whatever action is appropriate. Article XIV, Section 4. In Giacumbo, P-102-IBT-PNJ (October 12, 1995), aff’d, 95 - Elec. App. - 29 (KC) (October 30, 1995), she stated:

The **Rules** provide a wide range of examples of possible remedies, without providing any limitation. The broad scope of her supervisory responsibility for the elections, as recognized by the Consent Decree and subsequent decisions of the Court, gives the Election Officer substantial discretion in formulating a remedy to

fit the particular violation. In fashioning the appropriate remedy, the Election Officer looks to such factors as the nature and seriousness of the violation, the violation's potential for interfering with the election process, and which remedy will best protect the rights of members to a free and fair election.

In order to remedy this serious violation of the **Rules**, Mr. Gilmartin is directed to comply with the following:

First, Mr. Gilmartin will cease and desist from any further or similar surveillance, creating the appearance of surveillance or interference with the rights of IBT members under the Consent Order or the **Rules** with respect to supporting or engaging in any campaign-related activity on behalf of any candidate for delegate, alternate delegate or International officer of the IBT.

Within four (4) days of his receipt of this decision, Mr. Gilmartin will submit to the Election Officer the original and all copies of the notes or writings made by Mr. Gilmartin or made at his direction which list or display the names of persons attending the Hoffa fundraising event and any record of vehicle license numbers made in connection therewith.

Within four (4) days of his receipt of this decision, he shall sign the enclosed notice and return it to the Election Officer.

The Election Officer will conduct an investigation in order to determine the names of all persons who are entitled to receive copies of the signed notice, arrange for the reproduction and mailing of the notice and bill Mr. Gilmartin for all expense incurred in connection therewith. Mr. Gilmartin shall pay the Election Officer's statement of expenses immediately upon receipt.

Lastly, within ten (10) days of his receipt of this decision, Mr. Gilmartin will execute and file with the Election Officer an affidavit stating that he has complied with the Order of the Election Officer and stating in detail the manner of such compliance.

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 and Watkins  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax (212) 751-4864

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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: Kenneth Conboy, Election Appeals Master  
Regional Coordinators



## **NOTICE TO MEMBERS OF THE IBT**

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate in the 1995-96 IBT Election.

You have the right to participate in campaign activities on behalf of candidates for International office in the IBT.

You have the right to attend and participate in fundraising events sponsored by the campaign of James P. Hoffa, candidate for general president, free from any interference, restraint or coercion.

I will not interfere with your exercise of any of these rights or any other right of IBT members under the Consent Decree or the Rules for the 1995-96 IBT International Union Delegate and Officer Election.

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Tom P. Gilmartin, Jr.  
International Vice President

*Prepared and approved by IBT Election Officer Barbara Zack Quindel.*