

March 13, 1996

**VIA UPS OVERNIGHT**

Aubrey D. Hill  
10606 Farm Oak Court  
Louisville, KY 40241

Lon E. Fields, Sr., President  
Teamsters Local Union 89  
3813 Taylor Boulevard  
Louisville, KY 40215

Gerald Shaw, Vice President  
Teamsters Local Union 89  
3813 Taylor Boulevard  
Louisville, KY 40215

John Bolton  
Teamsters Local Union 89  
3813 Taylor Boulevard  
Louisville, KY 40215

Fred Zuckerman  
Teamsters Local Union 89  
3813 Taylor Boulevard  
Louisville, KY 40215

**Re: Election Office Case No. P-409-LU89-SCE**

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the ***Rules for the IBT International Union Delegate and Officer Election (“Rules”)*** by Aubrey D. Hill, a member of Local Union 89 and a candidate for delegate on the Members First slate. The Election Officer deferred the protest for consideration post-election, pursuant to Article XIV, Section 2(f)(2) of the ***Rules***.

Mr. Hill alleges seven instances of campaign violations by members or supporters of the Lon E. Fields Sr./Ron Carey (“Fields/Carey”) slate. These allegations include: improper campaigning at a work site; improper removal of campaign materials from bulletin boards; threatening members who were wearing Members First slate hats and buttons; instructing picketers to wear Fields/Carey slate hats on the picket line; improper campaigning at a craft meeting; and improper destruction of Members First slate hats.

This protest was investigated by Regional Coordinator Bruce Boyens.

The protester's allegations arise from different events. The Election Officer will resolve them separately.

1. Allegations of Campaigning at American Greeting Card Company

Mr. Hill alleges that on or about January 31, 1996, Local Union 89 President Lon E. Fields, Sr. and Business Agent John Bolton "toured" the American Greeting Card Company at Bardstown, Kentucky. Messrs. Fields and Bolton are both on the Fields/Carey slate. Mr. Hill contends that: (1) this visit was for campaign purposes and not for investigating grievances or plant problems; (2) former Chief Steward Avral Thompson later told witness Steve Boone that Messrs. Fields and Bolton had instructed him to remove all campaign material from the local union bulletin board; and (3) Mr. Boone was also told by plant personnel that there could be no posting or distribution of campaign material on company property.

Mr. Fields responds that he had been asked by Chief Steward Shelly Arnold to walk through the plant as he has done several times in the past with other stewards. He and Mr. Bolton also met with Roger Bias, the plant human resource manager, to discuss grievance issues. Mr. Fields states that several grievances were resolved the following week. Mr. Fields denies giving any instructions with respect to removing campaign material from bulletin boards, and he states that plant management had told him and Mr. Bolton that campaign material could not be posted or distributed in the plant, but could be distributed in the parking lot by all candidates.

The protester's witness, Mr. Boone, is on the Members First slate with the protester. Mr. Boone told Regional Coordinator Boyens that he observed no campaigning by Mr. Fields or Mr. Bolton and that it was a company representative who told him to take down campaign materials. He said that Mr. Bolton told him to put them up somewhere else and not cover Election Office materials.

The investigation of this allegation did not uncover any corroboration of the protester's charges. As the Election Appeals Master has stated in In Re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996), "[w]here the parties differ as to material facts, the Election Officer looks to the protestor, who bears the initial burden of proof, to offer evidence substantiating his allegations." Therefore, these allegations are DENIED.

2. Allegations of Campaigning by Fred Zuckerman

Mr. Hill alleges that Local Union 89 Business Agent Fred Zuckerman went on an unspecified date to two work sites and engaged in various forms of improper campaigning and intimidation of employees. Mr. Hill asserts that Mr. Zuckerman represents employees at one site, Transport Releasing, Inc. The other site, Active Transportation, is located in the same building. Mr. Hill's specific allegations are that Mr. Zuckerman distributed Fields/Carey slate hats and t-shirts to employees during working hours, admonished members who were wearing Members First slate hats and buttons, told them they owed their jobs to Messrs. Fields and Carey, and argued with some employees who resisted. Finally, Mr. Hill alleges that "[f]eeling threatened some of the employees did as instructed by Zuckerman," without specifying what that instruction was.

Mr. Fields responds that Mr. Zuckerman did go to Transportation Releasing and Active Transportation on January 31, 1996, and that Mr. Zuckerman took vacation that day. He states that Mr. Zuckerman met with some employees during a 9:00 a.m. break, who had requested Fields/Carey slate hats and shirts. Mr. Zuckerman had them in his car and the employees went with Mr. Zuckerman to the parking lot to get them. Mr. Fields further responds that Mr. Zuckerman did not threaten or argue with any employees that day, and that he did not instruct anyone to do anything.

Regional Coordinator Boyens spoke with two witnesses: Rob Maitland and Toby Hill. Messrs. Maitland and Hill support the Members First slate. They reported that they got into a discussion with Mr. Zuckerman while they were on break in a lunch room. However, they state that there was no argument, that they did not hear Mr. Zuckerman order anyone to remove Members First slate hats or shirts, and that they witnessed no campaigning.

Article VIII, Section 11(b) of the *Rules* protects the right of all local union officers and employees to:

. . . participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, officers and employees (and other members) of the Union may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off is also not violative of this section .

. . .

The investigation did not disclose any improper campaigning by Mr. Zuckerman.

With respect to retaliation, Article VIII, Section 11(f) provides:

Retaliation 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* is prohibited.

The investigation did not uncover any threats by Mr. Zuckerman. Accordingly, these allegations are DENIED.

3. Allegations of Improper Campaigning at Fontaine Truck and Equipment and at Kentucky Auto Ramp

Mr. Hill alleges that: (1) Mr. Zuckerman represents employees at Fontaine Truck and Equipment; (2) the employees at that work site went on strike for a replacement contract;

(3) Mr. Zuckerman gave Fields/Carey slate hats to members and instructed them to wear the hats on the picket line; and (4) Mr. Zuckerman placed casual workers at Kentucky Auto Ramp and instructed them to wear the Fields/Carey slate hats there as well.

Mr. Fields responds that Local Union 89 did strike Fontaine Truck and Equipment on February 1, 1996, but denies that the hats were given out as a result of the strike. He states that some hats were distributed prior to the vote on the contract and that some others were distributed on January 31, 1996. No members were compelled to wear the hats. He states that Mr. Zuckerman never instructed employees to wear the hats on the line.

With respect to the alleged placement of casual workers at Kentucky Auto Ramp, Mr. Fields responds that Local Union 89 does not have a casual agreement with that employer. He states that Mr. Zuckerman responded to a call from that employer for referrals, that he gave the company a list of laid-off employees in the classification, and that he gave some other names as well. He asserts that Kentucky Auto Ramp hired many of the referred members, but at no time was anyone instructed to wear Fields/Carey slate campaign material.

The investigation of this allegation did not uncover any corroboration of the protester's charges. Thus, these allegations are DENIED.

#### 4. Allegations of Campaigning at a Craft Meeting

Mr. Hill alleges that on February 4, 1996, Local Union 89 Vice President Gerald Shaw held a "short craft meeting" with members employed at the Louisville Switching Kentucky Truck Plant ("KTP"), which turned into a campaign meeting for the Fields/Carey slate. Mr. Shaw is a member of that slate.

Mr. Fields responds that there was a stewards election among KTP employees at the freight office on February 4, as requested by a majority of those employees. After that election, Mr. Shaw held a proposal meeting for all Louisville Switching employees who were present, which included the employees from KTP, as well as from the Louisville Assembly Plant ("LAP"). That meeting took place in a meeting room "C" and lasted 2½ to 3 hours.

During the meeting of KTP and LAP employees, a question came from the floor about the election. He further states that Mr. Shaw said at that time that he could not and would not "talk politics" during the meeting, but that he would stay after the meeting was over to answer questions from anyone who wished to stay. Mr. Fields asserts that Mr. Shaw made sure that everyone present understood that they did not have to stay for such a discussion. According to Mr. Fields, Mr. Shaw reported that a few members did leave after the meeting adjourned, that he was asked about the ballot slates by those who remained, and that he answered as factually as he could.

The investigation of this allegation did not uncover any corroboration of Mr. Hill's allegation of campaign activity. A communication is not "campaigning" under the **Rules**, unless it is used to "support or attack" a candidate. See Ohlson, P-050-LU325-EOH (September 27, 1995). It appears that Mr. Shaw answered the questions after the meeting factually. The protester has offered no evidence to support his allegations. Therefore, these allegations are DENIED.

#### 5. Allegations Concerning Slate Members

The protester states that 11 of 18 members on the Fields/Carey slate are employees of Local Union 89. He alleges that this fact gives the slate greater access to members through craft meetings and, thus, an unfair advantage. Mr. Hill states his belief that this alleged advantage violates Article VIII, Section 11(d) of the **Rules**.

Nothing in the **Rules** prohibits local union employees from becoming candidates and joining a slate. Those are protected rights. Article VIII, Section 11(b) guarantees the right of local union employees who are members to run for delegate: "All Union . . . employees, if members, retain the right to participate in campaign activities, including the right to run for office." Article IX, Section 1(a) guarantees the right of candidates to affiliate on slates: "Each candidate shall have the right . . . to appear on the ballot . . . as a member of a slate of candidates".

Mr. Hill's complaint is that the Fields/Carey slate, due to its 11 local union employee members, thereby enjoys a greater potential for engaging in campaign activity with members at meetings. A potential for violating the **Rules**, however, does not state a violation. If the local union employee members of the Fields/Carey slate do engage in campaigning with members at meetings, that conduct may be tested in a properly filed protest.

This allegation is therefore DENIED.

#### 6. Notice on Bulletin Board

The protester alleges that on February 1, 1996, a Transportation Releasing, Inc. employee posted a notice on an employee bulletin board offering to pay \$5 each for Members First slate hats. Mr. Hill further alleges that the employee was placed on the job by Mr. Zuckerman and posted the notice at Mr. Zuckerman's instruction.

Regional Coordinator Boyens interviewed the protester's witness, Jeff Thompson. Mr. Thompson stated that employee Stewart Thomas, a Fields/Carey slate supporter, paid \$5 each for an unspecified number of Members First slate hats, tore them up, and in one instance placed a torn-up hat on a bulletin board. Mr. Thompson took it down and later stated that he did not know where Mr. Thomas got the money to buy the hats or whether Mr. Zuckerman had told Mr. Thomas to do it. Mr. Thompson "guessed" that Mr. Thomas was following instructions from Mr. Zuckerman because Mr. Thomas was placed on the job under the collective bargaining agreement.

Mr. Fields responds that Mr. Zuckerman did not place Mr. Thomas on that job and did not instruct him to post any notice.

The Election Officer finds no corroboration of Mr. Hill's speculation that local union funds may have been channeled through Mr. Zuckerman to buy Members First slate hats. If the local union did not finance Mr. Thompson, he was free to dispose of the hats he bought as he wished. With respect to his posting one of the torn hats on a bulletin board, there is no

allegation that this action violated any rule or policy with respect to members' use of the bulletin board for campaign purposes.

Accordingly, the allegation is DENIED.

7. Allegations of Removal of Campaign Literature from Bulletin Board

Mr. Hill alleges that Mr. Shaw instructed the union steward at Central Transport to remove Members First slate campaign literature from a local union bulletin board.

Regional Coordinator Boyens interviewed witness Mike Murphy, a supporter of the Members First slate. Mr. Murphy stated that he had been instructed by the steward to remove Members First slate literature from a company bulletin board, not a local union board. The steward threw the material away. When Mr. Murphy asked the steward to retrieve the material, the steward did so. The steward then told Mr. Murphy that he could put the campaign literature "wherever he wanted" except on a company bulletin board.

It appears that the slate was permitted to post the literature on the union bulletin board. Accordingly, the allegation is DENIED.

Based upon the foregoing, 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:

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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  
Bruce Boyens, Regional Coordinator