

March 7, 1996

VIA UPS OVERNIGHT

Richard Opalesky
4369 Richmond Street
Philadelphia, PA 19137

Ted Carpino
6238 Erdrick Street
Philadelphia, PA 19135

James Merritt
751 Michelle Street
Ridley Park, PA 19078

William Shanahan
148 Seminole Avenue
Norwood, PA 19074

William Morris
417 Fifth Avenue
Belmawr, NJ 08031

Re: Election Office Case No. P-464-LU623-PNJ

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 Richard Opalesky, a member of Local Union 623 and a candidate for delegate on the Opalesky Team slate. Mr. Opalesky's protest is against the four members of Local Union 623 who constitute the rival Ron Carey Reform slate, and is related to two pieces of campaign literature alleged to be improper.

This protest was investigated by Regional Coordinator Peter V. Marks, Sr.

The first piece of allegedly improper campaign literature is a postcard that Mr. Opalesky received, apparently as part of a mailing to Local Union 623 members. The front of the postcard informs members that they will receive their delegate ballots in a few days, states "It's Your Union, and Your Dues Dollars," and includes a form of abbreviated sample ballot listing the Ron Carey Reform slate and the names of the individual slate members, with all boxes checked. The back of the postcard contains three campaign statements directed against "Hoffa Junior" and another

statement urging members to “Vote For the Ron Carey Reform Slate.” The slate name is preceded by a box, which is checked. Small print on both sides of the postcard informs members that the slate will appear on the right side of the ballot and gives dates and a telephone number relating to the mail-in ballot process for Local Union 623.

Mr. Opalesky alleges that this postcard “deliberately and purposefully seeks to express a preference for a candidate in the forthcoming election of International officers and contains no material intended to persuade members of the Union to vote for a particular individual for the position of delegate.” He states that the postcard was printed for use by candidates in many local unions and that information with respect to local union elections is imprinted before mailing.

The second piece of allegedly improper campaign literature is a notice asking readers whether they would vote for various union officials whom, the notice alleges, Mr. Opalesky voted for at various times. One of these union officials is identified as Roy Williams, who is alleged in the notice to have been convicted of bribery and to have admitted Mob ties. Another is Jackie Presser, who is alleged in the notice to have never worked as a Teamster, never been elected to any union position, and bragged of high union salaries making him a millionaire. A third is identified as R.V. Durham, who is alleged in the notice to have received high union salaries on the IBT General Executive Board while the International union went bankrupt. The notice alleges that “Rick Opalesky voted for them!” The notice also includes a sample ballot like the one on the postcard, as well as information about Local Union 623’s mail-in ballot process.

Mr. Opalesky alleges that this notice is libelous, “exceeds the bounds of proper campaigning,” and “expresses illegitimate and unauthorized positions . . .” In particular, Mr. Opalesky complains that the notice implies that he himself has been convicted of bribery and has admitted Mob ties.¹

The Election Officer has consistently held that the *Rules* “do not impose upon candidates the duty to be truthful in their remarks about opposing candidates.” Kieffer, P-390-LU435-RMT; Landwehr, P-201-LU795-MOI (November 15, 1995). “The goal to be protected is free speech.” Newhouse, P-388-LU435-RMT (February 21, 1996). To this end, the Election Officer has held:

¹As noted above, the Election Officer reads these particular allegations to refer to Mr. Williams, not Mr. Opalesky.

The fact that campaign statements . . . were allegedly false or even defamatory does not remove such literature from the protection of the *Rules*. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.

Braxton, P-304-LU623-PHL (May 21, 1991). See, also Mora, et al., P-186-LU186-CLA, et seq. (October 19, 1995).

In the instant protest, it is not disputed that the postcard and notice at issue are campaign materials. The Election Officer finds that the postcard, to the extent it suggests an affiliation between the members of the Ron Carey Reform slate and Mr. Carey, as opposed to Mr. Hoffa, is protected free speech. The Election Officer further finds that the statements in the notice are protected free speech.

The Election Officer has also consistently approved the use of sample ballots in material that is clearly campaign literature. Newhouse; Rogers, P-518-LU373-SOU (February 21, 1991); Hughes, P-499-LU710-CHI (February 21, 1991); Hammontree, P-530-LU667-SOU (February 25, 1991).

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, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

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Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Peter V. Marks, Sr., Regional Coordinator