

March 27, 1996

VIA UPS OVERNIGHT

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Andy Marshall, Trustee
Teamsters Local Union 104
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Phoenix, AZ 85009

Re: Election Office Case No. P-557-LU104-RMT

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 Gene Leggitt, a member of Local Union 104. Mr. Leggitt alleges that Local Union 104 Secretary-Treasurer Richard Esquivel and the other members of the local union's executive board, all of whom are candidates for delegate on the Teamsters for Reform (In Support of Ron Carey) slate, are retaliating against other candidates in the

delegate election by failing to maintain the local union's hiring hall for all crafts. The candidates who are allegedly being retaliated against are: Jacque Edgmon and Robert N. Justus (candidates for delegate on the Arizona Teamsters Restore the Pride slate); J.L. Carney and Terry Askey (independent candidates for delegate); and Virgil Hunt and Gilbert Torres (independent candidates for alternate delegate).

This protest was investigated by Regional Coordinator Jonathan Wilderman.

Although the protester contends that Local Union 104 is retaliating against the candidates named above by failing to open its hiring hall to "all crafts," the Election Officer's investigation did not uncover a dispute, except with respect to the freight craft. Ms. Edgmon and Messrs. Justus, Carney and Askey work in this craft. Messrs. Hunt and Torres work in the motion picture craft.

Five employers in Local Union 104's area are signatories to the National Master Freight Agreement ("NMFA"). Under the main text of the NMFA, the local union refers employees to employers by providing hiring lists of qualified members. A rider to the NMFA, known as "Rider #365," dated August 1982, changes the hiring list procedure to a hiring hall.

When Mr. Esquivel became secretary-treasurer of Local Union 104 in December 1994, the local union was not using a hiring hall for casual freight employees. By letter dated December 10, 1995, candidates Carney and Askey raised "the issues of the operations of the Local's hiring hall" with Local Union 104 Trustee Maurice Nelson and asked to discuss those issues with the local union's executive board at its next meeting. This letter resulted in a discussion of applicable NMFA provisions and Rider #365 at an executive board meeting held on January 20, 1996. At that meeting, the board instructed Mr. Esquivel to determine whether Rider #365 is in effect.

Mr. Esquivel's inquiry produced conflicting results. He had a series of communications in January and February 1996, with various representatives of employers and the IBT in which he sought documentation of Rider #365's status and, when he received it, sought assistance in interpreting it. Some employers covered by the NMFA contend that the rider is effective; others do not. IBT representative John Reynolds has advised that it is, in fact, effective. Correspondence in the record shows that as of February 14, 1996, Mr. Esquivel was defending the rider's effectiveness to Nathan Fullmer, an employer bargaining agent who believes that it is not effective. This dispute appears to be continuing.

On February 9, 1996, Messrs. Askey and Carney wrote to Mr. Esquivel that "by continuing to drag your feet on this issue you are denying us the opportunity to make a living in the craft we have been employed in for better than 20 years" and requested a formal response within five days. On February 14, Mr. Esquivel responded in a letter detailing his efforts and stating that he would keep them informed. On February 20, Messrs. Askey and Carney filed internal union charges against Mr. Esquivel for failing to reactivate the hiring hall.

During this period, Local Union 104 has been following the hiring list provisions of the NMFA. The record reflects four hiring lists sent by Local Union 104 to NMFA signatories. The two most recent, submitted January 17 and March 1, 1996, contain 50 names, including three of the four alleged victims of retaliation who are in the freight craft.

Mr. Leggitt's allegation is that Mr. Esquivel and the other members of Local Union 104's executive board "are retaliating for our participation in the delegate elections by not opening the hiring hall to all crafts. Essentially they are denying us the right to make a living."

Article VIII, Section 11(f) of the *Rules* prohibits any "[r]etaliatio[n] or threat of retaliation by . . . any [IBT] subordinate body . . . against a Union member . . . for exercising any right guaranteed by this or any other Article of the *Rules* . . ." The Election Officer does not find such a violation on this record.

The Election Officer has stated that allegations of retaliation cannot be sustained "unless there is some evidence which connects, expressly or through reasonable implication, the protested conduct with the exercise of a guaranteed right under the *Rules*." Hammond, P-250-IBT-SCE (January 2, 1996). In this matter, the protester has not put forth any evidence that Local Union 104's actions with regard to reactivating the hiring hall for casual freight employees are connected with the candidacies of Messrs. Askey, Carney, Justus, Leggitt, Hunt and Torres or of Ms. Edgmon. The "reasonable implication" of the evidence is to the contrary. The Election Officer finds that the local union has been taking rational actions to resolve the uncertain status of Rider #365. In the meantime, the local union has been continuing to issue hiring lists pursuant to the NMFA. The two most recent lists include the protester, two of the other alleged victims of retaliation and 46 other names. This indicates that the local union is not differentiating between the alleged victims of retaliation and any other members who share their job status.

With respect to alleged retaliation against Messrs. Hunt and Torres, who are motion picture employees, there is no evidence of relevant collective bargaining agreements or hiring hall practices in the record. As the Election Appeals Master 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." The protester has not sustained this burden.

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

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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
Jonathan Wilderman, Regional Coordinator