

June 18, 1996

**VIA UPS OVERNIGHT**

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

Michael Caffrey  
719 Brown Street  
Brooklyn, NY 11235

Diana Kilmury, Vice President  
International Brotherhood of Teamsters  
2612 E. 47th Avenue  
Vancouver, BC V5S 1C1

James P. Hoffa  
2593 Hounds Chase  
Troy, MI 48098

Paul A. Levy  
Public Citizen Litigation Group  
1600 20th Street, N.W.  
Washington, DC 20009

**Re: Election Office Case Nos. P-763-IBT-NYC, P-772-IBT-NYC**

Gentlepersons:

Richard Volpe, a candidate for International vice president aligned with James P. Hoffa and secretary-treasurer of Local Union 550, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the ***Rules for the IBT International Union Delegate and Officer Election ("Rules")*** against Diana Kilmury and Michael Caffrey. Ms. Kilmury is also a candidate for the office of International vice president on the Ron Carey slate. Mr. Caffrey is a member of Local Union 868. Mr. Volpe alleges that Mr. Caffrey and Ms. Kilmury violated the ***Rules*** at Article VIII, Section 11(f) by affixing adhesive campaign "stickers" supporting the election of General President Ron Carey in the restrooms of his bar.

Mr. Caffrey filed a pre-election protest pursuant to Article XIV, Section 2(b) of the ***Rules*** alleging that Mr. Volpe made an improper contribution to the campaign of Mr. Carey's opponent for general president, James R. Hoffa, by permitting a Hoffa campaign button to be exhibited in his bar. As the two protests involve the same parties, pertain to a common location and are related in time, the matters were consolidated for resolution.

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

Deinhardt.

Neither Ms. Kilmury nor Mr. Caffrey deny the facts which form the basis for Mr. Volpe's protest. The only dispute appears to be in the number of stickers placed in the ladies' and men's rooms. Mr. Volpe claims that a couple of stickers were placed in the ladies' room and "a bunch" of stickers were placed on the wall and mirror of the men's room. Ms. Kilmury admits she put one sticker up on the wall in the ladies' room. Mr. Caffrey states he put only two stickers in the men's room, one on the door and the other on a tiled wall, under the mirror.

Based upon the investigation, the Election Officer finds the following facts. On May 4, 1996, Ms. Kilmury and Mr. Caffrey were engaged in campaigning in Brooklyn, New York. They passed by a bar and Mr. Caffrey remarked that the establishment was owned by Mr. Volpe, a vocal opponent of Mr. Carey. They entered the bar and ordered several drinks. Thereafter, Ms. Kilmury retired to the ladies' restroom. While there, she placed an adhesive "sticker" supporting the re-election of Mr. Carey on the door. Mr. Caffrey placed two similar campaign "stickers" in the men's restroom, one on a tiled wall just below a mirror and another on the inside of a door.

Upon receiving a copy of the protest, Ms. Kilmury sent Mr. Volpe a letter which provides, in pertinent part, as follows:

In reference to your protest of May 8, 1996, received by fax today, please allow me to offer you my unqualified apology for putting up a Carey sticker in your bar the other night. While we are on opposite sides of a hard fought election, there is no excuse for such juvenile behavior and I truly regret my action.

I quite agree that anyone's private property should be treated with respect and I would be mortified if I thought that the placing of a single bumper sticker on the high gloss paint of a bathroom door caused any damage. I hasten to add that if any damage did occur, I will most certainly pay for it.

There is no evidence that Mr. Volpe's bar was damaged by the actions of Ms. Kilmury and Mr. Caffrey. Ms. Kilmury received no reply to her letter of apology. Mr. Volpe ignored her offer to pay for any damage she might have caused.

Several days after the incident, Mr. Caffrey asked his son-in-law, Eugene Tesoriero, to visit Mr. Volpe's bar and inspect the restrooms for damage. Mr. Tesoriero reported that no damage had occurred. Mr. Tesoriero further stated that during this visit, he observed a single

large Hoffa campaign button, perhaps five inches across, located behind the bar leaning against the wall on the top of the cash register.

A representative of the Hoffa campaign states that no buttons of that size have been produced. Mr. Volpe denies that he ever placed or permitted the placement of any campaign buttons in his bar. The bartender who Mr. Volpe claims was on duty that day, Robert Boccone,

states that he never saw any Hoffa paraphernalia in the bar.

1. Allegations of Retaliation

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 is supported by 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**.”

In Giacumbo, P-210-IBT-NYC (December 5, 1995), aff’d, 95 - Elec. App. - 45 (KC) (December 18, 1995), the Election Officer held, in pertinent part, as follows:

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.

Mr. Volpe, in the statement of his protest, takes the position that his private property was “deliberately destroyed.” He states that, as a candidate, he must remain “fearlessly free to run for office” and that the actions of Ms. Kilmury and Mr. Caffrey “infringe on such freedom.” Ms. Kilmury, in her letter of apology to Mr. Volpe, maintains that her “ill-conceived notion of a joke” was meant only in “the most light-hearted way.”

The behavior of Ms. Kilmury and Mr. Caffrey in placing campaign stickers on the wall of Mr. Volpe’s business property was, regardless of the spirit in which the conduct may have been intended, a deliberate act of harassment connected directly to Mr. Volpe’s right to run for office or support candidates of his choosing.

Violations of the **Rules** at Article VIII, Section 11(f) exist whenever confrontations between members go beyond the “heated discussion” and take the form of physical force or the threat of physical force. Dunn, P-110-LU25-BOS (July 28, 1995), aff’d, 95 - Elec. App. - 8 (KC) (August 21, 1995) (local union president did not violate the **Rules** by following, hovering near, and blocking the path of campaigning member); Lopez, P-456-LU743-CHI (April 10, 1996) (finding “I’ll kill you” to violate the **Rules**, in light of ongoing animosity between the parties); Smith, P-600-LU150-CSF (April 30, 1996) (finding remark “you’ll be taken out of here in a body bag” to violate the **Rules**); Kelly, P-600-LU705-CHI, et seq. (March 27, 1991) (finding an aggressive threat to

“kick their ass” made in a menacing manner to be harassment in violation of the *Rules*).

Conduct which results in the interference with the enjoyment of property is similarly violative of the *Rules*. Chentnik, P-182-LU325-CHI (October 31, 1995). In Chentnik, *supra*, the protester’s automobile was vandalized with partisan adhesive stickers. Although there was no evidence establishing the precise identity of the perpetrator, the decision indicates that such conduct is prohibited by Article VIII, Section 11(f). A decision of the prior Election Officer, Gregory, P-800-LU135-SCE (July 18, 1991), confirms this result. In Gregory, the identity of the person who vandalized and damaged the protester’s automobile was similarly not established by sufficient evidence. Regardless, Election Officer Holland ordered the local union officers to post a letter setting forth the facts of the incident and assuring the members that such conduct is not appropriate and will not be tolerated. The actions of Ms. Kilmury and Mr. Caffrey are violations of Article VIII, Section 11(f) of the *Rules*.

## 2. Allegations of An Improper Campaign Contribution

The Election Officer is troubled by the timing of this allegation. It is somewhat suspicious that Mr. Tesoriero, who is Mr. Caffrey’s son-in-law, would find a Hoffa button at the bar when he went to the bar to check on the damage caused by his father-in-law. Moreover, Mr. Tesoriero’s statement is flatly denied by Mr. Volpe and the bartender who has now been identified as being on duty that night.

Faced with these contradictory statements, and the suspicious nature of the protest, the Election Officer believes that it was incumbent on the protester to produce further corroboration regarding the alleged Hoffa button. Article XIV, Section 1 of the *Rules* places the burden on the complainants “to present evidence that a violation has occurred.” Further, the Election Appeals Master has stated that the protester bears the initial burden of proof to offer evidence substantiating his allegations. In Re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996). The Election Officer finds that under the particular circumstances of this case, the evidence provided by the protester is insufficient to meet his burden of proof.

The protest in P-763-IBT-NYC is GRANTED and the protest in P-773-IBT-NYC is denied.

When the Election Officer determines that the *Rules* have been violated, she “may take whatever remedial action is appropriate.” Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process.

The scope of the violative conduct by Ms. Kilmury and Mr. Caffrey is deemed to be *de minimis* and technical in nature. Nonetheless, the Election Officer quite agrees with the statement of Ms. Kilmury in her apology to Mr. Volpe that “anyone’s private property should be treated with respect.” The Election Officer reminds all participants in this campaign that the interference with the enjoyment of any person’s property has no valid place in the IBT election process. Both Ms. Kilmury and Mr. Caffrey are ordered to immediately cease and desist from

such conduct.

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.

Sincerely,

Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Barbara C. Deinhardt, New York City Protest Coordinator