

June 21, 1996

VIA UPS OVERNIGHT

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Re: Election Office Case No. P-770-LU743-EOH

Gentlemen:

James P. Hoffa, a member of Local Union 614 and candidate for general president, 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")* alleging that the Committee to Elect Ron Carey ("Carey Campaign" or "Campaign") misused a mailing list obtained from the Election Officer. Specifically, Mr. Hoffa contends that the Carey Campaign violated Article VIII, Section 3 of the *Rules*, governing use of the list, by allowing the list to be used in phone

bank campaigning to support candidates in Local Union 743's officer election.

The Carey Campaign admits that it allowed the list to be used in a local union officer election. It argues, however, that "[t]he delegate and local union officer elections at Local 743 present unique circumstances," which made the use reasonable under the *Rules*. It further states that it will not allow such a use in the future.

This protest was investigated by Protest Chief Benetta Mansfield.

The facts in this matter are undisputed. Ballots in Local Union 743's delegate election were mailed on April 4, 1996 and counted on April 27. Three slates ran in the election, including a slate identified with the International campaign of Mr. Hoffa (the "Take Back Local 743 Slate," or "Take Back" slate) and a slate identified with the International campaign of Mr. Carey (the "Local 743 Movement Towards Members Slate," or "MTM" slate). The Take Back slate was the winner.

During the campaign, the Carey Campaign assisted the MTM slate by making four mailings to local union members using names and addresses extracted from the IBT membership list that Mr. Carey obtained from the Election Officer under the terms of Article VIII, Section 3 of the *Rules*, discussed below. The mailings were made through a paid political consultant called the November Group, to which the Carey Campaign transmitted the names and addresses. In Lopez, P-716-LU743-CHI (April 19, 1996), the Election Officer found that this use of the list for the delegate election was proper under the *Rules*.

Approximately one week before the ballot count in the delegate election, the Carey Campaign offered the MTM slate an opportunity to campaign by telephone bank, using numbers supplied from Mr. Carey's membership list. The MTM slate declined.

The local union's officer election occurred about one month after the delegate election. Ballots were mailed on or about May 1, 1996 and counted on May 21. A pro-Carey "Local 743 Movement Towards Members Slate" also ran in that election, composed of seven members who had been candidates on the MTM slate in the delegate election.

On or about April 29, a representative of the MTM slate in the local union officer election called the Carey Campaign to ask the Campaign to support the slate's use of a phone bank. The representative requested that the bank be set up for the following day, due to the fact that ballots were about to be mailed. A senior official of the Carey Campaign learned that a phone bank could be set up that quickly and approved the request. He then instructed the November Group to forward information extracted from Mr. Carey's membership list to a telephone communications contractor, which facilitated the phone bank operation for the local union officer slate. The script for phone

bank campaigners was as follows:

Hello, May I speak with _____.

Hi, I'm calling for the Local 743 (seven-forty three) Movement Toward Members Slate. We pledge to freeze all current dues. Unlike the other slate, the Movement Toward Members Slate reflects the make-up of the members of Local 743: three women, four African-Americans and two Hispanics. If you want your local run by people who look like you and who will safeguard your dues, vote for the 743 Movement Toward Members Slate. Look for your officers ballot in the mail.

The MTM slate lost the officer election. The membership information extracted from Mr. Carey's list was returned to the Carey Campaign on June 7, 1996.

Article VIII, Section 3(a) of the *Rules*, in pertinent part, requires that accredited or nominated candidates for International office may request a copy of the membership list, subject to the following restrictions on use:

No membership list may be used for any purpose other than advancing the accredited or nominated candidate's campaign for nomination and/or election. Use of a membership list in support of the election of delegate and/or alternate delegate candidates shall not constitute misuse of the list, provided that the list is used solely to advance the accredited or nominated candidate's campaign for nomination and/or election.

The section further prohibits the distribution of the membership list to any candidate who fails to promise by affidavit that "he/she will not use or permit use of the membership list for any purpose other than advancing that candidate's campaign for nomination and/or election and that he/she will not provide the list to nor permit inspection or copying of the list by any third parties." The section further warns that "[a] violation of this paragraph is punishable by contempt, pursuant to the Opinion and Order of the United States District Court for the Southern District of New York (Hon. David N. Edelstein), dated August 22, 1995."

The Election Officer finds that the Carey Campaign, and Mr. Carey under the strict liability standard, violated this section of the *Rules* when they permitted information from Mr. Carey's membership list to be used by and for candidates in a local union officer election. The requirements and safeguards spelled out in this section are among the most elaborate in the *Rules*. As discussed below, they do not permit use of such a list in a context that has no connection to the

International union delegate and officer election. The record in this case shows that the Carey Campaign's controls over the use of Mr. Carey's list fell far short of acceptable standards.

The Election Officer has recognized that the history and text of Article VIII, Section 3 have raised certain questions about its application. Before turning to the Carey Campaign's particular argument in this matter, the Election Officer will summarize the principles that govern the use of membership lists by International candidates.

(1) The "accredited or nominated candidate for International office" who obtains a membership list from the Election Officer is personally responsible for its maintenance and use. The section provides for the transmission of lists to the candidates themselves. It further requires the candidates to sign an affidavit swearing not to provide the list to third parties and not to permit third parties to inspect or copy it.

(2) Candidates may appoint agents to handle and use lists for legitimate purposes. As a practical matter, the *Rules* could not require International candidates to perform all list functions personally. In Cipriani, P-420-LU391-SEC, et seq. (March 1, 1996), aff'd, 96 - Elec. App. - 123 (KC) (March 13, 1996), the Election Officer found that "dissemination of the list may only be made to agents of the candidates--that is, persons appointed by the candidate for this purpose, who have the specific authority to act for the candidate in connection with the list." Such agents may be individuals designated for the purpose of handling the list, such as a campaign manager. Agency relationships may also be created with mail houses or computer firms to convert portions of the list into labels, in which case the Election Officer requires such agents to execute affidavits swearing to observe appropriate controls and safeguards, similar to the affidavit that the Election Officer requires from the International candidate under the *Rules*.

(3) "No membership list may be used for any purpose other than advancing the accredited or nominated candidate's campaign for nomination and/or election." This provision restricts use of the list to activities that directly support the International candidate (except as allowed by the following sentence of the section, discussed next). Thus, the Election Officer found a violation in Baudo, P-702-JC39-NCE (May 10, 1996), where an accredited International candidate conveyed portions of his list to an unaccredited candidate as his agent, who then improperly used the information to campaign for himself. As an unaccredited candidate, he was not entitled under the *Rules* to receive and use the list personally. As agent for the accredited candidate, he was bound by his agency and the *Rules* to use the list only for the purpose of directly supporting the accredited candidate.

(4) "Use of a membership list in support of the election of delegate and/or alternate delegate candidates shall not constitute misuse of the list, provided that the list is used solely to advance the accredited or nominated candidate's campaign for nomination and/or election." This is an exception to the preceding sentence of the section, and it allows International candidates to use their lists to support delegate election candidates if, in the International candidate's judgment, such support may

advance the International candidate's campaign. As explained in Cipriani, the practice during the 1990-1991 International election was not to subject that judgment to review. See, e.g., Dalton, P-397-LU1145-NCE (February 15, 1991), aff'd, 91 - Elec. App. - 79 (SA) (February 27, 1991) ("if an accredited candidate decides that release of membership lists to non-committed candidates would further his/her campaign, then so be it"). Thus, the Election Officer does not require delegate election candidates receiving such support to campaign directly for the International candidate. Kent, P-783-LU464-CAN (June 4, 1996) (not a violation for delegate candidate as agent for International candidate to "to advance [International candidate's] campaign by campaigning on behalf of himself and his slate in the delegate election"). Review is confined to ensuring that such activity entails no improper dissemination of membership list information. See, e.g., Miraglio, P-658-LU439-

CSF (April 4, 1996) (no improper dissemination found), aff'd, 96 - Elec. App. - 177 (KC) (April 24, 1996).

(5) All uses of lists must be strictly controlled to prevent dissemination. For example, a common method in making campaign mailings is for an International candidate to provide an agent, such as a mail house, with address labels that are consumed in the mailing. See, e.g., Coburn, P-748-LU492-RMT (May 7, 1996); Furtado, P-705-LU302-CSF, et seq. (April 16, 1996). In any event, all information from a list remaining after an activity is completed must be recovered. In Cipriani, the Election Officer recognized that campaign volunteers at a telephone bank may have to possess portions of a list during the operation. However, "the accredited candidate and his/her intermediate agents (i.e., delegate/alternate candidates) remain responsible for instructing all volunteers in the requirements imposed by the rule and scrupulously recovering all portions of the list from the volunteers."

(6) The liability of an International candidate for dissemination or misuse of his/her list is strict. See Cipriani; Baudo. Thus, an International candidate is automatically liable for any dissemination or misuse of a list by his/her agent, regardless of the International candidate's actual knowledge or involvement. Strict liability is intended to caution International candidates to treat the requirements of Article VIII, Section 3 seriously and to choose agents carefully. The section is one of only two in the *Rules* that specifically mention contempt as a sanction.

Turning to the Carey Campaign's action at issue in this protest, the Campaign argues,

The decision to allow the use of the phone bank for the local union officer elections was made in the midst of a very fluid political situation. Specifically, the Local 743 delegate election pitted expressly pro-Carey candidates against expressly pro-Hoffa candidates. In turn, these same candidates ran against each other for local union officer positions. In the Carey Campaign's judgment,

having the pro-Carey candidates win the local officer election would directly "advanc[e Carey's] campaign for nomination and/or election," a purpose authorized by the Election Rules. See Article VIII, Section 3(a).

As discussed above, the Election Officer has interpreted the basic requirement of Article VIII, Section 3 ("No membership list may be used for any purpose other than advancing the accredited or nominated candidate's campaign for nomination and/or election") only to authorize uses of lists that directly support the possessor of the list. Baudo. If that were not the case, then the next sentence of the section, making an exception for uses that support candidates in the delegate election, would be completely unnecessary. The Carey Campaign's argument, which would allow any use according to the judgment of the candidate, would cause the scope of permitted uses to become so broad that the stated exception would no longer have any meaning. The Election Officer declines to read any part of the *Rules* to make

another part superfluous, particularly where the parts are two sentences in the same section that are intended to be read and understood together.

In this matter, information from Mr. Carey's list was supplied to a phone bank to support campaigning by candidates for local union office. The script of the message did not mention Mr. Carey at all. Thus, the use of the list was solely for the purpose of aiding candidates in a local union officer election. It had no connection to the International election, except as the Carey Campaign loosely argues: "the election of pro-Carey local union officers at Local 743 would have . . . pro-Carey candidacy ramifications for the general election." Even if true, it is impossible to square the vagueness of such an interpretation of the standard with the elaborate restrictions and safeguards in Article VIII, Section 3.

The Carey Campaign argues that particular aspects of this matter support its argument: *i.e.*, that the International delegate and local union officer elections for Local Union 743 were close in time and involved many of the same members. About ten days before the Carey Campaign's support for the phone bank in the local union officer election, the MTM slate in the delegate election turned down a similar opportunity that would have been permitted by the *Rules* if conducted properly. The Campaign suggests that phone banking for the local union officer candidates should not be treated differently than phone banking for delegate candidates, in view of the Campaign's belief that its efforts would have been advanced by success in both elections. The answer is that delegate candidates, if elected, may assist the efforts of International candidates at the International Convention, including the process of nomination. Local union officers, simply by virtue of their union office, have no such ability. Thus, the *Rules* allow International candidates to support delegate candidates as an exception to the general requirements of Article VIII, Section 3. There is no allowance for supporting local union officer candidates.

Lastly, the Election Officer notes several deficiencies in the ways in which the Carey Campaign handled the transfer of membership list information to the telephone communications contractor that facilitated the phone bank operation in question. In particular, the Carey Campaign did not obtain an affidavit from the contractor before transferring the information, as required by Cipriani. The phone bank operation took place on or about April 30, 1996. The Campaign submitted to the Election Officer an affidavit from the contractor dated June 12, six weeks later. Furthermore, the list information should have been returned to the Campaign immediately after the completion of the project. The Campaign, however, states that it did not receive the information until June 7, five weeks later.

The Carey Campaign's violation must also be attributed to Mr. Carey. It was Mr. Carey who received the membership list from the Election Officer, and he remains "strictly liable for any misuse or improper dissemination of the list." Cipriani. As the Election Officer stated in Baudo, "[i]t is this strict liability which provides the incentive to accredited candidates to create safeguards . . ." Therefore, Mr. Carey must be found to have violated Article VIII, Section 3 of the *Rules*.

For the foregoing reasons, the protest is GRANTED.

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 Election Officer stated in Cipriani that "[v]iolations of Article VIII, Section 3 are potentially serious. It may be the only rule which specifically warns that a violation thereof is punishable by contempt. That language . . . serves as a warning to all candidates and members that this rule will be strictly enforced." In prior decisions involving misuse of membership lists, the Election Officer has considered a wide range of remedies: cease and desist orders, mandatory disclosure of list recipients, mandatory purging of files and data banks, mandatory recovery of list information, disqualification of candidates for International office, and the institution of contempt proceedings. In determining the extent of the remedy, the Election Officer will consider mitigating circumstances. Baudo.

Here, the Carey Campaign, acting through a senior official, knowingly allowed Mr. Carey's list to be used by candidates in a local union officer election to campaign solely for themselves, an action completely unrelated to the International union delegate and officer election. That use was not supported by any reasonable interpretation of the text or history of Article VIII, Section 3, and its impropriety was exacerbated by deficiencies in the Carey Campaign's controls: *i.e.*, the failure to obtain the required affidavit from the phone bank contractor and the failure to recover information promptly after the completion of the activity. These factors demonstrate a serious violation of the *Rules* and show a failure on the part of the Carey Campaign to fully appreciate the

gravity of the rule and the Campaign's need to abide by it strictly and in good faith.

In mitigation, the Election Officer recognizes that Baudo, on which this decision partially relies, was issued after the phone bank operation in question had taken place. The Election Officer's decision in Engelbert, P-698-LU670-PNW (June 7, 1996), which stated that use of a membership list to support local union officer candidates violates the **Rules**, was also issued after the events in question.

For the above reasons, the Election Officer finds that a cease and desist order is not in itself a sufficient remedy and would not serve as an adequate deterrent for the future. Although the Election Officer, in Cipriani, made clear the potentially severe consequences of violating Article VIII, Section 3, apparently the Carey Campaign and possibly others have not understood the gravity of the matter. In reviewing additional remedies, the Election Officer has considered banning Mr. Carey's further use of his list, instituting contempt proceedings against Mr. Carey and the Carey Campaign, and disqualifying Mr. Carey as a candidate. The Election Officer finds that banning further use of the list is too extreme for the single violation here. More importantly, banning use of the list would run contrary to the **Rules**, which is to allow candidates the fullest access to the membership and members "the reciprocal right to hear or otherwise receive such campaign advocacy" so that voters will be fully informed in casting their ballots. See Article VIII, Section 11(a).

With respect to contempt or disqualification, the Election Officer finds that such remedies are more properly considered when persons have shown defiance for the processes established by the Consent Decree, such as by obstructing an investigation, disobeying a prior cease and desist order, or engaging in repeated knowing violations. The violation on this record was serious but did not show such a character.

Accordingly, the Election Officer orders the following:

(1) Mr. Carey and the Committee to Elect Ron Carey shall cease and desist from any further violations of Article VIII, Section 3 of the **Rules**, and shall cease and desist from any further failures to follow safeguards on the maintenance and use of membership lists obtained under that section, as set forth in Cipriani and this decision.

(2) Mr. Carey and/or the Committee to Elect Ron Carey shall not distribute or transmit all or any part of Mr. Carey's membership list to any person who is not an officer or senior official of the Committee, except upon a written designation of that person as an agent specifically authorized to have custody of the information; and the information as transmitted must bear the following notice:

NOTICE - THE ATTACHED MATERIAL IS THE CONFIDENTIAL
PROPERTY OF THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS AND IS BEING PROVIDED TO YOU FOR THE

SOLE AND EXCLUSIVE PURPOSE OF CAMPAIGNING FOR THE RON CAREY CAMPAIGN FOR PRESIDENT AND THE RON CAREY SLATE. ANY OTHER USE OF THIS MATERIAL, AND ANY FURTHER DISTRIBUTION OF THIS MATERIAL TO ANY OTHER PERSON IS A VIOLATION OF AN ORDER OF THE IBT ELECTION OFFICER AND MAY SUBJECT YOU TO CONTEMPT OF COURT.

(3) Within ten (10) days of the date of this order, the Committee to Elect Ron Carey shall pay a fine in the amount of five thousand dollars (\$5,000) into an escrow fund that the Election Officer shall establish to hold fines, to be released to the General Treasury of the IBT at the conclusion of the International officer election. The Election Officer imposes this fine pursuant to her authority under Article XIV, Section 4 of the *Rules* to "take whatever remedial action is appropriate" after finding that the *Rules* have been violated. The Election Officer acts on behalf of the IBT pursuant to the IBT's agreement through the Consent Decree. See United States v. IBT ("1991 Election Rules Order"), 742 F. Supp. 94, 105-06 (S.D.N.Y. 1990) ("the Election Officer's authority and hence [the election] rules arise under power reserved for the IBT under its Constitution"), aff'd as modified (931 F.2d 177 (2d Cir. 1991); United States v. IBT ("Star Market"), 954 F.2d 801, 806-07 (2d Cir.) (action of 1991 Election Officer, subsequently affirmed by Independent Administrator, was taken pursuant to the IBT Constitution), cert. denied, 505 U.S. 1205 (1992). In choosing a fine as an appropriate remedy for this type of violation, the Election Officer notes that fines are expressly authorized as one remedy for violations of the IBT Constitution, Article XIX, Section 10(a), and the use of fines by the Election Officer is thus in keeping with the practices and usages of the union. The Election Officer further notes that fines are included within the scope of remedies for proscribed behavior in the Federal Election Campaign Act (2 U.S.C. § 437g) and the Labor-Management Reporting and Disclosure Act, as amended (29 U.S.C. §§ 501(b), 502, 504). A fine in this amount should serve as an effective deterrent for future violations of Article VIII, Section 3.

(4) The Election Officer shall transmit a copy of this decision to all accredited candidates who have received the membership list and to any nominated candidates for International office who receive the membership list in the future. Such candidates are thereby placed on notice that remedies for future violations involving misuse of the list will be considered in light of this warning.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1996).

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:

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
Regional Coordinators