

May 31, 1996

VIA UPS OVERNIGHT

James P. Hoffa
2593 Hounds Chase
Troy, MI 48098

William Hogan, Jr., Secretary-Treasurer
Teamsters Local Union 714
6815 W. Roosevelt Road
Berwyn, IL 60402

Gerald Zero, Secretary-Treasurer
Teamsters Local Union 705
1645 W. Jackson Boulevard
Chicago, IL 60612

Re: Election Office Case No. P-771-LU705-CHI

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 James P. Hoffa, a member of Local Union 614 and candidate for general president. He alleges that Local Union 705 Secretary-Treasurer Gerald Zero violated the *Rules* by using local union resources in connection with sending a letter to Local Union 563 Secretary-Treasurer James Peterson, who is also president of Joint Council 39. The letter states Mr. Zero's disagreement with remarks allegedly made at a candidates' forum sponsored by Joint Council 39 by William Hogan, a candidate for secretary-treasurer aligned with James P. Hoffa.

This protest was investigated by Regional Coordinator Bruce Boyens.

Mr. Zero's letter, dated April 30, 1996, is printed on Local Union 705 letterhead. In it, Mr. Zero criticized Mr. Peterson for not arranging for someone to speak at the candidates' forum on Mr. Carey's behalf after Mr. Carey and his slate apparently declined to attend. The rest of the letter responds to Mr. Hogan's remarks, which Mr. Zero characterized as "attack[ing] the General President and myself quite liberally in a one and one half hour profanity laced speech in which he insinuated that I was a thug and had beaten members." With respect to the charge against himself, stemming from a confrontation at the Local Union 705 hall that the Election Officer addressed in Passo, P-469-LU705-CHI, et seq. (February 29, 1996),¹ Mr. Zero wrote that

¹Remanded, 96 - Elec. App. - 124 (KC) (March 13, 1996), decision on remand, P-469-

"I have never beat, kicked, punched, thrown anyone down stairs, or in any other physical way attacked a member . . ." With respect to Mr. Hogan's campaigning against Mr. Carey, Mr. Zero charged Messrs. Hogan and Hoffa with being associated with persons involved in IBT corruption that led to the Consent Decree. He further stated that Mr. Hogan "just sat on his hands and continued collecting multiple salaries and pensions," and that Messrs. Hogan and Hoffa are now "trying to convince our members that they want the government out of the Teamsters even though their close friends are the very same leaders who invited the Government in." Lastly, Mr. Zero accused Mr. Hogan of having members of Mr. Hogan's local union cross pickets lines.

Mr. Peterson forwarded Mr. Zero's letter to Mr. Hoffa, who alleges that it constitutes improper campaigning using union resources. Mr. Hoffa also suggests that the Election Officer should find Mr. Zero's defense of his actions during the confrontation at issue in Passo to be "in open defiance of the Election Officer's decision."

Mr. Zero responds that he prepared the letter on personal time and used "volunteer, non-union resources." He states that he sent it to Mr. Peterson as personal correspondence and "did not cause the letter to be otherwise distributed or posted or used in any way as a political statement or campaign piece." With respect to his use of local union stationery, Mr. Zero asserts that his letter "is no different than exchanges of correspondence involving political matters between Union officers on a private, not-to-be-published basis that undoubtedly occurs every day." Lastly, Mr. Zero denies that his defense against Mr. Hogan's alleged charge of beating members was in defiance of the Election Officer's decision in Passo. Mr. Zero states that he complied with the Election Officer's order in that matter.

Article XII, Section 1(b)(3) provides that,

No Union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigns unless the Union is compensated at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are advised in advance, in writing of the availability of such assistance. The use of the Union's official stationery with the Union's name, insignia or other mark identifying the Union is prohibited irrespective of compensation or access.

The Election Officer finds that Mr. Zero's letter had substantial campaign content. His intent was to respond to Mr. Hogan's campaign statements at the candidates' forum sponsored by Joint Council 39, and his statements would plainly have been campaigning if he had made them at that forum. The statements do not change character for having been made in a letter. See Kieffer, P-360-LU435-RMT, et seq. (March 19, 1996) (indicia of campaigning that letter responded "to campaign material published by their opponents"). While the Election Officer recognizes that part of Mr. Zero's letter constitutes his reply to an alleged personal attack on his role in the confrontation at the Local Union 705 hall, much of the text directly opposes Mr. Hogan and Mr. Hoffa in a manner typical of campaign rhetoric. See George, P-490-LU391-SEC (April 4, 1996) (statements made in opposition to candidate constituted campaigning).

The **Rules** protect Mr. Zero's right to campaign in response to Mr. Hogan's campaigning.² However, Article XII, Section 1(b)(3), quoted above, prohibits the use of local union resources in doing so. The prohibition on using local union stationery is specific and without qualification.

Mr. Zero contends that his correspondence was intended to be personal and therefore not campaigning. However, nothing in the **Rules** or the Election Officer's decisions requires a communication to be broadcast in order for it to be considered campaigning.

Mr. Zero's assertion that letters like his are sent between local union officials every day is not a response to the serious concern in the **Rules** that the use of local union letterhead to assist in campaigning is strictly prohibited. When correspondence has campaign content, it may not be sent on local union stationery.

With respect to Mr. Hoffa's suggestion that the Election Officer find Mr. Zero in defiance of her decision in Passo, the Election Officer has monitored compliance with her orders in that matter and is satisfied that they were carried out. The Election Officer found in Passo that "both groups contemplated physical confrontation and engaged in it." She declined to be drawn into each side's attempt "to gain mileage from the alleged level of confrontation and violence that it suffered at the hands of the other faction," finding that "it best serves the purpose of the **Rules** to condemn the actions of both sides."

For the reasons stated above, the protest is GRANTED as to Mr. Zero's use of union stationery.

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.

In this case, Mr. Zero states that he did not use local union resources in the preparation of his letter, and there is no contrary evidence. The letter itself was permissible campaigning.

²Article VIII, Section 11(a) of the **Rules** provides that "All Union members retain the right to participate in campaign activities, including the right . . . to support or oppose any candidate . . ."

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The violation was in the choice of paper.

The Election Officer orders Mr. Zero to cease and desist from using local union stationery when sending correspondence having campaign content.

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 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
Bruce Boyens, Regional Coordinator