

July 18, 1996

VIA HAND DELIVERY

Ken Mee, Vice President
International Brotherhood of Teamsters
Wyndham Franklin Hotel
Philadelphia, PA

James P. Hoffa
Pennsylvania Convention Center
Rooms 103B and 103C
Philadelphia, PA

VIA UPS OVERNIGHT

Marty Frates
Teamsters Local Union 70
70 Hegenberger Road
Oakland, CA 94621

Sargeant Williams, Administrative Asst.
Oakland Police Department
455 7th Street
Oakland, CA 94607

Bob Blanchet, Trustee
Teamsters Local Union 287
1452 N. 4th Street
San Jose, CA 95112

Chuck Mack, Secretary-Treasurer
Teamsters Local Union 70
70 Hegenberger Road
Oakland, CA 94621

Re: Election Office Case Nos. P-800-LU70-CSF, P-804-LU70-CSF

Gentlemen:

Related pre-election protests were filed pursuant to Article XIV, Section 2(b) of the ***Rules for the IBT International Union Delegate and Officer Election ("Rules")*** by Ken Mee, vice president for the western region of the IBT, and Marty Frates, a Local Union 70 business agent. Because of the related nature of the protests, they were consolidated by the Election Officer.

In P-800-LU70-CSF, Mr. Mee alleges that he and Bob Blanchet, trustee for Local Union 287, were prevented from campaigning at a Waste Management, Inc. ("Waste Management") parking lot by an agent of the employer, in violation of the ***Rules***. He also alleges that, while attempting to campaign at Waste Management facility, they were harassed by Ronald Rocha, a member of Local Union 70, and James P. Hoffa, a candidate for general president. Lastly, Mr. Mee alleges that Mr. Frates campaigned at a UPS facility on union time and harassed Mr. Mee when he tried to campaign at the same facility.

In P-804-LU70-CSF, Mr. Frates alleges that Messrs. Mee and Blanchet campaigned at the UPS facility on union and work time, respectively, in violation of the **Rules**.

Adjunct Regional Coordinator Victoria Chin investigated the protest.

1. Access to Waste Management Parking Lot

Messrs. Mee and Blanchet and an employee of Waste Management arrived at the Waste Management facility at approximately 3:00 a.m. on June 7, 1996. They were admitted into the lot by a security guard, but when they began to campaign, an agent of the employer ordered them to leave the premises and threatened them with arrest if they did not comply. Mr. Mee informed the agent that, under the **Rules**, he had a right to campaign there and refused to leave. At that point, the employer summoned the police. When the officers arrived, they refused to arrest Mr. Mee.

Article VIII, Section 11(e) of the **Rules** creates a limited right of access to IBT members and candidates to distribute literature and seek support for their campaign in any parking lot used by union members to park their vehicles in connection with their employment. While “presumptively available,” this right is not without limitations. It is not available to any employee on working time, and candidates and their supporters cannot solicit or campaign to employees who are on working time. It is also restricted to campaigning that will not materially interfere with an employer’s normal business activities.

Following this incident, Adjunct Regional Coordinator Chin spoke with Tom Tucker, counsel for Waste Management, in order to resolve this matter. Following this conversation, Mr. Tucker issued a letter in which he states that Waste Management will now permit campaigning in its employee parking lot, in accordance with the **Rules**. Thus, this issue has been resolved.

2. Alleged Harassment by Messrs. Rocha and Hoffa

Mr. Mee states that, shortly after the police left the Waste Management lot, Mr. Hoffa and Mr. Rocha drove in. According to Mr. Mee, they approached and harassed him. He states that Mr. Rocha said to him, “Haven’t you got something better to do as vice president?”

Mr. Rocha states that he and Mr. Hoffa drove up to Mr. Mee, greeted him, and shook his hand. He states that they remained in their vehicle and did not harass him or use obscenities.

Mr. Blanchet states that he saw Messrs. Hoffa and Rocha drive up to Mr. Mee, but was too far away to hear their brief conversation.

The **Rules** at Article VIII, Section 11(a) guarantee 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.

In the present case, however, Mr. Mee has not demonstrated that his election rights were in any way interfered with by Messrs. Hoffa or Rocha. He does not claim that he was threatened or intimidated. He was not prevented from campaigning by either individual since the employer had already refused to allow him to campaign on the premises. The brief incident as described by Mr. Mee does not rise to the level of harassment forbidden by the *Rules*.

3. Mr. Mee’s Allegations of Harassment by Mr. Frates

According to Mr. Mee, he and other Carey supporters arrived at the UPS facility on the morning of June 7, 1996 to circulate a pro-Carey petition and to distribute campaign literature. He stated that, while he was attempting to speak to members, Mr. Frates physically interposed himself between Mr. Mee and the UPS employees. Mr. Frates then addressed Mr. Mee and his companions with abusive and obscene language.

George Minori, a member of Local Union 439, was campaigning for Mr. Carey at the UPS facility during the alleged incident. He stated that Mr. Frates and other individuals, whom he identified as “Hoffa supporters,” were very aggressive and attempted to prevent the UPS employees from receiving Carey literature or signing the petition. According to Mr. Minori, Mr. Frates physically put himself between Mr. Minori and a UPS employee to whom he was speaking. He also stated that Mr. Frates generally spoke angrily to the Carey supporters and frequently used obscenities.

Mr. Blanchet stated that as he was soliciting signatures for the Carey petition, Mr. Frates, Tom Geagon and Tim Mosier came up and attempted to obstruct his access to the members with their own literature. According to Mr. Blanchet, the Carey supporters were forced to move elsewhere in the parking lot because of this interference.

Mr. Frates denied that he behaved in a threatening or harassing manner at the UPS facility. He stated that he did not come between the Carey supporters and the employees and that the Carey supporters campaigned some distance away from the Hoffa supporters. According to Mr. Frates, he briefly entered the facility but did not campaign while inside.

According to Mr. Mosier, he did not obstruct the Carey supporters' access to the employees, but because he was known to the employees, they would come to him first. He stated that there were no altercations between the two groups and that no one used obscenities. He described the mood at the time as "low key." Mr. Mosier also stated that Mr. Frates was inside the facility for 10 to 15 minutes while the Carey supporters campaigned outside.

Mr. Geagon stated that no interference occurred. He stated that Carey and Hoffa supporters stood side by side as they distributed their literature. According to Mr. Geagon, Mr. Frates shared angry words with a Carey supporter who accused him of stealing money from the union, but the incident ended quickly and did not result in violence. He did not recall Mr. Frates going inside the facility while the Carey supporters were present.

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**).

From this testimony, the Election Officer concludes that Mr. Frates and his companions displayed aggressive and spirited behavior during the incident at the UPS work site. The behavior described by Messrs. Mee, Blanchet and Minori, however, was not threatening and did not substantially interfere with their election rights as guaranteed by the **Rules**. The incident between the protester and Mr. Frates, while certainly spirited in nature, did not constitute a direct or implied threat, and does not constitute a violation of the **Rules**.

4. Allegation that Mr. Frates Was Campaigning on Union Time

Mr. Mee alleges that Mr. Frates campaigned at the UPS facility on union time because he states that he witnessed Mr. Frates enter the facility, presumably to conduct union business, and then reemerge and campaign. During the investigation, however, Mr. Frates' employer provided Ms. Chin with documentation that indicates he was on vacation when he campaigned at the facility. This evidence demonstrates that he was not on union time during the alleged incident.

5. P-804-LU70-CSF; Allegations Concerning Messrs. Mee and Blanchet

In P-804-LU70-CSF, Mr. Frates alleged that Mr. Mee campaigned at the UPS facility while on union time and Mr. Blanchet campaigned while on work time, in violation of the **Rules**.

The investigation revealed that Mr. Blanchet has been on leave from his job at Airborne since May 29, 1996. He is currently working for the Northern California Petition Drive for the Ron Carey Campaign. He was not, therefore, on work time for an employer other than the Carey campaign as Mr. Frates alleges. Further, Mr. Mee provided documentation to show that he was on vacation time when he campaigned at UPS. Hence, his activities at the work site do not violate the *Rules*.

Accordingly, the protest in P-800-LU70-CSF is RESOLVED as to the access to Waste Management and DENIED in all other respects. The protest in P-804-LU70-CSF 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.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Victoria Chin, Adjunct Regional Coordinator