

September 9, 1996

VIA UPS OVERNIGHT

Diana Rudolph
1235 N.E. 152nd Street
Shoreline, WA 98155

Jon Rabine, President
Teamsters Joint Council 28
553 John Street
Seattle, WA 98109

Re: Election Office Case No. P-858-LU174-PNW

Gentlepersons:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* by Diana Rudolph, a member of Local Union 174 and an alternate delegate at the IBT Convention. Ms. Rudolph alleges that Joint Council 28 President Jon Rabine, a candidate for International vice president on the Hoffa No Dues Increase slate, retaliated against her upon her return from the Convention because of her declared support for General President Ron Carey. She states that she was again intimidated when she complied with a request made of her by Mr. Rabine. Since the filing of this protest, Ms. Rudolph alleges that she has been retaliated against for filing the protest by her employer and Mr. Rabine.

Specifically, Ms. Rudolph alleges that on July 25, 1996, six days after the Convention ended, Mr. Rabine telephoned her at her home and asked her to stop by Joint Council 28's office to fill out a questionnaire to elicit her views on the Convention. The protester states that, upon arriving at the joint council office, she was pressured by a joint council official to complete the questionnaire in his

presence, but declined to do so. Ms. Rudolph alleges that the true purpose of Mr. Rabine's phone call and the events surrounding the questionnaire was to intimidate her.

Mr. Rabine denies that he or any other union official attempted to intimidate Ms. Rudolph. He states that the intent of his phone call and the questionnaire was to elicit her minority views for publication in the *Washington Teamster*, a Joint Council 28 newsletter.¹

This protest was investigated by Regional Coordinator Christine M. Mrak.

1. Mr. Rabine's Telephone Call to Ms. Rudolph

Ms. Rudolph, self-described as new to Teamster politics, is a driver employed by the *Seattle Times* ("Times") newspaper. On Thursday, July 25, she received a phone call at home from Mr. Rabine. She believes Mr. Rabine obtained her home phone number from her supervisor, Dick Underwood. Mr. Rabine asked her to come to the joint council's office in Seattle to fill out the questionnaire. According to Ms. Rudolph, the phone call troubled her because it is well-known that Mr. Rabine is "tight" with persons at the *Times*. Ms. Rudolph feared that her job could be placed in jeopardy due to her political activities and objects to the fact that Mr. Rabine contacted her employer to obtain her telephone number.

Mr. Rabine confirms that he spoke with Ms. Rudolph by telephone at her home on July 25, 1996. Mr. Rabine states that he called her at home only after first attempting to reach her at work. Al Groves, assistant transportation manager at the *Times*, informed him that Ms. Rudolph was on industrial injury leave. Mr. Rabine then requested her home number from Mr. Groves, telling him that he needed to contact Ms. Rudolph because she was a delegate. Mr. Groves provided Mr. Rabine with Ms. Rudolph's home telephone number, which is unlisted.

According to Mr. Rabine, he made the call because he had been informed by Jerry Halberg, a member of Local Union 174, that Ms. Rudolph was a Carey supporter who had not filled out a Convention questionnaire which the staff of the joint council's publication would use in its

¹Ms. Rudolph was the sole pro-Carey alternate delegate elected by Local Union 174 members. There were no pro-Carey delegates from Local Union 174.

Convention coverage. With the exception of Local Union 174, copies of the questionnaire were sent to the secretary-treasurers of all local unions that belong to Joint Council 28 for distribution to their delegates and alternates. For Local Union 174, however, Mr. Halberg, rather than Local Union 174 Secretary-Treasurer Bob Hasegawa, received the questionnaire and was asked to distribute it to Local Union 174 delegates. According to

Mr. Rabine, this was due to Mr. Hasegawa's perceived hostility toward the Hoffa supporters who were the slate of delegates at Local Union 174. Upon learning from Mr. Halberg that Ms. Rudolph never received the questionnaire, and because of her minority-view status, Mr. Rabine made the July 25 telephone call to Ms. Rudolph. Mr. Rabine states that obtaining comments from Carey supporters who attended the Convention was a high priority for him so that the Convention coverage in the joint council publication would be balanced.²

Article VIII, Section 11(f) of the *Rules* prohibits any retaliation against anyone by the union or its agents for exercising any right guaranteed by the *Rules*.³ To demonstrate retaliation, a protester must show that conduct protected by the *Rules* was a motivating factor in the adverse decision or conduct in dispute.

Ms. Rudolph was disturbed by the manner used by Mr. Rabine to obtain her telephone number. The Election Officer, however, concludes that neither Mr. Rabine's call nor the means he used to determine Ms. Rudolph's telephone number violate the *Rules*. Mr. Rabine had a legitimate reason for attempting to contact Ms. Rudolph. He desired Ms. Rudolph's input in order that minority views could be included in the publication. He states that he was motivated to contact Ms. Rudolph in order that he might remain in compliance with the *Rules*. The Election Officer finds no evidence to indicate that Mr. Rabine abused his power as joint council president or attempted to intimidate Ms. Rudolph through these actions.

2. Ms. Rudolph's Visit to Joint Council 28

²The comments of most of the delegates and alternate delegates who attended the Convention representing local unions affiliated with Joint Council 28 were printed in the August 1996 issue of the *Washington Teamster*. In *Chalfant*, P-882-JC28-PNW, P-883-JC28-PNW (September 6, 1996), the Election Officer determined that the publication of these comments did not violate the *Rules*.

³Article VIII, Section 11(f) states:

Retaliation 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* is prohibited.

According to Ms. Rudolph, when she arrived at the joint council's offices, three men and one woman were present. Ms. Rudolph states that she felt very nervous at the time, and told one of the men--whom she recognized as one of Mr. Rabine's assistants--that she felt vulnerable in answering the questions. He replied, "Don't," to which she responded that she did not want to complete the questionnaire at the joint council's office. According to Ms. Rudolph, the man then stated, "We have the rest anyway." She took the questionnaire and left.

Mr. Rabine's account of the events of July 25 are stated below. During the telephone conversation with Ms. Rudolph, she referred to herself as a "voice in the wilderness." Mr. Rabine replied that it was important that her viewpoint be included in the *Washington Teamster* for this reason. He suggested that Ms. Rudolph either fill out the questionnaire at the joint council's office or that he fax it to her at a shop in her neighborhood. Ms. Rudolph replied, "fine." Mr. Rabine left the questionnaire with Marie Schattenkerk, a bookkeeper employed by the joint council, and Ms. Rudolph appeared at the joint council's office later that day.

According to Ms. Schattenkerk, the questionnaire was given to Ms. Rudolph without instructions. At least two other persons were present at the time Ms. Rudolph arrived: Mark Andresen, a joint council research director, and Local Union 174 delegate Tony Murietta. Ms. Schattenkerk does not recall anyone telling Ms. Rudolph how to fill out the questionnaire, but concedes that something might have been said. Ms. Rudolph took the questionnaire out of the office and returned later that day with it completed.

Mr. Andresen states that he was in Ms. Schattenkerk's office when Ms. Rudolph arrived. According to Mr. Andresen, he was expecting Ms. Rudolph and went to Mr. Rabine's secretary's desk to get the questionnaire. He gave the questionnaire to Ms. Rudolph and encouraged her to fill it out because he appreciated the importance of obtaining the views of Carey supporters for the publication. Ms. Rudolph then told Mr. Andresen that she did not want to be put in the spotlight, but Mr. Andresen assured her that she would not be the focus of any unusual attention. Mr. Andresen states that he told Ms. Rudolph that the comments of many individuals would be included in the newspaper and that she would not be the only Carey supporter quoted. He also states that he may have mentioned that there was a deadline for submissions and that she could fill the form out at the joint council's office or take it home.

According to Mr. Andresen, Ms. Rudolph was hesitant to complete the form. He interpreted her hesitancy as a reluctance to fill out the form at all. He did not sense that she was reluctant to complete the questionnaire in the presence of others. Mr. Andresen recalls that Ms. Schattenkerk and two other individuals were present.

The Election Officer credits Mr. Andresen's testimony. While it differs slightly from Ms. Rudolph's account, Ms. Rudolph, by her own admission, was very nervous when she went to the joint council office. Due to her anxious state, she interpreted the situation as hostile and, thus, found it intimidating. The record, however, demonstrates that rather than attempting to intimidate Ms. Rudolph into silence or for her political affiliation, the actions taken by Mr. Rabine and the scene in Ms. Schattenkerk's office were caused by a reasonable effort on the part of the joint council officer to obtain Ms. Rudolph's comments. These efforts were motivated by a desire to comply with the *Rules* and to obtain Ms. Rudolph's comments prior to the publication's deadline.

Based on these facts, the Election Officer finds that there was no intimidation of Ms. Rudolph in filling out the questionnaire.

3. Allegation of Intimidation for Filing This Protest

Ms. Rudolph also claims that Mr. Rabine retaliated against her for filing this protest. She states that on July 30, one day after she received the Election Officer's letter docketing her protest, her supervisor initiated a conversation with Ms. Rudolph's husband who also works for the *Times*. Although the supervisor did not mention the protest, Ms. Rudolph believes that the conversation indicated he had knowledge of the protest. Ms. Rudolph contends that the supervisor received this information about the protest from Mr. Rabine in an attempt to intimidate her.

Article XIV, Section 1 of the *Rules* states that "[a]ny member . . . may file a protest with the Election Officer alleging non-compliance with the *Rules*, free from retaliation or threat of retaliation by any person or entity for such filing."

When interviewed by the investigator, the supervisor credibly stated that he had no knowledge of Ms. Rudolph's protest until he was contacted by the Regional Coordinator during the investigation.

The Election Officer finds that there is no evidence of retaliation for the filing of this protest.

For the foregoing reasons, 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 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

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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, D.C. 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
Christine M. Mrak, Regional Coordinator