

September 13, 1996

VIA UPS OVERNIGHT

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**Re: Election Office Case No. P-871-IBT-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 IBT improperly used the July 25, 1996 edition of its official publication, *The Teamster Leader*, to oppose his candidacy and to support the candidacy of incumbent General President Ron Carey. Mr. Hoffa objects to the number of times Mr. Carey's name is mentioned and disagrees with statements in the publication that blame "disruptions on the floor" for the failure of the Convention to reach certain issues. Mr. Hoffa contends instead that Mr. Carey delayed Convention proceedings through undemocratic conduct and filibustering, which Mr. Hoffa's supporters "vigorously and vocally protested."

The Election Officer also notes the objection of Local Union 853 member Daniel A. Harrington to the caption for one of the publication's pictures, which purports to identify a group of Convention attendees as non-delegates who improperly participated in delegate voice voting. Mr. Harrington states that he is a member of the group, that he was a duly elected alternate delegate, and that he did not participate in voice voting.<sup>1</sup>

This protest was investigated by Election Office Representative Christopher Corson.

The July 25, 1996 edition of *The Teamster Leader* is eight pages long. The first seven pages contain the publication's articles and pictures. When the publication is folded in half for mailing, the eighth page becomes the front and back of the mailer. The front is set up to be addressed. The back contains an order form for IBT paraphernalia.

While the protester objects to the publication in general, the allegations about overuse of Mr. Carey's name and bias in Convention reporting only apply to one article entitled, "Good News and Bad News From the International Union Convention." This article appears on the publication's first page, and on pages four and five, which form the publication's central two-page spread. Mr. Carey is not mentioned on pages two and three, which form a spread containing articles relating to national politics, lobbying and recent legislation, or on pages six and seven, which form a spread containing articles and a picture relating to organizing. One article on page three mentions the unanimous adoption at the Convention of initiatives relating to the U.S. presidential election without referring to any dispute over Convention proceedings.

A summary of the protested article appears in a highlighted text box on page one, which contains two statements: "The good news is that the 1996 Teamsters Convention held July 15-19 in Philadelphia took some historic steps to protect members' rights and prevent corruption," and "The bad news is that disruptions on the floor prevented delegates from considering many other reforms recommended by the Convention's Constitution Committee."

The first part of the article principally discusses the claimed disruption. It quotes the *Philadelphia Inquirer* as stating that there was "a deliberate campaign . . . [to] disrupt the proceedings," characterizes the disruption as "fights, physical threats, shouting, booing, guests voting on voice votes, and other tactics," relates an incident occurring on the first day of the Convention when U.S. Senator Arlen Specter was unable to address the delegates due to noise from the floor, and quotes Mr. Carey as Convention chair saying that "We are not going to have a convention that is ruled by mob rule."

The next part of the article, subtitled, "Some Steps Forward," states that the Convention "took some actions which will keep the union strong and protect Teamster families," including measures having to do with dues, a new code of ethics for pension and health fund trustees, a bar from membership for persons having ties to organized crime, and Canadian sovereignty.

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<sup>1</sup>Mr. Harrington addressed his objection to the IBT Communications Department with a copy to the Election Officer. This letter was not docketed as a protest. However, the Election Officer considered it in the investigation of Mr. Hoffa's protest.

A section entitled, "Some Proposals Voted Down" reports that the Convention defeated initiatives that would have imposed a service-related qualification for future International officer candidates and changed the name of the International union.

A section entitled, "Anti-Corruption Actions Upheld" reports Convention action to sustain actions taken by the General Executive Board ("GEB") against certain members for alleged wrongdoing and to reverse actions taken against certain others.

The longest section of the article, entitled, "More Reforms Blocked By Disruptions" spans the center of the page four and page five spread. It starts, "Because of the disruptions on the floor, the Convention did not get to vote on the following proposals recommended by the Constitution Committee," and lists 10 initiatives. Most are accompanied by an explanation of why the failure of the Convention to address such measures will disadvantage members or future operations. With respect to one initiative on the methods by which a local union may select business agents, the commentary reinforces the negative impact of claimed disruption: "Because disruptions prevented the Convention from taking up the proposal from the Constitution Committee to give the power to choose back to the locals, locals still don't have the right to make this decision for themselves."

The last section, entitled, "Special Convention Voted," notes that the GEB voted to hold a special convention after the International officer election. It states, "A less political atmosphere at that time may make it possible to consider and adopt the Constitution Committee's proposed reform package for the benefit of the membership."

Two photographs accompany the article. Across the top of the spread on pages four and five is the group photo objected to by Mr. Harrington. The full caption reads, "During disruptions on the Convention floor, non-delegates like these left their seats and participated in voice votes that were only supposed to involve delegates." The picture shows a group of persons on the Convention floor, most of whom have their arms raised in gestures of protest and appear to be vocalizing. Most of the persons in the group are clearly identifiable by their vests, shirts and campaign paraphernalia as supporters of James P. Hoffa. The second photo, on page five, shows a Hoffa supporter and a Carey supporter in front of a table at the Convention at which materials were sold to support Teamsters on strike against the Detroit newspapers.

Mr. Hoffa alleges that "[t]he publication repeatedly mentions candidate Ronald Carey by name, and blames 'disruptions on the floor' . . . for the failure of the Convention to address many of the substantive issues that were before it." He contends, "In truth, it was the highhanded, undemocratic and dictatorial behavior of Mr. Carey at the Convention that effectively filibustered the Convention." Mr. Hoffa further contends that the publication tries to shift blame away from Mr. Carey to Mr. Hoffa's supporters, "who vigorously and vocally protested Carey's undemocratic behavior on the first day of the Convention."

Article VIII, Section 8(a) of the *Rules* states that a union-financed publication or communication may not be “used to support or attack any candidate or the candidacy of any person.” In reviewing union-financed communications for improper campaign content, the Election Officer looks to the tone, content and timing of the publication. Martin, P-010-IBT-PNJ et al. (August 17, 1995) (decision on remand), aff’d, 95 - Elec. App. - 18 (KC) (October 2, 1995). The Election Officer also considers the context in which the communication appeared. Chalfant, P-882-JC28-PNW et seq. (September 6, 1996); Rodriguez, P-888-LU630-CLA (September 6, 1996).

In Martin, the Election Officer recognized that the IBT may use its official publications to report on the legitimate business of the union and on the views and actions of union officers and officials with respect to that business.

Elected union officials are entitled to use union publications to express their views and to have their union activities reported in [union] publications. They are not ordinarily required to give space therein to the expression of contrary views . . . . So long as such coverage is addressed to the regular functions, policies and activities of such incumbents as officers involved in matters of interest to the membership and not as candidates for reelection, there is not a violation . . . .

(quoting Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979) (construing Section 401(c) of the Labor-Management Reporting and Disclosure Act), aff’d, 108 L.R.R.M. (BNA) 2924 (D.C. Cir. 1981)).

Distinguishing between coverage addressed to the regular functions, policies and activities of incumbents as officers as opposed to their activities as candidates is naturally complicated by the fact that “policy issues within the union are frequently adopted as campaign issues in the campaigns of the International officers.” Szymanski, CONV-9-IBT et seq. (July 16, 1996); Hoffa, P-812-IBT-NYC (August 16, 1996). See Martin, P-010-IBT-PNJ (decision on remand) (August 17, 1995) (recognizing parallel debates within union on “how the IBT should prepare for the future in light of the institutional changes wrought by the Consent Decree and the changes in the national economy” and on “what individuals and groups within the union will hold power over the next four years”). Thus, in applying the tone, content and timing test to union-financed publications, the Election Officer endeavors to distinguish between the legitimate pursuit of institutional roles on the one hand and supporting or opposing a candidate on the other, recognizing that “a publication or communication may convey support or opposition to a candidate even if overt campaign material is not present.” Rodriguez.

Turning to the issue of *The Teamster Leader* in question, the Election Officer notes that most of the content of the protested article deals with institutional objectives and decisions of the IBT, *i.e.*, the recommendations of the IBT Constitution Committee that were adopted or rejected, the recommendations of that committee that were not reached, the disciplinary actions of the GEB that were upheld or overturned, and the decision of the GEB to hold a special convention after the International officer election. Mr. Carey's name is not mentioned in connection with any of these items. These portions of the article do not have campaign content, even though some of these IBT institutional positions have been adopted by Mr. Carey in his campaign. As the Election Officer observed in Rodriguez:

If [adoption of IBT positions by incumbent candidates] turned their job performance into campaigning, then incumbents would be required to stop acting on any such union business or risk an improper expenditure of union time and resources. If that fact turned criticism of incumbent performance into campaigning, then legitimate debate within the union would be stifled. The *Rules* require no such results if the distinction is maintained between an incumbent's roles as union officer and election candidate.

Mr. Hoffa objects that Mr. Carey's name is repeatedly mentioned. Under the tone, content and timing test "[o]therwise legitimate coverage of the activities of a union official running for office may constitute campaigning if it is excessive." Martin; Chalfant. In this matter, the Election Officer finds that Mr. Carey's name appears five times in the protested edition of *The Teamster Leader*, all in the Convention article's first section, which introduces the article and reports on the alleged disruptions of speeches and floor business. This portion of the article mentions Mr. Carey's position as general president and discusses his role in maintaining order as Convention chair. The Election Officer finds that the five mentions of his name are not excessive in connection with the subjects covered.

Mr. Hoffa's principal objection is the article's characterization of the actions of his supporters as "disruption," whereas he contends that they were "vigorously and vocally protest[ing] Carey's undemocratic behavior." In several recent decisions, the Election Officer addressed union-financed Convention reporting that adopted one or the other of these viewpoints. Chalfant (August 1996 issue of Joint Council 28's *Washington Teamster*, which included an article "written from the point of view that the failure of the Convention to address important issues was solely the fault of actions taken by the Convention chair"); Hoffa, P-870-PACONF-SCE (September 6, 1996) (July 1996 issue of Pennsylvania Conference of Teamsters' *Conference Report*, which commented negatively on disruptive floor behavior); Rodriguez (Convention report by Local Union 630 delegates, which attributed failure of Convention to reach certain issues on undemocratic action and abuse of Parliamentary procedure by Mr. Carey). In each of those matters, the Election Officer found that the

publication was not required to present all views, and that the reporting in each case was within the scope allowed by the *Rules*.

The Election Officer finds that the tone, content and timing of the protested issue of *The Teamster Leader* do not distinguish it from the publications found not to violate the *Rules* in Chalfant, Hoffa and Rodriguez. The Election Officer recognizes the legitimate institutional interest of the IBT in advancing the recommendations and decisions of its Constitution Committee and the GEB, as well as the corresponding institutional interest of members who disagree to voice their opposition. The deep divisions on such issues that were evident at the Convention are reflected in subsequent reporting. Publications containing such reporting will not be found to violate the *Rules*, absent some other factor or factors that indicate campaign content under the tone, content and timing test.

The Election Officer also does not find campaign content in the picture to which Mr. Harrington objects. That picture links the claims of disruption in the protested article to Mr. Hoffa's supporters. The Election Officer recognizes, however, that Mr. Hoffa's supporters had a legitimate right at the Convention to oppose the initiatives of the IBT with which they disagreed. Mr. Hoffa characterizes the actions of his supporters in his protest, as "vigorously and vocally protest[ing] Carey's undemocratic behavior." It is that opposition which the photograph depicts. The actions of Mr. Hoffa's supporters were distinct from their political support of Mr. Hoffa, as evidenced by their campaign vests, shirts and buttons. The Election Officer finds that the IBT is not precluded from reporting on or depicting opposition or disruption at the Convention because such opponents wore Hoffa campaign paraphernalia.

Mr. Hoffa further objects to the article's reference to a "special convention." Thus, Mr. Hoffa states that the report "explicitly ties ultimate consideration of Carey's 'reform package' to a 'special convention' to be held 'after the winners of this year's International Union elections take office next year.'" Mr. Hoffa argues that the IBT impermissibly ties the package of "constitutional reforms" to Mr. Carey's re-election campaign.

The protested section states, "A less political atmosphere at that time may make it possible to consider and adopt the Constitution Committee's proposed reform package for the benefit of the membership." Contrary to Mr. Hoffa's contentions, the acknowledgment that a politically charged atmosphere at the Convention contributed to the divisions at the Convention on substantive issues and inhibited resolution of such issues neither supports nor opposes Messrs. Hoffa or Carey in violation of Article VIII, Section 8(a) of the *Rules*.

As noted above, the Election Officer finds nothing that distinguishes it from the publications found not to violate the *Rules* in Chalfant, Hoffa and Rodriguez. In Rodriguez, the tone of the Local Union 630 delegates report was highly critical of "undemocratic" and "abusive" actions of Mr. Carey in conducting the Convention. In view of their substantive disagreements with the IBT, however, the Election Officer found that the tone of their report did not "rise to the extra level of a political attack."

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Similarly, the Election Officer finds that the critical tone of the protested Convention article does not exceed the scope of permissible reporting. With respect to timing, the release of *The Teamster Leader* on July 25, 1996, six days after the close of the Convention, does not indicate anything but timely coverage of an event of general interest to the members, despite the article's proximity to the election.

With respect to Mr. Harrington's objection that the caption of the picture in which he appears is inaccurate, "[t]he Election Officer does not monitor the content of union publications except to determine whether campaigning is present." Rodriguez. The Election Officer does not regulate allegations of accuracy or inaccuracy.

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  
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