

September 6, 1996

VIA UPS OVERNIGHT

Raul Rodriguez, Jr.  
13882 Stagecoach Circle  
Victorville, CA 92392

Jerome L. Vercruse, Secretary-Treasurer  
Teamsters Local Union 630  
750 S. Stanford Avenue  
Los Angeles, CA 90021

Re: Election Office Case No. P-888-LU630-CLA

Gentlemen:

Raul Rodriguez, Jr., a member of Local Union 630, 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 Local Union 630 violated the *Rules* when it published and distributed a report on the IBT Convention that had been written by the local union's Convention delegates ("report"). He contends that the report is inaccurate and constitutes improper campaigning against the re-election effort of General President Ron Carey.

Local Union 630 responds that its Convention delegates had a right to report to members on the Convention. It further responds that distribution to the membership was authorized at a general membership meeting.

This protest was investigated by Regional Coordinator Dolly M. Gee.

Mr. Rodriguez attended the Convention as a guest. Following the Convention, on August 20, 1996, he received in the mail a copy of a Convention report written by Local Union 630's delegates.

The report is one page, printed on both sides. The front is entitled, "A Report of the International Brotherhood of Teamsters Convention" and contains four single-spaced paragraphs of text. The back gives the results of nomination voting for International officer candidates at the Convention and lists the local union delegates and their workplaces. The report was issued in an English version and a Spanish version.

The text of the report is critical of the way in which Mr. Carey, as Convention chair, conducted the proceedings. The first paragraph states that the delegates went to the Convention "with the high hope of listening to different points of view" and voting on various issues, such as the International Strike Fund, International finances, and Canadian sovereignty, "after a debate with both sides being allowed to make their points." The paragraph goes on to state, however, that "We are sad to report that democracy did not rule the day, rather the abusive power of the Chairman (Ron Carey) was the order of the day."

The second paragraph comments that "the lack of democracy became very apparent" during the Convention's first order of business, which was the submission of the "Official List of Delegates" including approximately 90 delegates appointed by Mr. Carey. The report states that such delegates had not been elected by their home local unions, that some had in fact lost such elections, that most of them worked for the IBT, and that "Carey was their boss." The paragraph goes on to state that Mr. Carey "quickly called for a voice vote" on the submission, ruled that it was adopted on voice vote, and refused to recognize the demand of an estimated 900 delegates for a division of the house on the matter.

The third paragraph states that bias on Mr. Carey's part was shown by the divisions of the house that he did permit, which, the report contends, overturned his voice vote rulings six of seven times. The paragraph quotes *The Washington Post* of July 17, 1996, which stated that Mr. Carey appeared to be adopting a strategy of slowing down Convention business to keep certain issues from coming to a vote and refusing to extend Convention proceedings into night sessions.

The last paragraph states that the following issues were never addressed: (1) the International strike fund; (2) the International financial report; (3) “the issue of Local Union jurisdiction”; and (4) the size of the International itself. It concludes: “The failure of [issues to come to discussion or vote] must rest on the shoulders of the Chairman of the Convention, Ron Carey.”

Local Union 630 submitted to the Election Officer minutes of a general membership meeting on August 11, 1996 at which a motion was carried unanimously for the local union to mail the Convention report to all members and to post it on all local union bulletin boards.

Mr. Rodriguez contends that the report’s criticism of Mr. Carey is one-sided and unfair. With respect to the report’s statement in paragraph one that democracy had been overshadowed by the abusive power of the chairman, Mr. Rodriguez responds that heckling and disruptive noise from supporters of James P. Hoffa caused Mr. Carey to exclude alternate delegates and Convention guests from the floor. With respect to the statement in paragraph two that delegates appointed by Mr. Carey had not been elected by home local unions, he responds that some had been elected. He also points out that Joint Council 42, which he alleges supports Mr. Hoffa, appointed certain Convention delegates. Finally, he states that the report was one-sided in describing the calls for divisions of the house.<sup>1</sup>

Article VIII, Section 8(a) of the *Rules* prohibits the use of a union-financed publication or communication for campaigning: “No publication or communication financed, directly or indirectly, by a Union may 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.

In Martin, the Election Officer recognized that union officers and officials have a “right and responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern” (quoting Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), aff’d, 108 L.R.R.M. (BNA) 2924 (D.C. Cir. 1981)). However, the Election Officer also recognized in Martin that:

... an otherwise acceptable communication may be considered campaigning if it goes on to make a connection with the election or election process, if it involves excessive direct or indirect personal attacks on candidates, or, alternatively, involves lavish praise of

---

<sup>1</sup>Mr. Rodriguez submitted pages from the official minutes of the Convention to document his allegations of unfairness.

candidates. Otherwise legitimate coverage of the activities of a union official running for office may constitute campaigning if it is excessive.

In applying these tests to the report of Local Union 630's Convention delegates, the Election Officer first notes that it makes no mention of the International officer election other than the report of nominations on the back. Mr. Carey is extensively criticized in his capacity as Convention chair, but no mention is made of his candidacy or his campaign. Mr. Carey's political opponent, Mr. Hoffa, is not mentioned at all. No connection to the ongoing electoral process is made.

Under the "tone, content and timing" test, however, the Election Officer recognizes that a publication or communication may convey support or opposition to a candidate even if overt campaign material is not present. The Election Officer finds that the tone of the report is very critical of Mr. Carey's conduct as Convention chair. It accuses him of undemocratic action, abusive use of parliamentary procedure, bias toward his own positions in calling the results of voice votes, and stalling the Convention to avoid certain issues. While such a tone indicates displeasure with Mr. Carey's performance of his official duties, the *Rules* do not generally restrict the ability of IBT members to criticize the conduct of legitimate union business by their leaders. "[R]estrictions on campaigning must not be read so broadly as to restrict the right and the responsibility of union officers to conduct their official business, nor prohibit other members and subordinate bodies from criticizing the policies or official conduct of those officers." Martin. "Just as it is proper for incumbent Union officers to expend Union resources for the conduct of legitimate Union business, it is permissible for a Union member to criticize the manner in which the incumbent conducts such business." Jacob, P-060-LU745-EOH (July 21, 1996), remanded on other grounds, 95 - Elec. App. - 6 (KC) (August 14, 1995).

As noted above, excessive criticism or lavish praise regarding the conduct of legitimate union business may nevertheless indicate campaigning. In this matter, the Election Officer finds that the critical tone expressed by the Local Union 630 delegates in their report is not excessive, in view of their substantive disagreements with Mr. Carey on the issues involved in the matters reported. Therefore, the Election Officer finds that the tone of the report does not rise to the extra level of a political attack.

In content, the text of the report is exclusively concerned with aspects of Convention proceedings other than the Election Officer's processes for nominating and voting on the nominations of International officer candidates.<sup>2</sup> In several protests filed during the Convention, the Election

<sup>2</sup>As noted above, the results of nomination voting at the Convention are set forth on the back of the report. The Election Officer finds no campaign content in the layout or method of presentation. Candidates are listed by position, in the order of votes received. All names are given in the same font and typeface.

Officer found that controversies over non-electoral Convention proceedings, including some of the proceedings raised in the report, were matters of internal union dispute beyond the scope of the *Rules*. Szymanski, CONV-9-IBT et seq. (July 16, 1996) (adoption of Credentials Committee report recognizing appointed Convention delegates on voice vote without division of house); Bodine, CONV-17-IBT et seq., (July 16, 1996) (alleged failure of Mr. Carey to accept call for division of house); DiDio, CONV-34-IBT (July 19, 1996) (voting procedures on non-electoral matters). As the Election Officer stated in Szymanski:

The Election Officer has consistently declined to extend her jurisdiction under the Consent Decree to substantive issues concerning how the union should be organized and run . . . .

With respect to the parliamentary processes by which the [Credentials Committee] report was considered, these protests in effect request the Election Officer to sit as Convention parliamentarian. Without a clear connection to the electoral processes under her jurisdiction, the Election Officer declines to review Convention parliamentary procedures.

Similarly, the Election Officer declines to find campaign content in the fact that Local Union 630's delegates selected such internal union matters for its Convention report. These were matters of great controversy at the Convention. As noted above, the *Rules* respect the right and responsibility of union officers and officials "to advise and report to the membership on issues of general concern." Martin. The Election Officer notes that Local Union 630's delegates made no connection, express or implied, between Mr. Carey's performance as Convention chair and his status as a candidate or his possible future performance as IBT general president if re-elected.

The Election Officer also notes that the Convention ended on July 19, 1996, that Local Union 630 authorized the distribution of the delegate report on August 11, and that Mr. Rodriguez received his copy in the mail on August 20. Nothing in these time frames suggests that the report in question was not a timely report on a major event of general interest.

It is also important to recognize that tone, content and timing, when taken together, may have campaign impact that is not apparent when the factors are evaluated separately. In this matter, the Election Officer finds that while the Convention report of Local Union 630's delegates is highly critical view of Mr. Carey's conduct as Convention chair during the Convention's consideration of non-electoral issues, it is within the scope of reporting that is appropriate for elected Convention delegates. Accordingly, in applying the "tone, content and timing" test articulated in Martin, the Election Officer finds that the report does not constitute campaigning.

Mr. Rodriguez argues, however, that in the context of the Convention, there was no distinction between Mr. Carey in his role as general president and Convention chair, and his role as candidate. He asserts that the report cannot be perceived as anything but campaign literature.

The Election Officer rejected that argument in the Convention decisions cited above and rejects it here. “[P]olicy 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). It is to be expected that incumbent union officials often pursue policies in office that they espouse on the campaign trail. If that fact 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. As the Election Officer stated in Martin, “just as the incumbent may conduct union business without having it labeled as campaigning, potential rivals are also free to criticize the policies of the incumbent without having such conduct automatically be labeled campaigning.”

The finding that Local Union 630’s Convention delegate report does not implicate the electoral processes under the **Rules** means that the Election Officer has no basis for addressing Mr. Rodriguez’s allegation that the report is one-sided and unfair. The Election Officer does not monitor the content of union publications except to determine whether campaigning is present. “A union-financed communication does not violate the **Rules** because it fails to treat opposing ideas or opinions.” Volpe, P-828-IBT-MGN et seq. (July 11, 1996), aff’d, 96 - Elec. App. - 218 (July 23, 1996). As the Election Appeals Master has stated, “absent a political endorsement or attack, as established by the communication’s tone, content, and timing, the Election Rules do not empower me to intrude upon the journalistic process of a union publication.” In Re: Lamy, 95 - Elec. App. - 53 (KC) (January 11, 1996).

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

Raul Rodriguez  
September 6, 1996  
Page 7

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  
Dolly M. Gee, Regional Coordinator