ELECTION OFFICER for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

In re:	:	Election Office Case Nos.
	:	
JERALDINE CHEATEM;	:	Post-27-EOH, Post-29-EOH,
ROBERT H. SPEARMAN;	:	Post-31-EOH, Post-32-EOH,
JIM HOFFA-NO DUES INCREASE-	:	Post-33-EOH, Post-35-EOH,
25 & OUT SLATE;	:	Post-37-EOH, Post-39-EOH,
JERRY HALBERG;	:	Post-40-EOH, Post-42-EOH,
JAMES P. HOFFA	:	Post-43-EOH, Post-44-EOH,
	:	Post-51-EOH

SUMMARY OF DECISION*

The Election Officer for the International Brotherhood of Teamsters ("IBT") was appointed by the U.S. District Court for the Southern District of New York to supervise and conduct the rank-and-file election for International officers to ensure a free, fair and informed process. Her duties arise from the 1989 Consent Decree approved by the District Court in a case brought by the government under federal racketeering laws. The ballot count in the 1996 International officer election concluded on February 27, 1997. This decision follows the investigation of numerous post-election protests.

Part I of the decision addresses several protests which challenged the fairness and accuracy of the ballot count. Following a detailed explanation of the receipt, processing, and count of the ballots, those protests are denied.

Parts II and III of the decision address allegations that non-IBT members made $221,000 in improper contributions to Teamsters for a Corruption Free Union ("TCFU"), a fundraising committee of the Ron Carey Campaign. The Election Officer concludes that the contributions violated the Election Rules' prohibition against employer and IBT contributions.

The TCFU contributions were used by the Carey Campaign to fund approximately 40% of a direct mail get-out-the-vote program. Given the small margins between the winning candidates on the Carey slate and the losing candidates on the Hoffa slate, the TCFU-funded mailings could have persuaded at least a small percentage of Carey slate supporters to cast their ballots and therefore may have affected the outcome of the International officer election. The Election Officer refuses to certify the election and orders a rerun election for all positions except the Central Region Vice Presidents and the President of Teamsters Canada.

~~The Election Officer b~~egan an investigation of TCFU contributions after a review of the

* This summary has been prepared by the Office of the Election Officer for the convenience of the parties and the general reader. The summary is not part of the decision and may not be cited before the Election Appeals Master, the District Court, or any other tribunal.

TCFU's financial disclosure forms. The investigation continued following receipt of the post-election protests.

The investigation revealed a complex network of schemes to funnel employer and IBT funds into the Carey Campaign. Martin Davis, a principal in the political consulting firm November Group, and Jere Nash, campaign manager of the Carey Campaign, raised money through these schemes to fund a direct mail program. Davis recruited Michael Ansara, a principal in the Massachusetts telemarketing firm Share Group, to assist these fundraising efforts. Ansara arranged for Charles Blitz, a volunteer fundraiser for the consumer watchdog group Citizen Action, to solicit funds. Blitz raised $110,000 from wealthy individuals for the Carey Campaign. In return, contributions from the IBT would be arranged for political efforts supported by those individuals.

In addition, Ansara solicited contributions from his wife, who gave $95,000 to TCFU. Ansara and Davis developed a scheme to reimburse her through improper payments from Citizen Action and November Group to Ansara's consulting firm, Share Consulting; and by having Share Consulting bill the IBT for more calls than were actually made in connection with a telemarketing contract.

TCFU received an additional $16,000 from two contributors through solicitations by Ed James, a Washington, D.C. attorney who is an employer.

In ordering a rerun election, the Election Officer recognizes the hardship on the candidates who just went through an expensive two-year campaign and the disruption to the institution as many of its leaders become diverted from the central work of the Union. The Election Officer finds, however, that the members cannot have confidence in their union or its leaders if they see their choice of officers has been manipulated by outsiders. They cannot have confidence in the Consent Decree if the Court officers do not take effective action to prevent and remedy such misconduct. The Election Officer concludes:

> The election of International officers is the clearest expression of the control of members over their Union; it is also the key to insuring that organized crime, employers, or any other outsiders do not use the Union for their own purposes. To avoid a rerun because of the disruption it brings could allow this union to lose its most valuable resource: the support, participation, and confidence of its membership. Such a result cannot be allowed.

The protester argued that the severity of the misconduct requires that the Carey slate be disqualified and the Hoffa slate be declared the winners. The Election Officer gives serious consideration to this remedy but finds it inappropriate. Disqualification is a drastic remedy because it is undemocratic. Removing the Carey slate members from the ballot would deprive

members of the opportunity to vote for candidates who had been popularly nominated under the Election Rules. Because there is no evidence that Carey or any member of his slate knew of or participated in the various improper fundraising schemes, disqualification is not warranted. Even if disqualification had been appropriate, automatic installation of the candidates with the next highest vote count would not have followed. The obligation to ensure a fair and open election would necessitate providing an opportunity for supplemental nominations.

While the investigation did not uncover any misconduct by Carey or his slate members, important questions remain unanswered. If, subsequent to the issuance of the decision, evidence is brought to the Election Officer's attention that could warrant disqualification, the Election Officer will consider it.

The decision contains numerous additional remedies, including substantial fines against Davis, Nash and Ansara, and a bar against certain vendors and organizations from any further work on behalf of the IBT, its affiliates, or any candidate for International office.

The Election Officer notes that she has not been able to fully address additional issues involving the potential use of IBT and employer funds in the campaign. She finds, however, that resolution of such claims would not affect her decision to rerun the election, and that there are other adequate forums in which claims of improper conduct can be pursued. Several specific areas of inquiry are referred to the Court-appointed Independent Review Board and the U.S. Attorney for the Southern District of New York for whatever investigation and action they deem appropriate under the Consent Decree. The Election Officer's attention and resources must be primarily devoted to the conduct of the rerun election. While further evidence on the issue of disqualification will be considered, the Election Officer will not consider any additional evidence or further protests related to the initial election.

Simultaneous with the issuance of the decision, the Election Officer has made an application to the U.S. District Court for approval of a Proposed Rerun Election Plan. The proposed plan includes supplemental nominations, the prohibition of non-member contributions, a $1,000 limit on member contributions and a $5,000 limit on candidate contributions, and more frequent and detailed reporting requirements.

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DECISION

Dated: August 21, 1997

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	:	Post-51-EOH

DECISION

A number of post-election protests have been filed pursuant to Article XIV, Section 3(a) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")***. On December 11, 1996,[1] Jeraldine Cheatem, a member of Local Union 743 and a representative of the Stand Up for Teamsters slate ("Stand Up slate") filed a protest (Post-27) asserting that actions of the Election Office representatives during the count deprived members of equal rights based on inconsistent procedures used during the processing and counting of ballots as to the handling of ballots which were not sealed in secret ballot envelopes.

On December 16, Robert H. Spearman, a member of Local Union 480 and a candidate for At-Large Vice President on the Stand Up slate filed a protest (Post-29) complaining that an Election Office representative had allowed more observers from the Ron Carey No Corruption-No Dues Increase Slate ("Carey slate") in a ballot processing room than were permitted by the applicable election rules. The protest was amended on December 26, 1996, to further allege that International Vice President Diana Kilmury, a candidate for re-election, touched ballots in violation of the applicable election rules.

On December 30, the Jim Hoffa-No Dues Increase-25 & Out Slate ("Hoffa slate") filed a protest and request for information (Post-31) alleging a variety of irregularities during the count and incorrect rulings by the Election Officer. In brief, the protest alleges that:

- additional challenged ballots were counted although they had not been previously listed on the tally sheets;
- a unilateral change was made in the treatment of ballots returned without being sealed in a secret ballot envelope;
- the Election Officer failed to provide an accurate and complete written accounting of the ballots in the Election Officer's custody, and failed to allow meaningful

[1] Unless otherwise noted, all dates refer to 1996.

observation of the process for resolving challenged ballots.

On December 22, Jerry Halberg, a member of Local Union 174, filed a protest (Post-32) alleging that employees in Canada who were not Union members but are "Rand formula" payers[2] were nevertheless sent ballots by the Election Officer and allowed to vote.

Also on December 22, Mr. Halberg filed another protest (Post-33) contesting the Election Officer's alleged refusal to go behind the TITAN[3] roster in order to determine eligibility of members whose ballots were challenged.

By letter dated January 6, 1997, the Hoffa slate filed a protest (Post-35) challenging the Election Officer's announcement of the winners for the offices of Vice President for Teamsters Canada, Vice President for the Eastern Region, and Vice President for the Southern Region. The protest makes the following allegations:

- It contests the Election Officer's interpretation of Article XIV, Section 3(a)(2) of the ***Rules*** in requiring candidates to file post-election protests within 15 days of the announcement of the results of each race, rather than an omnibus protest at the end of the complete count;
- It incorporates the protests filed by the Hoffa slate in Post-31 and by Mr. Halberg in Post-32;
- The protest also incorporates 32 pre-election protests in which the Election Officer (and in some cases the Election Appeals Master) had already issued decisions. The protester asserts that in some of the cases the Election Officer incorrectly failed to find any violation, while in others the Election Officer found a violation but failed to order a remedy sufficient to cure the violation.

On January 24, 1997, the Hoffa slate filed a new protest (Post-37) in response to the announcement of the election results for General President as announced by the Election Officer on January 10. The protest makes the following allegations:

- It incorporates by reference the complaints and allegations contained in previous post-election protests Post-26, Post-31, Post-32, Post-33, and Post-35.
- It alleges a number of ways in which the Election Officer "failed to insure adequate safeguards to guarantee the integrity and accuracy of the vote count . . . ." Each

[2] The Rand formula is the Canadian designation for employees who do not belong to a union but pay the equivalent of an agency service fee for the benefits received from union representation.

[3] TITAN is a computer network that connects all but 11 IBT locals with the International office to provide various services, including a way to perform centralized electronic bookkeeping.

of the allegations is discussed more fully below.

- It incorporates by reference "all pre-election protests, including those listed in Post-35" as well as 23 others specifically named in the protest. It further incorporates by reference the allegations contained in two pre-election protests then pending before the Election Officer which allege retaliation against two IBT employees.[4]

On February 4, 1997, the Hoffa slate filed a letter seeking to amend and supplement the protest in Post-37, based on newly discovered evidence as to alleged improper campaign contributions solicited and received by the Carey campaign and a committee entitled "Teamsters for a Corruption Free Union." The protest charges Mr. Carey, the Carey slate, Gene Moriarty, a member of Local Union 677 and trustee for Local Union 966, and Nathaniel Charny, an attorney with Cohen, Weiss and Simon, with violations of the ***Rules***. Although designated as a supplement of Post-37, the Election Officer determined to docket the letter as a new protest, Post-39.

On February 14, 1997, the Hoffa slate filed a new protest (Post-40) in response to the Election Officer's announcement of the results for the races for General Secretary-Treasurer, International Trustees, four of the five At-Large Vice Presidents and one of the three Western Region Vice Presidents. In essence, the protest realleges and incorporates by reference the allegations contained in the protests described above. It also protests contributions made by the spouse of an employer who has business ties to the Carey campaign, described more fully in Post-39. It further alleges that Mr. Carey has used millions of dollars of Union funds to support his reelection.

On March 14, 1997, the Hoffa slate filed a new protest (Post-42) in response to the Election Officer's announcement of the results of the races for the remaining offices announced by the Election Officer on February 27, 1997. The protest essentially realleges and incorporates the allegations contained in the protests above. In addition to those protests previously incorporated, it incorporates three other specifically named protests.

On March 22, 1997, Mr. Hoffa filed a protest (Post-43) against Mr. Carey and the Carey slate, alleging that when the Carey campaign returned over $220,000 in contributions, it had debts of over $170,000 and therefore did not have the monies to return the "improper contributions." The protester urges the Election Officer to determine the source of the $220,000 in repaid contributions.

On March 25, 1997, Mr. Hoffa filed a protest (Post-44), alleging that Teamsters for a

[4] The two protests were later denied. Daugherty, P-1345-IBT-NYC (March 4, 1997), aff'd, 97 - Elec. App. - 319 (KC) (March 17, 1997); Rogers, P-1346-IBT-NYC (March 4, 1996), aff'd, 97 - Elec. App. - 320 (KC) (March 17, 1997).

Democratic Union ("TDU"), an independent committee that supported the Carey slate, raised funds from employers in violation of the ***Rules***. The protester requests a full investigation of all contributions received by TDU during the 1996 election.

On July 2, 1997, Mr. Hoffa filed a protest (Post-51), alleging that IBT representatives, organizers and members were paid with Union funds to campaign for the Carey slate during October and November 1996, in violation of Article VIII, Section 11(c) of the ***Rules***.

The above protests have been consolidated for decision here. Protest Chief Benetta Mansfield, New York City Protest Coordinator Barbara C. Deinhardt, and Coordinator of Campaign Finance and Reporting Kathryn A. Naylor investigated these protests. As part of their investigation concerning the ballot count, they conducted in-person or telephone interviews with numerous witnesses, including Hoffa slate representatives, Election Office staff, and other individuals who had personal knowledge of the allegations contained in the protests. They also reviewed the records of the ballot count. The Election Officer's investigation into the protests concerning campaign contributions is described separately in Part II(B) of this decision.

I. PROTESTS CONCERNING THE BALLOT COUNT AND ELECTION PROCESS

A. Statement of Facts

Several of the post-election protests here challenge the underlying fairness and accuracy of the count of ballots. Some of them make allegations of widespread irregularities. In order to explain the Election Officer's rationale for her decision herein, it is necessary to set forth in some detail the background to the Election Officer's supervision and conduct of the election, as well as a description of the process by which ballots were received, processed and counted.

1. Background

The Election Officer for the International Brotherhood of Teamsters ("IBT") is one of several Court-appointed officers entrusted with restoring democracy to the Union. The powers and duties of the Election Officer arise from the Consent Decree agreed to by the government and the IBT and approved in 1989 by the U.S. District Court for the Southern District of New York. The Consent Decree ended a civil action brought by the government under federal racketeering laws. United States v. IBT, 88 Civ. 4486 (S.D.N.Y. March 14, 1989).

Under the Consent Decree, the Election Officer has broad powers to supervise and conduct the election for International officers to ensure a free, fair and informed election. United States v. IBT (1991 Election Rules Order), 931 F.2d 177, 187 (2d Cir. 1991). To carry out these duties, the Election Officer maintains a Washington office with a staff of lawyers and administrative assistants. She also relies on a network of 20 Regional Coordinators and their Adjunct staff throughout the United States and Canada to assist in conducting delegate elections

and investigating allegations of ***Rules*** violations.

The Consent Decree requires that International officers be "elected by direct rank-and-file voting by secret ballot in unionwide, one-member, one-vote elections . . . ." Consent Decree at ¶ 12(D)(vii). In a subsequent order dated September 11, 1991, the District Court ordered that the election of International officers should be conducted by a mail ballot. Pursuant to the Consent Decree and to election rules approved by the District Court, Election Officer Michael Holland conducted the IBT's first direct-vote, democratic election of International officers in 1991. After resolving post-election protests, Election Officer Holland certified the results of that election on January 22, 1992.

Paragraph 12(D) of the Consent Decree states that the IBT consents to have the 1996 International officer elections supervised by the Election Officer. On February 7, 1995, the Court approved an order submitted by the government and the IBT which provided that the 1996 International officer election would be supervised and conducted by a Court-appointed Election Officer, and that "it is the intention of the Government and the IBT that the Election Officer function in 1996 as similar as possible to the 1991 Election Officer." The February 7, 1995 Order further provided for the appointment of an Election Appeals Master to hear disputes about the conduct of the 1996 election or the results thereof, instead of the Independent Administrator. Id. at ¶ 2.

The IBT election is governed by detailed rules issued by the Election Officer and approved by the District Court. The initial ***Rules*** were issued only after hearings were held in eleven cities throughout the United States and Canada to obtain the comments of union members. When issued, the ***Rules*** were submitted to the District Court and distributed to all IBT affiliates so that they could lodge any objections with the Court. The District Court approved the ***Rules*** in their entirety. United States v. IBT (1995 Election Rules Order), 896 F. Supp. 1349 (S.D.N.Y. 1995), aff'd as modified, 86 F.3d 271 (2d Cir. 1996). Three other sets of supplementary rules for the IBT International Convention and the final ballot count have been issued, distributed to all IBT affiliates, and approved by the Court.[5]

As envisioned by the Consent Decree and the ***Rules***, there are three stages in the IBT election process:

· Delegate Elections. During the period September 1995 through April 1996,

[5] Supplementary Election Officer Rules for the 1996 IBT Convention Floor Nominations and Nomination Voting (Application III, approved May 23, 1996); News Media Access Rules for the 1996 IBT International Union Convention (Application IV, approved July 1, 1996); and Supplemental Rules for the 1996 IBT International Officer Mail Ballot Election (Application VI, approved October 30, 1996).

each of 568 IBT local unions throughout the United States and Canada nominated and elected delegates to the IBT International Convention. A total of 275 local unions had contested elections for delegates, requiring mail ballot elections. The Election Officer and her staff approved the local union plans for all locals, conducted nomination meetings, supervised printing and mailing of ballots for locals with contested elections, conducted the count of ballots, verified the eligibility of candidates and voters, and certified the winners.

· Convention. The IBT International Convention took place in Philadelphia, Pennsylvania on July 15-19, 1996. At the Convention, elected delegates voted to nominate candidates for International office. Each candidate had to receive 5% of the delegate vote to be successfully nominated and appear on the November ballot. During the Convention, the Election Officer certified the credentials of the elected delegates, presided over the floor nominations on three days of the convention, and conducted three separate secret ballot elections for the contested International offices using electronic voting machines.

· International Officer Election. Candidates successfully nominated at the Convention were placed on the ballots, which were mailed to each of the approximately 1.5 million potentially eligible voters in the IBT in the United States and Canada. The Election Officer verified the eligibility of voters, supervised the printing and mailing of ballots, and counted all of the ballots using computerized voting equipment. She also resolves any protests concerning the election and certifies or refuses to certify the election results.

The Election Officer also adjudicates protests filed by IBT members who allege that the election rules have been violated. There have been more than 1,500 protests during the election process, including eligibility, convention, and post-election protests. Every protest is investigated by Election Office staff or representatives and results in a written decision from the Election Officer. Dissatisfied parties may appeal to the Court-appointed Election Appeals Master, and thereafter to the District Court.

2. Count Rules

On September 5, 1996, the Election Officer issued *Supplemental Rules for the 1996 IBT International Officer Mail Ballot Election* ("*Count Rules*"), and filed an application with the District Court for approval of those rules. The *Count Rules* were designed to address the specifics of the count process which had not been specified in the ***Rules***, including the following:

·setting a timetable and schedule for the mailing and counting of ballots, and other election related events;

·announcing the location of the count site and general procedures to be followed for picking up ballots from the postal service;

·establishing procedures to be followed for verifying and updating addresses of IBT

members;

·setting forth additional information for candidate observers;

·providing procedures to be followed in the sorting and counting of ballots;

·establishing measures to protect the accuracy and integrity of the electronic or mechanical count;

·setting procedures for challenges to ballots;

·establishing the criteria and terms under which a recount may take place; and

·providing for access to the count site by the media.

In response to the Election Officer's application, the Hoffa slate filed two specific objections to the *Count Rules*: (a) the rules should require a verification test run on each electronic counting device before and after the count of each local union; and (b) the rules should require a count by hand of ballots from randomly selected local unions to insure the machines are working properly. In its decision, the District Court overruled each of those objections and approved the *Count Rules* as written. United States v. IBT (1996 Count Rules Order), 943 F. Supp. 360 (S.D.N.Y. 1996).

3. Choice of Count Machines and Count Site

The Election Officer determined from the beginning to count ballots with electronic counting devices, in the same manner as in 1991. She contacted a number of companies which offered such services and sent several requests for proposals. After extensive analysis of the various proposals and investigation of the integrity and solvency of the company, she chose American Information Systems, Inc. ("AIS") as the provider of the counting devices.

AIS offered a computerized ballot tabulation system that had been certified pursuant to a Federal Election Commission ("FEC") voluntary standard, which comprises extremely detailed, highly technical requirements and evaluation benchmarks for electronic voting and counting machinery. Vendors may have their systems tested and deemed qualified under FEC guidelines by an independent laboratory. With respect to the operating codes, they are reviewed for "simplicity, understandability, testability, robustness, security, useability, installability, maintainability, and modifiability." The AIS Model 550 Optical Mark Reader, used by the Election Officer in the election, successfully completed the qualification tests and was awarded certifications pursuant to the FEC guidelines. All candidates and parties to the litigation were notified of this decision as part of the Election Officer's application to the Court for approval of the *Count Rules*.

The choice of the count site came after investigation and analysis by Count Coordinator Dennis Sarsany. Mr. Sarsany had located and set up the count site for the 1991 IBT International officer election on behalf of Election Officer Holland. In choosing a site for this

election, Mr. Sarsany established a number of criteria, chief among them that there be sufficient space that could be kept secure and controlled by the Election Officer for a month. Mr. Sarsany also considered other criteria, including proximity to Election Office headquarters and to the post office, sufficient rest room facilities for the hundreds of count workers and observers, access to lodging and ground transportation, access to catering services, and sufficient parking facilities.

After considerable investigation, Mr. Sarsany recommended and the Election Officer approved the choice of the National 4-H Center in Chevy Chase, Maryland. The 4-H Center is a campus-like conference facility which has experience in hosting large groups. The National 4-H Center is convenient to travelers by plane or car. It has plenty of large conference rooms, adequate parking, an on-site cafeteria, adequate lodging for all out-of-town staff, and a heating and ventilation system that could accommodate large numbers of people. It is also a short distance from the Bethesda postal facility where the ballots could be returned. The Election Officer concluded that the rooms to be used for ballot-related activities were large and secure enough for those purposes.

4. Voter Eligibility

Article VI, Section 1 of the ***Rules*** provides that an IBT member is eligible to vote if his/her dues are paid up through the month prior to the month in which the election is held. However, the ***Rules*** also provide that no member whose dues are withheld by an employer under a dues check-off agreement should be declared ineligible to vote because of any delay or default in the payment of dues by the employer to the local union.[6] The ***Rules*** provide specific means of analyzing the eligibility of employees on dues check-off, newly initiated members, and members employed in the seasonal food industry.[7] Article VI, Section 2 of the ***Rules*** provides

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[6] This requirement is also imposed by Article X, Section 5(c) of the IBT Constitution, and by Department of Labor regulations, 29 C.F.R. § 452.87.

[7] Article VI, Section 1 of the ***Rules*** states in part:

> Persons eligible to vote under this rule shall include, but not necessarily be limited to, the following:
>
> (a) Each person who is otherwise a member in good standing and whose dues are paid through the month prior to the month in which ballots are counted;
>
> (b) Under and in accordance with Article X, Section 5(c) of the IBT Constitution, each member otherwise in good standing whose dues record does not reflect that his/her dues have been paid through the month prior to the month in which ballots are counted, who pays his/her dues by check-off, and whose employer has remitted dues for him/her in the last remittance made by such employer, provided

that the Election Officer shall verify the eligibility of any member prior to counting his or her vote. The Election Officer or any candidate or observer may challenge the eligibility of any member to vote.

In order to implement these rules, the Election Officer adopted methods and procedures similar to those used during the 1991 election. On December 7, 1996, the IBT printed the Election Control Roster ("ECR") for the TITAN locals that would be utilized to check the eligibility of voters. To produce the ECR, the eligibility criteria set forth in the ***Rules*** were programmed into the computer.[8] When the computer found that an individual's dues and/or membership status did not meet the eligibility requirements, the name and supporting data were printed in the ECR with a "C" (for challenged) and given a specific challenge code. For example, a member with a C-1 code is a member who paid his/her dues by cash, but had not paid dues through November 1996 by December 9, 1996, the arrearage date set forth in the Notice of Election. A person with a C-6 code is someone who was listed in an inactive or non-member status code. Because of the special rules governing members on dues check-off status, other challenge codes, C-4 and C-5, identified members on dues check-off for whom the dues information contained in TITAN was insufficient to find them eligible under the check-off rules. Eligible voters were designated on the ECR with an "E" and an eligible code, along with dues and membership status data supporting their eligibility.

As envisioned in the *Count Rules*, candidate observers would inspect the ECR during the time ballots were actually processed (see below). By letter dated November 27, the Hoffa slate

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> that such remittance was received within ninety (90) days of the date on which the ballots are counted;
>
> (c) Each newly initiated member who is not in good standing solely because he/she has not fully paid his/her initiation fees, who pays his/her dues and initiation fees by check-off, and who has been employed in excess of six (6) calendar months; and
>
> (d) Each member (1) whose employment is seasonal, (2) who works in the seasonal food industry, (3) who is a member of a Local Union where ten percent (10%) or more of the membership is employed by a seasonal food industry employer, (4) who worked during some period in the twelve months prior to the election, and (5) who paid his/her dues through the last month of their employment.

[8] The Election Officer's computer consultant, the Center for Economic Organizing ("CEO"), produced ECRs for the non-TITAN locals based on membership and dues information it had received from these local unions utilizing the same eligibility criteria.

requested an opportunity to review the ECR prior to the actual count, asserting a right under the Labor-Management Reporting and Disclosure Act ("LMRDA") to do so. The Election Officer responded on December 5, finding no legal basis for any right to a pre-count inspection, but offering to provide to credentialed observers of each slate an opportunity for inspection of designated local union ECRs. Credentialed observers from the Hoffa slate spent several hours on December 9 inspecting the ECR for requested local unions in a count site room monitored by an Election Office supervisor.

5. Employment and Training of Count Workers

In order to staff the count, the Election Officer designated a personnel coordinator who advertised for count worker applicants and conducted interviews and testing sessions several times in October. At these sessions, the personnel coordinator described the Court-ordered, supervised election process. Prospective workers filled out application forms and took tests simulating certain tasks to be performed during the count. The personnel coordinator reviewed test scores, screened applicants and selected those to whom the temporary positions would be offered. Over 500 applicants were hired as temporary count workers.

In addition to temporary count workers, approximately 70 persons served in various supervisory positions during the count under the overall supervision of Count Coordinator Sarsany and Assistant Count Coordinator Bruce Boyens. Each of the processing and count rooms was supervised by a room supervisor, with the largest rooms also having an assistant supervisor. Each of these positions was held by Regional Coordinators or Adjuncts who had experience during the delegate election process. Most had also held supervisory positions during the 1991 International officer count. Within each room, additional supervisors were assigned to oversee the work of the temporary count workers.

Prior to the count, the Election Officer held several different training sessions. On November 11, the Election Officer conducted a one and a half day training session for those workers assigned to the boiler room and the remail operation.[9] On December 6, the Election Officer personally conducted training for count supervisors and count workers. On December 7-9, she led additional training sessions for room supervisors, remark/remake supervisors, and count room supervisors. In addition to this training, a group of count workers chosen as machine operators were required to attend specialized training on December 8 with Election

[9] The boiler room took telephone inquiries from IBT members throughout the United States and Canada who reported a change of address, inquired about why they did not receive a ballot, or sought a duplicate ballot because they had lost or damaged the original. The remail operation involved finding better addresses for ballot packages returned to the Election Officer as undeliverable.

Office supervisors and representatives of AIS.

Training for all employees included an explanation of the nature of the Court-ordered supervised election process, emphasizing the significant responsibility of count workers and the neutral and professional standards to which each person must adhere.

6. Pre-Count Orientation for Campaign Representatives and Observers

Each candidate/slate had the right to have observers present at every phase of the count. Thus, the Election Officer made provisions for each campaign to have observers present to watch each step in the process. The Election Officer issued a series of memoranda to candidates and slate representatives which provided the timetable for upcoming events related to the printing, mailing and transporting of ballots; the pick-up of voted ballots and undeliverable mail; and the sort of ballots prior to the count.

On November 26, 1996, the Election Officer held a several-hour training session attended by her senior staff and representatives from each of the three slates. During that session, the Election Officer discussed in detail the procedures she intended to follow during the count. She also provided written handouts to the campaigns covering different aspects of the count process, including a map of the count site showing where all operations would take place, as well as a flow chart that summarized the entire process as described below. Randy Barber, Director of CEO, made a detailed presentation on the logic behind the programming of the ECR used to determine the eligibility of voters. Materials were distributed to illustrate the ECR logic and coding.

On December 9, 1996, the Election Officer conducted a machine count demonstration and walk-through at the count site for five representatives of each slate. AIS personnel explained the operation of the electronic counting devices and the continuous audit log produced by printers attached to each machine. The Election Officer also reviewed the logic and accuracy test that would be performed in accordance with the *Count Rules* on each of the count machines at the beginning and end of the ballot count.

AIS and the Election Officer demonstrated the operation of the Model 550s. Sample ballots marked in various ways were fed through the machine to demonstrate that it was correctly tallying votes in accordance with the Election Officer's rule on slate voting. AIS also demonstrated how a ballot would be rejected if the machine was unable to read any markings; in this manner, any ballot which was not readable by the machine could be examined and remarked or remade (described below) in accordance with the *Count Rules*.

Following this machine demonstration, the Election Officer conducted a tour of the count site so that observers would be familiar with the physical layout of the count site and the rooms in which various operations would occur.

7. The Count Process

The count was governed by Article V, Sections 7 through 9 of the ***Rules***, the *Count Rules* and the detailed practices and procedures developed by the Election Officer in consultation with her staff. To a large extent, the Election Officer relied upon the procedures and techniques successfully used during the 1991 International officer election.[10]

All ballot storage, processing and counting was performed at the National 4-H Center, as described above. Beginning November 14, senior Election Office representatives and security guards picked up business reply envelopes from the post office and transported them to specially guarded ballot security rooms at the count site. On each day of mail pick-up, at least one observer from both the Hoffa and Carey slates traveled with the Election Office representatives to the post office and observed the pick-up and return of voted ballots to the count site. Similarly, Canadian ballots were picked up Monday through Friday at the Toronto post office. Observers from the Hoffa and Carey Campaigns generally accompanied Election Office representatives in Canada on this mail pick-up. Also, beginning November 14, each slate was allowed to have an observer stationed directly outside each of the ballot security rooms 24-hours-a-day, a right that continues to this date.

Beginning on November 18, count workers sorted business reply envelopes by local union, and each local union's ballots were further sorted alphabetically. Trays containing envelopes for each local union were stored together at particular tray locations in the ballot security rooms. An Election Office supervisor developed a chart for the count which kept track of the number of trays and shelf location for each local union's ballots in the ballot security rooms. Canadian ballots were sorted by local and alphabetized in Toronto.

On December 7, 1996, Election Office representatives, accompanied by Election Office Security Chief Joe Loesche, transported all Canadian ballots returned as of that date to the count site in the United States. Candidate observers followed the truck from Toronto to the count site. Mr. Loesche traveled back to Canada for the final Canadian mail pick-up and then traveled by plane to Washington, D.C., personally delivering those remaining ballots to the count site on the afternoon of December 10, 1996.

The count was conducted by two shifts of workers, the first shift working 8:00 a.m. to 3:00 p.m., the second shift working 3:30 p.m. to 10:30 p.m. The 10:30 p.m. closing time was necessary because the 4-H Center's rules required all organized activities to end and guests to leave the premises by 11:00 p.m.

[10] Most of this description of the count process appeared in Hoffa, Post-26-EOH (January 2, 1997) (decision on remand), aff'd, 97 - Elec. App. - 312 (KC) (January 22, 1997). It has been supplemented here with additional information relevant to the new protests under review.

Shortly after 9:00 a.m. on December 10, Election Office representatives picked up the last mail delivery from the post office and brought it to the count site. The business reply envelopes were sorted by local union. While that process was being completed, Election Office and AIS representatives, in the presence of observers, turned on all the counting machines and ran the logic and accuracy tests to insure that each machine was operating properly and had been correctly programmed.

Once all business reply envelopes from the last day's mail were integrated into the trays, the count was ready to begin. The counting of ballots for each local followed the same process:

(1) All ballots from an individual local union were transported as a unit from the ballot security room to a nearby room dedicated to the processing of ballots from a particular region. They were accompanied by a document known as a "traveler" which accounted for challenged and void ballots from that local union at each stage of the count. In addition, trays of ballots from each local union were tracked at every stage of the count process by means of a four-part carbonless log sheet.[11]

(2) The trays of business reply envelopes for a local union were transported in a cart by Election Office staff from the ballot security room to the nearby processing room for that region. In the processing room, a supervisor assigned the local union to one or more count teams.

(3) The count team(s) first checked for eligibility by comparing the coded return addresses on the outer envelopes to the eligibility information contained in the ECR. The business reply envelopes from voters whose eligibility had been challenged based on the ECR or whose votes had been considered void were separately counted, bundled and segregated in a tray, separate from the business reply envelopes from eligible voters. The number of manually counted business reply envelopes containing challenged and void ballots was added to the traveler by a supervisor.

(4) The processing team opened business reply envelopes from eligible voters using mechanical slitting machines and extracted the secret ballot envelopes. After being segregated from the business reply envelopes, the secret ballot envelopes were then slit open and the actual ballots were extracted, unfolded and stacked in trays. Any business reply envelope containing a ballot which was not in a secret ballot envelope was kept inside the business reply envelope and given to a supervisor. As discussed in greater detail in Part I(B)(2)(e) below, the supervisor would void the ballot extracted from the business reply envelope if the ballot's

[11] In addition to these tracking forms, Election Office security personnel were stationed in the hallways where they could monitor the transportation of all ballots.

secrecy could not be preserved. The team then checked the ballots for those which potentially needed to be remarked or remade[12] and segregated those ballots in a large envelope. The team did not make any judgments as to the intent of voters, but segregated any ballots that appeared to be marked in pen or marked without filling in the ovals, or any ballots that were physically damaged.

(5) The trays of ballots for the local union -- including the segregated packets of ballots declared void or challenged, and the envelope of ballots destined for remark/remake -- were then transported in carts to the count room for that region. Each count room contained a remark/remake team and a count team. All ballots were signed in by a supervisor on the log sheet, and those ballots needing to be remarked or remade were processed. During this process, ballots with questionable or disputed markings were brought to the attention of the remark/remake supervisor who ruled on any challenges from observers based on voter intent.

(6) After all ballots were remarked or remade, the ballots for the entire local union were fed through an electronic counting device. The count machine produced two identical tally sheets for that local union. This tally sheet included only ballots counted by the machine. One copy of the tally sheet remained with the ballots. Election Office staff in the count room attached to the other tally sheet a report of the number of challenged and void ballots as reflected on the local union traveler. This copy of the tally sheet was then transported to the Election Officer, who personally reviewed it, insured that the numbers of challenged and void ballots were manually added at the bottom of the machine-produced tally and approved it for distribution. Copies of the reviewed tally sheets signed by the Election Officer were then given to each campaign, posted in the tally room and made available to the press.

(7) The trays of all ballots for the local union were returned to the ballot security room, where they were placed back on the shelves in their assigned places.

8. The Role of Observers

In order to allow for meaningful observation during the count, the Election Officer allowed each campaign to have up to 39 observers at the count site at one time. The number was based on the number of different observable events going on within all of the rooms at the

[12] The electronic counting devices can read pencil marks in ovals next to the names of candidates. They cannot read certain kinds of inks or check marks outside the ovals. Thus, ballots with nonconforming vote marks had to be "remarked" using machine-readable markers. Certain ballots which were torn or marked in certain areas needed to be "remade" in order to be read by and physically pass through the counting device. In that situation, the voter's intended markings were placed onto a new blank ballot. The original and remarked ballot were Bates-stamped with the same number and preserved in an envelope kept in the tray of ballots.

count site. The campaigns were allowed to designate up to three observers as "rovers" who were allowed to travel the hallways to observe ballot movement, carry messages and coordinate activities for their campaigns. Observers noted which local unions' ballots left the ballot security rooms for processing. They were able to travel with the ballots as they were transported from the ballot security room to the processing room to the count room and back to the ballot security room during the process. Observers watched the count teams perform the eligibility check of ballots. They watched the slitting and extraction operations. They observed, ballot by ballot, the remark/remake operation. They watched the ballots being counted by the machines, and they inspected the tally sheets. They observed when each counting device was powered on and off, subjected to a logic and accuracy test to insure proper performance, and set to zero prior to the count. They checked the trays of ballots as they returned to the ballot security rooms. They were also allowed to remain outside the ballot security rooms around the clock.

Throughout the campaign and the election process, Peter V. Marks, Sr. served as the Election Officer's campaign liaison. He regularly provided slate representatives with advanced, detailed scheduling information as to election-related events and conveyed the candidates' concerns and views to the Election Officer and her staff. During the count itself, Mr. Marks met constantly with campaign representatives at the site to facilitate communications with the candidates and to insure that they were kept informed.

9. Security

One of the guarantees of the integrity of the vote count was maintenance of continuous security over the ballots from the time they were picked up at the post office through the conclusion of the election process. The Election Officer determined to use the same security system that was successfully used in the 1991 election and retained Joseph Loesche and Laura Schwefel as her security chiefs. Mr. Loesche had been security chief for Election Officer Holland in 1991, and had also coordinated security for the Election Officer during the 1996 International Convention. Mr. Loesche served 25 years with Detroit Police Department, rising to the ranks of detective and uniformed sergeant and later serving as the Police Commissioner's aide. From 1969 to 1985, Mr. Loesche served as Director of Security for the United Auto Workers International Union ("UAW").

In accordance with the practice in 1991 and at the 1996 International Convention, Mr. Loesche hired the bulk of the guards from a pool of local UAW members on layoff, a few of whom had prior security experience. All of the security guards were trained by Mr. Loesche prior to starting their duties, and received further on-the-job training. They were divided into three shifts so as to provide round the clock security.

During the period November 26 through December 15, Mr. Loesche returned home and Ms. Schwefel served as Chief of Security on-site. Ms. Schwefel has been a police officer for 17 years and took a leave of absence from her duties as a lieutenant with the Milwaukee Police Department in order to work for the Election Officer. She is also an attorney who worked in the 1996 International officer election as an Adjunct to the Regional Coordinator for the North Central region.

Commencing November 10, the Election Office security guards took up their stations throughout the count site. All guards wore uniform navy blue sweaters embossed with the words "Election Officer Security" and dark slacks or skirts. All guards on duty were equipped with two-way radios. At the peak of the count, 12 guards were on duty on first and second shift with five guards on duty at night. At least one guard was posted directly outside the door of each of the ballot security rooms at all times. In addition, any room in which ballots were being processed or counted had a guard either inside the door or nearby outside within direct sight of the door. Guards also maintained security over the rooms that served as offices for the Election Officer and her staff.

All Election Office staff and temporary workers, including security guards, wore photo IDs at all time while at the count site. All candidate observers and temporary guests were required to stop by the security desk in the Voss lobby to log in and receive a color-coded temporary badge before entering the count area. Anyone with a guest pass had to be personally escorted while present in the count site. No one without a badge was permitted into any room operated by the Election Officer. No IBT members were allowed anywhere in the count site unless they were observers presenting credentials signed by the candidate. The restrictions were enforced by Election Office supervisors located throughout the count site, as well as by security guards.

In addition, all room supervisors were responsible for insuring the security of any ballots or election records in their rooms, and for insuring that no one other than count workers touched ballots.

Each of the ballot security rooms was locked using a limited card access system. Only senior Election Office staff had cards accessing the ballot security rooms, which were kept locked except during times in which work was being performed in them. Because one ballot security room and one room storing blank ballots for the remark/remake operation contained windows, the rooms were equipped with electronic security devices to prevent unauthorized entry. In addition, rooms used for processing or counting ballots were specially equipped with battery operated lights in case of power failure and fire extinguishers in case of fire.

From November 10 to the present, there have been no reports to the Election Officer of

any attempted or actual unauthorized entry to the ballot security rooms or any attempt to conceal, destroy, or tamper in any way with any ballots.[13]

10. Announcement of Results and Challenged Ballot Resolution

The count of unchallenged ballots was completed in the early evening of Saturday, December 14. At that time, the Election Officer announced the results of the count and declared the winning candidates for the Teamsters Canada and Eastern Region Vice Presidents. Article V, Section 9 of the ***Rules*** requires that the count must proceed for any office until the number of remaining challenged ballots could not affect the outcome. The number of challenged ballots present on December 14 required that challenged ballot resolution commence in the remaining races.

On December 16, the Election Officer met with candidate observers and explained the procedures she would use to resolve and then count groups of challenged ballots. Between December 11 and 18, CEO staff logged all challenged ballots into a challenged ballot database. On December 18, ballots from eligible members that were among the duplicate ballots, stray ballots (ballots not placed with their local union at the time the local was counted), and ballots from Local Union 743, which had been under Election Officer challenge, were all counted.[14]

At the conclusion of the first phase of challenged ballot resolution, the margins in the races for Southern and Central Region Vice Presidents were greater than the number of challenged ballots remaining, and these results were announced. The Election Officer issued a report on December 19 containing a full description of the first phase of challenged ballot resolution and distributed it to all candidates.

Following the first supplemental count, the Election Officer, working closely with CEO,

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[13] In order to maintain the high level of physical security after the initial count, the Election Officer retained a private security firm that came with strong recommendations for their experience and professionalism. On December 20, additional electronic security devices were added to each of the ballot security rooms. From December 20, 1996 through March 29, 1997, they maintained round-the-clock security at each of the ballot security rooms at the 4-H Center. On March 29, 1997, the ballots were sealed in boxes and moved under guard to the Election Office headquarters in Washington, where they are currently maintained under round-the-clock security.

[14] A protest charging a member of Local Union 743 with collecting and mailing other members' ballots was under investigation at the conclusion of the initial count. The Election Officer ordered the Local 743 ballots to be treated as challenged and held back from processing pending a decision on the protest. The protest decision, Byrd, P-1336-LU743-CHI, was issued on December 17, and the ballots were processed and counted in the manner directed in the decision.

analyzed the remaining challenged ballots and determined methods by which groups of challenged ballots could be resolved. While some could be resolved by analyzing member information already in CEO's possession, the resolution of ballots from thousands of members in dues check-off status required wage information from their employers. The Election Officer developed procedures for obtaining this information.

On January 3, 1997, the Election Officer notified the campaigns of the procedures that would be followed in resolving the eligibility of members within various groups of challenged ballots. Pursuant to those procedures, challenged ballot resolution continued and the second supplemental count of challenged ballots was held on January 8-10, 1997, at the conclusion of which the Election Officer announced the winner of the General President race. A third supplemental count was held on January 29-31, 1997, following which the Election Officer announced the winning candidates in the General Secretary-Treasurer and International trustee races, as well as four of the five At-Large Vice Presidents and one of the three Western Region Vice Presidents. On February 27, 1997, the Election Officer held the fourth and final supplemental count, after which she announced the winners for the one remaining At-Large and two Western Region Vice President positions. With this announcement, the challenged ballot resolution process and the vote count was concluded.

At the conclusion of each of these phases of challenged ballot resolution, the Election Officer produced a report of the activity which had occurred, along with attachments of the vote tallies and charts accounting for the number of challenged and void ballots. These reports were sent to slate representatives and each of the candidates.

Pursuant to a request from the Hoffa slate under the *Count Rules*, the Election Officer conducted a recount of all ballots by the same machine counting devices on March 24-27, 1997.

B. Discussion

1. Standard of Review

Article XIV, Section 1 of the ***Rules*** places the burden on a protester for submitting evidence to prove a violation of the ***Rules***. In addition, Article XIV, Section 3(b) of the ***Rules*** provides that post-election protests "shall only be considered and remedied if the alleged violation may have affected the outcome of the election . . . ."[15]

Many of the complaints in the instant protests allege minor variances of the count routine.

[15] The rule provides an exception, in that "any timely protest alleging improper threats, coercion, intimidation, acts of violence or retaliation for exercising any right protected by the ***Rules*** shall be considered and remedied without regard to whether the alleged violation affected the outcome of an election." For a further discussion of the standard of review, see Part II(D) below.

The protesters make no attempt to allege or argue that the conduct affected the outcome of the election. Rather than summarily dismissing those complaints for failure to allege an effect on the outcome, they are discussed herein both as to whether there was a violation of the Election Officer's rules and as to whether there is any evidence to show an effect on the election.

A number of the protests here do not cite to any violation of the ***Rules***, but challenge discretionary decisions by the Election Officer as to how best to conduct the count or certain aspects thereof. The District Court has vested the Election Officer with "broad authority to supervise each and every facet of the 1996 IBT election." United States v. IBT (1996 Count Rules Order), 943 F. Supp. 360, 364 (S.D.N.Y 1996). Accord United States v. IBT (1991 Election Rules Order), 742 F. Supp. 94, 106 (S.D.N.Y. 1990), aff'd as modified, 931 F.2d 177 (2d Cir. 1991). The Election Officer's power to supervise the election "requires that the term 'supervise' be interpreted in its most expansive and proactive meaning." United States v. IBT, 723 F. Supp. 203, 206, stay and certif. denied, 728 F. Supp. 920 (S.D.N.Y.), appeal dismissed, No. 89-6252 (2d Cir. Dec. 13, 1989), pet. for reh. en banc denied (2d Cir. Feb. 12, 1990), cert. denied, 496 U.S. 925 (1990). The District Court has found that "it is within the scope of the duties of the Election Officer to take any further reasonable actions necessary to carry out his duties . . ." Id. at 207. Accord 1991 Election Rules Order, 931 F.2d at 187 ("The Election Officer . . . has substantial discretion to impose election rules and procedures that ensure that the upcoming elections are free, fair and informed"); United States v. IBT, 1997 WL 107431 (S.D.N.Y. March 11, 1997) ("extraordinary breadth of the Election Officer's authority . . . ."); United States v. IBT (TDU), 968 F.2d 1506, 1511 (2d Cir. 1992) (Election Officer has authority to amend the election rules without Court approval). Absent a colorable argument that the Election Officer has acted unreasonably or beyond her authority, objections to her rules and procedures are "quibbles" which should be dismissed. See 86 F.3d at 273. The Election Appeals Master has reiterated this point. See In Re: Hoffa, 97 - Elec. App. - 312 (KC) (January 22, 1997).

In light of this standard, protesters must demonstrate that the Consent Decree or the election rules were violated and that the violation may have affected the outcome of the election. Protests which simply allege a deficient procedure used during the count, or suggest a better way of conducting the count, are properly denied.

2. New Protests

a. Piecemeal Filing of Protests

In Post-35, the Hoffa slate protests the Election Officer's interpretation of Article XIV, Section 3(a)(2) of the ***Rules***, in which she required post-election protests to be filed within 15 days of the date when the Election Officer called the results for a particular office.[16] According

to the protester, the deadline for post-election protests should run from the date upon which the Election Officer makes a single comprehensive announcement of all results of the election. The protester argues that many potential grounds for post-election protests relate to the results in more than one region, and that it makes no sense to "Balkanize" the filing and adjudication of such broadly based issues.

Article XIV, Section 3(a)(2) of the ***Rules*** states that with respect to the International officer election, protests regarding any alleged improper election day or postelection conduct or event must be filed "within fifteen (15) days of the announcement of the election results . . . ." The language does not specify a single comprehensive announcement of results. The short time limit reflects the general policy of resolving any challenges to the fairness or regularity of the election as quickly as possible. The purpose of this determination was to allow prompt investigation of protests while memories were fresh, and to insure that delays in calling a few races would not block the Election Officer from investigating and adjudicating complaints which were already ripe for such action.

The protesters were given adequate time after the filing of the protests to provide evidence and position papers to the Election Officer. The time for filing protests did not begin to run until all challenged ballots which could possibly affect the contest for that office were resolved, so that there were no subsequent events which should have any effect on the count of ballots from that office.

The protester argues that it cannot be required to file post-election protests when the Election Officer has still failed to provide a "full and comprehensive accounting" of ballots. As described at length below, this complaint is without merit, in that at the time the results for each contest were announced, the candidates had the totals for all categories of ballots and had been afforded an opportunity to observe the challenged ballot resolution process as it affected each race.

The Election Officer's interpretation of the time limits is a reasonable interpretation of the ***Rules*** that is well within her discretion. The protester's complaint on this issue is denied.

b. Location of Count Site

The Hoffa slate alleges that the Election Officer failed to insure adequate safeguards to guarantee the integrity and accuracy of the vote count by selecting a location that failed to provide "the open spaces necessary to the count process." Post-37, ¶ 2(c), quoting II *The Cookbook* at 4-40 (1992).[17] According to John Murphy, the chief Hoffa slate observer, the

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[16] This complaint is incorporated by reference in Post-37, ¶ 1; Post-39, ¶ 1; Post-40, ¶ 1.

[17] *The Cookbook* is a three-volume comprehensive report that Election Officer Holland

layout of the count site at the 4-H Center was very confusing. There was no place to stand to get a wide view, all rooms were off of corridors, people didn't know where to go, there was activity in the hallways, and there existed general chaos. He asserts that the count activities were separated, and observers in one room did not know what was happening in other rooms. He compared this to the 1991 count site, where the Election Officer occupied an entire floor in an office building and there were basically two wide open areas. At the 4-H Center, he asserted, one could never get a sense of the whole process.

The protester's description of the 1991 count site is inaccurate. The location of the 1991 count, the 11th floor of the Bender Building in downtown Washington, did begin as a large open space. However, Election Officer Holland had the space subdivided with partitions into different areas for ballot storage, processing, counting, and office space for several different parties. Interviews with Election Office participants in the 1991 count confirm that there was no spot from which an observer could view all the activity at the 1991 count site. To the contrary, the 1991 Election Officer erected partitions and other barricades to segregate various activities related to the storage, processing and counting of ballots, in order to maintain control over the ballots.

Contrary to the implication of the protest, there is nothing in the ***Rules*** or the *Count Rules* which provides any requirements for the layout of the count site. While the protester assumes that the best layout is one where all functions are in one room and observable to anyone in the room, there is no basis for that assumption.[18] To the contrary, the Election Officer found a distinct advantage in compartmentalizing the different functions -- processing, counting, and storage -- in different rooms to keep them from becoming entangled. It makes it less likely that trays of ballots intended for one function will accidentally be given to the wrong table or group of workers. It also makes it easier for room supervisors and security guards to keep track of

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filed with the District Court after the 1991 IBT International officer election. The Cookbook describes in detail the process of planning, supervising and conducting the 1991 election, with recommendations for any future supervised election.

[18] The protest cites *The Cookbook* in alleging that the requirement for choosing a count site is open space. The selective quotation is misleading. In listing his criteria for 1991, Election Officer Holland stated that it must have space of approximately 25,000 square feet "divisible into areas for storing, processing and counting ballots, office space for the Election Officer, other Court Officers, the IBT and candidates, press telephone room, and a press conference room." II *The Cookbook* at 4-38. He also listed seven other criteria, including proximity to Election Officer headquarters, CEO and to the post office, sufficient rest room facilities, access to lodging and ground transportation, access to catering services, and sufficient parking facilities. There is nothing in *The Cookbook* about maintaining one open space for all count activities.

ballots within a defined geographic space to prevent the possibility of tampering.

As described above, the Election Officer in 1996 made a careful search for the best possible count site in light of all of the requirements. The 1996 count site was chosen and configured by Count Coordinator Sarsany, who performed the same function for the 1991 count. The National 4-H Center offered the best location, in that it had plenty of large rooms, adequate parking, an on-site cafeteria, adequate lodging for all out-of-town staff, adequate heating and ventilation, and proximity to the postal facility where the ballots could be returned.

There is also no basis for alleging that the count was somehow rendered unobservable because it was compartmentalized into different rooms. All count operations for a particular region were confined to rooms next to or near each other. The ballots for any particular local union made only two stops upon leaving the ballot security room: one stop at the processing room and one at the count room. Each campaign was provided printed maps of the count site with every room and its function clearly labeled. Slate representatives participated in a walk-through of the count site where they could see what activities would take place in which rooms. Moreover, the responsibilities of an observer at any given time (apart from the rovers) were limited to a particular function in a particular room. Nor were observers isolated; depending upon the room size, anywhere from 2-8 observers from the same slate were performing their duties in the same room at a time.

The choice of the count site was a matter left to the substantial discretion of the Election Officer. The protester has failed to produce any evidence that the configuration of the count site in any way negatively affected the accuracy or integrity of the count. To the contrary, the Election Officer concluded that the count site configuration contributed to the maintenance of control over the count process. The protest as to this issue is denied.

c. Receipt of Ballots by Rand Formula Payers in Canada

The protester in Post-32 alleges that ballots could have been mailed to certain Canadian workers who work in Teamster shops but are not themselves IBT members.[19] Instead, they pay the equivalent of an agency service fee (called the "Rand formula") to the IBT for the benefits received from union representation. The protester in Post-32 requests that the Election Officer conduct an investigation to see if any Rand formula payers voted and, if so, to impound those ballots and remove them from the local union tallies.

The protester did not provide any evidence that Rand formula payers in fact received ballots. Instead, he presented the testimony of Gary Kitchen, a member of Local Union 880

[19] This protest was also incorporated by reference by Post-35, ¶ 2; Post-37, ¶ 1; Post-40, ¶ 1.

and a count site observer on behalf of the Hoffa slate. According to Mr. Kitchen, he suspected that Rand formula payers must have been included in the mailing of ballots for Local 1999 because more ballots were returned to the Election Officer than he expected. Mr. Kitchen reviewed the ECR at the count site as part of the pre-count review and noted that several individuals employed at the Molsons and Labatt companies received ballots. He knew that some of the individuals working for those employers are Rand formula payers and concluded that they must have received ballots in light of the high voter response. Neither Mr. Kitchen nor Mr. Halberg presented the name of a single Rand formula payer who they allege received a ballot.

Initially, it must be noted that this protest is untimely. Article VII, Section 1 of the *Count Rules* provides the right of an observer to challenge the eligibility of any voter prior to the count of ballots. The time to challenge any ballots allegedly returned by nonmembers was while eligibility was being checked during ballot processing. In addition, at the request of the Hoffa slate, the Election Officer provided an opportunity for observers to inspect the ECR for certain designated local unions prior to the commencement of ballot processing. The issue of Rand formula payers was never raised with the Election Officer at the time count workers checked voter eligibility. The Election Officer finds that any complaint about who was mailed ballots is untimely.

Moreover, CEO confirms that the Rand formula payers were not listed in the TITAN system as active status members of the IBT and were not mailed ballots. There is no evidence of any kind to suggest that nonmembers of Local 1999 were mailed ballots, let alone voted, and there is no basis for concluding that the ***Rules*** were violated. The protest as to this issue is denied.

d. Choice of Count Machines

The protestor in Post-37 complains that the Election Officer selected vote counting machines that "would not reliably read voting marks made in ink or by means other than No. 2 pencil . . . ." Post-37, ¶ 2(d).[20] However, the protester has failed to provide any evidence or argument on this issue.

Further, the protestor has waived this aspect of the protest by failing to present it in a timely manner. As early as June 1996, the Hoffa slate was aware that election count machines based on optical scanning technology do not "read" all ink markings. Mr. Hoffa recognized

[20] The original protest also complained that the vote counting machines had not been certified by the Department of Labor for use in union elections. During an initial interview, counsel for the protester conceded that there was no evidence that the Department certifies machines for union elections and withdrew that aspect of the protest on February 7, 1997.

this fact in a letter to the Election Officer dated June 18, 1996, where he urged the Election Officer to issue supplemental rules "specifying in detail the steps required to produce an electronically 'readable' ballot."

In her application to the Court to approve the *Count Rules*, filed September 5, 1996, the Election Officer included an affidavit stating that she intended to use the AIS Model 550 counting devices in order to tally the ballots. She further addressed Mr. Hoffa's concern about marking the ballots as follows:

> The candidate correctly assumes that the count equipment will rely on an optical reading device that counts votes based on marks made on the ballot with pen or pencil by the voting member. Although I have determined not to add a specific rule on the subject, I agree that it is worthwhile to alert members to the need to carefully mark their ballots in such a way that the counting devices will accurately recognize and count their votes. I intend to include in the October and November issues of the Teamster magazine instructions to members on how to mark their ballots. In addition, the ballots themselves will contain explicit instructions on how to mark the ballots so that the vote will be counted by the counting devices.

Declar. of Barbara Zack Quindel, at ¶ 29.

In response to the application, Mr. Hoffa did not lodge any objection to the *Count Rules* by virtue of their failure to include a specific directive for instructing members on how to mark ballots, let alone objecting to the use of a machine that did not read all inks. The District Court approved the *Count Rules* in all respects.[21] Having failed to raise this issue in response to the promulgation of the *Count Rules* or before the Court, and instead raising it after the entire election has been conducted, the protester has waived his right to maintain this complaint. See Hoffa, Post-26-EOH (Decision on Remand) (January 2, 1997), aff'd, 97 - Elec. App. - 312 (KC) (January 22, 1997).

[21] The Hoffa campaign was also served with copies of the Election Officer's decisions in Petrecca, P-1071-LU705-EOH (October 16, 1996); and Atha, P-1175-IBT-EOH (November 6, 1996), in which protesters complained about the instructions to voters to only use pencil. In both decisions, the Election Officer stated:

> The voting instructions . . . were developed in order to direct IBT members to follow the procedure that would best facilitate the electronic counting of ballots. The machines being utilized to count ballots read virtually every type of pencil, but the same is not true with respect to all pens.

Id.

Even examining the issue on the merits, there is no basis for the protest. As described above, the Election Officer chose counting machines that met the strictest standards available as established by the FEC.[22] AIS was chosen as the vendor for the counting machines only after extensive consultation and after the machines were successfully used by the Election Officer to count nominating votes at the 1996 International Convention. Further, the Election Officer took steps to insure that members used a machine-readable marker on their ballots by publishing notices in the International's magazine, and by including explicit instructions on the face of every ballot to use a pencil.[23]

Finally, and most importantly, every ballot returned by an IBT member was visually inspected by count workers to insure that it could be read by the machine. Any ballot which raised a question as to the readability of the markings was segregated and sent to the "remark" operation, where count workers used special markers to fill in the ovals where the voters had made their choice to insure machine readability.[24] Thus, not only was there no violation of the ***Rules***, but the remark operation effectively took care of any ballots marked with unreadable ink. See Petrecca; Atha. Thus, the failure of the machines to read all inks could not have affected the outcome of the election. This aspect of the protest is therefore denied.

e. Treatment of Ballots Not Sealed in Secret Ballot Envelopes

Two protests complain of the Election Officer's procedure for handling ballots which were returned without being enclosed in secret ballot envelopes. See Post-27; Post-31, ¶ 3.[25] Specifically, the protesters allege that on the first day of the count, the Election Officer used a method which voided a number of ballots, whereas starting the next day, ballots that would have been voided the first day were now counted. This change, they assert, deprived members whose ballots were voided the first day of the right to vote under the Consent Decree.

Ballot secrecy guarantees the right of IBT members to vote independently, and is

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[22] The protester never provided any evidence that there are vote counting machines using optical scan technology which do, in fact, read all pens. AIS has informed the Election Officer that they are not aware of any such devices.

[23] Contrary to the protest's allegations, the Election Officer's instructions to voters never mentioned a "No. 2" pencil, but referred only to a pencil.

[24] As a further safeguard, the counting devices were run with the "blank ballot function" turned on, so that any ballot not marked with a readable marker would be interpreted by the machine as a blank ballot, causing the machine to stop and the blank ballot light to go on. The ballot would then be inspected and, if voted, remarked so that the machine could read it.

[25] This allegation was also incorporated by reference in Post-35.

fundamental to a free and fair election untainted by corruption. Pursuant to Article V, Section 5 of the ***Rules***, each ballot package sent to members contained a secret ballot envelope in which the marked ballot was to be sealed prior to being placed in the business reply envelope. Secret ballot envelopes ensure that a ballot can later be separated from the outer business reply envelope, which identifies the voter, in a manner that does not reveal the voter's choices. The instructions on the ballot specifically reminded the voter of the need to use a secret ballot envelope, as did the Notice of Election published in the October and the November/December issues of *The Teamster*.

Notwithstanding those instructions, a small number of members returned their ballots in business reply envelopes without first sealing them in the secret ballot envelopes. Article VII, Section 4 of the *Count Rules* provides, "All ballots cast by members in such a manner that the secrecy or integrity of the ballot cannot be preserved shall be voided by the Election Officer or her representative." Originally, count workers were instructed that when extracting from the business reply envelopes, if they came across a ballot not enclosed in a secret ballot envelope and where the vote choices were visible, the ballot's secrecy had been compromised and the ballot was to be marked void by a supervisor. However, if the ballot was folded in such a way that the vote choices could not be seen, the ballot would be given to a supervisor and would ultimately be counted.

All of the processing room supervisors were Regional or Adjunct Coordinators, and virtually all of them had conducted numerous elections for delegates to the 1996 International Convention, which also involved ballots enclosed in secret ballot envelopes. Many had been supervisors during the 1991 count as well. After the issue was raised on December 10 about a lack of consistency, the Count Coordinator discovered that room supervisors used slightly different means of preserving the secrecy of ballots not returned in secret ballot envelopes.

After review, the Election Officer ordered that all rooms follow a uniform policy. Count workers were to check each business reply envelope before extracting anything to insure that a secret ballot envelope was used. If the ballot was not enclosed in a secret ballot envelope, the count worker would immediately hand the business reply envelope containing the ballot to a supervisor, without further viewing of the ballot. At the end of processing all ballots for that local, the supervisor would place all business reply envelopes in a tray with the member's identifying information face down, mix the envelopes, and extract the ballots in a way such that the member information could not be seen. On the morning of December 11, the second day of the count, all room supervisors and all count workers in the processing rooms were instructed to follow this procedure. The revised procedure was used for the remainder of the count and on all supplemental counts.

As noted above, the Election Officer's ***Rules*** and *Count Rules* specify the use of secret ballot envelopes but do not specify what to do with ballots that are not returned enclosed in secret ballot envelopes. The U.S. Department of Labor ("DOL") regulations issued pursuant to the LMRDA state only that secret ballots must be "cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." 29 C.F.R. § 452.97(a) and (b).

As described above, at all times the Election Officer used procedures that guaranteed the secrecy of every ballot. The procedures initially used on December 10 met the requirements of LMRDA and the ***Rules***, in that the ballots in question were properly declared void because the count workers could actually see how the ballots were marked. There is no procedure for undoing the loss of secrecy of a ballot. Moreover, by changing the procedure slightly on December 11, the Election Officer did not violate the ***Rules*** or LMRDA, but instead insured that additional ballots would be counted even though they were not returned enclosed in the secret ballot envelopes. Thus, the change in procedure fulfilled one of the underlying goals of the Consent Decree and the ***Rules***, which was to maximize the participation of IBT members in the choice of International officers.

The protester in Post-27 argues that the Election Officer should re-examine and count the ballots voided on December 10 for not being enclosed in secret ballot envelopes. However, any such remedy presupposes a violation. See Post-26-EOH (Decision on Remand). Since there was no violation, no re-examination of those ballots is appropriate or necessary. The protests and requests for relief on this point are denied.

f. Discarding the Empty Secret Ballot Envelopes

The Hoffa slate argues that by throwing away the empty secret ballot envelopes after ballots were extracted, the Election Officer compromised the integrity of the process and violated the LMRDA.

The secret ballot envelopes used here contain a printed statement notifying the voter that his/her vote is secret and directing the voter not to write on the envelope. After the ballots were extracted, the empty secret ballot envelopes were discarded in open receptacles. Room supervisors were instructed to insure that discarded secret ballot envelopes were truly empty. In discarding the empty secret ballot envelopes after verifying that they were empty, the Election Officer was following a consistent practice that started during the 1991 election. Secret ballot envelopes were not retained during the 1991 delegate elections or the International officer election.

Moreover, the candidates were expressly told that the empty secret ballot envelopes would be discarded as part of ballot processing. This issue was covered during the November

26 meeting at which candidate representatives met with the Election Officer and her staff for several hours to learn about the count procedure. The fact was even noted in the diagram handed out to the slate representatives, one of whom was counsel for the Hoffa slate. The Election Officer finds that the protester's failure to raise the issue in a timely manner constitutes a waiver of the protest.

Even if the issue is considered on the merits, there is no violation of the ***Rules*** or of LMRDA. Article V, Section 11 of the ***Rules*** requires the Election Officer to preserve for one year "[a]ll ballots, including those that are challenged, voided, spoiled or unused, all ballot envelopes and copies of all tally sheets . . . ." This replicates the requirement of Section 401(e) of LMRDA.[26] The Election Officer has retained in a secure location the ECR and all business reply envelopes from the election. However, she finds that uniform, printed envelopes which do not contain any information identifiable with any particular voter or ballot are not "records" within the meaning of the ***Rules*** or LMRDA. There is nothing in LMRDA, the DOL regulations,[27] or cases decided under LMRDA that suggests otherwise. In the absence of a specific statutory requirement, it falls to the Election Officer to apply her substantial discretion to decide how best to conduct the 1996 International officer election.

This issue having been waived by the protester, and lacking merit in any event, this aspect of the protest is denied.

g. Excessive Observers in a Processing Room

In Post-29, the protester asserts that the Carey slate on a number of occasions had five observers present in one of the ballot processing rooms, although the Election Officer had previously announced that each campaign would be limited to two observers. He further alleges that when this was brought to the attention of the room supervisor, she said that she was not a kindergarten teacher or babysitter, and that she was not going to enforce the rule on this issue as long as she could move around. Finally, he alleges that Diana Kilmury, an International Vice President and a candidate for reelection, was observed picking up ballots from the challenge tray and looking at them, and even taking a ballot from the hands of one of the count workers to inspect it.

The evidence shows that the Arkansas room at the 4-H Center served as the processing room for ballots from the Southern Region and from Teamsters Canada. The room was

[26] 29 U.S.C. § 481(e) states in part that "[t]he election officials . . . shall preserve for one year the ballots and all other records pertaining to the election."

[27] The DOL regulations discuss the importance of keeping all ballots, marked and unmarked, valid and void, but do not mention secret ballot envelopes. 29 C.F.R. § 452.106.

partitioned, with Delores Hall supervising the Southern Region portion and Gwen Randall supervising the Canadian portion. On two occasions early in the count, a Hoffa observer complained to Ms. Hall that there were too many Carey observers in the room. Both times, Ms. Hall stated in a loud voice that there were too many Carey observers, and one promptly left. However, Ms. Hall and Ms. Randall soon agreed that there was no point in strictly enforcing the limitation as long as there was no obstruction of the aisles or the count workers. Thus, during processing of ballots from Local Union 745, a large local that supported the Hoffa slate, Ms. Hall saw at least five Hoffa observers in the room watching but did not move to eject any of them.

Sometime near the end of the count, Mr. Murphy, the chief Hoffa observer, complained about too many Carey observers in the room. Ms. Hall replied that this was not a kindergarten, and that she would not strictly enforce the rule so long as the work could get done. She further stated that he should talk to Mr. Marks, the Election Officer's candidate liaison, if he still objected.[28] Shortly thereafter, Mr. Marks came to the room and asked the extra Carey observers to leave, and they did so.

The evidence shows that room supervisors in other processing and count rooms exercised their discretion in deciding how strictly to enforce limits on the number of observers in the room. While some room supervisors were stricter than others, most gave observers some leeway so long as there was no effect on the ability of the count workers to complete their tasks. This discretion was exercised without reference to which candidates the observers supported. There is no evidence to suggest that this incident could have affected the outcome of the election.

As to the allegation that Ms. Kilmury touched ballots, Article V, Section 4 of the *Count Rules* prohibits any observer from touching or handling any ballots. Mr. Spearman states that he complained once to Ms. Hall and once to the room supervisor who was "the lawyer from Greensboro, North Carolina" about Ms. Kilmury touching ballots. Maureen Geraghty was a room supervisor for the Southern region and is a lawyer from North Carolina. Both Ms. Hall and Ms. Geraghty state that they never heard any complaint from Mr. Spearman or anyone else that Ms. Kilmury had touched a ballot. Both of them stated that they would have taken such a complaint very seriously, and would have remembered if one had been made. In addition, Ms. Kilmury denied ever touching any ballot, stating she knew how serious a violation that would be. Neither the Election Officer nor any other senior supervisor ever heard of this complaint until the amendment to the protest was filed on December 26. The Election Officer's investigation failed to find sufficient evidence to conclude that the incident occurred or that the *Count Rules*

[28] Although the protest was filed by the Stand Up slate observer, Ms. Hall could not recall ever hearing an objection from a Stand Up Slate observer during the count about the number of Carey observers in the room.

were violated. This part of the protest is therefore denied.

h. Inadequate Security

The protester complains that the Election Officer failed to guarantee proper ballot security. Post-37, ¶ 2(r). The witnesses proffered by the protester assert that people without credentials or IDs could walk into the count site from the central courtyard; that there were no alarms on the windows and doors of the ballot security rooms until December 20; that the security guards used during the initial phase of the count were not trained security personnel; that the guards never asked for the ID of people going into the ballot security rooms; and that open ballots were kept in ballot security rooms without alarms.

In addition, Patrick Szymanski, one of the attorneys for Hoffa slate, testified that on December 9, when he reported to the count site to participate in the walk-through, he was not stopped by anyone from entering the count site, there were no security guards in the Alabama area to greet him, he was left alone outside the open Election Officer offices, and he observed ballots present in one of the processing rooms without a security guard outside.

As described above, the Election Officer followed a comprehensive security plan that included multiple and redundant safeguards over the ballots and the count site. Contrary to the protester's allegations, all Election Office supervisors and security guards were instructed to insure that everyone in the count site wore identification and to challenge anyone who did not wear identification. Security guards were at all times stationed close to and within direct sight of the doors to the courtyard. Before any ballots arrived at the count site in November, the doors and windows in the ballot security rooms were indeed protected by electronic alarms.

While most of the security guards used through December 20 did not have law enforcement backgrounds, they were trained in their duties and well supervised by those with substantial security and law enforcement experience, and in fact they performed their duties well. The guards at the ballot security rooms did not have to ask for ID because they did not permit anyone into the rooms who did not have an Election Officer photo ID. Any observers who entered the ballot security rooms were wearing an Election Office observer ID badge, were accompanied at all times by Election Office staff and were closely observed by the security guards.

During the interviews, one witness for the protester who had been a Hoffa observer, Jim Ayers, mentioned two individuals who appeared to be carrying blank ballots through the hallways close to their bodies. When Mr. Ayers asked one of them where he was going with the ballots, the person allegedly refused to respond. Later, the other person with ballots told Mr. Ayers he was going to the count room. Mr. Ayers admitted that maybe the person was just taking ballots to be used in the remake operation, but alleged that the whole process was "just too

loose."

In fact, the two gentlemen in question were Election Office count workers whose job was to deliver small packets of blank ballots from one of the secure rooms to the count rooms whenever a remark/remake supervisor requested them. Both gentlemen wore photo IDs. When the remake operations for a local union were done, the courier would be called to take the blank ballots back to the secure room. To protect against any interference or possible tampering with the count process, all count workers were instructed not to speak to observers, and observers were instructed to raise any concerns they had with a supervisor, not the count workers directly. No mention was made of this issue during the count. There is nothing in this incident that demonstrates any breach of security.

As for Mr. Szymanski, his evidence amounts to the fact that on one occasion, he waited outside the security office for several minutes and did not see any security guards. There was no evidence that any ballots were left unguarded. He did not observe if there were supervisors or security guards inside the rooms where the ballots were being sorted. Although he says he could have taken ballots out of Room 4001 or 4002, there were no ballots or business reply envelopes in either of those rooms. Starting the following day, the Voss lobby was continuously staffed and any observer or other person who tried to by-pass the Voss lobby was challenged and ejected from the count site below.[29]

On a related matter, the protester complains that the ballots for Local Union 486 were delivered to the count room and then returned to the ballot security room without ever being counted. It was only after a Hoffa observer complained, he alleges, that the ballots for that local were counted. The witness implies that something happened to the ballots between the time they were opened and the time they were counted to reduce Mr. Hoffa's margin of victory. The Election Officer finds that according to the log sheet and machine tally sheet, the ballots for Local Union 486 were counted that evening. Even assuming the ballots were prematurely returned to the ballot security room, they were at all times kept under guard and under the watch of observers. There is no evidence that the count of these ballots was inaccurate or that any delay in counting them affected the outcome of the vote.

The protester has failed to produce any evidence of a violation of the ***Rules***, the *Count Rules* or the Consent Decree, and has failed to demonstrate that the security of the count site was ever compromised or that any tampering with ballots took place. See Marshall v. Local 4-227,

[29] Mr. Woodward, a key Hoffa observer, was at the Count Site every day and stated that the ballot security rooms seemed secure from what he could see. He also stated that Election Office security personnel were easy to spot, and that he did not see any security problem either at the post office or when ballots were being sorted at the Count Site.

Oil, Chemical & Atomic Workers, 108 LRRM (BNA) 2271, 2273 (S.D. Tex. 1981) (ballots stored overnight in union library where incumbents had keys does not invalidate election where there was no evidence of tampering). The protest on this issue is therefore denied.

i. Failure to Account for Additional Ballots Found During Challenged Ballot Resolution

The Hoffa slate protests the counting of certain challenged ballots for Local Unions 115 and 63 on the grounds that the ballots were not accounted for on the official tally sheets for those locals (Post-31, ¶ 1-2; Post-37, ¶ 2(o)). In the case of Local Union 115, the protest asserts that the tally sheet showed only one challenged ballot, but that three additional bundles of challenged ballots were "found" on December 18. In the case of Local Union 63, the protest asserts that the number of challenged ballots exceeded the number on the tally sheet. The protester claims that none of these ballots should be counted.

As described above, following the production of the machine tally for a local union, Election Office staff noted the number of challenged and void ballots listed on the traveler. The tally, along with the numbers for challenged and void ballots, was then transmitted to the Election Officer for review. The number of challenged and void ballots was then manually added to the bottom of the local union tally sheet used for distribution. Due to the manual initial count and recording of the challenged and void totals on the tally sheets, those figures were adjusted based on the later, more accurate count of challenged ballots resulting from the process of logging each challenged ballot envelope into a computer database. This was explained and reported to the slate representatives and candidates on several occasions.

For example, in her memo to all slate representatives dated January 7, 1997, the Election Officer stated:

> Challenge information used to announce the 41,002 on December 14, 1996 was based on the number of challenged ballots reflected on the local union tally sheet, plus a regional hand count of the stray ballots. Challenges from certain locals were not reflected in this number due to their last-minute handling (LU210, LU832). Since that time we logged the remaining uncounted ballots into the computer and have a data base. These data base figures, as to the number of outstanding eligibility-related challenges, are set forth on Attachment B, broken down by region. Small adjustments may occur based on additional housekeeping from the December 16-18 supplemental count.

In the case of Local 115, in a review of local union trays to ensure that all challenged ballots had been logged, Election Office representatives located three packets of challenged ballots for Local 115 in that local union's trays, all bound and clearly labeled as challenged

ballots. These bundles contained 184 ballots which CEO logged into the database. These ballots became part of the challenged ballot pool for the Eastern region from which ballots were selected for the supplemental counts.

The protester correctly noted that the tally sheet for Local Union 115 reflected only one challenged ballot for this local. An examination of the travelers for Local 115 show that on December 10, the processing room supervisor logged 182 challenged ballots for Local 115. Thus, the tally sheet for Local 115 was erroneous as to the true number of challenged ballots. In a continuing effort to account for all ballots, the Election Officer properly logged these ballots and treated them the same as other challenged ballots in the resolution process.

In the case of Local 63, the initial tally sheet reported 499 challenged ballots, whereas CEO logged 506 challenged ballots, a variance of seven ballots out of 4,965 cast overall from that local union.

The protester describes both of these local unions as ones where the members favored Mr. Carey, and uses quotation marks to describe the additional challenged ballots as "found," implying that the Election Officer acted improperly in locating ballots from these locals in order to assist Mr. Carey. However, the protester fails to mention the situation of Local Union 70, where the tally sheet showed only 42 challenged ballots. While logging the challenged ballots into the database, CEO discovered that there were 220 challenged ballots in three packets from that local; whoever filled out the traveler had only recorded ballots in one packet. The Election Officer processed all of the challenged ballots. Mr. Hoffa carried Local Union 70 with 72.6% of the vote.

By ignoring the situation with Local Union 70, the protester in effect misrepresents the evidence and makes allegations of impropriety against the Election Officer that have no basis. The evidence demonstrates that certain tally sheets contained errors in the number of challenged ballots recorded. These errors were later discovered and corrected on a neutral basis as the logging of ballots gave more accurate information.

The protester has presented no evidence of any kind to show that the additionally logged challenged ballots were not actual ballots voted by members of those three local unions. The Election Officer sees no basis for nullifying the right of members to vote simply on the basis that the number of challenged ballots was not correctly noted on the initial tally sheets. The evidence shows that these are legitimate ballots that were properly included in the pool of challenged ballots to be resolved, and the protest as to this issue is denied.[30]

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[30] Although never expressly alleged as part of a protest, the Hoffa Slate has made this same complaint in his appeal argument on an earlier protest. In In Re: Hoffa, 97 - Elec. App. - 312, the Election Appeals Master dismissed the allegation, noting that "neither proof nor

j. The Failure to Provide a Complete and Accurate Accounting of All Ballots

The Hoffa slate protests allege a failure by the Election Officer to provide an accurate count of all ballots after the count of unchallenged ballots, and the further failure to accurately account for challenged ballots.[31] Specifically, they allege:

- the failure to provide an accurate and complete written accounting of total ballots in the Election Officer's custody as of December 14 (Post-31, ¶ 4);
- the failure to provide a complete and accurate accounting of all challenged ballots resolved on December 18 (Post-31, ¶ 5); and
- the failure to provide full and comprehensive reports of the ballots counted, challenged and void at each stage in the ballot count process (Post-37, ¶ 2).

In fact, the evidence shows that at each stage of the ballot counting process, the Election Officer has provided the best possible accounting of all challenged and void ballots. At 7:30 p.m. on December 14, at the conclusion of the count of all unchallenged ballots, the Election Officer announced the cumulative tally indicating the number of members voting, and the number of challenged and void ballots. On December 16, the Election Officer met with observers from the Hoffa and Carey slates to explain the process of challenged ballot resolution. At that time she distributed to these observers a regional breakdown of the challenged ballots remaining as of the conclusion of the count of unchallenged ballots. She further explained that the challenged ballots would be logged into a computer database so that they could be analyzed for challenged ballot resolution.

The first phase of challenged ballot resolution occurred between December 16 and 18. On December 19, 1996, the Election Officer prepared a report explaining the activity that had occurred during this phase. It also provided an accounting of the challenged ballots determined eligible that had been counted and of the remaining challenged and void ballots. The report included regional tally sheets of the eligible ballots counted and a cumulative tally sheet. This report was distributed to the slate representatives and to each of the candidates.

On January 7, 1997, the Election Officer held a lengthy meeting with slate representatives to explain the next phase of challenged ballot resolution and to respond to inquiries regarding the accounting of ballots, including the inquiries made by the instant protester in its December 31 letter (docketed as Post-31). She specifically addressed questions about the

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explanation was proffered during the hearing." Id. at 5.

[31] The alleged failure to verify the number of ballots received prior to the machine tally of votes is addressed below in Part I(C)(1).

inclusion of various groups of challenged and void ballots in the figures which had been reported on December 14 and 19; how the logging of challenged ballots by CEO had provided a more accurate accounting of challenged ballots which would adjust the previous challenges reported; and several housekeeping tasks that would be performed, in the presence of observers, during the second phase of the challenged ballot resolution to ensure an accurate accounting of ballots that had been voided during the first phase of challenged ballot resolution. The Election Officer furnished each of the slate representatives with a memorandum explaining the challenged ballots remaining based upon the logging of eligibility challenges into the database. During the course of this second supplemental count, the Election Officer provided slate representatives with additional charts reflecting the challenged ballots remaining by challenge code within each region.

At the conclusion of the second phase of challenged ballot resolution, the Election Officer prepared a report detailing the activity of this second phase and providing an accounting of the challenged ballots resolved as eligible that had been counted, and the challenged and void ballots remaining. Once again, the Election Officer provided regional tally sheets of eligible votes counted and a cumulative tally sheet.

The third phase of challenged ballot resolution occurred on January 29-31, 1997. The fourth and final phase of challenged ballot resolution took place on February 27, 1997. Following each of these supplemental counts, the Election Officer issued her reports on the activity which had occurred and her accounting of the challenged ballots resolved as eligible which had been counted and the remaining challenged and void ballots. Attachments reflecting this accounting, along with the regional and cumulative tallies, were also provided. These reports were distributed to the slate representatives and candidates.

The protester asserts that there has not been a complete and accurate accounting of the ballots on particular dates and at each stage of the ballot count process. However, the evidence is to the contrary and shows that such an accounting was done on a continuing basis from the conclusion of the count of unchallenged ballots through each phase of the challenged ballot resolution process. The process of providing the most accurate accounting necessitated minor adjustments in previously reported numbers when errors were detected.[32] On each occasion, the basis for such adjustments was explained and reported to the slate representatives and candidates. Regular meetings with the Election Officer and slate representatives at each of the supplemental counts allowed an opportunity to request clarification on any aspect of the

[32] The adjustments which occurred during the course of challenged ballot resolution involved approximately 1/10th of one percent of the total number of ballots.

accountings which had been provided.

By definition, a "complete" accounting of the ballots could only occur when the process had concluded. The vote counting has now been concluded, a full recount has been conducted, and a final accounting has been reported to the candidates. This aspect of the protest is, therefore, denied.

The protester further complains of the failure to provide any breakdown by region or local union of challenged ballots resolved (Post-31, ¶ 8; Post-37, ¶ 2(p)), as well as the failure to keep a full local-by-local count of the ballots counted, challenged and void (Post-37, ¶ 2(q)). As described above, a regional breakdown of challenged ballots resolved as eligible was provided to the candidates as part of the Election Officer's report at the conclusion of each phase of challenged ballot resolution. The Election Officer also reported the regional breakdown of those challenged ballots resolved to be ineligible and, therefore, void.

With respect to the local-by-local count, the tally of votes from all unchallenged ballots was performed by local union. However, the Election Officer determined that the ***Rules*** required that challenged ballots resolved as eligible would be counted and tallied by region, not by local union. Article V, Section 9 of the ***Rules*** states in pertinent part, "All challenged ballots shall be divided into groups as determined by the Election Officer in a manner such that the secrecy of ballots shall not be undermined." In each phase of challenged ballot resolution, there were instances of single ballots in certain local unions which were resolved as eligible and were counted as part of the supplemental count. Candidate observers were permitted to watch the eligibility check for each of the previously challenged ballots, during which names of members determined eligible were read from a roster organized by region and local union. Hence, observers would know the identity of individuals voting in a given local and could correlate a name with the member's vote if a tally sheet were to be produced by local union.[33] This posed an unacceptable risk of compromising the secrecy requirement of the ***Rules***.

The Election Officer's determination was based on her substantial discretion to carry out the secret ballot requirements of the ***Rules*** and the Consent Decree. The protester has not provided any explanation as to why this decision was beyond the legitimate authority of the Election Officer or contrary to the Consent Decree. Moreover, all challenged ballots which were subsequently resolved as eligible were segregated by IBT region prior to counting so that all candidates for regional Vice President positions received the votes cast for them from members in their regions. Since no candidates are elected on a local union basis, the decision to

[33] The potential exposure of how a particular member voted extends beyond the single ballot resolution in a given local union. If the three or four eligible members vote the same way, producing a local tally would also breach the secrecy of how these members had voted.

count by region instead of by local could not possibly have affected the outcome of the election. This aspect of the protests must be denied.

k. Observability of Challenged Ballot Resolution

The protester complains that the Election Officer failed to allow observers to review her eligibility determinations during the challenged ballot resolution process. Specifically, they protest the following:

- the failure to allow observers to review eligibility determinations made on or before December 18, as reported on December 19 (Post-31, ¶ 6); and
- the refusal to allow observers to review a list of the voters declared ineligible, to review the reasons for declaring each of those voters ineligible, and to review the information supporting those determinations (Post-37, ¶ 2(l)).

The evidence, however, shows that candidates or their observers were able to observe the challenged ballot resolution process. At each supplemental count, the Election Officer provided slate representatives with a description of the groups of challenged ballots analyzed, the factual and legal basis for the eligibility determinations made, and the number of ballots resolved as eligible and ineligible for each region. The count of eligible ballots at each supplemental count proceeded as in the original ballot count and was observable in the same fashion. Specifically, a roster of members whose ballots were originally challenged and were later determined eligible was produced in order to select those ballots for counting. A team of Election Office representatives worked together, one reading the name of the members from the roster and the other selecting the member's ballot from the tray of challenged ballots.[34] Seated across from this team were observers from each slate. The list was organized by local union within region and candidate observers could, and did, challenge the eligibility of a particular voter whom the Election Officer had determined to be eligible. These rosters generally contained the information on which the eligibility determinations were made.

For example, cash dues payers were given until the arrearage date of December 9 to pay their dues through November. The ECR used at the count, however, had to be printed based on information current as of December 7. Therefore, cash dues payers who paid their dues after this date were listed as challenged on the initial roster. During challenged ballot resolution,

[34] The only exception to this procedure was during the first supplemental count when the stray ballots were checked for eligibility. The stray ballots, having been treated as challenged, were initially logged into the challenged ballot database by CEO. At the same time, however, the staff member checked the eligibility of the member using the computerized ECR instead of the identical printed (or "hard copy") version. As this eligibility check proceeded, observers were stationed next to the operator to view the computerized check in the same manner as they later viewed the check from the printed ECR.

these members were checked against the final ECR of December 10, 1996. Based upon this analysis, a number of previously challenged cash dues payers became eligible. This payment information was reflected on the ECR used during the supplemental count and available to observers to show how the determination of eligibility had been made.

Certain eligibility determinations were made with the use of additional dues information gathered from records of employer dues remittances. At meetings with slate representatives, the Election Officer explained the nature of these resolutions, the method of analysis, and provided samples of the documentation utilized in the resolution process.

The resolutions of challenged ballots determined as ineligible were also reported and explained by the Election Officer. During the first and second phase of challenged ballot resolution, the Election Officer resolved groups of challenged ballots on the basis of per se ineligibility determinations. These determinations were made for two general categories of members: those who had not met cash dues payment or initiation fee obligations by December 9, and those in certain status codes reflecting that they were not active as of the count date. Per se ineligibility determinations of this nature were made in resolving challenged ballots in the Eastern region during the 1991 election and are reported in II *The Cookbook*, at 4-102 - 4-106. The information on which these determinations were based is the same information that was contained on the ECR that was used in the original ballot count. As noted above, the Hoffa observers took advantage of an additional opportunity to review the information contained on the ECR for certain local unions on December 9, prior to the commencement of the ballot count. Finally, the rosters containing all of the ineligible determinations made during the four phases of challenged ballot resolution were made available to the slate representatives for inspection.

Thus, there is no basis for the claim that the challenged ballot resolution process was not observable and this aspect of the protest is denied.

The protester has raised two additional points related to the administration of the challenged ballot resolution process. On January 7, 1997, Mr. Murphy raised a concern that the per se ineligibility determinations made by the Election Officer could be wrong due to sloppy habits or other errors on the part of TITAN operators. He indicated that such errors could be detected by an experienced TITAN operator who could review dues records for members and determine whether the codes that were indicated on the TITAN records, on which the Election Office relied, were indeed accurate. He proposed that an experienced TITAN operator be flown to Washington at the expense of the Hoffa campaign to perform an investigation of the eligibility of individual members based on a random sample of members declared per se ineligible.

The Election Officer rejected this request. The determination of members as ineligible was based on a neutral and uniform application of the eligibility rules to members in certain

challenge codes. The Election Officer determined that such resolutions would not be subject to an individualized investigation and review of member records. Such a decision, consistent with the practice in 1991, was within the sound discretion of the Election Officer.

A second request made by the Hoffa Campaign involved challenged ballots for members who were in a check-off status code but not included in the most recent employer posting of dues (C-4) or had no dues posting within 90 days of the election count (C-5). This information, however, did not render such members definitively ineligible. Rather, in order to properly give effect to the eligibility rules, it was necessary to determine if the employee had earnings from which dues could have been deducted. See Part I(A)(4) above.

The Election Officer approved procedures utilized by CEO staff for outreach to employers for the verification of earnings necessary to resolve outstanding challenged ballots in these categories. The procedure involved identification of an employer contact person at each of the verifying employers. The identified employer contact was sent a letter over the Election Officer's signature referencing her appointment as a Court officer and the need for assistance in the challenged ballot resolution process. The employer representative was instructed to verify whether or not employees listed on an attached sheet(s) had received gross earnings of at least $50 within the requisite time period.[35] Employers returned this list, either by mail or facsimile, indicating by check mark whether or not the member had the requisite earnings.

At the meeting of January 7, 1997, Mr. Murphy stated his position that this method of earning verification was insufficient in that no underlying wage records were requested from the employer to confirm earnings. He expressed his concern that employers would not respond truthfully and that further authentication was needed.

The protester's complaint is without foundation. The procedures of employer verification developed by the Election Officer were sufficient to produce reliable verification of the necessary information. The cover letter explained that the request came from a Court-appointed officer and notified the employer of the importance of a timely and accurate response. The letters were directed to specific employer representatives, identified as the appropriate representative to provide the requested verification. Furthermore, this method of seeking earnings verification is consistent with challenged ballot methods that were developed and utilized in the delegate election process in 1996 and in 1991.

The request by the Hoffa slate for a further level of documentation would have delayed or

[35] Based on the IBT's dues structure, the Election Officer determined that members who had received gross earnings of at least $50 between November 1 and December 9, 1996, would be resolved as eligible. Conversely, verification that the employee had no earnings or earnings less than $50 during this period would render the member ineligible.

hindered the transmission of employer verification without any significant increase in the accuracy of the information that was received. Employers have been more willing and able to cooperate in providing information when a simple verification of earnings is requested rather than a hard copy of employee personnel or wage records. In order to resolve challenged ballots in which adequate member earnings were an issue, it was necessary for the Election Officer to contact approximately 1000 employers of IBT members throughout the United States and Canada. The Election Officer quite properly retained the discretion to adopt procedures for most accurately and efficiently securing this information. There is nothing presented by the protester that indicates that the procedures adopted violated the ***Rules*** or exceeded the discretion vested in the Election Officer.

To the extent that the protester has sought to challenge the procedures utilized by the Election Officer in resolving challenged ballots, this aspect of the protest is denied.[36]

C. Protests Which Are Barred by Res Judicata

In addition to the issues discussed above, the protesters seek to raise other complaints which were litigated and conclusively decided in previous decisions. The Election Officer will not reopen disputes which have been pursued to a final and binding decision, but instead gives them preclusive effect.

Article XIV, Section 2(j) of the ***Rules*** provides that if "no timely appeal is taken from the determination of the Election Officer or her representative, that determination shall become final and binding." Section 2(l) similarly provides that a decision of the Election Appeals Master is "effective and binding as of its issuance unless it is stayed or overturned by the Court."[37] Nothing in the ***Rules*** affords a protester the right to rechallenge findings of fact or conclusions previously made. Once an issue has been raised and decided by the Election Officer (or, if an appeal is filed, by the Election Appeals Master), the findings of the Court officers are conclusive and the principle of res judicata applies.[38]

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[36] Post-33 filed by Jerry Halberg alleges a violation in the refusal of the Election Officer to go behind the TITAN records in resolving eligibility. To the extent that this refers to the class-based nature of the per se ineligibility determinations, this is denied for the reasons set forth above. To the extent Mr. Halberg believed that the Election Officer was not planning to engage in the process of verifying earnings for challenged members on check-off, it is clear that such a procedure has, in fact, been followed, and the protest is therefore moot.

[37] Similar provisions applying to post-election protests are found at Article XIV, Sections 3(g) and (i) of the ***Rules***.

[38] Res judicata is the principle of law by which a final judgment by a court of competent jurisdiction is conclusive upon the parties in subsequent litigation involving the same cause of

During the 1991 International officer election, then-Election Officer Holland was presented with the same issue. In Durham, Post-75-IBT (January 10, 1992), an unsuccessful candidate in the election filed a post-election protest seeking to relitigate findings of fact and conclusions previously made by the Election Officer as part of pre-election protests. The Election Officer determined that protests which had become final by operation of the ***Rules*** could not be revisited:

> To the extent that Durham seeks to resurrect the issue previously raised by him . . . that matter has been decided, is res judicata and is not subject to further protest or appeal litigation.

Here, as described below, the protester seeks to relitigate several issues on which they have had a fair opportunity to present such facts and arguments that they deemed appropriate. All of those cases resulted in final and binding decisions. None of them was submitted to the District Court for review. The protests which the Election Officer has previously decided and which resulted in final decisions must be deemed conclusive as to the facts and issues raised, and will not be re-examined on the merits here.

1. Decision Not to Conduct a Raw Count of Ballots

Several aspects of the post-election protests pertain to the Election Officer's alleged failure to conduct a "raw count" of ballots prior to the time they were fed through the voting machines. Thus, the protester in Post-37 alleges that the Election Officer failed to insure adequate safeguards to guarantee the integrity and accuracy of the vote count by, among other things:

- failing to count the ballot return envelopes as they were received from the post office (¶ 2(e));
- failing to count the ballot return envelopes for each local union before preceding with other steps in the vote count process (¶ 2(f)); and
- failing to reconcile the number of ballots received from the post office with the post office receipts on a daily basis (¶ 2(s)).

These complaints have already been examined and adjudicated. In her decision on remand in Post-26, the Election Officer described at length how the question of a count of the number of ballots received, prior to actually tallying the votes, was considered and rejected.

> [T]he Election Officer made a conscious decision not to perform a "raw count" of ballots or ballot envelopes. She determined that a raw count by hand, involving hundreds of temporary workers, would not only be

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action. See Greenberg v. Board of Governors, 968 F.2d 164, 168 (2d Cir. 1992). The doctrine is firmly grounded on the need for finality in formal proceedings and the concept that, at some point, disputes over facts or the application of laws must come to an end.

> time consuming and cumbersome, but would inevitably lead to errors. The Election Officer determined that such efforts would not lead to an election that was any more free or fair than an election in which different safeguards were used.

Id. at 17. The Election Officer stated that she had determined that the principal safeguard of the ballots is "physical security coupled with the right to have observers with the ballots at all times . . . ." The Election Officer noted that her practice was consistent with that followed during the 1991 IBT International officer election. The Election Officer further pointed out that neither the ***Rules*** nor the *Count Rules* require conducting any raw count, and that the failure to have a raw count procedure was never mentioned by the protester in objections to the District Court. She concluded:

> The District Court has already found that the *Count Rules* "translate the Election Officer's concerns regarding the accuracy and integrity of the ballot-counting process into concrete procedures designed to insure the accuracy and integrity of the ballot-counting process." Since the Court found that the *Count Rules* sufficiently protect the integrity of the count, and since the protester has failed to cite any rule or law which has been violated, the decision of how best to safeguard the ballots is a matter committed to the Election Officer's discretion, and the unsubstantiated arguments here cannot sustain the protest.

Id. at 18. On appeal, the Election Appeals Master affirmed, stating:

> Such matters are, however, reserved for the discretion of the Election Officer under the Rules, and will not be disturbed on appeal absent a showing of abuse of discretion. The Election Officer's account of the ballot counting procedure is comprehensive and convincing, and I am satisfied that her amplification of the record in the remand decision has demonstrated that the process followed in no way undermined or compromised the integrity of the election.

97 - Elec. App. - 312 (KC), at 4.

Here, while the allegations are worded differently, they focus on exactly the same issue. The alleged failure to count business reply envelopes as they are received from the post office or before proceeding with other steps in the count is the same complaint as the alleged failure to produce a raw count of business reply envelopes prior to actually tallying the votes. Similarly, a reconciliation of the number of ballots received with the post office receipts on a daily basis is simply another way of insisting on a daily raw count of the number of business reply envelopes received from the post office. Each of these complaints is conclusively resolved by the Election Officer's decision in Post-26, upheld by the Election Appeals Master, which found that the

Election Officer acted within her authority in deciding not to count the business reply envelopes prior to tallying the vote. The protester did not file any application to the District Court seeking to vacate the Election Appeals Master's decision, and the issue is now res judicata. The protester may not seek to reopen issues which were fully litigated and conclusively resolved in an earlier decision. These aspects of the protest are therefore denied.

2. Listing Challenged and Void Ballots on Tally Sheets

The Hoffa slate again protests that the local union tally sheets did not initially list the number of challenged and void ballots. Post-37, ¶ 2(g). This issue was conclusively resolved in Post-26. There, the Election Officer noted that the tally sheets generated by the counting machines do not report challenged and void ballots, and so the information had to be manually added. The first few tally sheets released on December 10 did not include that information, but all remaining tally sheets did include that information and the initial tally sheets were revised and reissued the next day. The Election Appeals Master noted that the information had already been provided. In Re: Hoffa, 96 - Elec. App. - 310 (KC), at 2. No new evidence has been presented to justify reopening the final and binding decision on this issue.

3. Counting Locals Supporting Carey on December 10

The Hoffa slate alleges that the Election Officer deliberately counted local unions expected to support Mr. Carey during the first day of the vote count. Post-37, ¶ 2(i). This issue has already been raised by the protester and conclusively addressed in Post-26. There, the Election Officer noted that, pursuant to Article VI, Section 4 of the *Count Rules*, she was to try to give advance notice of the tentative date and shift of the commencement of the processing of the ballots cast by members of a particular local union. The decision continued:

> [T]he notice did not state, nor did the Election Officer advise the parties, that the local unions listed would be counted in numerical order. In fact, the notices stated that the schedule provided to the candidates is subject to "the efficient and orderly processing of the ballots." Thus, the order in which local unions were processed was determined by the administrative needs of the Election Officer to ensure that the process was efficient and orderly, i.e., that the counting rooms are remarking/remaking ballots and putting the ballots through the counting machines efficiently. It was solely within the Election Officer's discretion to determine the order of such processing to accomplish these goals.

Id.[39] The Election Officer concluded, "The choice of local unions to be counted was in no way

[39] Indeed, the posted notices expressly stated, "[T]he foregoing list does not necessarily indicate the order in which ballots cast by the members of the above-listed Local Unions will be counted."

based upon consideration as to who the voters in that local union might favor." Id.

On appeal, the Election Appeals Master summarily affirmed, stating that the complaint was "without merit, in that no evidence whatsoever is presented to show any injury to the integrity of the count process." In Re: Hoffa, 96 - Elec. App. - 310 (KC) (December 24, 1996). The protester did not file any application to the District Court to appeal or vacate the Election Appeals Master's decision, which is now final and binding.[40]

The protester has not presented newly discovered evidence or any basis for disturbing the final decision of the Election Appeals Master, and this complaint may not be relitigated. The protest on this issue is therefore denied.[41]

4. The Storage of Opened, Uncounted Ballots Overnight on December 10

The Hoffa slate asserts that the count was interrupted on the evening of December 10, which resulted in the ballots from several local unions being left open but uncounted overnight. The implication is that they were susceptible to tampering during that time. Once again, this issue was raised by the protester and conclusively addressed in Post-26. There, the Election Officer noted that by the end of the evening on December 10, the ballots for six local unions had been processed but could not be fully counted by the 11:00 p.m. curfew imposed by the 4-H Center:

Therefore, with observers present, the ballots processed for these local unions were brought to the ballot security room for the night. All ballots were locked and secured in the two ballot security rooms, guarded by an Election Office security guard for the entire night. The Carey and Hoffa slates each had observers sitting a few feet from the door of the ballot security rooms for the entire night. No one has presented any evidence that suggests that the ballot security rooms were not secure during the night.

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[40] Moreover, the factual predicate of the complaint is simply not true. The computer logs of the electronic counting devices show that on the first day of the count, December 10, the votes from 14 local unions were counted: eight favored Mr. Hoffa, six favored Mr. Carey. In his interview, Mr. Murphy now alleges that Local Union 63 in the Western Region was counted early because it was a Carey local. The computer logs for the count machines, however, show that the ballots from Local 63 were counted between 9:52 p.m. and 10:48 p.m. on December 10, after two other locals with higher local union designation numbers, Locals 70 and 78, both of which strongly supported Mr. Hoffa.

[41] The protester also alleges that the Election Officer promised to count the ballots from Local 107, a pro-Hoffa local, first on December 11, but instead first counted the ballots from Local 115, a pro-Carey local. This issue has been raised on appeal in previous protests before the Election Appeals Master but has never been ruled to have merit. Moreover, it could not have affected the outcome of the election.

Id. On appeal, the Election Appeals Master again summarily affirmed, finding the complaint to be "without merit, in that no evidence whatsoever is presented to show any injury to the integrity of the count process." In Re: Hoffa, 96 - Elec. App. - 310 (KC).

The protester has again failed to present any reason why the previous decision should not be given res judicata effect. The matter having been fully and fairly litigated previously, the protest as to this issue must be denied.

5. The Number of Ballots Received from the Postal Service

Although the issue has already been litigated and resolved, the Hoffa slate continues to allege that there is a significant discrepancy between the number of ballots received as announced by the Election Officer based on postal receipts, and the total number of ballots counted, challenged and declared void during the vote count.

This issue first arose during the appeal of the original decision in Post-26. In a remand decision in Post-26, the Election Officer fully addressed this issue. She reviewed in detail the procedures used for picking up the business reply envelopes, and the constant presence of candidate observers who made their own independent count of the number of trays picked up every day. The Election Officer explained that she had determined not to rely on any count of ballots or business reply envelopes done by an outside agency not under her control. At the request of the Election Officer, the U.S. Postal Service ("USPS") conducted its own investigation and determined that three separate errors resulted in overcharging the Election Officer for 15,200 business reply envelopes. Based on that investigation, the post office refunded the Election Officer $6,384 for that number of business reply envelopes. An additional error in the Election Officer's calculation of the postage receipts was also explained. As stated in the decision:

Thus, according to the charges now assessed by the Postal Service, it delivered

> 467,694 BREs [business reply envelopes] to the Election Office through December 10. This number is only 442 larger than the count made by the Hoffa campaign; 894 larger than the count by the Carey observers; and 2,047 greater than the number of ballots cast in the U.S. as announced by the Election Officer on December 14.

Id. at 10. The resulting discrepancy was less than 1/2 of 1%, which could be explained by other factors. The Election Officer concluded:

The Election Officer's report of December 14 and the above analysis of postal

> receipts are sufficiently close to demonstrate conclusively that there are no ballots "missing," and that the claims of such missing ballots are without any foundation. The investigation undertaken by the Postal Service further supports the Election Officer's original determination that a number based on the postal receipts

> "is not an accurate or verified count of the ballots actually received." There is only one verifiable count of the number of ballots received: the number of the votes tallied by the electronic counting devices, added to the number of ballots declared challenged or void.

The guarantee that all ballots received from the USPS were properly stored and counted does not come from a postal receipt or a postal count of envelopes, but from the physical security and the right of observers to view and accompany the ballots as they moved from the post office to the Ballot Security Rooms at the count site.

Id. at 12.

On appeal, the Election Appeals Master affirmed the Election Officer in all respects. In Re: Hoffa, 97 - Elec. App. - 312 (KC). Noting the protester's procedural complaints, he declined to address them "because the Hoffa slate has not made the slightest attack upon the completeness and integrity of the Election Officer's investigation and findings." Summarizing the evidence related to the postal receipts and the post office's own investigation, the Election Appeals Master concluded:

The Hoffa slate has not made the slightest showing that the Election Officer failed to conduct a competent, honest and convincing investigation on the discrepancy issue or produced any evidence casting doubt on the findings of that investigation.

Id.

Here, the Hoffa slate raises the same issues conclusively litigated and decided as part of Post-26. See Post-37, ¶ 2(b), (t). However, the "evidence" presented is not newly discovered, but are factual allegations or argument which were either presented during the litigation of Post-26, or which were in the protester's possession at that time. None of these factual allegations or arguments is sufficient to reopen the determination made in Post-26.

In his position statement in support of Post-37, the protester again complains about the post office investigation, alleging it was not done by a postal inspector, it did not result in a written report, and the explanation is not credible on its face. Each of these arguments was made in submissions on the appeal of Post-26 or at the time of argument of the appeal. The Election Officer's investigation in this matter was made immediately following the recognition of the discrepancy. The postal manager in charge of the receipt of the IBT mail at the Bethesda post office, Mr. King, conducted his own investigation. He provided the Election Officer with a chart showing his notes and calculations, upon which the refund was based. A copy of this document was provided to the protester in the course of the appeal of Post-26. The soundness

of the postal service's analysis is also corroborated by the tray count performed independently by the Hoffa and Carey slate observers at the post office each day. The Hoffa slate has not produced any newly discovered evidence to undermine or contradict the post office's findings on this issue, or to justify reopening the previous decision.[42]

In his statement of position, the protester argues that the Election Officer's explanation of the discrepancy involving the postal receipts is undermined by the tray count performed by a Hoffa observer on December 3. This is not newly discovered evidence, but a newly created argument. The information on which it is based was within the protester's possession at the time of the remand decision. James Woodward's notes were provided to and considered by the Election Officer prior to issuance of the remand decision in Post-26. Even on its merits, the argument must be rejected.

According to Mr. Woodward, a key Hoffa slate observer who accompanied the ballots from the post office to the count site most days, he did a local-by-local count of trays and partial trays on December 3, while the ballot trays were in the ballot security rooms. According to the protester, multiplying the number of trays he counted on December 3 by 400 gives a total of 517,755 business reply envelopes. Based on this, the Hoffa campaign asserts that there were more business reply envelopes at the count site than the number accounted for by the Election Officer.

This argument rests on the faulty assumption that the trays continued to have 400 business reply envelopes in them. This is not accurate. By December 3, many of the ballots received by the Election Officer had been taken out of the trays received from the postal service to be sorted by local union and later to be placed in alphabetical order. Election Office workers made no attempt to keep 400 ballots to a tray. Indeed, count workers intentionally did not fill trays so that during the sorting process, envelopes received later could be integrated with ease. The number of trays of ballots after they were sorted by the Election Office thus cannot be compared to the number of trays as received from the post office, and the proffered evidence is

[42] Mr. Woodward told the Election Office investigator that there could not have been any confusion between the undeliverable mail and the BREs with ballots mailed by IBT members, because he and the Carey observer carefully counted the trays at the post office and again at the Count Site, and the two types of mail were never combined. This is not inconsistent with the post office's investigation, which found that trays of undeliverable mail were on two occasions mistakenly billed to Election Office representatives as delivered mail. The fact that the candidate observers always correctly distinguished between the two types of trays after they were given to the Election Officer does not mean that the post office was similarly successful in distinguishing between them for billing purposes. This information does not in any way undermine the Election Officer's previous conclusion.

thus irrelevant.

This evidence and a continued claim of discrepancy are also very much at odds with the Hoffa campaign's evidence as to the ballots received from the post office. Mr. Woodward was responsible for the count of trays as received from the post office as well as this December 3 count of trays. According to the protester's logic, Mr. Woodward would have known on December 3 that his tray count at the count site had yielded some 40,000 more business reply envelopes than he had counted as received from the post office. It is inconceivable that any concern over such a discrepancy would not have been immediately communicated to the Election Officer or her representatives. Instead, the issue was raised for the first time on February 11, 1997, as further argument in a protest that has already been vigorously litigated. Clearly, the protester understood that the December 3 tray count was simply not comparable to the tray counts from the postal service. As noted above, that estimate was extremely close to the numbers announced by the Election Officer at the conclusion of the count of unchallenged ballots on December 14.

The protester has presented no evidence which would lead the Election Officer to reopen her previous decision on this question, one which was thoroughly investigated and upheld by the Election Appeals Master. This issue was conclusively litigated in Post-26, and the renewed protest on this issue is denied.

6. Allowing Observers to Travel with the Ballots from a Local Union

The protester alleges that candidate observers were not allowed to follow the ballots for one local union from one room to another, through the complete counting process. Post-37, ¶ 2(h). This issue was previously argued to the Election Appeals Master, who rejected the contention, stating, "In light of the provision for roving observers, this complaint is groundless." In Re: Hoffa, 97 - Elec. App. - 312 (KC), at 5. No appeal was taken from that decision, which is now final and binding.

Here, the protester presented the testimony of Mr. Szymanski, who states that he was told by Mr. Marks that observers could not follow the ballots of a particular local from room to room. Mr. Marks was interviewed on this issue and states that he did not make such a statement to Mr. Szymanski. The Election Officer herself told slate representatives that observers could follow a local so long as the number of observers within a room was kept within the limits. Moreover, neither the Election Officer nor her senior staff ever articulated or enforced any prohibition on following the ballots. To the contrary, observers from all slates freely entered and left the processing and count rooms, and accompanied carts of ballots from room to room. The only restriction placed on slates was that they could not have too many observers in the room at one time. See Part I(A)(8), above. Whatever was said between Mr. Marks and Mr. Szymanski

had no effect on the ability of observers to observe all aspects of the count or their practice of freely moving to different rooms. The protester has not offered any reason for not giving the previous decision of the Election Appeals Master preclusive effect on this issue. The protest as to this issue must be denied.

7. Incorporation of Previous Protest Decisions

In Post-35, the protester incorporates by reference 32 pre-election protests, all of which had been previously investigated, decided and, where appropriate, remedied by the Election Officer during the campaign period. The protester states:

> In some of these cases, the Election Officer, despite overwhelming evidence failed to find any violation. In other cases, the Election Officer finally found a violation but the remedy failed to erase the effect of the violation. These violations and their lingering, unremedied effects affected the outcome of the election in each of these three regions [Canada, East and South].

In Post-37, the protester incorporates the allegations of Post-35 by reference, incorporates by reference all pre-election protests, and further specifies an additional 21 pre-election protests to be incorporated. Although the protester did not submit any legal argument on this point, the Election Officer assumes that the protester's argument is the same as that articulated in connection with Post-35.

Of the 53 pre-election decisions cited in the two protests, 21 were denied in their entirety by the Election Officer.[43] The protesters appealed 11 of the 21 protests denied.[44] With one

[43] Hoffa, P-870-PACONF-SCE (September 6, 1996); Hoffa, P-871-IBT-EOH (September 13, 1996); Hoffa, P-943-IBT-MGN (September 16, 1996); Hoffa, P-954-LU463-EOH (September 23, 1996); Hoffa, P-1137-PACONF-CLE (November 8, 1996); Hoffa, P-1181-IBT-EOH (November 18, 1996); Hoffa, P-1009-IBT-CSF (October 17, 1996); Hoffa, P-1114-LU676-PNJ (November 5, 1996); Hoffa, P-264-IBT-SCE (January 11, 1996), remanded, 96- Elec. App. - 69 (KC) (February 1, 1996), decision on remand (April 2, 1996), aff'd, 96 - Elec. App. - 69 (KC) (April 22, 1996); Hoffa et al., P-310-IBT-SCE (February 1, 1996), aff'd, 96 - Elec. App. - 97 (KC) (February 23, 1996); Hoffa, P-315-IBT-SCE (February 27, 1996), aff'd, 96 - Elec. App. - 119 (March 11, 1996); Hoffa, P-792-IBT-EOH (June 14, 1996), aff'd, 96 - Elec. App. - 205 (KC) (May 2, 1996); Hoffa, P-796-IBT-SCE (June 20, 1996); Hoffa, P-808-IBT-SCE (June 28, 1996), aff'd, 96 - Elec. App. - 213 (KC) (July 17, 1996); Volpe et al., P-828-IBT-SCE (July 11, 1996), aff'd, 96 - Elec. App. - 218 (KC) (July 22, 1996); Hoffa, P-838-IBT-MGN (July 11, 1996), aff'd, 96 - Elec. App. - 214 (KC) (July 17, 1996); Hoffa, P-1019-IBT-NYC (October 23, 1996), aff'd, 96 - Elec. App. - 267 (KC) (November 8, 1996); Hoffa, P-843-IBT-NYC (July 31, 1996) (decision on remand) (August 21, 1996), aff'd, 96 - Elec. App. - 230 (KC) (September 3, 1996); Hoffa, P-996-LU436-CLE (September 23, 1996), aff'd, 96 - Elec. App. - 245 (October 3, 1996); Hoffa, P-093-IBT-PNJ (October 12, 1995), aff'd in part, rev'd in part, 95 - Elec. App. - 31 (KC) (October 31, 1995); Hoffa, P-1245-IBT-NYC (February 21, 1997).

exception, the Election Appeals Master affirmed the Election Officer in all respects on each of the denied protests.[45]

In 27 of the 53 cases, the Election Officer granted the protests in whole or in part.[46] Of those 27 granted protests, only 18 were appealed to the Election Appeals Master.[47] With the

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[44] Hoffa, P-264; Hoffa, P-310; Hoffa, P-315; Hoffa, P-792; Hoffa, P-808; Volpe, P-828; Hoffa, P-838; Hoffa, P-1019; Hoffa, P-843; Hoffa, P-996; Hoffa, P-093.

[45] In Hoffa, P-093-IBT-PNJ, the Election Officer ruled that a newspaper article in the *Springfield News Leader* for which an employee of the IBT Communications Department responded to questions, and three press releases and a flyer produced by the IBT Communications Department did not constitute the use of union resources to support Mr. Carey. The Election Appeals Master affirmed the Election Officer's decision, except with regard to the flyer which he found was impermissibly critical of Mr. Hoffa's candidacy. As a remedy for that violation, the Election Appeals Master directed the Carey campaign to reimburse the IBT for the costs of the preparation and dissemination of the flyer. 95 - Elec. App. - 31.

[46] Walton, P-128-LU743-CHI (October 12, 1995); Hoffa, P-214-IBT-SCE (November 28, 1995); Hoffa et al., P-313-LU728-SEC (February 26, 1996); Hoffa, P-812-IBT-NYC (August 16, 1996); Passo, P-921-LU705-CHI (September 25, 1996); Price et al., P-971-LU327-SCE (October 2, 1996); Fiori, P-988-LU726-CHI (October 11, 1996); Hoffa, P-1049-LU104-RMT (November 1, 1996); Hoffa, P-1276-LU115-PNJ (November 27, 1996); Hoffa, P-1279-LU50-NCE (November 25, 1996); Martin et al., P-010-IBT-PNJ (August 17, 1995), aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995); Hoffa, P-814-LU398-PGH (July 1, 1996), aff'd, 96 - Elec. App. - 212 (KC) (July 17, 1996); Steger, P-1020-IBT-PNJ (October 31, 1996), aff'd, 96 - Elec. App. - 271 (KC) (November 12, 1996); Castellano, P-1070-LU938-CAN (October 22, 1996), aff'd, 96 - Elec. App. - 263 (November 4, 1996), aff'd, 1996 WL 728696 (S.D.N.Y. December 13, 1996); Giacumbo et al., P-001-IBT-PNJ (September 29, 1995), aff'd, 96 - Elec. App. - 32 (KC) (November 1, 1995), supplemental decision aff'd in part, rev'd in part, 96 - Elec. App. - 40 (KC) (December 5, 1995); Halberg, P-259-IBT-SCE (January 2, 1996), aff'd, 96 - Elec. App. - 58 (KC) (January 23, 1996); Lopez, P-287-LU743-CHI (January 22, 1996), aff'd, 96 - Elec. App. - 73 (KC) (February 13, 1996); Passo et al., P-469-LU705-CHI (February 29, 1996), aff'd in part, remanded in part, 96 - Elec. App. - 124 (KC) (March 13, 1996), (decision on remand) (March 15, 1996); Lopez, P-513-LU743-CHI (March 20, 1996), aff'd, 96 - Elec. App. - 155 (KC) (April 13, 1996); Hoffa, P-689-LU1034-SEC (April 4, 1996), aff'd, 96 - Elec. App. - 176 (KC) (April 22, 1996); Hoffa, P-925-IBT-MGN (September 20, 1996), aff'd, 96 - Elec. App. - 244 (KC) (October 3, 1996); Hoffa et al., P-984-LU748-CSF (October 17, 1996), aff'd, 96 - Elec. App. - 261 (KC) (November 1, 1996); Hoffa et al., P-1034-JC1-CLE (October 17, 1996), aff'd, 96 - Elec. App. - 260 (KC) (October 30, 1996); Hoffa, et al., P-1108-LU174-PNW (November 8, 1996), remanded, 96 - Elec. App. - 284 (KC) (November 25, 1996), (decision on remand) (December 5, 1996), aff'd, 96 - Elec. App. - 307 (KC) (December 17, 1996); Middleton, P-1326-LU848-CLA (January 21, 1997), remanded, 97 - Elec. App. - 317 (KC) (February 25, 1997), (decision on remand) (May 7, 1996), aff'd, 97 - Elec. App. - 321 (KC) (May 27, 1997); Cipriani et al., P-420-LU391-SEC (March 1, 1996), aff'd, 96 - Elec. App. - 123 (KC) (March 13, 1996).

exception of four protests,[48] the Election Appeals Master affirmed the protests in all respects. Of the remaining five cases, one was settled without formal decision and one was withdrawn by the Hoffa slate. Two others were appealed to the Election Appeals Master by other interested parties, not by Mr. Hoffa, the Hoffa slate or any party aligned with his candidacy. In those cases, the decisions of the Election Officer were affirmed by the Election Appeals Master. In none of the cases cited above did the protesters seek review in the United States District Court. All of the protests cited resulted in final and binding decisions by the Election Officer and/or the Elections Appeals Master.

As to those protests which were denied by the Election Officer, a protester may not allege that the outcome of the election was affected by pre-election protests which were denied by the Election Officer. Such cases cannot have any effect on the outcome of the election because there is no violation of the ***Rules***. Durham.

The same result is required with respect to those protests where the Election Officer found a violation and formulated a remedy. In each case, the presumption exists that the remedy ordered was appropriate and sufficient to remedy the violation in question. Durham, supra. In certain cases, the protesters challenged the effectiveness of the remedy and appealed to the Election Appeals Master. In most of those cases, the Election Officer was affirmed as to the remedy. In those cases where the Election Appeals Master ordered a different remedy, then the Election Appeals Master's remedy must be presumed to have effectively addressed the violation. In either case, the principles of res judicata apply to these protests as well as those

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[47] Martin, P-010; Hoffa, P-814; Steger, P-1020; Castellano, P-1070; Giacumbo, P-001; Halberg, P-259; Lopez, P-287; Passo, P-469; Lopez, P-513; Hoffa, P-689; Hoffa, P-865; Hoffa, P-925; Hoffa, P-984; Hoffa, P-1034; Hoffa, P-1108; Middleton, P-1326; Cipriani, P-420; Hoffa, P-942.

[48] In Hoffa, P-1108, although the Election Officer found a violation and granted the protest in part, the Election Appeals Master remanded the decision for more investigation and a determination if a further remedy was needed. On remand, the Election Officer found no further remedy was needed, and that decision was affirmed by the Election Appeals Master. In Giacumbo, P-001, the protest was granted by the Election Officer. The Election Appeals Master affirmed the decision but ordered a further remedy. In his supplemental decision, the Election Appeals Master directed the Carey campaign to make a larger reimbursement to the IBT than that determined by the Election Officer in her supplemental decision. In Passo, P-469, the Election Officer granted the protest, but the Election Appeals Master remanded the decision for a stronger remedy against Local Union 705 Secretary-Treasurer Gerald Zero. On remand, the Election Officer ordered a stronger notice mailed to all local union members. In Middleton, P-1326, the Election Appeals Master remanded the case for additional investigation. The Election Officer affirmed her original decision and the Election Appeals Master affirmed.

which the Election Officer denied.

Giving the protest its most liberal reading, the protester is apparently arguing that in retrospect, the remedies ordered in those cases can now be seen to be inadequate, and the violations in those cases, taken together, were sufficient to affect the outcome of the election. As noted below, supervision of a union election establishes a presumption of fairness and regularity. That presumption can only be rebutted by evidence that the outcome may have been affected. No such evidence has been presented by the protester.

The Election Officer has reviewed the decisions in each of the protests specified by the protester where a remedy was ordered. She concludes that treated separately or together, each of those remedies was adequate to address the violations found, and that none of the remedied violations, even taken together, were in any way sufficient to have affected the outcome of the election. To the contrary, the violations were part of a vigorous and tumultuous campaign in which both major candidate slates were found to have committed violations of the election rules and were subjected to remedies of varying severity.

The protester raises a specific argument as to the alleged inadequacy of the remedy in only one case. Hoffa, P-942-LAB-CAN (October 17, 1996), aff'd, 96 - Elec. App. - 259 (KC) (October 26, 1996), aff'd, 945 F. Supp. 609 (S.D.N.Y. 1996). There, Mr. Hoffa and a group of supporters were denied access to the parking lot of the Labatt Brewing Company in LaSalle, Quebec, Canada. Although the employer ultimately complied with the District Court's order enforcing the Election Officer's decision, the protester now argues that the remedy was too late to be effective, and states that the company's action "sent an unmistakable message" to the IBT members who worked there.

A review of the case file in P-942 shows that the employer denied access to Mr. Hoffa on September 6, and Mr. Hoffa filed a protest the same day. The Election Officer investigated and issued her decision on October 17, finding that the employer violated the ***Rules*** and ordering Labatt to provide access. When the company refused to comply, the Election Officer referred the matter to the United States Attorney for enforcement. In the meantime, Mr. Hoffa appealed to the Election Appeals Master, arguing that a different remedy was now called for. The Election Appeals Master conducted a hearing on October 24 and issued his decision affirming the Election Officer on October 26.

On November 1, the government filed a motion to enforce the Election Officer's decision, and the District Court entered an Order to Show Cause that same day. The Court heard argument on the issue on November 4 and 6. On November 8, the District Court issued a 39-page decision and order, ordering Labatt to allow access to Mr. Hoffa within 24 hours. 945 F. Supp. 609.

Prior to the District Court's decision and order, several conversations were held between Bradley T. Raymond, Mr. Hoffa's counsel, and Protest Chief Benetta Mansfield; and between Mr. Raymond and Assistant U.S. Attorney Karen Konigsberg. On November 1, Mr. Raymond advised Ms. Mansfield that Mr. Hoffa would be in Quebec on November 4, and could campaign at Labatt on that date if permitted access to the parking lot. Ms. Mansfield communicated this information to Ms. Konigsberg, who attempted to get counsel for Labatt to agree to permit Mr. Hoffa access on that date. Labatt did not respond.

On November 8, Mr. Raymond left a message for Ms. Konigsberg. When Ms. Konigsberg returned Mr. Raymond's call, he stated that he informed Ms. Mansfield that "we have troops massed on the Detroit/Windsor border ready to cross." Later that day, the District Court's decision was issued. Ms. Konigsberg immediately telephoned counsel for Labatt, who told Ms. Konigsberg that the company would comply with the order. Counsel for Labatt asked that Mr. Hoffa advise the company when he was coming to campaign so that they could advise local personnel. Later on November 8, Ms. Konigsberg telephoned Mr. Raymond and conveyed this information. Mr. Raymond then stated that Mr. Hoffa had been in Quebec on Monday, November 4, and he expected to campaign at Labatt then, but could not. Mr. Raymond stated that he would make other arrangements and would let Ms. Konigsberg know. Mr. Raymond never called Ms. Konigsberg about campaigning at Labatt again.

The District Court's order and Labatt's agreement to comply with the order occurred on November 8, 31 days prior to the ballot count and during a period of vigorous campaigning. The Election Officer issued decisions on numerous parking lot access cases even after November 8, ordering access be given to IBT members.[49] Mr. Hoffa, according to his counsel, was prepared to campaign at Labatt on November 4 and again on November 8. The company had denied access to its property on a nondiscriminatory basis. As a result of the decisions of the Election Officer, the Election Appeals Master and the District Court, Mr. Hoffa was granted access on a timely basis. It was solely his decision not to take advantage of that access. There is no evidence of any effect on the outcome of the election.

In Post-37, the protester also incorporates by reference two protests pending at the time, P-1345 and P-1346. On March 4, 1997, the Election Officer issued her decisions in those two

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[49] See, e.g., Maney, P-1116-LU807-NYC (November 15, 1996) (access to Airborne facility in Elizabeth, New Jersey); Feeley, P-1139-LU807-NYC (November 15, 1996) (access to Airborne facility at John F. Kennedy Airport); Chentnik, P-1222-LU325-CHI (November 22, 1996) (access to Cassens Transport facility); Baker, P-1229-LU63-CLA (November 25, 1996) (access to Franklin Brass Manufacturing Co.); Connell, P-1283-LU200-NCE (November 25, 1996) (access to Seneca Foods).

cases. Daugherty, P-1345-IBT-NYC (March 4, 1997), aff'd, 97 - Elec. App. - 319 (KC) (March 17, 1997); and Rogers, P-1346-IBT-NYC (March 4, 1997), aff'd, 97 - Elec. App. - 320 (KC) (March 17, 1997). The protesters did not seek review in the District Court, and those decisions are final and binding.

In summary, there is no evidence to support a finding that the conduct of the election by the Election Officer or her representatives violated the Consent Decree or any of the applicable election rules. All of the protests described above are accordingly DENIED.

II. ALLEGATIONS OF IMPROPER CONTRIBUTIONS

The Election Officer's investigation of prohibited contributions to the Carey Campaign began after reviewing the December 1996 Campaign Contribution and Expenditure Reports ("CCERs") from Teamsters for a Corruption Free Union ("TCFU"), a committee of the Carey Campaign. The investigation continued following receipt of the protest in Post-39, filed by the Hoffa slate after inspection of the CCERs filed by TCFU. The protest alleges that the large contributions made to TCFU by nonmembers, totalling more than $200,000, were in fact illegal employer contributions that were paid by TCFU directly to the Carey Campaign's consulting firm in order to fund key anti-Hoffa mailings around the time ballots were mailed. The protest further contends that Nathaniel Charny, an attorney in the law firm of Cohen, Weiss and Simon, improperly solicited contributions. It also asserts that Gene Moriarty, TCFU treasurer, may have violated the ***Rules*** by signing inaccurate CCERs.

In subsequent submissions, the protester alleges that the TCFU contributors were all employers and provides information in support of the allegations. It further alleges that the contribution of Barbara Arnold was the product of a scheme by which monies paid by the IBT to her husband's business, the Share Group, were then channelled through her account to be given to the Carey Campaign. The protester also alleges that these contributions affected the outcome of the election. As a remedy, the protester has requested in different submissions disqualification of the entire Carey slate and/or a rerun election.

In Post-40, the Hoffa slate alleges that the Share Group engaged in fundraising work for the Carey Campaign which was not reported. It argues that since the Campaign did not pay for the work, any contributions obtained from the telemarketing efforts are illegal employer contributions and must be returned. Post-40 also alleges that millions of dollars of IBT money were spent to further Mr. Carey's re-election. It claims that the most recent financial report shows the IBT spent $17 million more in the third quarter of 1996 than it did in the same period in 1995. Since only $7 million was spent on the IBT convention and no major contracts were under negotiation, "[i]t's obvious that the money was spent on Mr. Carey's campaign for re-

election."[50]

Post-42, as described above, realleges certain allegations from previous protests, including those in Post-39 concerning contributions to TCFU.

In Post-43, Mr. Hoffa questions the source of the funds used to return the contributions to TCFU contributors and urges the Election Officer to determine the source of the $220,000 in repaid contributions.

In Post-44, Mr. Hoffa alleges that Teamsters for a Democratic Union ("TDU"), an independent committee that supported the Carey slate, raised funds from employers. The protester requests a full investigation of all contributions received by TDU during the 1996 election.

The investigation has involved extensive interviews with dozens of witnesses, some of whom were interviewed several times. Election Office investigators examined thousands of pages of documents from the Carey Campaign, the IBT, various campaign and IBT vendors, and others. As some witnesses failed to cooperate voluntarily, the Election Officer sought and obtained the Court's authority to issue investigatory subpoenas. As the investigation widened, other potential violators of the ***Rules*** were served with a copy of the protest and invited to make submissions of evidence and argument. The protester and the various respondents filed a number of position statements on various issues.

Because of the unusual circumstances of this protest, the discussion below is divided into four sections. Part A provides a detailed statement of the facts. Part B describes the Election Officer's investigation. Part C analyzes the facts and concludes that the ***Rules*** were violated. Part D discusses whether the violations may have affected the outcome of the election. A separate Part III contains orders and remedies necessary to address the violations and to safeguard the integrity of the election process, and refers evidence of additional potential wrongdoing to the Independent Review Board ("IRB") and the U.S. Attorney's Office.

A. Statement of Facts

1. Carey Campaign Personnel and Vendors

Mr. Carey became a candidate for reelection as general president in October 1994.[51] He

[50] Since the filing of these protests, the Election Officer has received additional protests from the Hoffa slate alleging further fundraising improprieties by the Carey Campaign. The Election Officer has exercised her discretion to investigate such allegations as part of the ongoing investigation in Post-39 and to treat the letters as submissions in that case rather than docketing them as separate protests.

[51] See Martin, P-010-IBT-PNJ (August 17, 1995) (decision on remand), aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995).

chose the law firm of Cohen, Weiss & Simon ("Cohen Weiss") as counsel to his campaign. Cohen Weiss partner Susan Davis was his principal campaign attorney. In early 1996, Attorney Davis asked Nathaniel Charny, then an associate at the firm, to assist her. Cohen Weiss represented Mr. Carey during his first campaign in 1991. During the period 1992 to the present, the firm has also represented the IBT in various matters, including those involving the Consent Decree.[52]

In February 1996, Mr. Carey chose Jere Nash, a political consultant based in Mississippi, to be his campaign manager. Mr. Nash met Mr. Carey in 1992, when he assisted the new Carey administration in its transition period. In 1994 and again in 1996, the IBT retained Mr. Nash as a consultant on budgetary and other matters.

An important component of the 1996 Carey Campaign was the November Group, a Washington-based political consulting firm. The November Group specialized in the use of "persuasion" mail to convince or motivate voters; its companion company, Malchow Adams & Hussey, specializes in fundraising through direct mail. Martin Davis[53] and Hal Malchow, two of the principals of the November Group, had been actively involved in Mr. Carey's 1991 campaign. The November Group was also asked to work with Mr. Carey's reelection campaign.

The November Group also provided services to the IBT. During the period 1992-1996, the IBT paid the November Group over $650,000 for a variety of services, including literature and materials for the IBT's political work and direct mail campaigns in support of IBT organizing drives.

In or about April 1996, the November Group acted on behalf of the Carey Campaign to retain the services of the Share Group, Inc. ("Share Group"), a telemarketing firm in Somerville, Massachusetts, to assist in fundraising. Share Group was run by Michael Ansara and has approximately 600 employees. Messrs. Davis and Malchow own stock in the company, and Mr. Davis was on the board of directors. Share Group frequently worked on projects with the November Group. Mr. Ansara's wife, Barbara Arnold, is also on the board of directors but does not otherwise appear to have much involvement with the company. Mr. Ansara also ran a small company, Share Consulting Co. ("Share Consulting"), which is essentially just a name for his personal outside consulting work.

Mr. Ansara and Share Group had performed some work for Mr. Carey's 1991 campaign.

[52] Richard Gilberg, a partner at Cohen Weiss, was general counsel to the IBT for a period in Mr. Carey's first term.

[53] Martin Davis is not related to Attorney Susan Davis.

After Mr. Carey's first election, Mr. Ansara attempted on a few occasions to generate business with the IBT by suggesting projects to people he knew on the IBT staff. With a few exceptions, little work resulted and he discontinued his efforts.

In January 1995, William Hamilton was hired as the IBT's Director of Government Affairs.[54] Previously, Mr. Hamilton had run a small company which, among other activities, brokered telemarketing services by Share Group to other organizations. Mr. Hamilton had an expansive and proactive view of the IBT's role in politics and in mobilizing its membership for political action, a view shared by Mr. Carey. Mr. Hamilton wanted to increase the IBT's activities in those areas. In the Fall of 1995, Mr. Hamilton commissioned Share Group on behalf of the IBT to perform a telephone survey for a special U.S. Senate election in Oregon.

In June 1996, pursuant to an earlier agreement arranged by Mr. Davis and signed by Mr. Nash, Share Group attempted to raise funds for the Carey Campaign through telemarketing. Based on the agreement, any monies raised by the telephone effort would be sent to an escrow agent, and Share Group would receive $44 for each calling hour, $2 per pledge and 5% of any lump sum credit pledge. Because of the risk involved, Share Group agreed that it would not charge the Campaign for any costs and expenses in excess of the funds raised. After one to two weeks of calling, Share Group reported that its efforts were not returning enough to cover the expenses. Accordingly, in mid-June, Mr. Nash called off the Share Group fundraising efforts. The Share Group bills were sent to the Carey Campaign in care of the November Group. The fundraising efforts resulted in a total of $11,452.62 in contributions that were sent to the escrow agent. Share Group sent bills to the Carey Campaign totaling $17,879.94. Since the Share Group billings exceeded the amount held in escrow, the escrow was distributed to Share Group in December and the Carey Campaign did not receive any funds. The remaining balance of $6,426.32 was not paid and the invoice summary contains a handwritten note which reads, "Written off due to breakeven."

Throughout 1996, Mr. Davis took an active interest in the Carey Campaign's fundraising efforts. In early April, he telephoned Attorney Susan Davis, saying he wanted to raise large contributions from the presidents of other unions. Attorney Davis sent him a memorandum on the Election Officer's ***Rules*** which outlined the prohibition on employer contributions. Mr. Davis called again on April 18 to ask if the spouses of union presidents could contribute. Attorney Davis responded with a memorandum dated April 19, explaining how the Election Officer treats the contributions of employers' spouses. Attorney Davis warned that in light of the high profile nature of such large, non-Teamster contributions, a protest would likely be filed

[54] Mr. Hamilton resigned from the IBT on July 29, 1997.

and subject the contributions to "close political scrutiny." She therefore suggested that "we conduct a thorough inquiry before accepting questionable contributions, as the Campaign is strictly liable for all improper contributions."

On at least 3-4 occasions, Mr. Davis also discussed fundraising with Mr. Hamilton, who was active in the Carey Campaign. Once, around the time of the IBT International Convention, Mr. Davis raised with Mr. Hamilton the idea of a committee to solicit large amounts of money from nonmembers through a separate committee so that they could contribute without publicity. Together they reviewed the names of potential donors.

2. Initial Planning of the Direct Mail Campaign

The Carey Campaign focused virtually all its initial efforts on the IBT International Convention, which took place July 15-19, 1996. Soon thereafter, Mr. Nash began seriously planning the fall campaign. By the end of July, Mr. Nash and Mr. Davis had tentatively agreed on having the November Group execute a large direct mail campaign.[55] The plan included not just printing and mailing the pieces, but also conducting focus groups, commissioning a telephone survey and analysis thereof, drafting the text, designing the mail pieces, and determining the audience for each piece. To prepare the direct mail campaign, November Group drafted possible pieces and presented them to focus groups for feedback.

3. Creation of TCFU

Sometime in August or September, Mr. Nash spoke to Cohen Weiss about setting up an independent fundraising committee to accept large non-Teamster donations to support the Carey Campaign. After considering the issue, the firm concluded that under the ***Rules***, such a committee could not be independent. The lawyers informed Mr. Nash of their conclusion, and it was decided to establish a committee controlled by the Carey Campaign. The committee was named Teamsters for a Corruption Free Union. Mr. Nash appointed Gene Moriarty to be the treasurer of TCFU.

4. Contributions by Spouses of Share Group Executives

In August 1996, Mr. Ansara had a conversation with Mr. Davis about other business matters, during which Mr. Davis asked Mr. Ansara to raise $15,000 to $20,000 for the Carey Campaign. Mr. Davis explained that the IBT election rules prohibited employers from

[55] According to reports of a conversation on March 10, 1997, between Mr. Nash and attorneys from Cohen Weiss, Mr. Davis wanted a direct mail campaign that would cost approximately $500,000. Mr. Nash said the Campaign would only pay $300,000 toward the cost of the direct mail campaign. Mr. Nash told Mr. Davis that if he wanted to implement a more expensive direct mail campaign, Mr. Davis would have to raise the additional money himself.

contributing or soliciting contributions for the campaign, but suggested that Mr. Ansara could arrange to have some spouses contribute. Mr. Ansara agreed to try to raise approximately $5,000. He spoke to his wife, who has an inheritance which is kept in a separate investment account in her name. She agreed to contribute $1,250 from her personal account. Mr. Ansara also spoke to Evan Grossman, then president of Share Group, whose wife Wendy Swart contributed $1,000; and to George Bachrach, a vice-president of Share Group, whose wife Susan Centofoni contributed $250. These contributions, totalling $2,500, were made in September 1996.

5. Creation of the Contribution Swap Scheme

On or about September 30, 1996, Mr. Ansara went to Mr. Davis' home in the Washington D.C. area to discuss business unrelated to the IBT. During the meeting, Mr. Davis said that he needed Mr. Ansara's help with the Carey Campaign. Mr. Davis said that the race was unbelievably close, that the Carey campaign was being out-fundraised 4-1 or 5-1 by the Hoffa campaign, that Mr. Hoffa was raising money from the "Mob" and other undisclosed sources, that the race was very much up in the air, and that Mr. Carey would lose without enough money. The election was winnable, Mr. Davis asserted, but not unless the right people voted.

Mr. Davis then asked Mr. Ansara to come up with a creative solution to the financial problem. They began discussing the general notion of looking at political donors who cared about the 1996 Congressional elections. The idea would be to convince these donors that by contributing to Mr. Carey's campaign, they could insure that the IBT under Mr. Carey's direction would assist the get-out-the-vote ("GOTV") efforts of certain Congressional candidates favored by the donors.

At this meeting, and a subsequent meeting on October 5, Messrs. Ansara and Davis further developed a scheme to solicit contributions from wealthy non-Teamsters. As originally discussed by Messrs. Ansara and Davis, the plan was to identify wealthy, nonemployer supporters of certain political causes or candidates and solicit contributions from them to the Carey Campaign. In return, they could point to a contribution, perhaps in a multiple of that amount, from the IBT to the GOTV efforts for those Congressional districts in which the political donors were interested.

To implement this scheme, they needed someone who was not an employer to solicit the contributions to the Carey Campaign. On October 6, Mr. Ansara went to California to attend a meeting of the Social Venture Network ("SVN"). SVN is a loosely connected group of about 300 wealthy individuals, many of whom have inherited money, who gather together with representatives of various organizations to exchange ideas about social projects to which SVN members could contribute. At this meeting, Mr. Ansara approached an acquaintance, Charles

Blitz, about soliciting the funds for the Carey Campaign. Mr. Blitz was a part-time employee of the Midwest Academy, a center that trains labor and community organizers. He also worked as a volunteer fundraiser for Citizen Action, a nationwide consumer watchdog group with separately incorporated chapters in a number of states. Mr. Ansara knew that Mr. Blitz was involved in raising money for political causes.

Mr. Ansara told Mr. Blitz about the IBT election and the importance of Mr. Carey's re-election to the future of the labor movement. Mr. Ansara also explained that the IBT was contributing money to many of the same Congressional races for which Mr. Blitz was raising money. He suggested that for contributions Mr. Blitz might raise for Mr. Carey, the IBT would likely make contributions of some multiple of that amount towards the GOTV effort(s) favored by the contributor. Thus, by soliciting contributions for Mr. Carey, Mr. Blitz could assist his own fundraising efforts. Mr. Ansara cautioned that while such reciprocal IBT contributions were likely, they could not be guaranteed.

Mr. Blitz liked the idea, but he wanted to be able to give his prospects some guarantee that a corresponding IBT contribution to their chosen GOTV efforts would be made. Ultimately, they agreed that Mr. Blitz would send the contribution checks to Mr. Ansara, who would hold them until he was advised that a reciprocal IBT contribution had been confirmed.

6. Implementation of the Contribution Swap Scheme

In mid-October, Mr. Charny learned from Mr. Nash that Mr. Moriarty had agreed to be the treasurer of TCFU. Mr. Charny prepared a memorandum on permissible campaign contributors to the Campaign which he sent to Mr. Moriarty for distribution to all potential contributors. Mr. Moriarty did not himself solicit any contributions to TCFU, but maintained the records of the contributions.

Around the same time, Mr. Nash told Cohen Weiss that he had found a solicitor of funds for TCFU, Charles Blitz. The lawyers spoke to Mr. Blitz on the telephone on or about October 15 and questioned him about whether he was an employer. Asked where the money would come from, Mr. Blitz mentioned SVN and a number of people he had solicited or intended to solicit, among them Jeremy Sherman, James Kimo Campbell, and Joshua Mailman. Other potential contributors mentioned were summarily rejected by the lawyers because they were clearly employers. In this and subsequent calls, Mr. Charny reviewed a number of possible contributors, rejecting all but seven. Mr. Blitz did not mention to the lawyers the contribution swap scheme, or that the IBT was supposed to make certain political contributions in exchange for contributions to the Carey Campaign.

During the October 15 conversation, Attorney Davis asked Mr. Blitz a number of specific questions about Joshua Mailman, who had already contributed $75,000 to TCFU. The check

was made out on the account of Sirius Business Company, Mr. Mailman's company. Mr. Blitz confirmed that he had solicited the Mailman check and that Mr. Mailman was a good friend of his. Attorney Davis told Mr. Blitz that she would ask the Election Officer for an advisory opinion on whether Mr. Mailman was an employer and whether his contribution would be prohibited. Later, when the Election Officer declined to provide any advisory opinion, the Campaign decided to return the Mailman contribution.

Mr. Blitz solicited contributions from Mr. Sherman, Mr. Campbell, and Gwendolyn Grace, all of whom agreed to contribute. As Mr. Blitz requested contributions, checks arrived at Mr. Ansara's office. Kendra Muelling, Mr. Ansara's assistant, would telephone Mr. Davis and advise him of the fact. Mr. Davis spoke frequently with Ms. Muelling, wanting to know what checks had been received and the amounts of the checks.

On several occasions, Mr. Ansara received proposals for IBT donations to political causes. Mr. Davis would call Mr. Ansara's office to find out if the proposal had arrived and to have it faxed to him. When Mr. Ansara understood that an IBT contribution was to be made, he had the checks which he was holding sent to Mr. Charny at Cohen Weiss.

Among the proposals sent to Mr. Ansara were two from Citizen Action on behalf of its Campaign for a Responsible Congress ("CRC"), a separately incorporated chapter of Citizen Action which engages in voter education concerning the priorities of Congress. CRC was involved in significant GOTV efforts in the 1996 Congressional elections. Rochelle Davis was deputy director of Citizen Action and of CRC, and also managed certain operations of the Midwest Academy.[56]

After the SVN meeting in early October, Rochelle Davis understood that Mr. Ansara was going to assist Mr. Blitz in his fundraising efforts for Citizen Action and, in return, Mr. Blitz was assisting Mr. Ansara in raising money for the Carey Campaign. At Mr. Blitz's direction, Rochelle Davis wrote a memo to the IBT on October 14, with a copy to Mr. Ansara, seeking a $225,000 contribution to CRC. On October 23, also at Mr. Blitz's instruction, Rochelle Davis wrote a memo to the IBT, with a copy to Mr. Ansara, seeking an additional $250,000 contribution, for a total request of $475,000.

Rochelle Davis also took actions at the direction of Mr. Blitz to facilitate certain contributions to the Carey Campaign from Mr. Sherman, Mr. Mailman, and from Mr. Blitz himself. Mr. Sherman was a contributor to Citizen Action and had loaned the organization $25,000 in 1990. In 1996, Citizen Action persuaded Mr. Sherman to forgive the loan and the accumulated interest. However, according to Rochelle Davis, Mr. Blitz instructed her in

[56] Rochelle Davis is not related to Martin Davis or Attorney Susan Davis.

October to repay the loan to Mr. Sherman so that Mr. Sherman could contribute to the Carey Campaign. She did so. Mr. Sherman sent a check to TCFU in the amount of $25,000 dated October 14, and a second check for $10,000 dated November 14.

Earlier in 1996, Mr. Mailman had donated $50,000 to CRC. In October, Mr. Blitz told Rochelle Davis to give the money back to Mr. Mailman so that he could use it to contribute to the Carey Campaign. Rochelle Davis had the money returned.

Mr. Blitz had loaned $65,000 to Citizen Action earlier in 1996. During the year, Citizen Action repaid $50,000 of the loan. On August 9, Mr. Blitz told Rochelle Davis to donate the remaining $15,000 to a group supported by Citizen Action, which she did. In early October, however, Mr. Blitz advised Rochelle Davis that he had changed his mind and wanted Citizen Action to pay $15,000 to him so that he could make a donation to the Carey Campaign. Rochelle Davis had Citizen Action pay the money to Mr. Blitz, who wrote a check for $15,000 to TCFU on October 21.

7. The Fry and Furst Contributions

Sometime in the fall, Mr. Nash asked Ed James, an attorney and shareholder in the Washington law firm of James and Hoffman, if they could meet to discuss fundraising for the Carey Campaign. Mr. James and his firm have done extensive work for the IBT, both in connection with the IBT officer elections and on other union matters. When they met, Mr. Nash said that the Campaign needed to raise money and asked if Mr. James could help. Mr. Nash instructed Mr. James that any checks should be made payable to TCFU.

Mr. James called Shanti Fry, a friend who worked at the Bank of Boston in Boston, Massachusetts. Ms. Fry agreed to make a contribution and sent a check payable to TCFU for $1,000, dated September 29, to Mr. James. Mr. James also called Jim Miller, a friend in the Boston area who was involved in various businesses. Mr. James explained that employers could not contribute but asked if Mr. Miller's wife, Dr. Annette Furst, would be willing to contribute. Sometime in late September, Mr. James received in the mail an undated check from Dr. Furst to TCFU in the amount of $15,000. Mr. James sent the checks to Mr. Nash, who forwarded them to Cohen Weiss, which in turn forwarded them to Mr. Moriarty for deposit.

8. Mr. Charny's Contacts with Contributors

Mr. Charny states he does not know why the TCFU checks were coming to him, nor why invoices from the November Group to TCFU came in care of him at his law office. Nevertheless, he forwarded the checks to Mr. Moriarty. Upon periodic instructions from Mr. Nash, Mr. Charny would call Mr. Moriarty to have him issue a check to the November Group for a specified amount.

Mr. Charny attempted to verify the eligibility of each of the contributors, although not at

the time the contribution was made. He spoke to most contributors sometime after they had made their contributions, many only in late November when he was helping to prepare the CCERs for filing with the Election Office. With respect to the Fry and Furst contributions, he spoke to Mr. Nash in November, who told him to call Mr. James. Mr. Charny obtained from Mr. James some information about the contributors. Eventually, Mr. Charny spoke to Ms. Fry. However, he never spoke to Dr. Furst, but obtained his information from telephone calls with her husband, Mr. Miller. Mr. Charny was never able to speak with Ms. Grace. Her husband, Michael Honack, refused to let her speak with him and insisted that all information be relayed through him. Mr. Charny also relied on information about Ms. Grace that he learned from Mr. Blitz.

On a couple of occasions, Mr. Davis asked Mr. Charny how the fundraising was going and once complained that with respect to the Mailman contribution, good money was being sent back.

9. Authorization of Certain IBT Political Contributions

Sometime in mid to late October, Mr. Nash telephoned Monie Simpkins, executive secretary and office supervisor for Mr. Carey at the IBT, and asked her to meet with him at the Carey Campaign headquarters a block away. Ms. Simpkins knew Mr. Nash both from the Carey Campaign, for which she was a regular volunteer, and from Mr. Nash's frequent visits to IBT headquarters as a consultant to the Union. During their meeting that afternoon, Mr. Nash told Ms. Simpkins that the IBT was going to be making contributions to certain political organizations, and in return certain individuals would contribute to the Carey Campaign through TCFU. It was therefore important that she expedite those IBT check requests when they came to her desk. Mr. Nash assured Ms. Simpkins that it was all completely legal and had been approved by the lawyers. He also said that the Union would not be harmed because money would be coming to the IBT from Union Privilege.[57] Ms. Simpkins, who knew and trusted Mr. Nash, did not see anything wrong with the request. She went back to work and did not tell anyone about the conversation at the time.

On a few subsequent occasions, Ms. Simpkins received telephone calls from Mr. Nash concerning certain proposed political contributions by the IBT. Each time, Mr. Nash told her that she would shortly be getting a check request for a particular organization, and would she please expedite it. Ms. Simpkins recalls that at least one of Mr. Nash's calls mentioned Project Vote and at least one mentioned Citizen Action. Each time, a check request for Mr. Carey's

[57] Union Privilege is a credit card program established by the AFL-CIO for the members of its affiliates. Union Privilege pays royalties to the various sponsoring unions based on the number of credit cards issued.

approval for that organization appeared shortly thereafter. Mr. Carey was frequently out of town during this period and communicated by telephone with Ms. Simpkins. She relayed the requests to Mr. Carey over the telephone while he was out of the office. On one of the requests, she believes the first, she told Mr. Carey that she had a certain check request, that it was one that Mr. Nash had called about, and that it needed to be approved quickly. She cannot remember if she mentioned Mr. Nash's name in every instance. On each occasion, it appears that Mr. Carey approved the check request. On each request except one, Ms. Simpkins signed his initials, then her initials on the request ("RC/ms"). On the other request, she signed only her own initials.

There were expenditures to at least three organizations for political GOTV projects during this period which appear to have been subject to calls from Mr. Nash and approval through Ms. Simpkins' conversations with Mr. Carey:

· CRC: On October 14, CRC sent a memo from Rochelle Davis to Mr. Hamilton requesting a donation of $225,000 to fund their ad campaign and to mail voter guides to voters in additional districts. In a brief memo to Mr. Carey on October 21, Mr. Hamilton attached the CRC memo, endorsed the request and represented that the IBT had funded them the previous year for similar activity. However, as described below, previous contributions to the organization from the IBT were much lower. On October 23, Citizen Action sent another memo from Rochelle Davis to Mr. Hamilton, asking for an additional $250,000 to expand CRC's voter contact program through mailings to additional Congressional districts. That same day, Mr. Hamilton sent a memo to Mr. Carey, saying that he had spent additional time looking at CRC's materials and had concluded that "they represent the same issues and same priorities as we have -- and are a good alternative vehicle for getting the job done while snubbing Senate Democrats."[58] Mr. Hamilton suggested increasing the contribution to CRC to $475,000. The memo bears Ms. Simpkins' handwriting saying, "OK RC/ms 10/24/96." An IBT check was issued for that amount the same day. The IBT paperwork shows that it received the other requisite approvals.

· Project Vote: Project Vote is an organization seeking to mobilize low income and minority voters. On October 17, Mr. Hamilton sent a memo to Mr. Carey seeking approval for a $75,000 contribution to Project Vote. The leadership of the AFL-CIO supported Project Vote and had sent a letter to all affiliated unions asking them to contribute to Project Vote. In his memo, Mr. Hamilton noted that Project Vote was active in turning out minority voters in North Carolina. The memo was also initialed by Ms. Simpkins, "OK RC/ms

[58] Mr. Hamilton asserts that he stopped all contributions to the Democratic Senate Campaign Committee because the Democratic Senators voted for a measure that the IBT believed would make union organizing more difficult among employees of Federal Express.

10/17/96." The check issued on October 31.

On October 23, Mr. Hamilton sent another memo to Mr. Carey, seeking an additional $100,000 to fund Project Vote's GOTV efforts among minority voters in California, Missouri, New Jersey, Colorado, Pennsylvania and Michigan. The memo bears the handwriting of Ms. Simpkins, "OK RC/ms 10/24/96," and the check issued the same day. The IBT paperwork shows that both checks received the other requisite approvals.

· National Council of Senior Citizens ("NCSC"): On October 16, Mr. Hamilton sent to Mr. Carey a memo stating that NCSC had requested $85,000 for their GOTV efforts among retirees and senior citizens. He noted that it would be especially helpful in places like Florida. The Hamilton memo contained a notation in Ms. Simpkins' handwriting, "OK MS 10/17/96." Ms. Simpkins says that although she only put her own initials, she is certain that she spoke to Mr. Carey over the telephone about it and that he approved it. The IBT check was issued on October 24. The IBT paperwork shows that it received the other requisite approvals.

In a sworn interview with the Election Officer, Mr. Carey stated that he has no recollection of the requests for approval of the political contributions described above but assumes that he must have approved the expenditures because Ms. Simpkins signed his initials on each of the requests, signifying approval. He further stated that at no time did he have any idea of the existence of schemes to funnel IBT or employer funds into the Carey Campaign, nor did anyone ever suggest to him that contributions by the IBT Government Affairs Department to political organizations would translate into contributions from outsiders to his campaign.

The Election Officer has reviewed the records of IBT contributions from the general fund for 1995-1996, and the records for donations to Citizen Action for 1992-1996. During 1996, the IBT made over $1.5 million of contributions to numerous organizations out of the general fund. The October 1996 contributions described above were not the first made to Citizen Action, Project Vote, or NCSC. However, prior contributions had been in significantly less amounts. For example, the IBT donated the following amounts to Citizen Action: $20,100 in 1992; $10,000 in 1993; $5,000 in 1994; and $27,500 in 1995.

The records also show that during 1996, there were only three authorizations for expenditures for Government Affairs, other than those described above, which bore the designation "RC/ms" in Ms. Simpkins' handwriting. There were an additional two occasions in which Mr. Carey himself authorized, by his personal signature or initials, contributions for political organizations out of the general fund.

10. Contributions by Barbara Arnold

Messrs. Ansara and Davis also developed a scheme to have Ms. Arnold make contributions to TCFU in addition to the $1,250 she contributed to the Carey Campaign in

September. During their September 30 or October 5 meeting, Mr. Davis asked Mr. Ansara to have his wife donate more money to the campaign from her independent resources. Mr. Davis stated in substance that she could be reimbursed by monies from contracts Mr. Davis would obtain for Mr. Ansara. Mr. Ansara stated that he would have to pay taxes and other expenses on any monies to the business, so that only a portion of the amount could be used to reimburse Ms. Arnold for her contribution. Mr. Davis offered to arrange for contracts for which it was understood that there would be no actual expenses and no work to be performed, if Mr. Ansara would ask Ms. Arnold to make the contributions. Mr. Ansara agreed. As a result, Ms. Arnold made two additional contributions, one for $45,000 on October 31 and one for $50,000 on November 27.

Ms. Arnold made the contributions solely at Mr. Ansara's request. She asked him if they were doing anything illegal, and Mr. Ansara replied no, the worst that could happen was that the contributions would be returned to her. Ms. Arnold knew that she would be reimbursed by her husband, but apparently did not know the sources of the reimbursement.

In October, Mr. Ansara called Mr. Charny, saying that Mr. Nash had suggested he call to see if a woman named Barbara Arnold was eligible to contribute. Mr. Charny asked various questions about her employer status and the source of the money. Mr. Charny then told Mr. Ansara that the contribution was probably acceptable so long as it was not solicited by an employer. According to Mr. Charny, he had no idea the woman in question was Mr. Ansara's wife and did not learn this fact until sometime in February 1997. He also did not precisely know who Mr. Ansara was, except that he was considered a friend of the Campaign. A couple of days later, Mr. Charny was alerted by Mr. Nash to expect a check from Ms. Arnold.

Ultimately, Mr. Ansara and Mr. Davis reimbursed Ms. Arnold for her contributions in three separate ways:

· DeLancey Printing: DeLancey Printing Company ("DeLancey Printing")is a significant vendor to the IBT and also performed a large amount of work for the Carey Campaign. In early October, Mr. Ansara told Ms. Muelling to make up invoices for DeLancey Printing for "consulting services." He told her to call Mr. Davis for details. Mr. Davis told Ms. Muelling to make up two invoices for $11,250 each, dated one week apart and send them in one envelope to Merle DeLancey. Ms. Muelling thereupon sent a Share Consulting invoice dated October 1 for "consulting retainer for the month of September" and one dated October 7 for "consulting retainer for the month of October." Approximately ten days later, Mr. Davis called her and asked if she had received payment. She said no, and Mr. Davis said he would look into it. On or about October 28, Share Consulting received a check from DeLancey Printing for $11,250. The other invoice was never paid.

According to Merle DeLancey, the owner of DeLancey Printing, his firm's payment of the invoice came about at the request of Mr. Davis. Earlier in the year, Mr. Davis assisted DeLancey Printing in obtaining a large non-IBT account, and Mr. DeLancey agreed to pay November Group a 10% commission. On one occasion, Mr. DeLancey received a Share Consulting invoice, and Mr. Davis asked that Mr. DeLancey pay the money directly to Share out of commissions then owing to November Group on the project described above. Mr. DeLancey states that he does not know why Mr. Davis made this request, but as it involved no gain or loss to DeLancey Printing, the printing company paid the Share invoice. Mr. DeLancey says that he only received one invoice from Share, not two, and so only paid a total of $11,250.

· IBT contract: The second vehicle to reimburse Ms. Arnold involved a contract between the IBT and Share Consulting. In October, Mr. Davis told Mr. Ansara that Share was going to get a "big contract" from the IBT for its GOTV efforts in the national political elections and that Mr. Ansara could use the profit from the contract for further reimbursement for his wife's contribution to the Carey Campaign. Mr. Ansara then spoke to Robyn Glazier, a Share Group employee who coordinated its GOTV telemarketing work and sometimes worked for Share Consulting. He told her that they would be getting a big contract from the IBT. Ms. Glazier responded that she had already been speaking with Robert Nicklas, Mr. Hamilton's assistant at the IBT, about a Teamster GOTV project, but that it was only for $73,000 and that Share Group could not do the amount of work the IBT wanted at that price.

Mr. Ansara contacted Mr. Hamilton at the IBT and they agreed upon a contract for 149,500 calls at $0.65 per call, for a total contract price of $97,175. The price per call was the same as that previously charged to the IBT earlier in the year by Share Group. They agreed that the IBT would pay half of the contract price on October 22, prior to the project, and the other half on November 6 after the project was to be completed.

After reaching agreement with Mr. Hamilton, Mr. Ansara contacted Mr. Davis and told him that the contract with the IBT was only for $97,000, which would not be enough profit for Mr. Ansara to reimburse Ms. Arnold for her contribution. Mr. Davis suggested that Mr. Ansara should "lose some calls," meaning that Share should make less calls than agreed to under the contract. When Mr. Ansara refused, saying he would never do that to a client, Mr. Davis asserted that he was the client. When Mr. Ansara disputed that statement, Mr. Davis withdrew the assertion but then claimed that "the client knows and wants it done that way." Mr. Davis also said that no one ever checks to see how many calls are actually made. The Election Officer has not uncovered evidence that any IBT official knew of or authorized Mr. Davis' instruction to "lose some calls."

Share Consulting did not perform the work itself, but subcontracted it to TeleMark, a

telemarketing company in Portland, Oregon, for $0.35 per call. Following Mr. Davis' directive, Mr. Ansara instructed Ms. Glazier to give TeleMark a contract with Share Consulting, not Share Group, and to make the contract for a number of calls significantly less than the number he had agreed to with Mr. Hamilton. Therefore TeleMark, pursuant to its agreement with Share Consulting, only made 85,805 calls at $0.35 per call, for a contract of $30,031.75. The IBT paid $97,175 to Share.

· Citizen Action: In or about late October or early November, either Mr. Davis or Mr. Blitz advised Mr. Ansara that he was going to get a "contract" from Citizen Action, the purpose of which was to fund additional contributions from Ms. Arnold. On November 13, at Mr. Ansara's direction, Ms. Muelling faxed an invoice on behalf of Share Consulting to Rochelle Davis at Citizen Action for $75,000, allegedly for consulting services at $25,000 per month for August, September and October. The invoice was paid by Citizen Action on November 14 at the urging of Mr. Blitz. Rochelle Davis assumed that the Citizen Action check to Mr. Ansara was actually a finder's fee for having obtained the IBT contribution to CRC.

Ms. Arnold issued a check to TCFU on October 31 for $45,000. Share Consulting issued three "bonus" checks to Mr. Ansara: $20,000 on November 11; $50,000 on November 15; and $25,000 on November 17. Mr. Ansara gave the checks to his wife, who deposited them on November 20 into their joint checking account. Ms. Arnold issued another check to TCFU for $50,000 on November 27. On December 2, she transferred $90,000 from the joint checking account into her investment account.

11. The Final Months of the Campaign

During the fall, Mr. Nash ran the Carey Campaign and planned its final efforts. His plan called for a large direct mail campaign, coupled with professional and volunteer phone banking, leafletting at plant gates, distribution of video and audiotapes, paid media advertising, and free media coverage. During this time, Mr. Nash was also working as a contract employee of the November Group for another large client, the Clinton/Gore campaign. He generally spent mornings at the Carey Campaign offices and 4-5 hours later in the day at the November Group offices. According to Mr. Carey, Mr. Nash never said that he was working for other clients during this time period.

Between November 4 and 9, the Carey Campaign put into the mail 1,697,214 pieces of literature prepared by the November Group. In addition, it mailed another several hundred thousand pieces that had been prepared by Steve Wattenmaker of the campaign and printed by DeLancey Printing and by the Sun Printing Company. The Campaign targeted the mail so that members in certain groups would receive anywhere from one to five pieces of mail over the course of a week. The Carey Campaign executed an extensive GOTV effort apart from the

mailings. Professional phone banks completed approximately 145,000 calls to targeted members. The Campaign printed and distributed to activists in the field approximately 500,000 sample ballots in English, 200,000 sample ballots in Spanish, 300,000 palm cards, 300,000 stickers, and hundreds of thousands of copies of various leaflets. Many of these articles were handed out at organized plant gate visits. The Carey Campaign also distributed several thousand copies of campaign audio and videotapes to members, bought radio ads in certain locations, and maintained a home page on the Internet's World Wide Web.

Throughout this period, Mr. Carey was often out of town, either campaigning for himself, mobilizing IBT members to vote in the national political elections, or conducting Union business. He kept in touch with his campaign efforts through Mr. Nash. Some IBT officials attempted to use Mr. Nash to communicate with Mr. Carey.

As described above, the count of unchallenged ballots began on December 10 and concluded on December 14. A first supplemental count took place on December 16-18, and a second took place on January 8-10, 1997, at the end of which Mr. Carey was declared the winner of the contest for general president. Additional supplemental counts took place on January 29-31 and February 27, 1997. A recount was conducted on March 24-27, 1997. A total of 486,300 ballots were cast Unionwide. This represents 35.9% of the number of eligible IBT members. For the office of General President, Mr. Carey won by 15,918 votes over Mr. Hoffa. In the narrowest race for Vice President At Large, John Riojas won by 4,366 votes over Tom O'Donnell, the losing candidate on the Hoffa slate with the most votes. In the Western Region, where 91,492 ballots were counted, Ed Mireles won his position as Western Region Vice President by 256 votes over Chuck Mack, the losing candidate on the Hoffa slate with the most votes.

12. Laundering of Funds to Pay November Group

In December, Mr. Ansara cooperated with Mr. Davis and others to transfer additional monies to Mr. Davis, purportedly for the benefit of the Carey Campaign. As described above, the Carey Campaign had previously returned a $75,000 donation from Mr. Mailman due to concerns about his employer status. Either Mr. Blitz or Mr. Davis told Mr. Ansara to set up a consulting contract with Mr. Mailman. Mr. Ansara caused Share Consulting to invoice Mr. Mailman's company for $75,000, and Share Consulting received a check for $75,000. Later, Share Consulting was instructed by one of Mr. Mailman's representatives to return the money, that Mr. Mailman would pay the money to Citizen Action, and then Share Consulting should invoice Citizen Action.

Rochelle Davis was told by Mr. Blitz that Citizen Action would receive $75,000 from Mr. Mailman and that these monies would be used to pay an invoice that Citizen Action would

receive from Share Consulting. When Citizen Action's charitable arm, Citizens Fund, received the invoice from Share Consulting, it sent two payments totaling $75,000 to Share Consulting, one on January 9 and one on January 15, 1997. On February 25, 1997, World Marketing, a business owned by Mr. Davis, invoiced Share for $35,000 and Share paid the invoice that day. The same day, Mr. Davis sent a bill to Share for $40,000 from a company called Affinity Direct, Inc. Mr. Ansara did not pay the invoice.

13. Payments from Axis Enterprises to November Group

On June 19, 1997, Mr. Hoffa advised the Election Officer of an allegation that in October 1996, the IBT paid $250,000 to Axis Enterprises, Inc. ("Axis") for "Teamster Vote 96" hats and t-shirts, and that Axis in turn paid $95,000 to November Group, monies which may have been laundered into the Carey Campaign. The investigation revealed the following:

Axis is a corporate promotions company located in New York City. Larry Cohen is the owner and sole shareholder. On or about August 20, Martin Davis retained Axis to produce, on a rush basis, 5,000 t-shirts, 20,000 baseball hats and a quantity of balloons for "Teamster Vote 96," the IBT's GOTV activities for the political elections.[59] Axis completed the order at the promised time. All of the contacts were through November Group.

After the goods were shipped,[60] Axis invoiced November Group but was not immediately paid. A few weeks later, Mr. Davis asked to meet with Mr. Cohen, at which time Mr. Davis requested that Axis send its bill directly to the IBT for the work performed. Mr. Davis then faxed Mr. Cohen a summary setting forth Axis' costs, the prices Axis was charging the IBT, and then the "sell price" to be used in the invoice, which included the "margin" for November Group. While Mr. Cohen thought it was unusual to bill the ultimate consumer directly when there was an intermediary involved, he wanted to be paid and therefore invoiced the IBT for the amounts set out by Mr. Davis, for a total bill of $247,958.40. After receiving payment from the IBT, on October 18, Axis paid November Group its "margin" totaling $94,036.00.

B. Election Office Investigation

The ***Rules*** require candidates, slates of candidates and independent committees to file CCERs and various supplemental forms on certain specified dates during the election period. See Article XII, Section 2(a). The CCERs must include an accounting of contributions and

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[59] Neither Mr. Davis nor November Group were regular customers of Axis.

[60] The goods were sent to Joe Henry, an IBT International Representative in care of John Metz, president of Joint Council 13 in St. Louis. The Election Officer notes that the IBT and Joint Council 13 sponsored a voter registration picnic in St. Louis on September 2. See Hoffa, P-925-IBT-MGN (September 20, 1996), aff'd, 96 - Elec. App. - 244 (KC) (October 3, 1996).

expenditures, including the name and address of any contributor whose aggregate contributions exceed $100. Election Office staff review all CCERs and may request further information or confirming evidence at their discretion. Candidates or their representatives may also inspect (but not copy) the CCERs filed by other International officer candidates and slates.

TCFU filed two CCERs with the Election Office, both signed by Mr. Moriarty. Report No. 6, for the period August 21 through November 20, 1996, was filed on or about December 2, 1996. It shows that TCFU raised $171,000 from seven individual contributions and made expenditures of $161,025, all but $25 paid to the November Group for campaign mailings.[61] At the end of the period, TCFU reported a balance of $9,975.

Report No. 7, for the period November 21 through December 20, 1996, was filed on or about January 2, 1997. It shows that TCFU raised $50,000 from one individual contribution from Barbara Arnold. The committee made expenditures of $59,975, comprised of $59,000 to the November Group for campaign mailings and $975 to the Carey Campaign. At the end of this period the fund had a balance of $0.

Altogether, the CCERs for TCFU shows the names and occupations of seven contributors:

- Shanti Fry, bank employee $ 1,000
- Annette Furst, doctor $15,000
- Jeremy Sherman, student $35,000 (two checks)
- Gwendolyn Grace, artisan $50,000
- Charles Blitz, organizer, Midwest Academy $15,000
- James Campbell, activist-philanthropist $10,000
- Barbara Arnold, student $95,000 (two checks)

After reviewing the CCERs filed by TCFU, the Election Office sent a letter to Mr. Charny on January 22, 1997, seeking additional information as to these contributions. In response to the Election Office inquiry, Mr. Charny had a series of telephone conversations with the TCFU contributors or, in the case of Ms. Grace and Dr. Furst, their spouses. He had 8-10 telephone conversations with Mr. Honack, who provided information but adamantly denied any access to his wife. Mr. Charny called Mr. Blitz for assistance. Mr. Blitz called back later and said that Ms. Grace would never speak to Mr. Charny, that her husband was very protective and would never let her speak to him. However, Mr. Blitz said that Ms. Grace would be willing to sign an affidavit saying that she had spoken to Mr. Charny. The affidavit ultimately drafted by Mr. Charny and signed by Ms. Grace affirmatively states that she had spoken to Mr. Charny.

[61] The other $25 was paid as bank service fees.

By letter dated January 29, 1997, Mr. Charny supplied the Election Officer with signed affidavits from Mr. Campbell, Mr. Sherman, Dr. Furst, Ms. Fry, and Ms. Arnold. An affidavit signed by Ms. Grace was delivered to the Election Office on February 3, 1997. The affidavits presented facts that purported to show their eligibility to contribute. Ms. Arnold's affidavit, dated January 28, 1997, asserted that she was a student studying to receive a teaching certificate, that her wealth was comprised entirely of an inheritance, that she had no employees except a housekeeper, and that she was involved with three charitable organizations but exercised no supervisory or managerial authority over their employees. She made no mention of her husband or her status as a director of Share Group.

On February 4, 1997, the Hoffa slate filed its first protest based on the TCFU contributions. The Election Office continued its own investigation and also pursued the specific allegations contained in the protest.

Ms. Mansfield interviewed the contributors after receiving their affidavits.[62] Ms. Grace refused to speak directly to Ms. Mansfield. Instead, Ms. Mansfield conducted two interviews with Mr. Honack and received documentary and financial information in support of the assertion that Ms. Grace was not an employer and that the monies came from Ms. Grace's own assets. Ms. Mansfield interviewed Ms. Arnold by telephone on February 10, 1997, with Mr. Charny listening in as campaign counsel. Ms. Arnold stated that she could not remember why she first contributed the $1,250 but thinks it may have been in response to a direct mail solicitation. She claimed that she decided to make a more substantial contribution because she had followed the campaign in the press and thought it was critical to the future of the labor movement that Ron Carey be reelected. She stated that no one solicited these donations, but that she called the Carey Campaign in Washington and offered to give money. When questioned about her husband's involvement in her decision, she stated that she had told him about the contributions after the fact, that he never encouraged her to make them and that they never discussed the impact of a Carey or Hoffa victory on Mr. Ansara's business. She also stated that there were no infusion of monies into her account from her husband or any other source during the period September-December 1996. At the end of the interview, Ms. Mansfield requested that Ms. Arnold provide copies of financial records which would confirm that the monies in the account came only from her personal assets.

At the request of Ms. Mansfield, Mr. Charny submitted an affidavit to the Election Officer on February 20, 1997. The affidavit set forth Mr. Charny's position with TCFU and his

[62] Election Office investigators also interviewed other persons who might have information that would allow for a determination of the contributors' employer status.

role in insuring that the contributions were within the ***Rules***. It detailed Mr. Charny's conversations with each contributor and stated that he spoke to each contributor before or at the time the contributions were received. The affidavit specifically stated that Mr. Charny had spoken to Ms. Grace and Dr. Furst. The affidavit did not mention any conversations with Mr. Ansara or Mr. James.

On February 24, 1997, Mr. Ansara sent a letter to Mr. Hamilton, explaining that he had reviewed his records for the fall work and "[t]o my chagrin, I have found that there was a descrepancy [*sic*] between what you paid us in advance and what was in the end due." According to Mr. Ansara, the IBT overpaid by $26,599.30. The letter continued that "per our usual procedure," he would keep the money as a credit toward future work but would refund it if the IBT so wished.[63] Mr. Ansara calculated the reimbursement figure by multiplying the true number of calls completed by $0.65, and subtracting that number from the contract price paid by the IBT.

During several conversations, including one on February 18, 1997, Ms. Mansfield asked Mr. Charny to provide copies of financial records requested of Ms. Arnold. Mr. Charny replied at some point that he was having difficulty because Ms. Arnold had obtained counsel, but that he was in contact with her lawyer, William Codinha. On February 24, 1997, Mr. Charny received a call from Mr. Codinha, stating that the records would not be provided. Mr. Charny became upset and told Mr. Codinha that they couldn't do this, the whole election was at risk. Mr. Codinha replied that, "off the record," the committee wouldn't want his clients to turn over the bank records because "the numbers match." Mr. Charny asked, "hypothetically," if Mr. Ansara had ever put money into the account before. Mr. Codinha replied, "hypothetically," not in the recent past. A letter from Mr. Codinha to Mr. Charny, dated the same day, confirmed that neither Mr. Ansara nor Ms. Arnold would produce any further records or testimony in this matter.

Mr. Charny reported this conversation to Attorney Davis, and she recommended to Mr. Carey that the contribution be returned. Mr. Carey approved, and Attorney Davis informed Mr. Nash of the decision. Attorney Davis then received a call from Martin Davis, objecting to any return of the Arnold contribution. Attorney Davis replied that Mr. Carey had already made the

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[63] By letter dated March 4, 1997, Mr. Hamilton replied that Share should hold the money for the time being, since the IBT was considering a mail-phone solicitation and would probably use Share for some or all of the phoning. However, a second letter from Mr. Hamilton to Share dated March 10, 1997, directed the company to transfer $10,825.65 to cover a separate invoice for work done by Share Group for the IBT in Kentucky, and to return the balance to him. Share did so on March 17, 1997.

decision. She stated that before she as counsel could accept the money, she would need to know whether Mr. Ansara received money from the IBT, whether he gave the money to Ms. Arnold, and what their practice on transfers of money had been in the past.

Attorney Davis then received a telephone call from Mr. Codinha, who said that he had just received a telephone call from Mr. Davis but that he did not want to talk to Mr. Davis. Mr. Codinha then went through the questions posed by Attorney Davis and gave "hypothetical" answers. Had Mr. Ansara received money from the IBT? Yes, approximately $97,000. How much money had been transferred to Ms. Arnold? Within a few thousand dollars of the same amount. When was the money transferred? There was a striking similarity in the dates. Why was the money transferred? Mr. Codinha replied to the effect that there was no good answer. Attorney Davis then advised him of the Campaign's decision to return the contribution. By letter dated February 25, 1997 to Ms. Mansfield, Mr. Charny advised the Election Office that "[r]ather than expend time and resources in further process and without conceding that Ms. Arnold has made a 'prohibited contribution,' the Committee will refund the contribution."

In order to have the money to return the Arnold contribution, Mr. Nash called upon a number of Carey activists within the IBT to make new contributions. A total of $95,000 in contributions was made to TCFU between February 28 and March 11, 1997. TCFU used that money to fund the return of Barbara Arnold's contributions. The check for repayment was dated February 27, 1997, and was sent to Ms. Arnold on March 3.[64]

Also in or about early March, the U.S. Attorney's Office for the Southern District of New York began a criminal investigation of the Arnold contribution, a fact which was reported in the *Boston Globe* on March 8. A number of people in the IBT and the Carey Campaign received subpoenas or requests for interviews from either the FBI or the U.S. Attorney's Office.

Throughout February and March 1997, Ms. Mansfield had frequent telephone conversations with Mr. Charny in which she sought additional documents and evidence. She further requested position statements on certain issues, including why the returned Arnold contribution did not affect the outcome of the election. In response, Cohen Weiss submitted a position paper on March 3, 1997. The position paper asserted, among other arguments, that TCFU "carefully and meticulously investigated the Arnold contribution and provided Ms.

[64] In Post-45, the protester raises an issue as to the timing of the repayment of the Arnold contribution, questioning whether there were funds or a loan which is not recorded on the CCER. The investigation did not reveal that any other funds were deposited into this account to cover the check to Ms. Arnold. The other allegations in Post-45 are addressed in a separate decision issued today.

Arnold with a comprehensive memorandum outlining who may make contributions . . . ." The position paper further stated that the Arnold contribution did not affect the outcome of the election because the money for the mailings was available in a reserve fund based on a pledge program organized by Mr. Nash in the Summer of 1996. Allegedly, Mr. Nash secured pledges in a total amount of $250,000 from six candidates on the slate and six campaign activists to provide funds, above and beyond their regular donations, to help pay for the post-convention campaign. This assertion was supported by an affidavit signed by Mr. Nash and submitted to the Election Officer together with the position statement.

Based on the position paper and affidavit, an Election Office investigator interviewed Mr. Nash by telephone on March 6, 1997, with Mr. Charny listening on the line. Several statements of Mr. Nash in the interview did not support the assertions contained in his affidavit concerning the pledge program. In the interview, Mr. Nash admitted that he never received formal pledges from anyone and did not discuss amounts with them. Instead, he stated that in or about July 1996, he told a number of people that he expected to raise the money necessary for the campaign, but that if he couldn't and there was a need for money, he wanted to know if he could count on them to "go the extra mile." There was no actual reserve fund of money. Mr. Nash stated that he made no list of these individuals at the time but gave the investigator the names of 14 individuals he had been referring to as the pledgees. Mr. Nash further stated that his recent requests for money to reimburse the Arnold contribution were based on a conversation he had with Ed Burke, an IBT employee and Mr. Carey's 1991 campaign manager, about who they could ask for additional contributions.

Ms. Mansfield spoke to Attorney Davis, telling her that Mr. Nash's statements during his telephone interview had differed significantly from the facts in his affidavit. Ms. Mansfield demanded interviews with each of the named pledgees as well as a face-to-face interview with Mr. Nash. On March 11-12, 1997, Election Office investigators interviewed 10 IBT members who the Carey Campaign claimed had given commitments in the Summer of 1996 to give more money in case the Campaign needed it near the time of the balloting.

After hearing about the March 6 interview, Attorney Davis called Mr. Nash and arranged a meeting for Monday, March 10. Attorney Davis also requested a meeting with Martin Davis, which took place at Cohen Weiss' office on Sunday, March 9, 1997, for 2-3 hours. Present were Attorney Davis, Cohen Weiss lawyer Stephen Presser, Mr. Charny, and Mr. Davis. Martin Davis was very guarded in his response to questions. The lawyers did learn that, contrary to their earlier belief, Share Group had been a provider to the Carey Campaign, and that both Mr. Davis and Mr. Malchow were shareholders in Share Group.[65] They also learned that

Mr. Nash was working for the November Group on the Clinton/Gore account during the fall. Mr. Davis professed not to know that Share was doing work for the IBT. He stated that Mr. Nash had committed to a $500,000 direct mail campaign in July 1996. Mr. Davis also told the lawyers that he never solicited anyone to contribute to the Carey Campaign or spoke to Mr. Ansara about giving money to the Campaign, and that Share's work for the IBT did not come through him. Mr. Davis also complained to the lawyers about returning the Arnold contribution, saying the money was entirely clean and that it was a terrible mistake to return it.

On Monday, March 10, Attorneys Davis, Presser, Charny and Stanley Berman met with Mr. Nash to discuss the protest and the Campaign's fundraising. During the 2 1/2 hour meeting, Mr. Nash told the lawyers that Barbara Arnold contributed to TCFU at the request of Mr. Ansara. He also stated that the direct mail campaign only cost the Campaign $300,000 because he had told Mr. Davis to raise the remaining $200,000 or "eat" the difference. He further said that Messrs. Ansara and Davis were involved in identifying potential contributors connected with the Social Venture Network. He informed the lawyers that the Share Group was doing telemarketing work for the Democratic National Committee. Mr. Nash and the lawyers also discussed the so-called pledge program.

According to the lawyers, Mr. Nash also said that there were people, leaders of other labor organizations, who had wanted to contribute to the Campaign but were not allowed. According to reports of the conversation, Nash said that a few such people had therefore given cash which was being held by Ed Burke and Rick Blaylock, an assistant to Mr. Carey at the IBT. That money would supposedly be used to support the Campaign. Mr. Nash stated that cash from those contributors had also been reported as receipts from the sale of campaign merchandise. Messrs. Burke and Blaylock denied these assertions in sworn statements.

Following their meetings with Messrs. Davis and Nash, Cohen Weiss began to review whether it could ethically reveal the information that Mr. Nash had given, since he was asserting that Cohen Weiss was his personal lawyer as well as the Campaign's. After consulting counsel, Cohen Weiss decided that they needed a judicial determination of the privilege issue before disclosing the information to the Election Officer or to the government.

Attorney Davis spoke with Mr. Carey that night by telephone, reporting to him on her

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[65] On February 19, 1997, Mr. Charny wrote to the Election Officer, stating that it was not true, as alleged in the protest Post-40, that Share Group had done any work for the Carey Campaign. However, by letter dated March 13, 1997, Mr. Charny notified the Election Officer that the November Group had subcontracted a project to Share Group for the Campaign, and that Share Group had run an unsuccessful telemarketing drive for the Campaign during the Summer 1996.

meetings with Messrs. Davis and Nash. On March 12, 1997, Attorneys Presser, Charny and Berman spoke with Mr. Nash by telephone and told him that the Campaign would not be producing Martin Davis as a witness to the Election Officer, and that they were going to tell Mr. Davis that he should get his own attorney. According to the lawyers, Mr. Nash said that was a bad idea, that they could not "spin Martin out on his own." He reiterated that Ms. Arnold contributed to the Campaign because Messrs. Ansara and Davis told her to. Mr. Nash then said that "we are all one family," naming Messrs. Nash, Davis, Ansara and Charny, and that if the lawyers break up the family, everyone in the family was going to be hurt. The lawyers told Mr. Nash that Mr. Carey had made the decision about not representing Mr. Davis and that the decision would not change.

The refusal of Mr. Ansara and Ms. Arnold to cooperate with the Election Officer's request for information was clearly hampering the investigation of the Arnold contribution. Accordingly, on March 7, 1997, the Election Officer filed Application VIII with the District Court, requesting the authority to issue subpoenas. The District Court issued an order granting the application on the same day. The Election Officer issued subpoenas the same day to Ms. Arnold and Mr. Ansara to produce documents and to appear for sworn interviews on March 14. On March 13, Mr. Codinha notified the Election Officer that Mr. Ansara and Ms. Arnold would refuse to testify or produce records in response to the subpoena, asserting their privileges under the Fifth Amendment to the U.S. Constitution. The interviews were accordingly postponed. In the meantime, on March 10, 1997, Election Office investigators obtained Share Group's 1995 annual report as filed with the Massachusetts Secretary of State, showing that Barbara Arnold and Martin Davis were directors of the corporation.

Around the same time, Ms. Simpkins read in the newspapers about the criminal investigation of the Arnold contribution and became concerned about her conversation with Mr. Nash the previous October. When Attorney Davis called about an unrelated matter, Ms. Simpkins asked if she could talk to her about something the next time she was in town. Attorney Davis said that she would be in Washington on Wednesday, March 12. On that date, they met and Ms. Simpkins told Attorney Davis about the October conversation with Mr. Nash.[66] Ms. Simpkins said she thought it was legal because Mr. Nash had told her that Attorney Davis had approved it. Attorney Davis replied that she had never approved of or heard of any such thing. With Ms. Simpkins' permission, Attorney Davis immediately told Mr. Carey in person about the Nash-Simpkins conversation.

[66] Ms. Simpkins' account of the conversation differed in certain respects from the one she later gave to the Election Officer, but the import and implications of the conversation were, for the purposes here, the same.

The Election Officer tried on a number of occasions to interview Martin Davis about the allegations in the protest, but he did not return telephone calls or professed to be too busy. A telephone interview finally took place on March 15, 1997, but Mr. Davis did not return subsequent calls for necessary follow-up and failed to sign an affidavit of facts based on the interview. Accordingly, the Election Officer issued a subpoena for him to appear at a sworn interview and to produce numerous documents. The sworn interview took place on March 24-25, 1997, and certain records were eventually produced. However, Mr. Davis refused to answer any questions concerning his alleged involvement with fundraising, asserting a Fifth Amendment privilege.

On March 17, 1997, Attorney Davis received a telephone call from Mr. Nash, who said he had to speak to her about Mr. Ansara's relationship with the IBT. Attorney Davis replied that she was on her way to meet with Mr. Carey right then. Mr. Nash asked what she thought Mr. Carey would say about all this. Attorney Davis said she didn't know.[67]

That same day, Attorney Davis and Cohen Weiss partner Bruce Simon held a long meeting with Mr. Carey and told him in detail about what they had learned over the last few days, including the role played by Messrs. Nash and Davis in fundraising and Mr. Nash's statement about the use of cash to support the Campaign. They also described the Nash statements about the "family of four" and how they interpreted that as a threat against Cohen Weiss. They reviewed the issues concerning Mr. Nash's potential claim of attorney-client privilege. They then requested authorization from Mr. Carey to withdraw their previous submission to the Election Officer and also that he waive attorney-client privilege so that the lawyers could communicate with the necessary authorities. Mr. Carey gave them authority to withdraw the submission and to talk to whomever they needed in order to investigate and resolve the matter.

In mid-March 1997, the Carey Campaign called upon certain Carey activists within the IBT to contribute toward the reimbursement of the remaining TCFU contributors. Between March 18 and March 27, the Campaign raised $126,000 to return to Mr. Blitz, Ms. Grace, Mr. Campbell, Mr. Sherman, Ms. Fry and Dr. Furst. The checks for repayment were sent on March 20, 1997.

On March 19, 1997, Cohen Weiss submitted a revised position statement to the Election Officer. That same day, Ms. Mansfield requested that Mr. Charny be produced for a personal interview. On March 20, 1997, Mr. Charny went to Attorney Davis and told her that his

[67] Thereafter, Mr. Nash obtained his own lawyer, and Attorney Davis did not have any further substantive conversations with Mr. Nash.

affidavit of February 20 contained a number of inaccuracies and had to be withdrawn. As they went through the affidavit paragraph by paragraph, Attorney Davis learned for the first time that Mr. Charny had made a number of inaccurate statements to the Election Officer; that he had never spoken to Dr. Furst or Ms. Grace and was not sure if he had spoken to Mr. Campbell; and that he had deliberately misstated the dates of a number of his conversations with contributors, which actually took place weeks or months after the date his affidavit placed them. Later that day, Attorney Davis faxed a letter to the Election Officer withdrawing the Charny affidavit. The following day, Mr. Charny was forced to resign from Cohen Weiss. Attorney Davis notified the Election Office on March 21 that Mr. Charny was no longer with the firm or representing the Campaign.

On the evening of March 22, 1997, Attorneys Davis and Presser met with the Election Officer and told her that the Campaign wanted to retract certain positions taken in light of new information they had learned. They explained that Mr. Charny had been asked to resign because he had given false information to the Election Officer, and that the so-called "pledge program" described by the Nash affidavit did not really exist, but was a series of much more informal assurances by Carey supporters to give more money if necessary. They provided a chronology of events of the preceding three weeks to explain how they learned that certain information previously provided to the Election Officer was untrue. They went through the Charny affidavit paragraph by paragraph to explain what was incorrect.

They further told the Election Officer that they had learned certain additional relevant information during two conversations with Mr. Nash, one on March 10 and one on March 12, 1997. However, Mr. Nash was asserting a personal attorney-client privilege in those conversations. The Cohen Weiss attorneys said that the law firm would seek a judicial order declaring that Nash's assertion of privilege was not valid, so that they would be free to tell the Election Officer what they knew, as Mr. Carey had asked.

On March 24, 1997, the Election Officer issued a subpoena to Mr. Nash in Mississippi. His attorney notified the Election Officer that his client would invoke the Fifth Amendment privilege as to any testimony or production of documents if an interview took place. The Election Officer also attempted to subpoena Mr. Blitz, who refused to cooperate in light of the ongoing criminal investigation.

On March 26, 1997, the Election Officer again met with Attorneys Davis and Presser, and with Attorneys Mike Smith and Jonathan Levy of the firm Zuckerman, Spaeder, Goldstein, Taylor & Kolker, which was representing the IBT. Mr. Smith described the information Ms. Simpkins had given to Attorney Davis and later, in a slightly different form, to him. He also described their investigation of the allegations to date. They stated that they wished to

cooperate with the Election Officer's investigation in any way they could.

Based on the information from the March 22 and 26, 1997 meetings, the Election Officer expanded her investigation and began interviewing a number of new witnesses. The IBT, the Carey Campaign, and a number of private entities produced thousands of pages of documents for her review.

Throughout the investigation, the Election Officer maintained close communications with the criminal division of the U.S. Attorney's Office, and both groups cooperated to the extent possible. Because of strict rules concerning grand jury secrecy, the U.S. Attorney's Office could not provide the Election Officer with any evidence developed from the grand jury investigation and frequently requested that the Election Officer postpone interviews with witnesses in order to avoid compromising the criminal investigation.

On April 2, 1997, Secretary-Treasurer Tom Sever wrote to Mr. Davis, informing him that the IBT was terminating its relationship with the November Group based upon Mr. Davis' failure to respond to questions in the ongoing investigations by the United States Attorney and the Election Officer. He sent a similar letter to Mr. Nash on the same date, terminating Mr. Nash's consulting arrangement with the IBT. In addition, the IBT adopted policies requiring appropriate cooperation with inquiries as a condition of the IBT continuing any relationship with outside vendors, and prohibiting an employee or vendor who invokes the Fifth Amendment in an inquiry related to the Union from remaining in a relationship with the IBT. The IBT also determined that it would not defray costs of counsel for individuals until it became apparent that their role in an investigation was factual. The IBT also stopped all payments to Messrs. Ansara, Nash, Davis, and their respective companies pending the outcome of the current investigations.

By the second week in April, Cohen Weiss had still not obtained any judicial order adjudicating Mr. Nash's claim of privilege. Accordingly, on April 10, 1997, the Election Officer filed an application for declaratory judgment with the District Court to determine the merits of Mr. Nash's claim. Mr. Nash intervened, and an evidentiary hearing took place on April 17. Judge Edelstein ruled from the bench that Mr. Nash could not assert the attorney-client privilege in the communications. The District Court issued a full written decision on April 24, 1997. In the meantime, counsel for Mr. Nash sought and obtained a stay pending appeal from the U.S. Court of Appeals for the Second Circuit. The Court ordered that the appeal be heard on an expedited schedule.

On April 18, 1997, Election Office investigators interviewed Mr. Ansara at length and learned for the first time of the scope of the financial schemes in which he was involved. As a result of this interview, the Election Office investigation pursued a number of new leads.

On June 6, 1997, federal officials arrested Mr. Davis and unsealed a one-count complaint

against him for mail fraud in connection with the use of IBT funds and monies from unidentified entities to fund a $95,000 contribution to the Carey Campaign.

On June 12, 1997, the Second Circuit heard oral argument on Mr. Nash's appeal concerning his claim of attorney-client privilege. By the end of the day, the Court of Appeals had issued an order affirming the District Court and dissolving the stay.[68] The next day, Election Office investigators interviewed Attorneys Davis and Presser and learned the contents of their interview with Mr. Nash as related above.

The Election Officer subpoenaed additional documents from Citizen Action and CRC. In addition, as a result of a letter from Mr. Raymond dated June 19, 1997, Election Office investigators conducted interviews and obtained documents concerning Axis Enterprises.

On July 17, 1997, the Election Officer and three of her investigators conducted a 4 1/2 hour interview with Mr. Carey.

C. DISCUSSION

The Consent Decree prohibits any contribution "or other things of value" to a candidate from an employer.[69] Such a ban "reflects a desire to minimize the danger that employers will influence the outcome of union elections." United Steelworkers of America v. Sadlowski, 457 U.S. 102, 117 (1982). Article XII of the ***Rules*** implements the Consent Decree by comprehensively regulating the financing of campaigns for International office. In addition, on December 14, 1995, the Election Officer published an *Advisory on Campaign Contributions and*

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[68] The Court of Appeals issued a written decision on July 23, 1997.

[69] Paragraph 8 of the Consent Decree states:

> Article IV, Section 2 of the IBT Constitution shall be deemed and is hereby amended to include a new paragraph as follows:
>
> "No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office."

The language of the Consent Decree is incorporated verbatim in Article XII, Section 1(a) of the ***Rules*** as well as in Article IV, Section 4 of the IBT Constitution. A prohibition against employer contributions also appears in Section 401(g) of LMRDA, 29 U.S.C. § 481(g), which applies to the candidates here. See ***Rules***, Article XII, Section 1(a); Article XIII.

Disclosure ("*Advisory*") to provide additional guidance regarding campaign contributions and expenditures.

Article XII, Section 1(b)(1) of the ***Rules*** broadly prohibits an employer from contributing -- and a candidate from accepting -- anything of value "where the purpose, object or foreseeable effect . . . is to influence, positively or negatively, the election of a candidate."[70] The rule makes clear that it applies to all employers, including political action organizations, nonprofit organizations, law firms and other professional organizations that employ any staff. It is not limited to employers that have contracts with the IBT.[71] In addition, employers may not solicit contributions. Committee to Elect Ron Carey, P-651-IBT (August 14, 1991), aff'd, 91 - Elec. App. - 183 (SA) (September 17, 1991); Hoffa, P-1122-RCS-EOH (October 30, 1996); Hoffa, P-1130-RCS-EOH (November 14, 1996).

Supervisors and managerial employees are presumed to be agents of employers and are also prohibited from making contributions, although the presumption is rebuttable. *Advisory*, at 8-9. Similarly, contributions from spouses of employers are presumed to be employer contributions, although here, too, the presumption is rebuttable. Id. at 10.

Labor unions are also prohibited by the ***Rules*** and by LMRDA from making any contribution to a candidate. ***Rules***, Article XII, Section 1(b)(1); Article XIII, Section 1; 29 U.S.C. § 481(g). See Gilmartin, P-032-LU245-PNJ (January 5, 1996), aff'd, 95 - Elec. App. - 75 (KC) (February 6, 1996).

In order to facilitate the enforcement of these prohibitions, the ***Rules*** hold a candidate strictly liable for any prohibited contributions. Article XII, Section 1(b)(9). Strict liability requires a finding of a violation even if the candidate(s) did not know that the contribution came

[70] The ***Rules*** define a campaign contribution as "any direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence, positively or negatively, the election of a candidate for . . . International Officer position . . . ." Definitions, ¶ 5.

[71] Article XII, Section 1(b)(1) states as follows:

> No employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. No candidate may accept or use any such contribution. These prohibitions are not limited to employers that have contracts with the Union; they extend to every employer, regardless of the nature of the business, and include, but are not limited to, any political action organization that employs any staff; any nonprofit organization, such as a church or civic group, that employs any staff; and any law firm or professional organization that employs any staff . . . .

from employer or union funds. Article XII, Section 1(b)(10). See, e.g., Sweeney, P-1058-LU807-NYC (October 28, 1996).

The ***Rules*** expressly recognize the right of candidates to accept contributions from nonmembers who are not employers. Article XII, Section 1(b)(5).[72] There is no limit on the amount an individual can contribute. Article XII, Section 1(b)(8).

There is no doubt that all of the contributions to TCFU are prohibited contributions. All of the contributions were the product of employer solicitations and/or employer-created schemes to inject employer and IBT funds into the Carey Campaign, as well as to induce individuals to contribute through the improper manipulation of IBT spending. These schemes thoroughly tainted all monies collected by TCFU.[73]

As the facts show, there were several schemes involved in TCFU's fundraising.

· Employer solicitations of contributions. Mr. Ansara, an employer, solicited contributions from his wife, Ms. Arnold, who initially gave $1,250. He further solicited two of his executives to have their spouses make contributions: Evan Grossman, whose wife Wendy Swart gave $1,000, and George Bachrach, whose wife Susan Centofoni gave $250. Mr. Ansara also solicited money from Mr. Blitz, who gave $15,000 to the Carey Campaign, and solicited the additional $95,000 in contributions from Ms. Arnold. In addition, there is the separate incident in which Mr. James, an employer, solicited contributions from two friends, Ms. Fry and Jim Miller, also an employer, who in turn asked his wife, Dr. Furst, to contribute. Ms. Fry gave $1,000 and Dr. Furst gave $15,000. All of these contributions were prohibited because they were the direct result of employer solicitations.

· Laundering prohibited monies through Ms. Arnold's personal account. Mr. Ansara and Mr. Davis also laundered employer and IBT monies through Share Consulting and transferred the monies to Ms. Arnold so that she could give two additional contributions

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[72] Article XII, Section 1(b)(5) of the ***Rules*** states in part: "Nothing herein shall prohibit any candidate from accepting contributions made by any nonmember who is not an employer."

[73] Evidence of the schemes described above makes it unnecessary to rule on the issue of the contributors' individual employer status.

The protester is incorrect in asserting that the Carey Campaign's decision to return the contributions is an admission of their illegality. A campaign might return a contribution for a number of different reasons apart from the legality of the donation; for example, a candidate may want to avoid unfavorable appearances from taking a contribution from a controversial individual. Whatever the reason for the refund, the Election Officer follows her previous practice in refusing to characterize a contribution based solely on a candidate's decision to refund it. See Rockstroh, P-764-IBT-EOH (July 11, 1996).

amounting to $95,000. In pursuit of this scheme, Share Consulting sent invoices totalling $75,000 to Citizen Action and $22,500 to DeLancey Printing for which no work was ever performed. The Citizen Action invoice and one of the DeLancey invoices were paid, although Mr. DeLancey claims that he was paying the invoice with monies owed to the November Group at the express instruction of Mr. Davis. Thus, contributions from two employers (Citizen Action and November Group via DeLancey Printing) were made to the Carey Campaign. Further, Share Consulting sent inflated invoices for $97,175 to the IBT for telemarketing work, although Mr. Ansara had subcontracted the work to another firm for less than the number of calls he had agreed with the IBT to perform. This amounted to a theft of monies from the IBT to be funnelled to Ms. Arnold and then to TCFU, constituting a prohibited use of Union assets to assist a candidate.

· The Contribution Swap. Mr. Ansara and Mr. Davis, with the active assistance of Mr. Nash and Mr. Blitz, instituted the contribution swap, whereby wealthy individuals would be induced to make large contributions to the Carey Campaign in exchange for political contributions of some multiple of those amounts from the IBT to the GOTV efforts for various Congressional and other candidates in the 1996 political elections. It appears that the scheme was accomplished through the IBT making political contributions of $475,000 to CRC and may have involved contributions to other organizations as well. As a result of the scheme, IBT monies were indirectly used to support a candidate for IBT office, in violation of Article XII, Section 1(b)(1).

There is also evidence of a scheme by Messrs. Ansara and Davis to funnel $75,000 from Mr. Mailman to Mr. Davis through a series of sham transactions involving Citizen Action, Share Consulting, and two of Mr. Davis' own companies. Mr. Ansara understood the purpose of this scheme was to defray the November Group's expenses incurred for work on behalf of the Carey Campaign. However, the scheme occurred after the election, and there is insufficient evidence at this time to establish that the monies laundered were used to benefit the Campaign. While the Election Officer does not find a violation here as to this series of transactions, she believes the matter warrants further investigation as described below.

Thus, all of the monies raised by TCFU were prohibited contributions under the ***Rules***, since the facts clearly demonstrate that these monies were solicited by employers or were obtained from employers and/or the IBT through various schemes.

Based upon the evidence, the Election Officer reaches the following conclusions:

1. The Carey Campaign. As a committee used to obtain funds for the Carey Campaign, TCFU clearly violated Article XII, Section 1(b) of the ***Rules*** by soliciting and accepting contributions of IBT and employer assets. The Carey Campaign and each member of

the Carey slate further violated Article XII, Section 1(b) of the ***Rules*** by receiving the use and benefit of the prohibited contributions. Since a candidate is strictly liable for the receipt of prohibited contributions, it is irrelevant whether Mr. Carey or any of his slate members actually knew that the contributions were improper.

The fundraising effort conducted by the Share Group in July 1996 did not violate the ***Rules***. The agreement between the Campaign and the Share Group, that the Campaign would be liable for expenses only to the extent of the funds raised by the effort and deposited into the escrow account, was commercially reasonable. Thus, writing off expenses in excess of the monies raised does not constitute forgiveness of a debt owed by the Carey Campaign.

As to the allegations regarding the source of the repayment of the contributions raised in Post-43, the Election Officer's investigation did not disclose evidence that prohibited funds were used to return the TCFU contributions. However, in light of the evidence described herein, this issue will be referred to the IRB and the U.S. Attorney's Office for further investigation.

2. Martin Davis and November Group. The facts show that Mr. Davis was the prime mover in the improper schemes described above. As the chief executive of November Group, which has a number of employees, he is clearly an employer. He solicited Mr. Ansara to participate in the various schemes. He used Mr. Ansara as the go-between with Mr. Blitz to implement the contribution swap. He arranged with Mr. Ansara to defraud the IBT so that the additional monies could assist the campaign. He used DeLancey Printing for the purpose of transferring $11,250 to Share Consulting so that funds could be laundered through Ms. Arnold's account and contributed to the Campaign. He was also the link between the efforts of Mr. Blitz and Mr. Ansara to raise monies, and the efforts of Mr. Nash and unknown others to see that the IBT made political contributions in furtherance of the contribution swap. Thus, Mr. Davis and November Group, as employers, made contributions and actively solicited other employer contributions for the Carey Campaign in violation of Article XII, Section 1(b) of the ***Rules***. They also violated the ***Rules*** by assisting the diversion of IBT assets for the use of the Campaign.

In addition, Mr. Davis participated in the action by Share Consulting to defraud the IBT on the telemarketing contract for the express purpose of having IBT monies assist the Carey Campaign, a separate violation of Article XII, Section 1(b).

3. Michael Ansara, Share Group, Share Consulting. As chief executive officer of Share Group and Share Consulting, Mr. Ansara is clearly an employer. Using his two companies, he obtained monies from the IBT and from other employers (Citizen Action and November Group via DeLancey) and transferred them to his wife for the express purpose of laundering monies to be contributed to TCFU. He also solicited contributions from his wife and the spouses of two other high executives in Share Group. Those executives are also

employers under the ***Rules***. See *Advisory* at 8-9. He participated in the scheme to obtain contributions for the Carey Campaign from nonmembers in exchange for IBT contributions to outside political campaigns favored by the contributors. By each of these activities, Mr. Ansara either contributed himself or solicited monies or things of value from employers and/or the IBT to benefit the Carey Campaign, in violation of Article XII, Section 1(b) of the ***Rules***. Share Group and Share Consulting, as the vehicles through which the contributions were made or facilitated, are equally responsible for the prohibited contributions and also violated the ***Rules***.

4. Barbara Arnold. Not only is Ms. Arnold the spouse of an employer, but she is a member of the board of directors of Share Group. She made one contribution to the Carey Campaign and two contributions to TCFU at the request of her husband. As to at least the second two contributions, she knew that the monies she was contributing were not her own, but were in essence given to her by her husband. It does not appear that she knew about the various other schemes between Mr. Ansara and Mr. Davis, or that she knew of the source of the monies with which she was being reimbursed. Nevertheless, she knew she was using monies given to her by her husband, and knew that fact should be hidden from the Election Officer. Her contributions were in fact employer contributions. Her knowledge and activities also make her a knowing (although distinctly subordinate) part of the scheme to deliberately funnel prohibited contributions to a candidate. She has thus violated Article XII, Section 1(b) of the ***Rules***.

5. Charles Blitz. Mr. Blitz was a knowing participant in a scheme to obtain large donations from individuals for the Carey Campaign in return for IBT contributions to certain outside political organizations, thus violating Article XII, Section 1(b)(1) of the ***Rules***. He also arranged to have Citizen Action pay $50,000 to Mr. Mailman and $25,000 to Mr. Sherman -- monies Citizen Action was not obligated to pay -- for the express purpose of allowing them to contribute to the Carey Campaign. He further directed Citizen Action to pay him $15,000 that was no longer owed to him, so that he could donate it to the Carey Campaign. Since Citizen Action is an employer, this had the effect of laundering Citizen Action monies through individuals to make contributions to the Carey Campaign, also a violation of the ***Rules***. See Thompson, P-1025-LU745-SOU (November 1, 1996), aff'd, 96 - Elec. App. - 268 (KC) (November 12, 1996). His own contribution also violates the ***Rules*** since it was apparently a part of this scheme, and was in any event solicited by Mr. Ansara, an employer.

6. Jere Nash. Mr. Nash's refusal to cooperate has made it difficult to fully uncover the extent of his participation in the various improper transactions. It is known that he helped implement the contribution swap by instructing Ms. Simpkins to expedite approval of certain IBT expenditures that would, in turn, prompt contributions to TCFU and the Carey Campaign. He knew about the individual IBT expenditures because he spoke to Ms. Simpkins

on each occasion to let her know the check request was on its way. He also knew of and permitted the efforts of Messrs. Ansara and Davis to obtain the large contributions from Ms. Arnold. He admitted to Cohen Weiss that he was part of the "family" of fundraisers who would be hurt if any of their activities came to light. Based on this, and drawing the appropriate adverse inferences from Mr. Nash's false statements in his March 3, 1997 affidavit, and his refusal to cooperate with the investigation, the Election Officer finds that Mr. Nash knowingly participated in improper schemes to obtain prohibited contributions from employers and the IBT for the Carey Campaign, in violation of Article XII, Section 1(b)(1) of the ***Rules***.

7. Citizen Action and CRC. Citizen Action, an employer, gave $75,000 to Share Group for work not performed based on invoices the organization knew were not valid, knowing the money was intended to be used as part of an arrangement that would benefit the Carey Campaign. Further, Citizen Action gave $50,000 to Mr. Mailman, $25,000 to Mr. Sherman, and $15,000 to Mr. Blitz for the express purpose of allowing them to contribute to the Carey Campaign. Citizen Action participated in the schemes to receive IBT assets for CRC, a chapter of Citizen Action. While the full scope of Citizen Action's activities is not presently known, there is sufficient evidence to conclude that Citizen Action gave, directly or indirectly, assets for the foreseeable purpose of aiding the Carey Campaign, in violation of Article XII, Section 1(b)(1) of the ***Rules***. See Gilmartin.

8. Ed James. Mr. James is clearly an employer who solicited contributions for a candidate and therefore violated Article XII, Section 1(b) of the ***Rules***. Committee to Elect Ron Carey, supra.

The Election Officer does not find violations of the ***Rules*** as to the following:

Nathaniel Charny and Cohen, Weiss & Simon. The protester alleges that Mr. Charny solicited employer contributions in his role as counsel to TCFU. The facts fail to show that Mr. Charny knew of any of the schemes involved in funneling IBT and employer monies into TCFU, or that he knew that any of the contributors he interviewed were employers. While he later misled the Election Officer (see Part III(C)(7) below), there is no evidence to show that he was involved in any solicitation of contributions, or that any other lawyer at Cohen Weiss was so involved.

Gene Moriarty. As treasurer of TCFU, Mr. Moriarty was responsible for keeping the committee's records. There was no evidence that he ever personally solicited any contributions or that he knew of any of the fundraising schemes. Nor is there any evidence that he knowingly falsified TCFU's records or the CCERs. Accordingly, he cannot be found to have violated the ***Rules***.

IBT. The end result of the various schemes described above was that IBT funds

were used to fund campaign contributions to the Carey Campaign. In order to find a violation by the IBT, the Election Officer must have evidence that the IBT's assets were contributed by the IBT with the purpose, object, or foreseeable effect of influencing the campaign. See Gilmartin. It would not be enough to show that the IBT monies were later diverted by the recipients and then used in separate transactions to benefit the Carey Campaign.

There is insufficient evidence that IBT officials knew that they were making payments and contributions that would be used for campaign purposes. However, the evidence clearly establishes that significant amounts of IBT funds were used to benefit the Carey Campaign, and it is difficult to understand how these series of transactions could have been accomplished in the manner they were without the participation of someone with authority within the IBT. For these reasons, while no violation is found against the IBT at this time, the participation of the IBT and its officers and employees in any schemes to benefit the Carey Campaign will be part of a referral for further investigation to the IRB and the U.S. Attorney's Office. In addition, the relief ordered below includes restraints on the IBT to help insure that IBT assets will not be used to make prohibited campaign contributions again in the future.[74]

D. Did the Violations Affect the Outcome of the Election?

1. Standard of Proof

While the contributions described above are clearly prohibited by the ***Rules***, the Election Officer cannot grant a post-election protest unless "the alleged violation may have affected the outcome of the election . . . ." Article XIV, Section 3(b). If the Election Officer does find such an effect on the outcome, she cannot certify the election. In order to apply this rule, the Election Officer must apply the standard of review that recognizes her broad supervision and

[74] In Post-44, Mr. Hoffa alleges that TDU also attempted to raise money from employers based on an article about the TCFU controversy in the *San Francisco Chronicle* on March 22, 1997, which stated in part as follows:

> But Ken Paff, an activist with the reformist Teamsters for a Democratic Union, downplayed the entire controversy. "It's not a big shock that liberals supported Carey," he said. "I try to raise money from the same people myself."

On its face, the article refers to Mr. Paff's general interest in raising money from liberals, not employers. The protester has not supplied any evidence that TDU raised or attempted to raise prohibited contributions from employers. TDU's right to participate in the IBT International officer elections has been clearly established. Sargent, P-249-LU283-MGN (May 21, 1991), aff'd, In Re: Gully, 91 - Elec. App. - 158 (SA) (June 12, 1991); Halberg, P-019-LU174-PNW (December 14, 1995) (decision on remand). The Election Officer has recently reviewed the CCERs filed by TDU, which do not show any evidence of prohibited employer contributions. The protest in Post-44 must therefore be denied.

control of the election process.

Federal case law interpreting the LMRDA distinguishes between supervised and unsupervised elections in applying an appropriate standard of review. When a labor union conducts its own election and DOL later finds that a violation of Title IV of LMRDA occurred, there is a presumption that the violation affected the outcome of the election. Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492, 506-07 (1968). The burden is then placed on the union to show that the violation did not affect the outcome. Thus, in an unsupervised election, the Secretary does not necessarily have to find specific evidence of an effect on the outcome, because the presumption supplies that causal connection.

Where, however, DOL supervises a labor organization's election pursuant to LMRDA,[75] "the Secretary's supervision of the [rerun election] establishes a presumption of fairness and regularity . . . ." Brennan v. International Union of District 50, 499 F.2d 1051, 1059 (D.C. Cir. 1974).[76] Thus, before setting aside a supervised election, the Secretary must find convincing evidence that the violation may have affected the outcome and must present a statement of reasons explaining the connection, if any, between the violations found and the outcome of the election. The shift in the presumption is based on the close, ongoing involvement that DOL has in a supervised election. Local 299, 515 F. Supp. at 1281. Because of this outside supervision, courts have not utilized the presumption articulated in Wirtz v. Local 6, supra.

[75] Section 402(b) of LMRDA, 29 U.S.C. § 482(b), provides in part that where the Secretary of Labor finds probable cause to believe that a violation of the subchapter occurred and has not been remedied, he shall bring an action to set aside the invalid election. If the court finds that the violation may have affected the outcome of the election, it shall declare the election null and void-

> and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization.

29 U.S.C. § 482(c).

[76] Accord, Usery v. Local Union 639 IBT, 543 F.2d 369, 377-78, 379-80 (D.C. Cir. 1976), cert. denied, 429 U.S. 1123 (1977); Maldonado v. Brock, 661 F. Supp. 548, 552 (S.D.N.Y. 1987); Donovan v. Blasters, Drillrunners & Miners Union, Local 29, 521 F. Supp. 595, 598 (S.D.N.Y. 1981); Martin v. Int'l Org. of Masters, Mates and Pilots, 786 F. Supp. 1230, 1236 (D. Md. 1992); Donovan v. Local 299, IBT, 515 F. Supp. 1274, 1286 (E.D. Mich. 1981); Donovan v. Teachers Local 6, 747 F. 2d 711 (D.C. Cir. 1984); Martin v. Local Union 996 IBT, 1991 WL 346365 (D. Hawaii Aug. 12, 1991).

The rationale articulated by the courts in utilizing the supervised election standard is applicable to this election. In an election supervised by the Secretary of Labor, the DOL assists a local union in planning its election and monitors each stage of the process. Nevertheless, the union runs its own election and controls the mechanics of the election. Such limited monitoring of a union-run election was expressly rejected by the District Court for the 1991 IBT International officer elections. United States v. IBT, 742 F. Supp. 94, 106 (S.D.N.Y. 1990), aff'd as modified, 931 F.2d 177 (2d Cir. 1991). Rather, as directed by the Court, the Election Officers in 1991 and 1996 actually performed all of the steps necessary for the election process. In light of this close supervision, Election Officer Holland, in Durham, analogized to a DOL-supervised election in establishing the standard of proof to apply to post-election protests after the 1991 International officer election, rejecting the use of a presumption to establish that a violation may have affected the outcome of the election.

The standard of proof used in DOL-supervised elections also reflects the adverse effects of rerunning an election. In Local 299, the Court emphasized the importance of not prolonging such an expensive and disruptive process:

> [T]he conduct of elections is not a game or sport. Elections are expensive, and disruptive of the union's business. It is in the interest of the membership of the union and union democracy to provide finality to the election process and not to compel further elections after an election supervised by the Secretary unless it can be shown that the conduct is grievous and may have affected the outcome of the election.

Id. at 1282.[77]

Just as with DOL-supervised elections, the 1996 IBT election was expensive and

[77] This is true of all democratic elections. In fashioning Title IV of LMRDA, "Congress' model of democratic elections was political elections in this country . . . ." Wirtz v. Local 6, 391 U.S. at 504. Court decisions to invalidate an election in the public sphere have recognized that:

> the court must balance the rights of the candidates and voters against the state's significant interest in getting on with the process of governing once an election cycle is complete. Special elections not only disrupt the decision-making process but also place heavy campaign costs on candidates and significant election expenses on local government. The state also has an interest in placing a reasonable limit on the number of times voters are called to the polls.

Gjersten v. Board of Election Commissioners for City of Chicago, 791 F.2d 472, 479 (7th Cir. 1986). See K. Starr, "Federal Judiciary Invalidation as a Remedy for Irregularities in State Elections," 49 N.Y.U. L. Rev. 1092, 1128 (Dec. 1974).

disruptive of the Union's business. While these considerations should not permit certification of a tainted election, they warn against rerunning an election unless there is a reasonable probability that the violation may have affected the outcome.

Considering the factors above, the Election Officer concludes that this election is presumed to be fair and regular. Therefore, in order to grant a post-election protest, the evidence must overcome this presumption by demonstrating a violation of the ***Rules*** that may have affected the outcome of the election. This is consistent with DOL's standard for certification of supervised elections. See Local Union 639; Local 299.

The protester asserts that the standard of review for a DOL-supervised election cannot be applied here because the Election Officer does not have the same authority as the Secretary of Labor pursuant to LMRDA, and because this is not a DOL-supervised rerun of an original union election. The Election Officer is not seeking to appropriate to herself the powers of the Secretary of Labor, but to determine the correct standard of review under the ***Rules***, given her extensive supervision and control over the election. In making her decision, the Election Officer looks to analogous situations under federal law, a practice she has frequently employed in the past. Furthermore, as stated above, the Election Officer's level of supervision is greater than that exercised by DOL under LMRDA in a normal supervised election, and her involvement should be reflected in the standard of review.

The protester argues that the appropriate standard of review is the one used by the courts in unsupervised union elections as described in Wirtz v. Local 6, supra, and relied upon by the Election Appeals Master in In Re: Carter, 95 - Elec. App. - 46 (KC) (December 20, 1995), aff'g Carter, P-217-LU71-SEC (December 7, 1995). In that case and other post-election cases,[78] the Election Officer's decision did not clarify the distinction between the supervised and unsupervised standard. The Election Officer has now carefully reviewed the issue and described the rationale and legal precedent which has lead to the adoption of the supervised election standard.

The protester also argues that the higher standard for evaluating a post-election complaint in a supervised election should not apply here, where the violation was not uncovered and cured prior to the casting of votes. The protester asserts that the higher standard is only justified in the case law under LMRDA because the Secretary has the opportunity to remedy the violation before it affects the election's outcome.

The protester essentially argues that there should be two different standards of review applied to a supervised election: one for violations uncovered and remedied prior to balloting,

[78] See, e.g., Birch, P-708-LU320-NCE (April 19, 1996).

and a lower standard for violations not uncovered or remedied until after the election. However, this distinction does not appear anywhere in the LMRDA cases. Rather, the cases concerning certification of a supervised election involve violations unremedied at the time of the election. The courts make clear that a violation detected after a supervised election does not, without more, demonstrate an effect on the outcome.[79] In Durham, Election Officer Holland found contribution violations which were not remedied prior to balloting. Citing the presumption of fairness and regularity, he analyzed those violations and found that they did not affect the outcome of the election. Id. at 35, 48. Thus, the Election Officer finds that the failure to detect a violation prior to balloting does not remove the presumption of fairness and regularity to be applied to supervised elections.

2. Application of the Standard to the Contribution Violations

Having concluded that the supervised election standard applies, the Election Officer must determine whether the improper conduct found here may have affected the outcome of the election. This determination focuses on whether there is "a meaningful relation between a violation of the Act and results of a particular election." Wirtz v. Local Unions 410, 410A, 410B & 410C, Int'l Union of Operating Engineers, 366 F.2d 438, 443 (2d Cir. 1966). The causal connection between the specific conduct at issue and the election outcome is independent of the degree of bad faith or moral culpability of the actors, or the knowledge or participation of any candidate or IBT official. The purpose of the post-election protest is to determine whether the election should be certified, and the Election Officer's concern is not who wins the election, but whether the election results fairly represent the will of the members, as provided for by the Consent Decree and the ***Rules***. Thus, even serious misconduct will not necessarily support the granting of a post-election protest if it did not affect the outcome of the election.

Here, the evidence demonstrates that a portion of the GOTV mailings were paid for with TCFU contributions that have now been found to violate the ***Rules***. The question that must be determined, therefore, is whether the use of these contributions may have affected the outcome of the election.

As described above, the Carey Campaign determined early on that a large direct mail campaign was a critical part of their overall strategy. The November Group billed the Carey

[79] See, e.g., Local 639, 543 F.2d at 381 (Secretary found no effect on outcome where employer held a meeting with employees, urged them to vote for the incumbents, served beer and soda, paid the employees two hours overtime, and lent a truck to the incumbents for campaign purposes); Shelly v. Brock, 793 F.2d 1368, 1377 (D.C. Cir. 1986) (Secretary found no effect on outcome where incumbents used union funds and facilities to aid their campaign); Maldonado, 661 F. Supp. at 551 (Secretary found no effect on outcome where an employer contributed $1,100 to a candidate slate that had raised $103,000 from legitimate sources).

Campaign and TCFU approximately $474,000 for the portion of the direct mail campaign undertaken by November Group. TCFU paid a total of $220,000 to fund the creation, printing and mailing of 886,269 pieces, described below. The Carey Campaign was billed by the November Group to produce and mail another 810,945 pieces, consisting of six different flyers, four of which were mailed to one or more of the same targeted groups of members as received the TCFU-funded pieces. Two of the leaflets went to two additional targeted groups. The total cost for these six pieces was $245,958.32. In addition, the Campaign used DeLancey Printing and another printing company to print and mail several hundred thousand copies of additional flyers, all of which were billed to the Carey Campaign. Thus, TCFU funded approximately 40% of the pieces used for the final direct mail campaign.

The TCFU-funded portion of the November Group mailing consisted of three separate flyers. There were 255,094 copies produced of the leaflet "Don't Let Corruption Back into Our Union." The piece alleged that Mr. Hoffa had associations with corrupt union officers and "Mob figures." This leaflet was mailed to members in the freight industry and a more general targeted group of likely Carey supporters. There were 388,262 copies produced of the leaflet "Keep Our Union Strong." The leaflet claimed that Mr. Hoffa has no experience, would hurt Teamster organizing and would bring back corruption. Another 242,913 copies were produced of the leaflet, "Is Your Pension Safe?" It claimed that Mr. Hoffa would put members' pensions at risk and repeated allegations about his alleged Mob ties. The latter two leaflets were mailed to members employed by United Parcel Service, members in the freight industry, and a more general group of targeted Carey supporters. Each of the leaflets carried a common message: vote for a cleaner, stronger Teamsters Union, and vote by mail for the Ron Carey slate. Two of the leaflets pictured a sample ballot envelope and advised the member that his or her ballot would arrive the week of November 11.

The protester asserts that the TCFU-funded mailings were "deliberately misleading hit-pieces against Mr. Hoffa." A review of the mailings themselves demonstrates that they did not raise any new charges or issues that had not been presented previously, nor were they any harsher or more negative than many of the communications issued by both sides during much of the campaign. While the flyers accused Mr. Hoffa of associating with organized crime figures, those charges had previously appeared several times in the campaign pages published in the IBT magazine. As to the accuracy or unfairness of the pieces, the Election Officer does not censor campaign materials based on tone or content, and a candidate does not violate the ***Rules*** by making harsh allegations in campaign literature. Mora, P-186-LU186-CLA (October 19, 1995).

The Carey Campaign argues that the TCFU contributions did not affect the outcome of the election because the TCFU-funded portion of the direct mail program would have gone

forward, even if the TCFU contributions had not been available. As evidence, the Campaign points to the oral commitments made to Mr. Nash by a core group of campaign activists during the Summer of 1996 to contribute "above and beyond" the contributions they were already making to the Campaign, if needed. The Election Officer cannot accept this argument. Even assuming the veracity of these commitments, it would completely undermine the ban on prohibited contributions to accept the argument that such contributions did not affect the outcome of the election because they could have been replaced with lawful contributions. The prohibited contributions were used to finance the direct mail, while the "pledged" monies were not received until after the election. Thus, the Election Officer cannot assume that the TCFU-funded portion of the mailings would have been sent even in the absence of the TCFU contributions.

The Carey Campaign alternatively argues that even if the TCFU-funded pieces had not been mailed, there would have been no effect on the outcome. The Campaign first asserts that by the time the mail went out, most voters had already made up their mind and would not have changed their choice. However, the main purpose of the mailings was to motivate supporters to mail in their ballots, not to convince opponents to change their minds. Thus, the mailings were still potentially meaningful as to the ultimate turnout. The same analysis applies to the Campaign's related argument that the mailings could not have had an effect because the results of the election mirrored the predictions of the October 31 poll. It is a familiar adage that polls don't vote, people do. Getting out the vote was the purpose of the mailings, and the poll offers no evidence as to whether the mailings were effective in achieving that purpose.

Second, the Campaign argues that the November Group mailings had no effect on the outcome of the election because, as the Campaign later discovered, the post office treated the flyers as third class mail.[80] Instead of reaching members during the period November 8-13, the Campaign asserts that most of the November Group mail did not arrive to members until November 19-28, well after most members voted and too late to influence the election.

The Election Officer does not accept this argument. First, while there is some anecdotal evidence of late receipt of the mail, no persuasive evidence has been produced to show that the entire mailing was received substantially late. Even if true, by the Campaign's own estimate at least half of the ballots ultimately cast were not received by the Election Officer by the time the allegedly late mail started to reach members' homes. Further, if the error of the November

[80] According to the Campaign, the November Group assumed that the mail would receive a special priority for political mail known as "red tagging." However, the postal service disagreed, and as a result the Campaign believes that the mail was treated as regular third class mail.

Group had indeed resulted in a $500,000 mailing being rendered useless, one would expect some evidence of an immediate dispute between the Campaign and the November Group over such a disastrous mistake. Despite numerous opportunities, the Carey Campaign did not complain about the November Group's supposed error until mid-June 1997, after the argument was made to the Election Officer. The evidence therefore does not support the Campaign's argument over the alleged lateness of the mail.

Finally, the Carey Campaign asserts that the TCFU-funded mailings must be viewed in the context of the entire campaign and that, so viewed, the mailings could not have affected the outcome of the election. The Election Officer has carefully considered this argument, recognizing that the TCFU-funded mailings must indeed be seen within the context of a very long, expensive and vigorous campaign waged by all of the candidates.

The Election Officer recognized Mr. Carey as a candidate beginning in October 1994. In the months between then and the beginning of the vote count on December 10, the Carey Campaign and the independent committees supporting the slate (not including TDU) raised approximately $3.1 million and spent approximately $3.55 million.[81] In planning and executing their campaign, the Carey slate used professional political consultants and sophisticated vendors for printing, mailing, polling, and other services. The Election Officer estimates that the Carey Campaign alone distributed millions of leaflets, flyers, and letters to individual IBT members during the last half of 1996. The Campaign distributed several thousand copies of campaign audio and videotapes to members. It also bought radio ads in certain locations, and maintained a home page on the Internet's World Wide Web. Further, pursuant to Article VIII, Section 10 of the ***Rules***, the Carey slate was entitled to free space for campaign purposes in five separate issues of the IBT's magazine, *The Teamster*, which is mailed to all 1.4 million members of the IBT. Mr. Carey and members of his slate also made numerous campaign appearances at rallies, meetings, and employer parking lots throughout the United States and Canada. Hundreds of volunteers regularly distributed literature and campaigned at worksites throughout the United States and Canada.

In addition, both campaigns benefitted from extraordinary coverage of the election by the media. Radio, network television, daily newspapers and weekly news magazines carried hundreds of stories about the two presidential candidates and the issues that each candidate supported.[82] CNN carried a 40-minute report on the candidates and the election on November

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[81] These figures are based on CCERs of all candidates on the Carey slate and all campaign committees supporting them submitted as of March 28, 1997.

[82] A NEXIS search revealed more than 600 articles on the election campaign for 1996

10.[83] All of this media scrutiny helped focus the attention of the members on the election and on some of the issues involved.

The Carey Campaign also executed an extensive GOTV effort apart from the mailings. Professional phone banks completed approximately 145,000 calls to targeted members. The Campaign printed and distributed to activists in the field 500,000 sample ballots in English, 200,000 sample ballots in Spanish, 500,000 leaflets, 300,000 palm cards, and 300,000 stickers. Many of these materials were handed out at organized plant gate visits.

The activities of the Carey Campaign were also supplemented by the activities of Teamsters for a Democratic Union ("TDU"), an independent committee of IBT members. TDU raised and spent approximately $458,000 on campaign activities. TDU had hundreds of activists who campaigned vigorously for the Carey slate. TDU published two special editions of its newspaper, *Convoy Dispatch*. The November issue, which was shipped on September 26, had a special printing of 80,000 copies; the December issue, shipped on November 1, had a special printing of 125,000 copies. The vast majority of these newspapers were shipped to a network of some 700 activists who then distributed them to fellow members in their shops and at plant gates.

The efforts of the Carey Campaign were matched by the Hoffa slate, whose own campaign activities were every bit as extensive and sophisticated. The Hoffa Campaign and its affiliated committees together raised approximately $3.6 million and spent approximately $3.8 million on the election.[84] It made use of professional campaign managers and sophisticated campaign mail houses, pollsters and other vendors. The Hoffa Campaign distributed hundreds of thousands of leaflets and newsletters, recruited thousands of volunteers, and made extensive use of phone banks for its GOTV efforts. It also maintained a home page on the Internet to communicate with IBT members.

The result of these equally hard-fought and heavily financed campaigns was an election whose results, with few exceptions, were extremely close. Union-wide, with 486,300 votes cast, the vote margin between winning and losing candidates ranged from 15,918 for General President to 4,366 for one of the International Vice Presidents. Regionally, 91,492 votes were

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prior to the ballot count.

[83] In Hoffa, P-1216-JHC-EOH (November 19, 1996), aff'd, 96 - Elec. App. - 287 (GSB) (November 27, 1996), the Election Officer found that the program did not constitute improper campaigning by an employer, but was legitimate media broadcasting.

[84] These figures are based on CCERs of all candidates on the Hoffa slate and all campaign committees supporting them submitted as of March 28, 1997.

counted from members in the Western region, with the margin between the winning and losing candidates for Western Region Vice President ranging from 1,889 to 256 votes.

The nature of this particular campaign makes it very difficult to assess the effect the tainted portion of the mailings may have had on the outcome of the election. There is no simple calculation that can be made to answer the question. Here, the prohibited contributions funded over 800,000 pieces of the direct mail campaign which were carefully targeted to have the most effect on voters likely to make the difference. It is true that the membership was sharply polarized already and that the same message had been presented numerous times in the Carey magazine ads and other literature. However, the mailings were designed to get out the vote for the Carey slate, not merely to persuade members to support its platform. A GOTV program seeks to persuade targeted voters to take the only act that ultimately matters: voting.

While the TCFU-funded mailings predominately featured the general president's race, each mailing urged the members to support the entire Carey slate of candidates. Since more than 88% of the voters in the election cast a slate ballot, any mailing supporting Mr. Carey benefitted the entire slate.

The TCFU funds made it possible for the Carey Campaign to remind key voters on several occasions of the need to vote. This effort could have persuaded at least a small percentage of Carey supporters to cast ballots who would not have otherwise voted. In a campaign that was marked by comparable efforts by both sides, and considering the small margins between winning and losing candidates, the TCFU funded mailings may have made the difference. The Election Officer therefore finds that the mailings paid for by TCFU funds may have affected the outcome of this election.

For the above stated reasons, the protests described in Part II of this decision are GRANTED in part and DENIED in part. The election will not be certified.

III. REMEDIES

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 addition, Article XIV, Section 5 provides,

> Should the Election Officer refuse to certify any election, she shall then immediately order that a rerun election be held, including, if necessary, the rerunning of the nomination process.

A. Rerunning the Election

Having determined that the violation may have affected the outcome of the election, the question remains as to what remedy is appropriate. The protester assumes that if the violation may have affected the outcome, the only alternative is to rerun the election or disqualify the Carey slate. The language of the ***Rules*** certainly seems to require a rerun election, although at least one LMRDA case suggests that the remedy remains within the Secretary's discretion in the context of a DOL-supervised election. McLaughlin v. Lodge 647, Int'l Bhd. of Boilermakers, 876 F.2d 648 (8th Cir. 1989).

However, even apart from the language of the rule, the goals and principles of the Consent Decree weigh heavily in favor of a rerun. The Consent Decree was designed to democratize a union infiltrated by the "hideous influence of organized crime." United States v. IBT, 896 F. Supp. at 1352. Approving the ***Rules***, the District Court stated:

> Rank and file Teamsters will watch this election with the hope that the Union will continue to be free and democratic. They will constantly be asking themselves whether the Union truly belongs to them. It is not just their interests that are at stake: the American public as a whole will benefit when this union of more than 1.4 million members is freed from the clutches of organized gangsterism.

Id. at 1353. The rank-and-file election of International officers has been seen as the centerpiece of the reform effort. Id. at 1354.

The reform effort has had significant success, and has become an accepted feature of this Union. This election cycle was marked by the absence of any debate over the propriety of allowing the rank-and-file to elect their International officers. Over the last few years, a culture of democracy has begun to take root in this Union. The 1996 election process was characterized by an unparalleled intensity. The slates and the individual candidates projected their positions and criticized their opponents with a directness, passion, and aggressiveness rarely seen in American political elections. Every aspect of the presidential candidates' pasts was brought to light and probed by the opposition. Most campaign materials were unsparing in their attacks on the positions, records, and integrity of the opposing candidates. One may question whether such campaigns are the most effective in winning votes or even building democratic institutions, but no one can question that this campaign was as open and competitive as any undertaken in an American labor union in recent history.

Preserving the new open spirit within the IBT requires some sacrifice. Certainly the hardship on the candidates and the members of rerunning so massive an election is a factor to weigh in this decision. A rerun election inevitably affects the Union as an institution, as many of its leaders, at both the local and national level, become diverted from the central work of bargaining and enforcing contracts and organizing new members. Many members of this Union

want nothing more than to return to the basic tasks of trade unionism and have looked forward to a respite from the almost ceaseless campaigning of the past two years. However, there are even greater dangers if strong action is not taken when employers secretly attempt to influence the election of IBT officers. The violations of the ***Rules*** described above were not merely technical, but products of schemes to funnel Union and outside money into the election and thus change the outcome. These were egregious violations by high level campaign functionaries who believed winning at all costs was more important than abiding by the ***Rules*** and the law. Members cannot have confidence in their Union or its leaders if they see that their choice of officers has been manipulated by outsiders. They cannot have confidence in the Consent Decree if Court officers do not take effective action to prevent and remedy such misconduct.

The Election Officer has searched for a means of properly remedying the violations while at the same time avoiding the burden on the Union and its members inherent in holding a new election. Unfortunately, no such path is apparent. The election of International officers is the clearest expression of the control of members over their union; it is also the key to insuring that organized crime, employers, or any other outsiders do not use the Union for their own purposes. To avoid a rerun because of the disruption it brings could allow this union to lose its most valuable resource: the support, participation, and confidence of its membership. Such a result cannot be allowed.

Because the violations of the ***Rules*** described above may have affected the outcome of the election and further threatened the integrity of the process, the Election Officer hereby orders a rerun election for all International officer positions except Central Region Vice Presidents and President of Teamsters Canada.[85] An application to the District Court, seeking approval for the Election Officer's Proposed Rerun Election Plan, is being filed simultaneously with the issuance of this decision. The plan provides for supplemental nominations, a prohibition on nonmember contributions, a limit on contributions of $1,000 from members and $5,000 from candidates, and more detailed and frequent reporting of campaign contributions and expenditures.

B. The Question of Disqualification

The protester argues that the severity of the misconduct here requires that all members of the Carey slate be disqualified and that the members of the Hoffa slate be declared the winners of

[85] The winners of the contest for the five Central Region Vice President positions were all members of the Hoffa slate. Since the violations of the ***Rules*** found herein were committed on behalf of the Carey slate, the violations could not have affected these races. Louis Lacroix, President of Teamsters Canada, who also sits as an International vice president on the GEB, was nominated without opposition at the IBT Convention and was declared the winner at that time. His election could not have been affected by the violations found herein.

all International officer positions. The Election Officer has given serious consideration to this remedy but finds it inappropriate.

Article XII, Section 1(d) of the ***Rules*** states:

> The remedy that may be imposed by the Election Officer in resolving any protest concerning a candidate's or campaign's receipt or use of improper contributions will be influenced by the manner in which the contribution was solicited and by whether an appropriate disclaimer was contained in, or issued at the time of, the solicitation.

Article XIV, Section 4(c) specifically mentions disqualification of a candidate as a possible remedy where a protest is granted.

Disqualification is a drastic remedy of last resort, since it is ultimately undemocratic: it interferes with the members' right to nominate and elect candidates. The Carey slate was initially accredited by petitions containing tens of thousands of signatures of IBT members throughout the United States and Canada. The slate members were all nominated by a sizable margin of delegates to the International Convention, who themselves were elected in supervised elections. Removing the Carey slate members from the ballot would deprive members of the opportunity to vote for candidates that had been popularly nominated according to the ***Rules***.

Previous decisions of the Election Officer demonstrate that disqualification is not a favored remedy. In Hoffa, P-770-LU743-EOH (June 21, 1996), aff'd, 96 - Elec. App. - 210 (KC) (July 11, 1996), the protester argued that Mr. Carey should be disqualified because members of his campaign organization improperly used the IBT membership list for a local union election. The Election Officer found:

> Such remedies are more properly considered when persons have shown defiance for the processes established by the Consent Decree, such as by obstructing an investigation, disobeying a prior cease and desist order or engaging in repeated knowing violations.

In that case, Mr. Carey was held strictly liable for the violation of the ***Rules*** by his campaign workers, but was not disqualified because there was no evidence of his knowledge of or involvement in the conduct which gave rise to the violation.

In other cases where candidates were found to have received and used prohibited contributions, the Election Officer has not disqualified candidates. In Gilmartin, various local union and joint council officers were found to have improperly used more than $116,000 of union assets to create the Real Teamsters Caucus, a campaign-related network of activists to oppose Mr. Carey. In Thompson, the Election Officer found that officers and business agents of Local Union 745 engaged in a scheme to divert over $44,000 of union assets to the campaigns

of Mr. Hoffa and T.C. Stone and to the Real Teamsters Caucus through the mechanism of a business agent fund and arbitrary salary increases for agents. While the diversion of funds in both cases was intentional, the Election Officer did not consider or order disqualification.

The protester has implied that if the violations may have affected the outcome, then the Election Officer must declare as winners the candidates with the next highest vote count, without any analysis of the appropriateness of disqualification. However, the finding that the violations "may have affected" the election outcome is something less than a finding that the violations did affect the outcome. The Hoffa slate cannot claim that its candidates would have won the election if the violations had not occurred, only that they might have. To install candidates who were not elected would not simply remedy the violations found in this decision but would potentially place the Hoffa slate in a better position than they would have been in had the violations not occurred. This result is inconsistent with the Consent Decree and the ***Rules***.

Further, the protester's argument would have to be rejected even if disqualification had been warranted here. Under the Consent Decree, the Election Officer's obligation is to ensure a fair and open election. Where the Election Officer refuses to certify the election, the ***Rules*** give the Election Officer the discretion to reopen nominations as part of a rerun election. As described in her application to the District Court filed this date, the Election Officer has found that in order to preserve the right of members to nominate and elect their officers, supplemental nominations are necessary. The same interest underlying that finding would remain even if a candidate from the initial election had been disqualified.

The protester points to the language in Paragraph 8 of the Consent Decree and Article XII, Section 1(a) of the ***Rules*** cited above, which prohibits use of employer contributions and states that "[v]iolation of this provision shall be grounds for removal from office" (emphasis added). The Election Officer does not read that language as requiring automatic disqualification or removal from office upon a finding that a candidate has used or accepted employer contributions. The language is best understood as stating that a violation of this provision can be sufficient, even absent any other violation, for removal from office. To apply it automatically to all instances of employer contributions would conflict with the plain language of Article XII, Section 1(d) of the ***Rules***, which gives the Election Officer discretion in imposing a remedy based on the surrounding circumstances.

The protester has also argued that the Carey slate should be disqualified because under the ***Rules***, candidates are strictly liable for the acceptance or use of any improper contributions. This argument confuses the finding of a violation with the choice of a particular remedy. It is correct that if a candidate or slate accepts a prohibited contribution, it has violated the ***Rules*** whether it acted with bad intent or complete innocence. This insures that a remedy will remove

the prohibited contribution from the election process by ordering the candidate to return the contribution. Thus, strict liability applies to establishing that a violation of the ***Rules*** occurred. Article XII, Section 1(d) of the ***Rules*** demonstrates that the choice of remedy is still dependent on the surrounding circumstances. It would be inconsistent with the ***Rules*** to disqualify a candidate from running for office if he or she had in good faith accepted a contribution that later turned out to be prohibited. On a number of occasions, the Election Officer has held the principal candidates strictly liable for prohibited campaign contributions of which they had no prior knowledge; she did not disqualify any candidates.[86] Thus, while the Carey Campaign violated the ***Rules*** by accepting the $221,000 in prohibited contributions, the Election Officer must engage in a separate inquiry as to whether the remedy of disqualification is appropriate.

Here, the investigation has not disclosed any evidence which would support a conclusion that Mr. Carey or any member of his slate knew of or participated in the various improper fundraising schemes. There is no evidence that they knew that Mr. Davis and Mr. Ansara were soliciting contributions; that employer and IBT monies were being funnelled to Ms. Arnold to contribute to TCFU; or that IBT contributions to political causes had been promised to nonmembers in exchange for contributions to the Carey Campaign. Mr. Carey has denied any such knowledge.

During the Fall of 1996, Mr. Carey was out of the office a great deal, spending his time on IBT business as well as campaigning. He appears to have been, in many ways, detached from the day-to-day activity of the campaign, relying for his knowledge on memos from Mr. Nash. When the Cohen Weiss lawyers disclosed what they had learned about the fundraising schemes in various conversations in March 1997, Mr. Carey ordered the lawyers to waive attorney-client privilege, to disclose the information to the Election Officer and the U.S. Attorney's Office, and to fully cooperate with any investigation. While not directly proving or disproving wrongdoing, such conduct is generally consistent with Mr. Carey's asserted lack of knowledge of the schemes and inconsistent with participation in the misconduct.

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[86] See, e.g., Pratt, P-649-LU966-NYC (April 2, 1996), aff'd, 96 - Elec. App. - 168 (KC) (April 15, 1996) (employer distributed campaign literature supporting delegate slate from delivery trucks); Feeley, P-874-LU817-MGN (September 17, 1996) (Hoffa campaign material on employer trucks and equipment); Maney, et al., P-956-IATSE-NYC (October 2, 1996), aff'd, 96 - Elec. App. - 251 (KC) (October 15, 1996) (Carey and Hoffa campaign material on employer trucks in parade); Sweeney, et al., P-1029-RCS-NYC (October 28, 1996) (Carey bumper stickers on UPS trucks); Jette, P-1178-LU31-CAN (November 14, 1996) (display of candidate materials in trust fund office); Swannie, P-1262-LU31-PNW (November 21, 1996), aff'd, 96 - Elec. App. - 289 (KC) (November 27, 1996) (employer inserted campaign literature supporting Hoffa slate candidates in pay envelopes).

The Election Officer has further examined whether certain other facts described in this decision show knowledge or participation by Mr. Carey. In telling Mr. Ansara to "lose some calls" from his IBT GOTV contract so that the profit could be diverted to the Campaign, Mr. Davis said that the client knew and wanted it done that way. Mr. Davis and Mr. Ansara did not discuss who Mr. Davis meant by "the client." The investigation has not disclosed any evidence that Mr. Carey knew or approved of any action to defraud the IBT through the GOTV contract with Share Consulting.

The Election Officer has also examined whether Mr. Carey's approval of the $475,000 contribution to CRC demonstrates knowledge of or participation in any of the various schemes. This was by far the largest single political contribution made by the IBT during the 1996 public elections, and substantially more than any other donation or contribution made by the IBT in 1992. The evidence shows that the IBT was spending a very large amount of money in 1996 to support their favorite candidates for Congress and for President of the United States. The IBT not only spent all of its PAC funds from DRIVE, but also spent a substantial amount of general fund monies in lawful GOTV activities. CRC was, on its face, a rational recipient for IBT political contributions in that it had organized substantial GOTV activities throughout the country for the candidates being supported by the IBT. The contribution to CRC was consistent with the political goals of the IBT, and Mr. Carey's approval does not in itself demonstrate any knowledge by Mr. Carey of misconduct.

On the other hand, troubling questions remain about this contribution and possibly others. Mr. Hamilton's memos to Mr. Carey pointed out the legitimate need for such expenditures, but they seem extraordinarily brief given the amount of the contributions being considered. Messrs. Hamilton and Carey state that they never discussed the CRC contributions directly. Mr. Carey states that he does not have any memory of authorizing the expenditure, a surprising statement in light of its size compared to other IBT contributions in the same period.

Thus, while the investigation has not uncovered evidence of any misconduct by Mr. Carey or his slate members, important questions remain unanswered. If, subsequent to the issuance of this decision, evidence is brought to the Election Officer's attention that could warrant disqualification of Mr. Carey or other members of his slate, the Election Officer will consider it.

C. Other Remedies

The Election Officer has determined that certain additional steps must be taken in light of the conduct found in this decision. The District Court has repeatedly affirmed the Election Officer's broad authority to supervise the election and enforce compliance with the ***Rules***. See Part I(B)(1) above. Article I of the ***Rules*** states in part:

> The Election Officer, consistent with her duties and obligations, reserves the authority to take all necessary actions in supervising the election process to insure fair, honest, open and informed elections.

Article XIV, Section 4 of the ***Rules*** states in part:

> If as a result of any protest filed or any investigation undertaken by the Election Officer with or without a protest, the Election Officer determines that the ***Rules*** have been violated or that any other conduct has occurred which may prevent or has prevented a fair, honest, open and informed election, the Election Officer may take whatever remedial action is appropriate.

Id. (emphasis added). The Election Officer has on a number of occasions issued remedial orders in the absence of the granting of a protest against a particular party, where such orders were necessary to protect the integrity of the election process. See Snow, P-727-LU443-ENG (May 28, 1996); Willett, P-863-LU331-PNJ (August 16, 1996); Sheibley, P-1010-LU653-ENG (October 14, 1996). While the Election Officer normally limits remedies to enjoining specific misconduct, she has inherent authority to order broader relief when the circumstances require. Hoffa, P-812-IBT-NYC (August 16, 1996); Steger, P-827-IBT-EOH (September 3, 1996). This includes the power to order fines. Hoffa, P-770. In the latter case, the Election Officer noted that not only were fines authorized by the IBT Constitution, but that their use was in keeping with the usages under the Federal Election Campaign Act and LMRDA. Further, the jurisdiction of the Election Officer extends to persons and entities which are not parties to the Consent Decree. See, e.g., United States v. IBT, 945 F. Supp. 609 (S.D.N.Y. 1996); United States v. IBT (Yellow Freight), 948 F.2d 98, 103 (2d Cir.), vacated as moot, 506 U.S. 802 (1992).

Here, the extraordinary nature of the misconduct demands that effective action be taken to safeguard and protect the democratic process. The TCFU schemes were an attempt to have the reelection campaign of the General President and his slate funded in part by the IBT, employers, and outside political organizations seeking favors from the IBT. As described above, one of the main purposes of the Consent Decree was to prevent outside corruption from gaining influence within the Union. Moreover, a number of people involved in various aspects of the schemes lied to Election Office investigators, made false affidavits under oath, refused to cooperate with the Election Officer's investigation, and/or actively obstructed that investigation.

In a written submission, Mr. Davis argues that the Election Officer has no legal authority to take remedial action against him because he is not a member or employee of the IBT, nor is he an employer of IBT members. However, as noted above, the terms of the ***Rules*** are not limited to IBT members or just employers of IBT members. The District Court has recognized the

need to issue orders against nonparties who are likely to frustrate the jurisdiction of the Court in implementing the Consent Decree. Further, Mr. Davis is factually in error when he argues that the Election Officer's authority does not extend to "independent contractors with no affiliation or contractual agreement with the IBT, who have received no payments or benefits from the IBT, who do not employ or sub-contract IBT members and do not have access to IBT funds or resources." As the evidence shows, Mr. Davis provided a substantial amount of goods and services to the IBT, and received substantial payments in return. The facts further show that he used his access to the IBT to accomplish the various illegal schemes described above. Mr. Davis' portrayal of himself as an innocent, peripheral vendor for the IBT is simply contrary to the facts.

Mr. Davis also argues that he has "absolutely no idea as to the specific conduct or alleged wrongful acts you believe were committed by Mr. Davis." This assertion is inaccurate. Mr. Davis' counsel was informed of the most serious charges being investigated and was given a full opportunity to respond to the allegations and to the possible imposition of remedies as to him.[87] Further, he will have an opportunity to be heard before the Election Appeals Master. These objections are therefore overruled.

In order to remedy the misconduct described in this decision and vindicate the integrity of the election process, the Election Officer orders the following relief:

1. IBT. Although the Election Officer did not find sufficient evidence at this time to conclude that the IBT violated the ***Rules***, the various schemes had the intended and actual effect of causing the IBT to be defrauded so that monies paid by the Union could be funnelled into the Carey Campaign. The evidence disclosed that these schemes were carried out in large part by outside consultants who had gained the trust and confidence of IBT officials, and who used their special positions to work their mischief. In order to safeguard the election process from further misconduct, it is necessary to insulate the IBT from future business dealings with the people and companies identified herein as knowing violators of the ***Rules***.

Accordingly, the IBT, all affiliates, and all candidates for International office are hereby barred from engaging in any business relationship with, accepting goods or services from, or paying any money or other thing of value to, any of the following: Martin Davis, November

[87] Election Office representatives served Mr. Davis, through his counsel, with the protest in Post-39. His counsel was further informed in a telephone conversation that the investigation concerning Mr. Davis included the allegations contained in the criminal complaint filed by the United States against Mr. Davis on June 6, 1997, as well as additional schemes of funneling improper contributions into the Carey Campaign. He was also told that the Election Officer was investigating Mr. Davis' refusal to cooperate with the Election Officer's investigation and possible false testimony under oath.

Group, Jere Nash, Democratic Consulting Group, Inc., Michael Ansara, Share Group, and Share Consulting. They may not perform any work for or against any candidate, or work for the IBT or any other entity where the work will directly or indirectly involve or be related to the IBT elections, nor may they bill or receive monies for election work performed by them or by any other entity. All candidates are barred from allowing any of these people or entities to participate in any way in the 1996 IBT International officer elections. This bar against the IBT, affiliates and candidates applies not just to dealings with the persons and entities named above, but also to any corporation, partnership, other entity or person in which any of the named persons or entities has or will have any ownership interest or which will make any payment of any kind, directly or indirectly, for any election-related work or for any IBT-related work. The right to conduct any IBT business in the future may only be restored after a period of six (6) years for good cause shown upon order by the IRB or the District Court.

Certain of the improper schemes described herein were successful because the IBT did not have a more rigorous authorization process and because contributions and contracts with vendors were not adequately monitored. While the lack of adequate internal financial controls does not violate the ***Rules***, the Election Officer's investigation has shown that this weakness is an invitation to improper and illegal conduct. The Election Officer shall refer this matter to the IRB.

Finally, the IBT shall provide to any member, upon his/her written request, a copy of this decision at the Union's expense.

2. The Carey Campaign. The Carey Campaign must cease and desist from soliciting or accepting any contributions from the IBT, its affiliates, any other labor organization, and from any employers. It must also return all improper contributions. The Election Officer notes that TCFU and the Carey Campaign have already returned all of the TCFU monies and the $1,250 initial contribution from Barbara Arnold. However, the Campaign must also return the $1,000 contribution to Wendy Swart and the $250 contribution to Susan Centofoni. The Carey Campaign is further bound by the portion of this order above that bans the IBT, its affiliates, and all candidates for International office from any future dealings with the violators named above.

3. Martin Davis and November Group. As described above, Mr. Davis, acting as a principal of the November Group, knowingly and willfully initiated and coordinated a scheme to funnel illegal employer contributions into the Carey Campaign. He also participated in a scheme to defraud the IBT by directing Share Group to shortchange the Union in its telephone canvassing. He further participated in a scheme to hide these transactions by issuing and convincing others to issue fraudulent invoices for which no work was ever performed. Finally, he made numerous false statements to the Election Officer and then further obstructed

her investigation by a refusal to give information about his relationship to fundraising activities.

Mr. Davis' conduct shows a complete and willful disregard for the ***Rules*** and the goals of the Consent Decree. If the fairness of the election process is to be upheld, the November Group must be removed from the process. Accordingly, Mr. Davis individually and the November Group are hereby barred from any further participation of any kind in the 1996 IBT International officer election. They may not perform any work for or against any candidate, or work for the IBT or any other entity where the work will directly or indirectly involve or be related to the IBT elections, nor may they bill or receive monies for election work performed by them or by any other entity.

The Election Officer further finds that the fraudulent and deceptive conduct of Mr. Davis and the November Group was exercised in large part to safeguard their status as a major vendor of the IBT. Certainly their means of effectuating much of the various schemes depended on Mr. Davis' access to IBT officials and his ability to subcontract IBT work. Such conduct is inconsistent with the fair business dealings expected of vendors given the goals and purposes of the Consent Decree. Accordingly, Mr. Davis and the November Group are hereby barred from any further work on behalf of the IBT or any IBT affiliate.

These bars apply not only to Mr. Davis and November Group, but to any corporation, partnership, other entity or person in which either Mr. Davis or November Group has or will have any ownership interest or which will make any payment of any kind, directly or indirectly, to Mr. Davis and November Group for any IBT-related work. The right to conduct any IBT business in the future may only be restored after a period of six (6) years for good cause shown upon order by the IRB or the District Court.

Finally, a substantial fine is necessary to remedy the misconduct of Mr. Davis and November Group. This was not an altruistic effort by these participants, but a scheme whose end result was to ultimately have all of the TCFU money paid to them as payment for a portion of the direct mail campaign. Accordingly, in addition to the remedies described above, Mr. Davis and November Group are jointly and severally ordered to pay a fine of $204,000 to an escrow account established by the Election Officer for this purpose to help defray the costs of a rerun election. This figure represents amount paid to November Group by TCFU which was raised by the improper schemes in which Mr. Davis played a part.[88]

4. Jere Nash. Mr. Nash was a knowing party to the various schemes, including the scheme to trade IBT political contributions for nonmember contributions to the Carey

[88] Of the $220,000 paid to November Group by TCFU, $16,000 was raised from Dr. Furst and Ms. Fry, separate from Mr. Davis' schemes.

Campaign. As campaign manager, he was the chief representative of Mr. Carey and had a special responsibility to uphold the ***Rules***. His willful subversion of the ***Rules*** has tarnished the integrity of the entire process. Finally, he gave false evidence to the Election Officer in his affidavit of March 3, 1997, about the so-called pledge program and the financial arrangements between the Campaign and the November Group, and then refused to cooperate with the Election Officer's investigation.

Accordingly, Mr. Nash individually and his company, Democratic Consulting Group, Inc., are hereby barred from any further participation of any kind in the 1996 IBT International officer election. They may not perform any work for or against any candidate, or work for the IBT or any other entity where the work will directly or indirectly involve or be related to the IBT elections, nor may they bill or receive monies for election work performed by them or by any other entity.

The Election Officer further finds that the fraudulent and deceptive conduct of Mr. Nash was facilitated by his role as a consultant to the IBT. Such conduct is inconsistent with the fair business dealings expected of vendors given the goals and purposes of the Consent Decree. Accordingly, Mr. Nash and Democratic Consulting Group are hereby barred from any further work on behalf of the IBT or any IBT affiliate.

These bars apply not only to Mr. Nash and Democratic Consulting Group, but to any corporation, partnership, other entity or person in which Mr. Nash has or will have any ownership interest or which will make any payment of any kind, directly or indirectly, to Mr. Nash and Democratic Consulting Group or any IBT-related work. The right to conduct any IBT business in the future may only be restored after a period of six (6) years for good cause shown upon order by the IRB or the District Court.

Finally, a substantial fine is necessary to remedy the misconduct of Mr. Nash. In addition to the remedies described above, Mr. Nash and Democratic Consulting Group are jointly and severally ordered to pay a fine of $10,000 to an escrow account established by the Election Officer to help defray the costs of a rerun election.

5. Michael Ansara, Share Group, Share Consulting. Mr. Ansara was a key planner of the various schemes to funnel prohibited contributions into the Carey Campaign. He further used his position as an IBT vendor to defraud the Union and divert its monies to the Carey Campaign. In accomplishing these efforts, he used his companies, Share Group and Share Consulting, to pay fraudulent invoices and transfer funds.

Accordingly, Mr. Ansara individually and his companies, Share Group and Share Consulting, are hereby barred from any further participation of any kind in the 1996 IBT International officer election. They may not perform any work for or against any candidate, or

work for the IBT or any other entity where the work will directly or indirectly involve or be related to the IBT elections, nor may they bill or receive monies for election work performed by them or by any other entity.

The Election Officer further finds that the fraudulent and deceptive conduct of Mr. Ansara, Share Group and Share Consulting was facilitated by their roles as vendors to the IBT. Such conduct is inconsistent with the fair business dealings expected of vendors given the goals and purposes of the Consent Decree. Accordingly, Mr. Ansara, Share Group, and Share Consulting are hereby barred from any further work on behalf of the IBT or any IBT affiliate.

These bars apply not only to Mr. Ansara, Share Group and Share Consulting, but to any corporation, partnership, other entity or person in which Mr. Ansara has or will have any ownership interest or which will make any payment of any kind, directly or indirectly, to Mr. Ansara, Share Group or Share Consulting for any IBT-related work. The right to conduct any IBT business in the future may only be restored after a period of six (6) years for good cause shown upon order by the IRB or the District Court.

Finally, a substantial fine is necessary to remedy the misconduct of Mr. Ansara. While he eventually cooperated with the Election Officer and the United States Attorney in this investigation, his central role in the original scheme justifies further action. In addition to the remedies described above, Mr. Ansara, Share Group and Share Consulting are jointly and severally ordered to pay a fine of $126,425 to an escrow account established by the Election Officer for this purpose to help defray the costs of a rerun election. This number represents the monies obtained by them from DeLancey Printing ($11,250), Citizen Action ($75,000) and $40,175 from the IBT GOTV contract[89] which were then used to fund the illegal contribution of Ms. Arnold.

6. Citizen Action, CRC - Citizen Action paid Share Group for work not performed and furthered a scheme to assist Mr. Blitz in getting contributions to the Carey Campaign. Accordingly, Citizen Action, CRC, Citizens Fund, or any affiliates thereof are hereby ordered to cease and desist from any further participation in any way in the IBT International officer elections, including but not limited to any financial transaction which has the purpose, object, or foreseeable effect of supporting or attacking any candidate for IBT International office.

Further, by soliciting contributions from the IBT, Citizen Action knew that such contributions were part of a plan to improperly transfer monies to the Carey Campaign. Such

[89] The $40,175 figure represents Share Consulting's net income from the IBT contract and is derived by subtracting the following items from the $97,175 contract price: $30,000 paid for services properly performed by Telemark, and $27,000 already repaid by Mr. Ansara to the IBT.

conduct is inconsistent with the goals of the Consent Decree. Accordingly, Citizen Action, CRC and Citizens Fund, or any other entity associated with them, is hereby barred from obtaining or attempting to obtain contributions from the IBT or any IBT affiliate.

Since the full scope of Citizen Action's activities is not presently known, it may be that further remedial action is warranted to serve the goals of the Consent Decree. For example, the role that Citizen Action and Citizens Fund played in the second transfer of $75,000 to Share Consulting remains unclear, as well as the purpose of the transfer. Thus, the Election Officer will refer this matter to the IRB and the U.S. Attorney's Office for whatever investigation and action it deems appropriate under the Consent Decree.

7. Nathaniel Charny - The evidence does not show that Mr. Charny knew that the TCFU contributions were being solicited by employers, or that he knew of or participated in the schemes to funnel employer and IBT assets into the Carey Campaign. Arguably, there were events during the period August through November that should have alerted him that something was wrong. Nevertheless, the totality of the evidence does not show that Mr. Charny willfully ignored or covered up clear evidence of wrongdoing in connection with the contributions to TCFU.

However, Mr. Charny signed an affidavit under oath which he knew contained false statements. His affidavit of February 20, 1997, falsely stated that he had spoken to all of the TCFU contributors at the time of the contributions, that he had spoken to Dr. Furst and Ms. Grace personally, and that he had thoroughly and personally vetted these contributions on behalf of TCFU. These statements were designed to show that TCFU, acting through its counsel, Mr. Charny, had taken great care with each potential donor prior to any contribution being spent in order to prevent any prohibited contributions tainting the election. In fact, while Mr. Charny did try to investigate the source of each contribution, his efforts were neither timely nor thorough.

As an officer of the Court, Mr. Charny had a duty to disclose all material facts and to refrain from making a false statement to a Court-appointed officer acting in an adjudicatory role. See ABA Model Rules of Prof. Conduct, Rule 3.3(a)(1) and (2) (as amended 1996); N.Y. Disp. Rules of the Code of Prof. Respon. §§ 1200.3(a)(4), 1200.33(a)(4) & (5). By violating this duty, Mr. Charny assisted others in their attempts to deceive and mislead the Election Officer.

Accordingly, Mr. Charny is barred from any further participation of any kind in the 1996 IBT International officer elections. He may not perform any work for or against any candidate, or work for the IBT or any other entity where the work will directly or indirectly involve or be related to the IBT elections, nor may he bill or receive monies for election work performed by him. Further, the Election Officer believes it her responsibility to refer this matter to the

appropriate attorney disciplinary body for the State of New York for any action it may deem appropriate. See ABA Model Code of Judicial Conduct, Canon 3(D)(2) (1990).

8. Barbara Arnold, Charles Blitz, and Ed James - The Election Officer orders each of these to cease and desist from making or soliciting any contributions for or on behalf of any candidates for International office in the future.

D. Referral to IRB and U.S. Attorney

While the Election Officer has attempted to thoroughly investigate all issues which have arisen related to the TCFU contributions, she has not been able to fully address all issues involving the use of IBT and employer funds in the campaign. The evidence obtained by the Election Officer suggests that there may be additional improper schemes, additional instances of improper uses of IBT assets, and additional participants in improper activities. A complete investigation of all issues raised in this decision would take many more months, a delay inconsistent with the Election Officer's duty to promptly resolve post-election protests.[90]

Weighing the competing priorities, the Election Officer has determined to issue her decision at this time. The Election Officer's first duty is to resolve factual and legal issues necessary to decide the question of certifying the election. While a thorough description of any and all schemes that involve improper contributions may be desirable, it is not necessary to carrying out this duty. Evidence of additional improper schemes would not alter the central conclusion of this decision, that the election must be rerun.

The Election Officer further finds that there are other adequate forums in which any continuing claims of improper conduct can be pursued. Evidence of additional schemes or new claims arising during the initial election can be addressed by the IRB, which has been assigned primary responsibility by the Consent Decree for addressing corruption and misconduct within the IBT. The government also retains the ability to apply to the Court as necessary to enforce the Consent Decree. Finally, the federal criminal investigation continues. The Election Officer, on the other hand, is responsible for the proper supervision of the election. Her attention and resources must now be primarily devoted to the conduct of the rerun election, including the investigation and adjudication of protests that arise in connection with the rerun election. Therefore, the Election Officer's investigation of the initial election is considered closed. While any further evidence on the issue of disqualification will be considered, the Election Officer will not consider any additional evidence or further protests relating to the conduct of the initial election. Such matters will be referred, as appropriate, to the IRB and the

[90] United States v. IBT, 1997 WL 107431 at *5-6. See ¶ 12(D) of the Consent Decree; Article XIV, Section 3(e) of the Rules.

U.S. Attorney's Office.[91]

As part of this decision, the Election Officer is referring a number of specific areas of inquiry to the IRB and to the United States Attorney for the Southern District of New York for whatever investigation and action they deem appropriate under the Consent Decree. These issues shall include all activities of Martin Davis and the November Group in connection with IBT expenditures or contributions; transactions involving the IBT, Martin Davis and Axis Enterprises; the involvement or participation of IBT officials or employees in a scheme to make political donations in exchange for contributions from nonmembers to the Carey Campaign; the purpose and use of political contributions made by the IBT to Citizen Action/CRC and other political organizations referenced in this decision; and the possible collection and use of cash and other contributions from ineligible contributors by the Carey Campaign.[92]

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). However, the payment of fines will be stayed pending a final decision if a timely appeal of this decision is filed.

[91] By letters dated June 10 and June 23, 1997, Mr. Hoffa requests that the Election Officer reopen and reinvestigate nine pre-election protests "because they were the result of fraud perpetrated by the Carey campaign and/or others acting in concert with the Carey campaign." The letters cite Hoffa, P-925-IBT-MGN (September 20, 1996), aff'd, 96 - Elec. App. - 244(KC) (October 3, 1996); Hoffa, P-984-LU748-CSF (October 17, 1996), aff'd, 96 - Elec. App. - 261(KC) (November 1, 1996); Hoffa, P-1009-IBT-CSF (October 17, 1996); Hoffa, P-1017-LU705-CHI (October 4, 1996); Hoffa, P-1122-RCS-EOH (October 30, 1996); Hoffa, P-1130-RCS-EOH (November 14, 1996); Hoffa, P-1245-IBT-NYC (February 21, 1997); Hoffa, 1306-RCS-NYC (December 4, 1996); and Middleton, P-1326-LU848-CLA (January 21, 1997), remanded, 97 - Elec. App. - 317 (KC) (February 25, 1997), P-1326-LU848-CLA (May 7, 1997) (decision on remand), aff'd, 97 - Elec. App. - 321 (KC) (May 27, 1997).

It is unnecessary to reopen these cases in light of the remedies provided in this decision, which order a rerun election, bars Mr. Davis and November Group from any further participation in the election, and refers instances of misconduct to the IRB and the U.S. Attorney's Office. Accordingly, the protester's request to reopen is denied.

[92] On July 2, 1997, Mr. Hoffa filed a protest (Post-51) alleging that IBT representatives, organizers and members were paid with Union funds in order to campaign during October and November 1996 for the Carey slate. On July 25, 1997, Mr. Hoffa requested investigation of the donation of IBT funds to state political parties to see if it was part of a scheme to funnel contributions into the Carey Campaign. In both cases, a finding of a violation would not change the central remedies of this decision. The protest in Post-51 is DENIED. Since both sets of allegations also raise possible misuse of IBT funds, they will be referred to the IRB and the U.S. Attorney's Office.

RIGHT OF APPEAL

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within three (3) days 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 on the service sheet 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.

Dated: August 21, 1997

_____
Barbara Zack Quindel
Election Officer

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