

October 30, 1997

VIA UPS OVERNIGHT

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Jim Tadeusiak
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Teamster Local 638
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Minneapolis, MN 55414

Lester A. Singer, President
Teamsters Joint Council 44
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Ron Carey Campaign
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Real Teamster Causus
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Baptiste & Wilder, P.C.
1150 Connecticut Avenue, NW
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Washington, DC 20036

James P. Hoffa
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32300 Northwestern Highway
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Farmington Hills, MI 48334

Re: Election Office Case No. PR-005-JC44-NCE

Gentlemen:

Brent Lindberg and Jim Tadeusiak, both members of Local Union 638, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** against Joint Council 44. The protesters allege that Joint Council 44 improperly used union resources to transmit and distribute printed campaign material to Local Union 638. Both Joint Council 44 and Local Union 638 assert that the disputed items are not campaign material. Joint Council 44 additionally maintains that, at the time the union resources were allegedly used, the ***Rules*** were not in effect.

The protest was investigated by Regional Coordinator Judy Kuhn.

Mr. Tadeusiak is an employee of UPS in Minneapolis. On September 4, 1997, he found an eight page packet of newspaper articles hanging from a clipboard attached to a locker door in the feeder department at his work facility. The clipboard belonged to Mark Dray, a union steward. The general subjects of the newspaper articles were the UPS strike and the Election Officer's decision in Cheatem, Post-27-EOH, (August 21, 1997), aff'd. in relevant part, 97 - Elec. App. - 322 (KC) (October 10, 1997).

The tone of the articles were critical of General President Carey and the Election Officer. The packet included columns and editorials questioning Mr. Carey's veracity in stating that he was not aware of certain **Rules** violations discussed in Cheatem and further accusing him of planning an "unnecessary" strike to benefit his campaign. Another article alleged that the Election Officer delayed her decision in Cheatem to benefit Mr. Carey's election campaign and also reported that she was planning to resign her position. Mr. Dray, a supporter of Mr. Carey, denies placing both the articles and the clipboard on his locker.

Mr. Lindberg, also an employee of UPS, found two separate packets of newspaper articles in another area of the feeder department. Both of these items were observed by Mr. Lindberg on the same day of Mr. Tadeusiak's discovery, September 4, 1997. The first of these packets was identical to the one found by Mr. Tadeusiak. The second packet, six pages in length, contained additional articles concerning the same subjects. The last page of the second packet consisted of a montage of printed paragraphs, critical of Mr. Carey, pasted over an article of the *New York Daily News*. Four pages in this second packet bear an identifying mark, similar to a logo, for the "Real Teamsters," a campaign organization previously determined by the Election Officer to support Mr. Hoffa. Gilmartin, P-032-LU245-PNJ (January 5, 1996) aff'd, 95 - Elec. App. - 75 (KC) (February 7, 1996).

Joint Council 44 admits that its fax machine was used to transmit both packets to Local Union 638 and that these transmissions took place on September 12, 1997. An employee of Joint Council 44, William Lichtenwald, sent the documents and addressed them to Richard Heck, Local Union 638's secretary-treasurer. According to Joint Council 44, both Mr. Lichtenwald and Mr. Heck were members of the IBT national negotiating committee responsible to negotiate a collective bargaining agreement with UPS and consequently agreed to exchange newspaper articles concerning these subjects.

Local Union 638 admits that the packets were reproduced and distributed to its business agents through an "in-box" system at the local union, but denies any intention to post or distribute the articles to any other members. Local Union 638 also stated that Jim Iund, a UPS steward, took one of the business agent copies, made additional copies at a fire department where he is a

volunteer and circulated them.

Both Joint Council 44 and Local Union 638 deny adding the “Real Teamster” identifying mark which is found on some of the documents contained in Packet 2. Mr. Lichtenwald states that these marks were not on the documents when he faxed them. Mr. Heck denies observing them upon arrival at Local Union 638.

Article XII, Sections 1(b)(1) and (3) prohibit a union from using its resources “to promote the candidacy of any individual.” The *Rules* define campaign contribution broadly to include any direct or indirect contribution where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate. *Rules*, Definitions, 5.¹

With the exception of the four pages with the Real Teamster mark in Packet 2, the documents contained in Packet 1 and Packet 2 do not contain campaign material. All of the printed matter concerns reports of the Election Officer’s decision to rerun the election or of the recently concluded UPS strike. Both topics have been determined by the Election Officer to be within the IBT’s institutional interests and legitimate newsworthy subjects to its members. Atha, PR-001-IBT-EOH (October 10, 1997); Atha, PR-002-IBT-EOH (October 15, 1997) (appeal pending). See also Hoffa, P-1181-IBT-EOH (November 18, 1996).

The references to the Real Teamsters, however, support the campaign of Mr. Hoffa and therefore identify these documents as campaign material.

There is some question as to how the Real Teamster references became part of these four documents. Joint Council 44 denies that they were displayed at the time of transmission. Local Union 638 does not recall seeing these references upon receipt. Regardless, their existence does constitute a violation of the *Rules* and the transmission and distribution of these documents using union resources requires a remedy.

Accordingly, the protest is GRANTED in part and DENIED in part.

¹The *Rules* went into effect on August 21, 1997, the date the Election Officer ordered the rerun election in Cheatem.

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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.

The Election Officer has determined that union resources of Joint Council 44 and Local Union 638 were used to promote the candidacy of Mr. Hoffa. Joint Council 44 and Local Union 638 shall therefore cease and desist from using union resources to support the candidacy of Mr. Hoffa in violation of the *Rules* at Article VIII, Section 11(c).

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).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 444 N. Capitol Street NW, Suite 445, Washington, D.C. 20001, facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Benetta M. Mansfield
Interim Election Officer

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cc: Kenneth Conboy, Election Appeals Master
Judy Kuhn, Regional Coordinator