

November 17, 1997

VIA UPS OVERNIGHT

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Re: Election Office Case No. PR-012-LU705-NCE

Gentlepersons:

John McCormick, a member of Local Union 705, filed a pre-election protest pursuant to the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** against the Hoffa Campaign. The protester alleges that a fundraising event was organized and held for benefit of the Hoffa Campaign at the Maywood Park Race Track ("Maywood") in Maywood, Illinois on October 11, 1997 and violated the ***Rules*** because (1) the admission ticket contained a disclaimer which solicited contributions from nonmembers, specifically from nonmember retirees, (2) contributions were improperly solicited on work time, (3) required information about contributors was not maintained, (4) contributions were accepted from

Maywood, an employer, and (5) contributions were accepted from the Local 705 - United Slate ("United Slate"), a slate of candidates for local union office, which is also funded with contributions which are improper under the *Revised 1996 International Officer Rerun Election* ("Rerun Plan").

Mr. Hoffa responds that the alleged improper solicitations were for local union candidates, which are not within the Election Officer's jurisdiction. Further, Mr. Hoffa asserts that proper records were maintained of contributors to his campaign and no improper contributions were accepted by his campaign.

The protest was investigated by Regional Coordinator Judith E. Kuhn.

I. Findings of Fact

On Saturday, October 11, 1997, two fundraising events were held at Maywood. The first was organized by the Hoffa Campaign. All services rendered by Maywood in connection with this event were paid for by the Hoffa Campaign. The admission ticket indicates that the hours of the event were between 3:30 and 5:30 p.m. and that the price of admission, including a cocktail reception and dinner, was \$100. The ticket contained the following disclaimer:

Only I.B.T. members or persons who are not employers may contribute to my campaign. Employers, union [sic], charitable organizations, trusts, foundations or other similar entities may not contribute any money, goods, services or facilities to my campaign.

Mr. Hoffa paid his own travel expenses to and from the event. Maywood confirms that about 100 people attended the Hoffa fundraiser.

A second fundraising event, organized for the benefit of the United Slate, was scheduled for after 6:00 p.m. The services rendered by Maywood for this event were paid for by the United Slate. The United Slate supports the candidacy of Dane Passo and a slate of other candidates for local union office. The price of admission, according to the face of the ticket, was \$20. The admission ticket promised dinner and "an evening of boxing and betting," including several live boxing matches.

Maywood stated that about 1100 people attended the United Slate fundraiser. Mr. Hoffa spoke to those who attended the United Slate fundraiser and admits that, in addition to making statements which supported the candidacy of Mr. Passo and other candidates on the United Slate, he made remarks supporting his own candidacy. An America Online message advertising the United Slate fundraiser noted that Mr. Hoffa would be a "special guest" at the event.

For its standard "per person" price, Maywood permitted free guest admission to its club

house and arranged a cocktail reception for the Hoffa Campaign. Maywood also arranged dinner, official racing programs and special reserved seating to observe the races. Additionally, Maywood named a race "in honor" of the Hoffa campaign organization. Mr. Hoffa's name was prominently displayed in Maywood's official race program. A race was also named "in honor" of a Central Region vice-president who ran on the Hoffa Slate in the initial election.

The United Slate received the same basic services including the naming of races for candidates. According to Maywood, additional races were named "in honor" of United Slate candidates since more people attended that event. On the night the fundraisers were held, the fourth, fifth, sixth, seventh, eighth and ninth races were named as follows:

The Hoffa Now Race - Dane Passo United Slate Local 705 - The
Bill Hogan Race - The Frank Wsol Slate - Pat Flynn, Vice
President I.B.T - The Tony Fiore Race - Local 726

Maywood further confirms that the standard package of services purchased and received by the Hoffa Campaign was no different than those generally provided to other Maywood customers, including the United Slate. The evidence establishes that the Hoffa Campaign was treated no differently than any other commercial customers of the Maywood in terms of the services rendered and the price paid.

During the evening, campaign paraphernalia supporting Mr. Hoffa and United Slate candidates were sold from common tables. These tables were provided to both sponsors as part of Maywood's commercial customer service. Although paraphernalia for the Hoffa Campaign and for the United Slate were sold together, separate records of the amounts collected for the sale of Hoffa Campaign paraphernalia were kept. Records maintained by the United Slate, the Hoffa Campaign and supporting testimony establish that the campaign paraphernalia supporting Mr. Hoffa was sold only to IBT members.

In support of the allegations concerning the improper solicitation of contributions, the protester presented Bob Chocolate, an employee of the Central States Welfare Fund ("Fund") and a member of Local Union 743. Mr. Chocolate stated that he was approached by a Fund employee, Rick Delgado, who asked him to purchase tickets on behalf of two IBT retirees. Two tickets were ultimately purchased by Mr. Chocolate for an October 11 fundraiser from Karen Tumillo and Kathy Hoyos, also employees of the Fund. According to Mr. Chocolate, he was solicited by Ms. Tumillo and Ms. Hoyos on work time and was told these tickets would admit the holders to the Hoffa fundraiser. Mr. Chocolate further states that Ms. Tumillo and Ms. Hoyos were aware that he was purchasing the tickets for two nonmember retirees. The tickets purchased by Mr. Chocolate were sold at the price of \$20 each and were valid for admission to the United Slate event only.

II. Improper Disclaimer

The protester's first claim is that the Hoffa Campaign violated Article V, Section A.1 of the *Rerun Plan* by utilizing a ticket to the fundraising event which did not contain the appropriate disclaimer. Article V, Section A.1 of the *Rerun Plan* states:

No candidate, slate of candidates or independent committee, nor anyone on their behalf, may solicit or accept financial support, or any other direct or indirect support of any kind, from any nonmember. Nonmembers include any former member of the IBT (including retirees). Nonmembers do not include a member's immediate family defined as the member's spouse, parents, children, sister(s) and brother(s).

The protester asserts that the ticket to the Hoffa fundraiser violates this provision because it solicits contributions "from persons who are not employers," regardless of whether or not they are members.

Under Article XII, Section 1(b)(9) of the **Rules**, candidates are strictly liable to ensure that the source of each contribution received is proper. Throughout the election period, the Election Officer has strongly advised that candidates utilize a disclaimer on all literature and advertising seeking to raise funds or to promote fundraising events. The *Advisory on Campaign Contributions and Disclosure* ("Advisory") as revised November 1997, suggests that the following disclaimer be used:

ATTENTION: Under the Election Rules, the campaign may accept contributions only from active IBT members. IBT members who are also employers may only make contributions from their personal funds. No member may contribute more than \$1,000 in total for use in the rerun election.

The Hoffa Campaign admits that the disclaimer displayed on the tickets to the October 11 fundraiser does not comply with Article V, Section A.1. Under the **Rules** and the *Advisory*, however, the use of a disclaimer is purely voluntary. A candidate using a disclaimer which inaccurately invites improper or ineligible persons or entities to make campaign contributions does so at his or her own peril. However, such activity does not by itself, constitute a violation of the **Rules** or the *Rerun Plan*. An allegation of a **Rules** or *Rerun Plan* violation is sustainable only if items of literature or promotional material containing an inaccurate disclaimer are sent to persons or entities who are not IBT members or some other evidence exists showing that improper contributions have been made. Carey, PR-022-RCS-NYC (November 3, 1997).

Here, the improper disclaimer is the sole basis for the assertion that nonmembers or retirees contributed to the Hoffa Campaign by purchasing a ticket to the fundraising event. No witnesses or other evidence were produced in support of this contention. The Hoffa Campaign has presented evidence showing that all persons attending the fundraiser or contributing directly

to the campaign at the Maywood event were active IBT members.

II. Solicitations

The protester asserts that improper solicitations for contributions to the Hoffa Campaign were made by Ms. Tumillo and Ms. Hoyos in violation of the **Rules** at Article XII, Section 1(b)(4), which prohibits campaigning during time that is paid for by an employer.

The protester's contention that Mr. Chocolate was solicited to contribute to the Hoffa Campaign is based solely on Mr. Chocolate's statement that he was told "the fundraiser was for Jimmy Hoffa's campaign." The tickets which Mr. Chocolate bought, however, were sold for the price of \$20.00 each, indicating that they were for the United Slate event, not the Hoffa fundraiser. The United Slate fundraiser supported candidates for local union office and not for the International election. The **Rules** do not apply to local union elections. Ryan, P-1149-LU150-CSF et.seq. (November 21, 1996). See also Rules, Preamble.

The protester further asserts that Ms. Tumillo and Ms. Hoyos acted in violation of the *Rerun Plan* at Article V, Section 1.A by indirectly accepting contributions from nonmember retirees and by failing to comply with the record keeping requirements. The purchase of fundraising tickets by Mr. Chocolate, the allegations that contributions were improperly solicited, and allegations regarding the failure to maintain proper records all relate to a local union officer election and are beyond the Election Officer's jurisdiction to remedy.

III. Contributions to the Hoffa Campaign

The protester contends that the United Slate contributed to the Hoffa Campaign by (1) permitting the sale of Hoffa campaign paraphernalia at tables set up for the United Slate; (2) permitting Mr. Hoffa to make a campaign address to the guests of the United Slate fundraiser and (3) publicizing Mr. Hoffa's presence at the United Slate event. Additionally, the protester asserts that these contributions were improper because, as a group of IBT members supporting local union candidates, the United Slate is permitted to be funded with monies which are now prohibited to International campaigns under the *Rerun Plan*.

The **Rules** define "campaign contributions" to include "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 the election of a candidate." **Rules**, Definitions, 5. As stated in the *Advisory*, such contributions can include any goods, compensated services or any material things of value. The Election Officer has very strictly construed the phrase "any . . . other thing of value" in interpreting the **Rules** relating to improper campaign contributions. McNamara, P-876-LU107-PNJ (September 18, 1996), aff'd, 96 - Elec. App. - 241 (September 30, 1996).

The United Slate did not make a campaign contribution to the Hoffa Campaign by permitting the sale of Hoffa campaign paraphernalia from its table. Maywood included this

service in its standard per person price to both campaign organizations. Moreover, separate records were kept of all sales made on behalf of the Hoffa Campaign.

However, the Election Officer concludes that the United Slate made a contribution to the Hoffa Campaign by permitting Mr. Hoffa to speak in support of his candidacy. Mr. Hoffa contends that his conduct does not implicate the **Rules** because the **Rules** do not prevent him or any other candidate from exercising the right as an IBT member to attend a campaign event in support of candidates running for local union office. In the initial election, prior to the adoption of the *Rerun Plan*, such appearances were proper, except when sponsored by union resources. Zero, P-078-LU337-EOH (August 4, 1995) (appearance before a group of members to support candidates for local union offices does not violate the **Rules** unless union resources are used).

Under the *Rerun Plan*, Mr. Hoffa, or any other candidate, may still attend a rally to support local union candidates. However, on October 11, 1997, Mr. Hoffa did not merely appear at the United Slate rally and make a speech supporting candidates for local union office. He also made campaign statements in support of his own candidacy. By doing so, Mr. Hoffa converted his appearance into an activity which must be reviewed for compliance with the **Rules** and the *Rerun Plan*. Thus, the Election Officer must determine whether or not the United Slate campaign contribution is a proper one.

Prior to the adoption of the *Rerun Plan*, distinctions between fundraising events held by groups of IBT members supporting only local union candidates and those fundraising events covered by the **Rules** were unnecessary for purposes of determining the propriety of contributions. The **Rules** generally permitted nonmembers as well as members to make contributions to election campaigns, so long as no nonmember contributions were accepted from an employer.

However, under the *Rerun Plan*, contributions from nonmembers are prohibited, regardless of whether the nonmember is considered an employer. Caucuses, groups or organizations of IBT members supported at least in part by such funds are now prohibited from making campaign contributions to International officer campaigns, unless the conventions are observed which guarantee proper funding. The requirements are the same as those currently contained in the **Rules** at Article XII, Section 1(b)(5) and the *Advisory*. The **Rules** provide as follows at Article XII, Section 1(b)(5):

[N]othing herein shall prohibit any candidate from accepting contributions made by any caucus or group of Union members or any campaign organization of any candidate or prohibit such caucus, group or organization from making such contributions, provided that such caucus, group or campaign organization is itself financed exclusively from contributions permitted under the *Rules*.

The *Advisory* provides as follows at page 20:

If a caucus of union members receives contributions or funding from sources prohibited under the **Rules**, such as foundations or labor organizations, the caucus can still make campaign contributions if: (1) the caucus properly allocates and segregates resources obtained from prohibited sources from those received from permissible sources under the *Rerun Plan*; and (2) uses only the resources obtained from permissible sources under the *Rerun Plan* for campaigning activities.

See also *In Re: Gully*, 91 - Elec. App. - 158 (SA) (June 12, 1991), affirming Sargent, P-249-LU283-MGN (May 21, 1991).

Thus, in the rerun election, any “caucus, group or organization” within the meaning of Article XII, Section 1(b)(5), making contributions to a campaign covered by the **Rules**, must itself comply with the requirements stated in the Election Officer’s *Advisory* and *In Re: Gully* if it obtains funds from any prohibited source, including nonemployer nonmembers.

The United Slate has failed to provide the Election Officer with any evidence that it segregates permissible funds from nonpermissible funds as required by the *Advisory* and the **Rules**. The transaction between Ms. Tumillo, Ms. Hoyos and Mr. Chocolate indicate that the United Slate does not keep the type of records required by the *Rerun Plan*. The Election Officer therefore concludes that the United Slate violated the **Rules** when it permitted Mr. Hoffa to address its guests in support of his own campaign.

The protester’s remaining allegations concerning improper contributions are without merit. No violation of the **Rules** occurred when the United Slate advertised Mr. Hoffa’s appearance over the Internet. No mention of his candidacy was made. Rather, Mr. Hoffa was referred to as a “special guest.”

In support of his contention that the fundraisers organized by the Hoffa Campaign and the United Slate were not separate events but was instead a single “thinly-veiled Hoffa rall[y],” the protester submits the two admission tickets, which are similar in certain respects, and asserts that United Slate tickets were advertised as admission to the fundraiser for Mr. Hoffa. The protester also contends that “Mr. Hoffa was apparently the dominant figure” at the United Slate event. This evidence is insufficient to show that the two events were tied together. There is also no evidence that the United Slate contributed any money to the Hoffa Campaign.

Finally, no evidence was presented to show that Maywood made any contributions to the Hoffa Campaign. The investigation disclosed that no discount from the normal commercial rate was made and that Maywood treated the Hoffa Campaign the same as its other commercial customers in all respects.

The protest is GRANTED with respect to the improper contribution by the United Slate to Mr. Hoffa's campaign due to his speech, and is DENIED in all other respects.

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 is aware that the *Rerun Plan* represents a substantial change from the manner in which campaigning was financed in the initial election. Nevertheless, as a remedy, the Election Officer directs that Mr. Hoffa and the Hoffa campaign to do the following:

1. Cease and desist from accepting contributions in violation of the *Rerun Plan*.
2. Within two (2) days of the receipt of this order, the United Slate shall provide simultaneously to the Election Officer and to the Hoffa Campaign, the gross amount collected from ticket proceeds collected at its fundraiser of October 11, 1997; the best estimate of the length of time, in minutes, of Mr. Hoffa's speech at the United Slate fundraiser, and the amount of time for the total fundraiser.
3. Within one (1) day of being so notified, the Hoffa Campaign will reimburse the United Slate an amount based on the following calculation: total amount collected multiplied by the fraction resulting from the number of minutes Mr. Hoffa spoke when divided by the total time of the fundraiser. Within one (1) day thereafter, Mr. Hoffa will submit an affidavit with the Election Officer detailing his compliance with this order, and attaching a photocopy of the Hoffa Campaign's reimbursement to the United Slate.

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 (1) day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022

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Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, 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

cc: Kenneth Conboy, Election Appeals Master
Judith E. Kuhn, Regional Coordinator