

November 18, 1997

VIA UPS OVERNIGHT

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Moreen Dugan
c/o Teamsters Local Union 786
300 S. Ashland Ave., Suite 501
Chicago, IL 60607

Lou Mazzei, President
Teamsters Local Union 786
300 S. Ashland Ave., Suite 501
Chicago, IL 60607

Re: Election Office Case No. PR-020-LU786-NYC

Gentlepersons:

Anthony D'Amico 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 Local Union 786. The protester alleges that Anthony Andrich was denied entrance to a union membership meeting and that he and Mr. Andrich were intimidated and pushed out of the union hall because they were supporters of James P. Hoffa, a candidate for general president. The president of Local Union 786, Lou Mazzei, denies any improper conduct and responds that Mr. Andrich was denied entrance to the meeting because he had been issued a withdrawal card.

The protest was investigated by New York City Protest Coordinator Barbara C. Deinhardt.

Mr. Andrich and Mr. D'Amico were elected vice-president and trustee, respectively, of Local Union 786 in November 1996. They ran on the slate headed by Lou Mazzei. Messrs. Andrich and D'Amico were also long-time business agents. Soon after the election, Mr. Mazzei terminated them from their positions and filed charges against them for knowingly associating with an organized crime figure. The Local Union 786 Executive Board held a hearing on the charges and issued a

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decision finding them guilty of the charges. As a penalty, the local union ordered them permanently expelled from the Local Union 786 and from the IBT. The decision of the local union was sustained by Joint Council 25, and Messrs. D'Amico and Andrich appealed to the General Executive Board.¹ Both Mr. D'Amico and Mr. Andrich denied the charges and claimed that they were being retaliated against for exposing what they alleged was improper conduct by Mr. Mazzei and former Local Union 786 President Walter Hoff.

On May 14, 1997, Mr. D'Amico was issued a stay of the withdrawal of his membership by General President Ron Carey and a copy of the stay was sent to Mr. Mazzei. On September 24, 1997, Mr. Carey also issued a stay letter for Mr. Andrich. That letter indicates that a copy was sent to Mr. Mazzei. On September 30, when Mr. Andrich went to the union hall to pay his dues, he was told that the local union had not received a copy of his stay letter. He showed Mr. Mazzei a copy, but Mr. Mazzei doubted the authenticity of the copy and called the IBT. He was advised that a stay had been issued and that he would get a copy in the mail. Mr. Mazzei claims that he never received it and consequently left instructions that Mr. Andrich was not to be permitted into the local union membership meeting

On October 13, 1997, the day of the membership meeting, Mr. D'Amico and Mr. Andrich came to the union hall to sign in. Mr. D'Amico was permitted to sign in, but pursuant to Mr. Mazzei's instructions, Mr. Andrich was not. A loud argument ensued and the security guards escorted Mr. Andrich and Mr. D'Amico from the hall. Mr. D'Amico later returned and attended the rest of the meeting without incident, although he claims he felt intimidated by the presence of the security guards. Both Mr. D'Amico and Mr. Andrich claim that the security guards pushed and swore at them. Mr. D'Amico also stated that the guards waited outside the hall after the meeting, causing him to call 911 before he felt safe leaving the hall.

Mr. D'Amico asserts that this conduct directed against him at the membership meeting was based upon his support of Mr. Hoffa and his disputes with the current and past presidents of Local Union 786. However, in an affidavit dated May 27, 1997, in which Mr. D'Amico discusses what he claims to be improper conduct toward him by Mr. Mazzei, including Mr. Mazzei's refusal of Mr. D'Amico's tendered dues, Mr. D'Amico does not mention his support of Mr. Hoffa as a factor. Rather, he discusses only his long-standing dispute with Mr. Mazzei and Mr. Hoff, including his challenge of the election in which he (Mr. D'Amico) and Mr. Mazzei were elected, his objection to Mr. Hoff's pension, and his allegations of sweetheart contracts. Mr. Andrich claims that both his exclusion from the meeting and his rough treatment by the security guards were primarily due to the dispute between himself and Mr. Mazzei. He asserts that he is being retaliated against "because [he] know[s] the truth." During the investigation, Mr. Andrich also claimed that his support for Mr. Hoffa was another reason for his improper treatment.

¹On October 20, 1997, the General Executive Board voted to affirm Joint Council 25's decision and dismiss Mr. Andrich's and Mr. D'Amico's appeals.

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Mr. Mazzei responds that he excluded Mr. Andrich because he had doubts about the authenticity of his stay letter from Mr. Carey. He denies that the security guards treated either Mr. Andrich or Mr. D'Amico roughly and claims that he gave instructions that only Mr. Andrich was to be kept out of the meeting. He concedes that he knew Mr. D'Amico and Mr. Andrich were supporters of Mr. Hoffa, but claims that they became so only after they had been terminated from the employ of, and expelled from, the local union.

Article VIII, Section 11(f) of the **Rules** prohibits any retaliation against anyone by the Union or its agents for exercising any right guaranteed by the **Rules**. No violation of this section can be sustained unless some evidence is presented or disclosed which expressly or inferentially connects the conduct which is alleged to be improper to an activity protected by the **Rules**. Giacumbo, P-100-IBT-PNJ (October 13, 1995); Salucci, P-178-LU552-MOI (October 31, 1995); Rogers, P-1346-IBT-NYC (March 4, 1997), aff'd, 97 - Elec. App. - 320 (KC) (March 17, 1997).

Additionally, the Election Officer will not find retaliation if she concludes that the union officer or entity would have taken the same action even in the absence of the protester's protected conduct. Gilmartin, P-032-LU245-PNJ (January 5, 1996), aff'd, 95 - Elec. App. - 75 (KC) (February 6, 1996). See Leal, P-051-IBT-CSF (October 3, 1995), aff'd, 95 - Elec. App. - 30 (KC) (October 30, 1995); Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995).

In the instant matter, the Election Officer finds that there have been serious animosities between Messrs. D'Amico and Andrich on the one side, and Mr. Mazzei and the local union on the other. The primary source of this conflict--the termination of employment and expulsion from the local union of both Messrs. D'Amico and Andrich--in fact preceded their public support for Mr. Hoffa. Consequently, the investigation does not support the protester's contention that Mr. Andrich's rejection from the membership meeting was due to his support for Mr. Hoffa rather than to his long-standing dispute with the local union leadership. This is particularly so in light of the fact that while both Mr. D'Amico and Mr. Andrich were equally supportive of Mr. Hoffa, only Mr. Andrich was barred from the membership meeting. The Election Officer is not free to remedy adverse conduct merely because it occurs in the general context of the election and during the election period, unless the conduct is improper under the **Rules**.

Accordingly, the protest is DENIED.

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

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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

cc: Kenneth Conboy, Election Appeals Master