

March 23, 1998

VIA UPS OVERNIGHT

James P. Hoffa
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Tom Leedham, Director
Warehouse Division
International Brotherhood of Teamsters
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David L. Neigus
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Steve Sonnenberg
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Teamsters Local Union 688
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Bradley T. Raymond, Esq.
Finkel, Whitefield, Selik,
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32300 Northwestern Highway
Suite 200
Farmington Hills, MI 48334

Re: Election Office Case No. PR-064-IBT-EOH [CORRECTED]

Gentlemen:

James P. Hoffa, a candidate for general president, 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 the IBT and International vice president Tom Leedham. Mr. Leedham is a candidate for International vice president in the rerun election. He currently serves as the Director of the IBT's Warehouse Division. The protester alleges that Mr. Leedham "has been widely reported as a likely candidate to oppose [Mr. Hoffa] for the position of IBT General President." Mr. Hoffa alleges that the content and timing of the February 1998 edition of the *Teamsters Warehouse News ("News")* and the mailing of the newsletter directly to members promotes the candidacy of Mr. Leedham in violation of the ***Rules***. The protester attaches a letter to Marvin Levy, Court-appointed auditor, from Steve Sonnenberg, a business representative of Local Union 688. The protestor's allegations appear to be derived from the Sonnenberg letter.¹

¹W. Richard Euler, a former member of Local Union 767, also sent a letter to Marvin M. Levy, court-appointed auditor to the IBT, making allegations about the *News* similar to those asserted by the protester. Mr. Levy forwarded a copy of Mr. Euler's letter to the Election Officer.

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The IBT responds that the *News* reports on items of interest and importance to IBT members who are employed by supermarket and other warehouse facilities. The IBT contends that it produces and distributes the *News* -- one of several IBT membership newsletters -- to communicate information of interest and significance to a segment of the membership and that the February 1998 *News* in particular did not implicate or violate any of the **Rules**.

The protest was investigated by Election Office Counsel David S. Paull.

Mr. Leedham was first elected to the position of IBT International vice-president in 1996. Since September 1992, Mr. Leedham has directed the IBT's Warehouse Division, an administrative unit of the IBT that attends to the contractual and other interests of IBT members employed in the warehousing industry. Mr. Leedham was nominated as a candidate for International vice president at the 1996 convention and is currently a candidate for that position in the rerun election.

The *News* is a union-financed newsletter that reports to members on topics associated with the warehouse industry. First published by the IBT in April 1995, Mr. Leedham supervises the publication of the *News*. The *News* is not published on a regular schedule but is produced when the IBT decides that it has accumulated newsworthy information sufficient to fill the six page newsletter format

The *News* is not the only special topic publication of the IBT. See Martin, P-010-IBT-PNJ, (August 17, 1995), aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995). Since 1992, the IBT has created nine newsletters that disseminate information of particular interest to segments of the IBT membership. These newsletters are the *UPS Update* (first published by the Parcel and Small Package Trade Division in March 1993), the *Freight Bulletin* (first published by the Freight Division in October 1993), the *Carhaul Bulletin* (first published by the Automobile Transporters Industry Division in February 1992), the *Brewery & Soft Drink Workers News* (first published by the Brewery and Soft Drink Workers Conference in March 1995), the *Trade Show and Convention Center Update* (first published by the Trade Show and Convention Centers Division in June 1995), the *Tankhaul News* (first published by the Tankhaul Division in June 1995), the *Food Processing News* (first published by the Warehouse Division in August 1995), the *Public Employee News* (first published by the Public Employees' Trade Division in October 1995), and the *Check-In* (first published by the Industrial Trades Division in July 1996).

In addition to the *News* and the *Food Processing News*, the Warehouse Division publishes "a compilation of news items of interest to Teamster members employed in the warehouse and food processing industries" that is entitled *Warehouse News*. Although the titles are similar, the *News* and *Warehouse News* differ significantly. First, *Warehouse News* compiles news clippings reprinted from various warehouse industry publications such as *Transportation & Distribution*, *Tri-State Food News*, *Grocery Marketing*, *Food Trade News*, and *Supermarket News*. In contrast, the *News* originates its own news articles and features. Second, while the *News* is published as dictated by the accumulation of original articles on significant news items of special

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interest to the warehouse division, the *Warehouse News* compilation is published on a regular basis. Finally, *Warehouse News* can contain many pages. The February 1998 compilation runs for 36 pages. The *News*, however, has been limited to six pages.

The February 1998 issue of the *News*, six pages in length, contains ten separate articles. Eight of the articles concern organizing or collective bargaining activities and include stories of recently approved contracts, strike actions, and an example of an effective response to management “anti-union” tactics. Also, appearing in the February 1998 *News* is a story encouraging IBT members to “call your representative in Congress” concerning the expansion of the NAFTA treaty on a “Fast Track.”

An article under the headline, “Get Involved In The Fight For Better Jobs” is identified as a “message” from Warehouse Division Director Tom Leedham. The article, which encourages members to contact their steward and lend support for customary union activities such as contract negotiations and organizing, begins as follows:

The articles in this newsletter are about Teamster families all over the United States who are standing up for good jobs, pensions, and health care. Teamsters are winning victories these days because more members are getting involved in the union and because we are building alliances with other citizen groups to our communities. Like the Teamster members described in the newsletter, you can join the fight for the future of working families.

The article covers approximately one-third of one page of the newsletter and includes a small picture of Mr. Leedham.

Other than this “message,” the *News* refers to Mr. Leedham two other times. First, Mr. Leedham is quoted on the front page in connection with two “breakthrough” agreements made with C & S Wholesale Grocers, a Vermont employer. According to the *News*, Mr. Leedham was the chief spokesman for the union in those negotiations. He is quoted as saying that “These agreements show that we can stand up to employers and keep good Teamster jobs in our communities.” Mr. Leedham is also quoted in the NAFTA story, calling the treaty a “disaster for working families on both sides of the border.”

None of the *News* articles discusses the IBT election or any particular person as a candidate. None of the articles describes or refers to Mr. Leedham as a candidate for International office. The protestor offered no evidence, other than the February 1998 *News* itself, on the issue of the content of the publication as supporting Mr. Leedham’s candidacy.

Like other IBT newsletters, the *News* is mailed directly to the interested membership segment. Gaye Williams, IBT Assistant Director of Communications, states that the *News* was originally mailed to all IBT local unions having warehouse members for re-distribution. This method was determined to be an ineffective way to disseminate the newsletter to interested individual members. Thus, in October 1996, the *News* was mailed directly to all members working in the warehouse industry. The IBT asserts that the October 1996 issue was particularly important because it contained material concerning the upcoming national elections. See, Moerler, P-1152-IBT-CLA (November 20, 1996).

The IBT has submitted evidence showing that other divisional newsletters are also mailed directly to the members. For example, the *Brewery & Soft Drink Update* and the *Public Employee News* were initially mailed to local unions and are now mailed directly to members. The July/August 1996 issue of the *Teamster* contains an announcement encouraging members to call the IBT for copies of certain newsletters if they were “not seeing” them on a regular basis. The *News* was included in this group.

Article VIII, Section 8(a) of the **Rules** states that a union-financed publication or communication may not be “used to support or attack any candidate or the candidacy of any person.” In reviewing union-financed communications for improper campaign content, the Election Officer looks to the tone, content, and timing of the publication. Martin, P-010-IBT-PNJ, (August 17, 1995), aff’d, 95 - Elec. App. - 18 (KC) (October 2, 1995). The Election Officer also considers the context in which the communications appeared.

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

... an otherwise acceptable communication may be considered campaigning if it goes on to make a connection with the election or the election process, if it involves excessive direct or indirect personal attacks on candidates, or alternatively, involves lavish praise of candidates. Otherwise legitimate coverage of the activities of a union official running for office may constitute campaigning if it is excessive.

The stories appearing in the February 1998 issue of the *News* pertain to collective bargaining, organizing, strike action, a strategy to successfully counter anti-union employer conduct, an article in support of the IBT’s effort against NAFTA and the “message” from Mr. Leedham encouraging member participation in union activities. All of these matters are legitimate, newsworthy and proper topics for communication with members. Prior Election Officer decisions have denied protests challenging union financed communications on similar

subjects. Michaels, P-205-LU407-CLE (November 8, 1995) (collective bargaining); Riley, P-101-IBT-EOH (August 23, 1995), aff'd, 95 - Elec. App. - 14 (KC) (September 29, 1995) (collective bargaining); Moerler, P-1171-IBT-EOH (November 6, 1996) (relations with employers); Volpe, P-828-IBT-MGN (July 11, 1996), aff'd, 96 - Elec. App. - 218 (KC) (July 23, 1996) (organizing); Hoffa, P-1181-IBT-EOH (November 18, 1996) (strikes and collective bargaining); Hoffa, P-808-IBT-SCE (June 28, 1996), aff'd, 96 - Elec. App. - 119 (KC) (March 11, 1996) (NAFTA-Fast Track).

The picture of Mr. Leedham has no caption and is consistent with his “message” to encourage full participation of the membership in union affairs. Hoffa, P-202-IBT-EOH (November 17, 1995), aff'd, 95 - Elec. App. - 39 (KC) (November 30, 1995); Lamy, P-258-IBT-EOH (December 18, 1995), aff'd, 96 - Elec. App. - 53 (KC) (January 11, 1996); Landon, PR-011-LU337-EOH (October 22, 1997) aff'd in relevant part, 97 - Elec. App. 324 (KC) (November 6, 1997). The two short quotations of Mr. Leedham are related to the legitimate union subjects that are reported. Neither the picture nor the two quotations constitute excessive coverage of Mr. Leedham. See Moerler, P-1171-IBT-EOH (November 6, 1996); Hoffa, P-1053-LU952-CLA, P-1088-LU952-CLA (October 28, 1996); DeRossett, P-1141-IBT-EOH, P-1145-IBT-EOH (October 31, 1996).

The Election Officer finds that this protest has no merit. The IBT has every right to prepare and distribute information about union business to its membership by newsletters, magazines, broadcasting, the Internet or other media. Communication about union business should not be chilled or discouraged by the threat that mere publication will result in an investigation. Except where the **Rules** or the *Rerun Plan* specifically address the content or the timing of publications of the IBT or IBT subordinate bodies, or a publication blatantly and lavishly promotes the activities of officials who are also candidates, the ongoing election does not curtail the right of the institution to disseminate information on union business. See Martin; **Rules**, Article VIII, Section 8.

Equally, neither the IBT, nor any IBT subordinate body, may use its resources to prepare and distribute publications that support or attack a candidate or a campaign in this rerun election. **Rules**, Article VIII, Section 8. If proven, a violation of this section would merit severe sanctions. That is not, however, the situation in the February 1998 *News* as the content, method of distribution and the timing of the publication demonstrate.

The content of the February 1998 *News* has been reviewed and, as set forth above, it does not constitute support for a candidate or excessive publicity for a union official/candidate in violation of the **Rules**. There are similarly no grounds to conclude that the **Rules** were violated because of the timing of the publication of the *News* or because of the changes in the method of delivery. The publication was timed to coincide with the resolution of negotiations with C & S, and the story was deemed important enough to warrant first page placement. The Election Officer concludes that the timing of the publication related to a subject of legitimate interest to the

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IBT membership, and not to the election. Hoffa, PR-028-PCT-NYC (November 18, 1997); Volpe, P-828-IBT-MGN (July 11, 1996).

Other than questioning the fact of distribution of the February 1998 *News* directly to the membership, the protester offered no evidence or argument on the issue of the method of distribution as promoting Mr. Leedham's candidacy. The IBT however, had distributed other, similar newsletters by direct mail to the membership and that distribution method is not unreasonable. Specifically, although the protester described the mailing of the February 1998 *News* as "an unprecedented membership mailing," that assertion is contradicted by the evidence of similar newsletters being similarly mailed to the membership.

Although afforded the opportunity to submit additional evidence and argument, the protester essentially offered nothing beyond the publication of the newsletter as evidentiary support for the protest. As the citations to earlier protests show, the Martin standard, and the requirements of Article VIII, Section 8 of the **Rules** are well-established, well-tested, and well-known. The Election Officer makes no comment or judgment on the wisdom of the IBT's use of its resources to print and distribute newsletters about union business to the membership: that decision is a matter of IBT policy. A protest alleging a violation of the Article VIII, Section 8, however, must articulate, in good faith, factual allegations that support, directly or by inference, the elements necessary to establish a Martin violation. In the future, protests that lack the required support may be subject to summary dismissal.²

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 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

²In the letter attached to the protest, Mr. Sonnenberg makes reference to "previous editions of the Warehouse News" which he states consists of "articles copied from other supermarket related publications" and asserts that the protested issue is "quite different in that it pictures and promotes" the candidacy of Mr. Leedham. Mr. Sonnenberg has confused the *Warehouse News* compilation with the newsletter that is the subject of this protest.

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

Sincerely,

Michael G. Cherkasky
Election Officer

MGC:chh

cc: Kenneth Conboy, Election Appeals Master
Marvin Levy, IBT Court-appointed Auditor