

June 23, 1998

**VIA UPS OVERNIGHT**

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Teamsters Local Union 470  
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Gerard P. McNamara, Trustee  
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**Re: Election Office Case Nos. PR-096-LU115-NYC  
PR-097-LU115-NYC  
PR-098-LU115-NYC**

Gentlemen:

Richard Carosi and Frank Ritacco, members of Local Union 500, filed separate pre-election protests (PR-096 and PR-097) pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* ("Rules") against John Morris, a candidate for International vice-president in the initial and rerun elections, Tom Hummel and Jim Smith, both members of Local Union 115. They allege that Messrs. Morris, Hummel, and Smith threatened and intimidated them during a campaign rally for James P. Hoffa, a candidate for general president, and Dan De Santi, a candidate for vice-president. The protested conduct allegedly violated of Article VIII, Section 11 of the *Rules*. John Schmitt, a member of Local Union 500, filed a pre-election protest (PR-098) alleging

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threatening and intimidating actions by Daniel McGinley, a member of Local Union 107, as well as Messrs. Morris, Hummel, and Smith at the same rally. As the protests all involved the same incident, they were consolidated for decision.

The protests were investigated by New York City Protest Coordinator Barbara C. Deinhardt.

In the afternoon of May 3, 1998, James P. Hoffa, a candidate for general president, and Dan De Santi, a candidate for International vice-president, held a campaign rally at the Lagoon Restaurant in Essington, Pennsylvania. Between 900 and 1,000 supporters of Messrs. Hoffa and De Santi attended the rally. Political opponents of the Hoffa Slate held an "anti-Hoffa" demonstration outside of the restaurant. Mr. Smith assisted in organizing the demonstration and contacted the local police to advise them of the event. Approximately 250 people participated in the anti-Hoffa demonstration, including Messrs. McGinley, Hummel and Smith.

The majority of demonstrators were isolated at the back end of the parking lot, approximately 250 yards from the entrance to the restaurant. The boundary of the demonstration area was marked by yellow caution tape. The majority of the demonstrators stood approximately 50 yards behind the tape. The police allowed 25 demonstrators to stand on the street corner where people turned into the parking lot.

Essington Chief of Police Robert Lythgoe was at the event, along with several other uniformed officers. The police directed traffic, stationing themselves approximately every 50 yards. Chief Lythgoe directed Mr. Smith to remain in the same place during the entire event, and Mr. Smith did so.

Mr. Smith and Mr. Hummel stood close together. Mr. McGinley stood in the middle of the crowd. Mr. Morris did not attend the anti-Hoffa demonstration.

The demonstrators were reasonably orderly until a group of Hoffa supporters left the restaurant and approached the demonstrators in the back of the parking lot. Messrs Carosi and Ritacco were in the group of about ten Hoffa supporters who approached the demonstrators. Mr. Carosi and one other member each had video cameras and began filming the anti-Hoffa demonstrators.

As the group of Hoffa supporters approached the demonstrators, the two sides began to trade insults and obscenities. The exchange of insults became increasingly heated and, as the group of Hoffa supporters approached the caution tape, some anti-Hoffa demonstrators broke through the tape barrier. According to Chief Lythgoe, the two sides traded insults and obscenities at an equal rate and volume; neither side was more belligerent than the other. Before an altercation erupted, Mr. Smith notified the police, who broke up the exchange and separated the group of Hoffa supporters from the anti-Hoffa demonstrators. Thereafter, the rally and demonstration concluded peacefully.

The Election Office obtained and viewed a video tape of the demonstration made by a Hoffa supporter. The tape shows the demonstrators peacefully milling around at first and later shouting "Morris," anti-Hoffa slogans and waving signs at the Hoffa supporters taping the event. The video tape does not show the demonstrators moving towards the individuals taping them nor does it show them breaking through the yellow caution tape. Although some of the shouting was unintelligible, no threats are audible on the tape.

Union members have the right to participate in campaign activities and have the right to "support or oppose any candidate [and] to aid or campaign for any candidate." **Rules**, Article VIII, Section 11(a). Union members cannot threaten, intimidate or coerce any other members for their participation in campaign activities. **Rules**, Article VIII, Section 11(f). Members violate the **Rules** when they engage in physically or verbally aggressive behavior that threatens actual harm. Sheibly, P-1010-LU653-ENG (October 14, 1996); Passo, P-469-LU705-CHI (February 29, 1996), aff'd in relevant part, 96 - Elec. App. - 124 (KC) (March 13, 1996). However, the **Rules** do not proscribe the "natural discourse that arises as a result of campaign-related activities," even if heated. Sheibly, P-1010-LU653-ENG (October 14, 1996). See Dunn, P-110-LU25-BOS (July 28, 1995), aff'd, 95 - Elec. App. - 8 (KC) (August 21, 1995) (local union president did not violate **Rules** by following, hovering near, and blocking path of campaigning member).

Mr. Smith stated that he stayed in the same place during the entire demonstration and he did not rush the caution tape to meet the Hoffa supporters. He said that Mr. Hummel stood close to him during the entire event and that he did not believe that Mr. McGinley was among the anti-Hoffa demonstrators who rushed the caution tape. Mr. Smith further argued that these protests are untimely.

Chief of Police Lythgoe stated that both sides were yelling at each other and using obscenities. He believed that the two sides shared equal responsibility for the incident and one side was not worse than the other. He stated he did not hear any threats of violence. Protester Ritacco agreed with Chief Lythgoe and said, "[W]e were all screaming at each other." He also admitted that he saw Messrs. Smith and Hummel in the crowd, but not in the group that rushed the caution tape.

Article XIV, Section 2(b) of the **Rules** requires protesters to file "within two (2) working days of the day when the protester becomes aware or reasonably should have become aware of the action protested." Although the short time limits are important, "[n]evertheless, the Election Officer has not treated time limits as an absolute jurisdictional requirement, but rather as a prudential restriction." Hoffa, P-788-IBT-EOH (June 18, 1996). In the instant case, the incident occurred on May 3, 1998, and the protests were filed on May 7, 1998, two days late. Because the instant case involves allegations of threats and intimidation, however, the Election Officer will decide these protests on the merits. See e.g., Moriarty, PR-056-LU986-EOH (Supplemental Statements on Remand) (May 26, 1998) aff'd 96 - Elec. App. 353 (KC) (June 3, 1998).

The investigation established that a confrontation occurred at a Hoffa rally between Hoffa supporters and anti-Hoffa demonstrators, that the confrontation began when the Hoffa supporters approached the demonstrators with video cameras,<sup>1</sup> and that the confrontation escalated with yelling and obscenities until the police dispersed the parties. There is no evidence of any threats of violence. Given that individual from both sides admitted to yelling at the other side, neither side appears to have been intimidated by the actions of the other. Finally, both sides resumed their campaign activity peacefully after the incident, showing that neither side suffered any inhibiting effects of the confrontation.

In protest PR-098, Mr. Schmitt stated that the demonstrators were screaming anti-Hoffa slogans and obscenities as he drove past them. Mr. Schmitt said he was called a “pussy” and his wife was called a “whore”, but he did not hear any threats of violence. He also stated that the police were directing the cars into the parking lot and that none of the demonstrators blocked his car. Mr. Schmitt alleged that he felt like he had run a gauntlet when he entered the restaurant. He stated he saw Mr. Hummel, Mr. Smith, and Mr. McGinley in the crowd of demonstrators and named them as charged parties. He attributed the actions of the demonstrators to Mr. Morris and named him as a charged party.

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<sup>1</sup> The Election Officer has previously found that, in certain circumstances, photographing or videotaping members during protected campaign activity violates the **Rules** because it chills the free exercise of such activities and is “destructive of the fundamental safeguards of . . . free and fair elections outlined in the **Rules**.” Sheibley, P-1010-LU653-ENG (date) (quoting Pollack, P-008-LU732-NYC (October 29, 1990), aff’d, 90 - Elec. App. - 8 (November 7, 1990)).

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The actions of the demonstrators while Mr. Schmitt drove into the Lagoon's parking lot do not violate the **Rules**. Mr. Schmitt did not hear any threats of violence and saw that the police were working to maintain orderly attendance of the rally. The obscenities and name-calling about which Mr. Schmitt complained might have been offensive. They do not, however, constitute intimidating conduct that threatens harm in violation of the **Rules**. Further, much of the speech heard by Mr. Schmitt, specifically the anti-Hoffa slogans, consisted of legitimate campaign discourse and is protected by the **Rules**.

Accordingly, these protests are 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, Esquire  
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 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 Cherkasky  
Election Officer

MGC:chh

cc: Kenneth Conboy, Election Appeals Master  
Barbara C. Deinhardt, New York City Protest Coordinator