

April 29, 1999

VIA FACSIMILE AND FIRST-CLASS MAIL

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James P. Hoffa, General President
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Hoffa Unity Slate
c/o Bradley T. Raymond, Esq.
Finkel, Whitefield, Selik, Raymond,
Ferrara & Feldman
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334

Re: Election Office Case No. SR-10-LU528-BCD

Gentlepersons:

Paul Alan Levy, Esq.
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009

Barbara Harvey, Esq.
645 Griswold, Suite 1800
Detroit, MI 48226

Patrick J. Szymanski, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue
Washington, DC 20001

A protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* by Doug Mims, a member of Local Union 728, against Local Union 528. Mr. Mims asserts that the February 1999 issue of *Teamsters Local 528 News*, a regular union-financed publication of Local Union 528, improperly used union resources because it contained material supporting the candidacy of James P. Hoffa for general president. Local 528 asserts that the advertisement for the Hoffa fundraiser to which the protester objects was included by

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error. The Hoffa Slate claims that the protest is untimely and that it properly relates neither to the original rerun nor to the Southern rerun.

The protest was investigated by Election Officer Representative Barbara C. Deinhardt.

I. FACTS

The front page of the publication contains a schedule and information about the inauguration of James Hoffa and related activities. The schedule includes information about a \$100 per ticket "Gala Dinner" with proceeds to benefit the Hoffa Rerun Campaign. Just under the schedule is a notice to Local 528 members that Local 528 is sponsoring a trip to Washington, D.C. for the inaugural festivities. In a narrative block to the side of the schedule is a reference to "Jim Hoffa and the Hoffa Unity Slate . . . bringing their inauguration to the members."

According to Cathy Smith, Office Manager of Local 528, the information on the front of the newsletter was taken from a flyer received in the Union office. She states that she mistakenly copied all of the material from the flyer, not realizing that she should delete the information about the fundraiser. No officer of the local reviewed the newsletter before it was distributed. According to Ms. Smith, the newsletter was sent by first-class mail on February 2 or 3 to all 150 stewards, each of whom received 5-10 copies to distribute at the worksites.

The protest was docketed by the Election Office on April 7, 1999. The protester's counsel asserts that a protest was sent earlier, on February 26, 1999, but not acknowledged by the Election Office. Neither the protester nor the Election Office could find a record of the earlier-filed protest.

II. ANALYSIS AND CONCLUSION

The Hoffa Slate claims that the protest is untimely filed, having been filed over three weeks after the publication of the newsletter, assuming that it was in fact filed on February 26 as claimed by protester's counsel. According to the Office Manager, the newsletters are mailed only to stewards. It is then up to them to distribute them at the worksites. Thus, it is difficult to determine with any certainty when the newsletters came into the possession of the general Local 528 membership. The protester, who is neither a steward nor a member of Local 528, alleges that he filed the protest on February 26, 1999, within

two days of the time he became aware of the newsletter. The Election Officer makes no determination on whether the protest was in fact filed on February 26. Instead, the Election Officer will exercise his discretion to waive the prudential limitations on timely filing, and will accept the protest for determination.

Turning to the merits, Article VIII, § 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.” There is no question, nor does the Hoffa Slate nor the Local Union dispute, that the advertising of a Hoffa fundraiser and a description of the inauguration as being brought to the members by “Jim Hoffa and the Hoffa Unity Slate” constitutes an improper use of union resources to support James Hoffa as a candidate.¹ The Hoffa Campaign offers several counter-arguments. First, it claims that it had nothing to do with the publication or distribution of the newsletter. Article XII, § 1(b)(10) of the **Rules** makes clear, however, that “[i]gnorance by a candidate . . . that union . . . funds or other resources were used to promote a candidacy shall not constitute a defense to an allegation of a violation of the Rules.” In this case, the Union, through its newsletter, contributed publicity and advertising for the Hoffa Slate fundraising event, as well as support for the candidacy of James Hoffa. The Hoffa Slate is therefore liable for the violation.

Second, the Hoffa Slate asserts that if this protest is related to the upcoming Southern Rerun, it must fail because the fundraiser was for the Hoffa Slate and no candidate in the Southern Rerun may run as part of a slate. Alternatively, they argue that if this protest is related to the rerun election that was concluded in December, it must fail because the February 1999 newsletter could not have affected the results of that election. The Hoffa Slate is correct that this is not a proper pre-Southern rerun protest. The protest is, however, sustained as a post-election protest. The Election Officer has continuing jurisdiction to oversee the retirement of election campaign debt and to enforce the provisions of the **Rules** in doing so. See, e.g., Rules, Art. XII, § 7. To hold otherwise would encourage candidates to amass and hold large campaign debts until after an election and then conduct fundraising in violation of the **Rules**.

Finally, the Hoffa Slate notes that the March fundraiser publicized by the Local Union never occurred and has now been rescheduled for May 1. The upcoming event will not be publicized by the Local. Therefore, no benefit was ever received by the Hoffa campaign. The violation in the form of Local 528’s endorsement of the debt retirement fundraiser occurred when the time the newsletter was published and distributed, however, and whether the fundraiser actually happens does not affect the conclusion that union resources were misused to promote a candidate. The benefit of union-sponsored publicity was never given back or returned by the Hoffa Slate, nor is it possible to do so in any practical sense. That changed circumstances diminished the value of the contribution to the campaign does not excuse the violation.

Accordingly, the protest is GRANTED.

¹ Local Union 528 took no position on the matter other than to claim it was a mistake that was remedied because the publicized March fundraiser was not in fact held.

III. REMEDY

When the Election Officer determines that the **Rules** have been violated, he "may take whatever remedial action is appropriate." Article XIV, § 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation. The Election Officer has determined that resources of Local Union 528 were used to promote the candidacy of Mr. Hoffa in the *Teamsters Local 528 News*. A similar benefit cannot be provided to the opposition candidates as the rerun election is already passed, unless the candidates are also sponsoring fundraising events to retire their debt. Accordingly, the Election Officer orders the following:

1. Local Union 528 shall cease and desist from using union resources to support the candidacy of Mr. Hoffa, or any International officer candidate, in violation of the **Rules** at Article VIII, § 8(a).
2. If within three months from the date of this decision any candidate opposing Mr. Hoffa or a member of his slate in the first rerun holds a fundraising event to retire a rerun campaign debt and wishes to have a six line/one column notice of the event published in the Local 528 newsletter, the candidate(s) shall submit such a notice to Local Union 528 and simultaneously provide a copy of these materials to the Election Officer.
3. If submitted, the notice(s) referred to in Paragraph 2 above shall be published by Local Union 528 in the next regular issue of the *Teamsters Local 528 News* on page one. The notice(s) submitted shall be preceded with the following statement: "This material is printed by the order of the Office of the Election Officer for the International Brotherhood of Teamsters." No person or entity may modify the notice(s) submitted pursuant to this order without the consent of the Election Officer.
4. Within one (1) day of the mailing of any issue of the *Teamster Local 528 News* containing such a notice, the Secretary-Treasurer of Local 528 will submit an affidavit to the Election Officer indicating compliance with this order.

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

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made in writing and shall be served on:

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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,

Michael G. Cherkasky
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Barbara C. Deinhardt, Esq.