

June 10, 1999

VIA FACSIMILE

Charlie Gardner Campaign Headquarters  
3224 Highway 67 East, Suite 105  
Mesquite, TX 75217

Doug Mims  
1645 Brantford Drive  
Tucker, GA 30084

Aaron Belk  
6502 Poplar Corner  
Walls, MS 38680

Donald S. Scott, President  
Teamsters Local Union 728  
2540 Lakewood Ave. SW  
Atlanta, GA 30315

Richard Black, Secretary-Treasurer  
Teamsters Local Union 728  
2540 Lakewood Ave. SW  
Atlanta, GA 30315

**Re: Election Office Case No. SR-34-728-NYC**

James L. Hicks Jr., P.C.  
Suite 1100  
2777 N. Stemmons Freeway  
Dallas, TX XXX-XX-XXXX

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

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

Gentlemen:

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 Charlie Gardner, candidate for Southern Region Vice-President, against Donald Scott, President of Local 728, and Richard Black, Secretary-Treasurer of Local 728. Mr. Gardner asserts that a campaign leaflet distributed by Mr. Scott and Mr. Black in support of Doug Mims violated the *Rules* because it carried the IBT logo, it was distributed during the publication blackout period and it was intended to be an endorsement by Mr. Scott and Mr. Black in their official capacities.

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

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The facts are undisputed. Mr. Scott and Mr. Black produced and distributed a flyer financed by donations from individual Teamster members. The flyer--a letter to Members of Teamsters Local 728--bears their names (without titles or other identification) and the IBT horse head logo on the top, above a bold headline "Let's Get Out the Vote for Doug Mims." The letter notes that local unions are prohibited from communicating with members and that the letter was being published with private donations. In the body of the letter, Mr. Scott and Mr. Black identify themselves as "your elected principal officers" who support Doug Mims, but note that the "Executive Board cannot and has not officially endorsed a candidate."

Article XII, Section 1(b)(3) provides that,

No Union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigns unless the Union is compensated at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are advised in advance, in writing of the availability of such assistance. The use of the Union's official stationery with the Union's name, insignia or other mark identifying the Union is prohibited irrespective of compensation or access. Other use of the Union's name, insignia or mark by Union members, in connection with the exercise of rights under the *Rules*, is permitted.

The *Rules* prohibit the display of the official IBT emblem for campaign purposes only when used on union stationery. Because the protested campaign material does not utilize the stationery of Local Union 728, there is no breach of the *Rules* at Article XII, Section 1(b)(3) on the basis of the use of the IBT insignia. Hoffa, P-214-IBT-SCE (November 28, 1995); Leedham, PR-210-JHC-EOH (September 23, 1998).

As there is no evidence that the flyer was a Union publication, financed or distributed with Union resources, it is not covered by the Temporary Suspension in the 1996 IBT International Officer Southern Region Rerun Election Plan.

Finally, the flyer in question makes clear that the flyer was a privately financed publication and did not constitute an endorsement by the Union. The letterhead did not identify the official titles of Mr. Scott and Mr. Black and the letter explicitly stated that the Executive Board has not endorsed any candidate.

Article VIII, Section 11(b) of the *Rules* makes clear that while union members, including officers, are free to endorse candidates, this can only be done in the member's "individual capacity." The provision also states, however: "The Union or a Local Union as such . . . may

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not endorse or otherwise advance a candidacy, even if all members agree on the endorsement or candidacy.” The **Rules** define “campaign contribution” as including “[a]n endorsement or counter-endorsements by an individual, group of individuals, or entity.” Definitions, 5(f).

Individual members of a local union’s executive board or a local union, in their capacity as members of the IBT, may endorse candidates for International office, a particular candidate or slate of candidates. For example, in Moriarty, P-1071-LU677-ENG (November 15, 1991), a letter sent to local union members stated that “the members of Teamster Local No. 24 Executive Board have unanimously endorsed the R. V. Durham Unity Team.” The letter was signed by the executive board and noted their titles. The Election Officer found no violation because this was an endorsement by individual members of the board. Such campaign activity, however, may not be financed by union funds. Schauer, P-1251-LU421-MOI (November 19, 1996).

Individual endorsements are distinguished from endorsements by collective entities of the unions, such as the executive board or the local union as a body. Such entities cannot endorse any candidate or slate of candidates. Thus, a notice stating “Teamsters Local 673's Executive Board unanimously endorse the Shea-Liguoris Action Team” violated the **Rules** because it showed an endorsement by the Local’s executive board. Custer, P-1098-LU673-CHI (November 18, 1991). Also, an improper contribution was found when a statement of the Executive Board of the local endorsed candidates for International office. Hoffa, P-954-LU53-EOH (September 23, 1996).

In the immediate protest, Mr. Mims was endorsed by individuals, acting as such, who happen to be Local officers as well. While they did not indicate in the letter that their positions were listed “for identification purposes only,” their description of themselves as “your elected officials” does not suggest that the local issued the endorsement.

Accordingly, the protest is DENIED.

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 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

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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 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.