

September 13, 1995

VIA UPS OVERNIGHT

Clifford T. Chentnik
N3066 Apricot Road
Lake Geneva, WI 53147

Darrell Shelby, Secretary-Treasurer
Teamsters Local Union 579
2214 Center Avenue
Janesville, WI 53546

**Re: Election Office Case Nos. P-056-LU579-NCE
P-076-LU579-NCE**

Gentlemen:

Related pre-election protests have been filed pursuant to Article XIV, Section 2 (a) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election (“Rules”)***.¹ Because these protests were filed by a single member raising identical factual claims, they were consolidated by the Election Officer.

¹ These “reach back” protests were filed within the 30-day period following the final promulgation of the ***Rules*** on April 24, 1995, and alleges violations occurring prior to the issuance of the ***Rules***. The ***Rules***, at Article XIV, Section 2(a), state:

Protests regarding violations of the [Labor-Management Reporting and Disclosure Act, as amended](including violations of the IBT Constitution) allegedly occurring prior to the date of issuance of the ***Rules*** and protests regarding any conduct allegedly occurring within the first twenty-eight (28) days after the issuance of the ***Rules*** must be filed within thirty (30) days of the date of issuance, or such protests shall be waived.

Clifford T. Chentnik, a candidate for delegate, filed protests P-056-LU579-NCE and P-076-LU579-NCE alleging that certain incumbent officers of Local Union 579 acted improperly by publishing a monthly, union-financed, newsletter containing articles which support their candidacies for union office. The protester further complained that the current officers are distributing to members certain written and non-written materials which attack Mr. Carey, his slate of candidates and the Teamsters for a Democratic Union ("TDU") while simultaneously promoting the candidacy of the incumbent officers and the Real Teamster Caucus ("RTC"). The protester further asserted that these same incumbents retaliated against and coerced two other members because of their activities in support of Mr. Carey and the protester by delaying and misrepresenting information concerning their grievances. Finally, the protester cites as improper a written Local Union policy which prohibits campaigning or the distribution of campaign literature at "union meetings." The protester objects to the rule, both on its face and the manner in which it has been applied to him.

In response, the Local Union asserts that the newsletters and other written and non-written material at issue do not constitute campaign literature. The union further maintains that the grievances have been properly processed and that the rule prohibiting union hall campaign activity is facially neutral and proper as applied.

These protests were investigated by Regional Coordinator Judy Kuhn.

I. Teamster Local 579 Newsletter

An analysis of union-financed publications under the **Rules** must begin with the determination of whether or not the subject of the communication was a "candidate" at the time of publication.

The Election Officer has previously found that Mr. Carey became a candidate for International office in October of 1994. Martin, et al., P-010-IBT-PNJ, et seq. (August 17, 1995). There is no evidence that Local Union 579 Secretary-Treasurer Darryl Shelby or Local Union 579 President Penni Secore were candidates for delegate or International office at the time the newsletters were published.

The protester specifically cites as examples of improper publication issues of the *Teamsters Local 579 Newsletter* for the period beginning July 1994 and ending February 1995. The protester objects to the two volumes which contain columns entitled "Meet Your Business Agent," featuring Local Secretary-Treasurer Shelby and Local President Secore.

Copies of the Teamster Local 579 Newsletter published after October 1994 concern general Local Union news and make no mention of Mr. Carey.

II. The Local Union Policy on Literature Distribution

Several editions of the Local Union newsletter refer to an “information table” located in the Local Union lobby. The protester presented evidence that several documents have been placed on this table including the newsletter of the Real Teamster Caucus (“RTC”), *The Real Teamster*, which contains articles generally opposing the policies and activities of General President Ron Carey. Reprints of other communications and items of paraphernalia also adverse to Mr. Carey and his administration are similarly available at the table. The protester asserts that the policy prohibiting campaigning at union meetings has been wrongfully applied to prevent him from distributing or placing on the information table the *Convoy Dispatch*, a publication supportive of Mr. Carey’s administration.

The Election Officer finds that members of Local Union 579 have had regular opportunities to stop at the distribution table in the lobby and review both written and non-written material which are generally adverse to the candidacy of Mr. Carey. For example, a flyer entitled “Why Isn’t Sever Gone?”, which is undated, reads in part:²

[General Secretary-Treasurer Tom] Sever ran on a slate pushing for ‘democracy’ and the protection of members’ rights, yet he is one of the worst offenders. . . . Isn’t this the type of behavior TDU campaigned on as being wrong with this union? Ken Paff, Diana Kilmury, and the rest of TDU should clean up their own house before going after others.

A copy of a letter dated February 21 from R. V. Durham to James P. Hoffa³ reads:

I have received a number of calls from Local Union leaders since our meeting in Chicago last week to confirm that I was no longer a candidate for General President. I have told everyone I have stepped aside with the hope that this will prevent two tickets opposing the Carey Administration in 1996. . .

Our Union will not survive another five (5) years with a Carey Administration. Our members have already been hurt very badly and their welfare must come first.

²Mr. Sever is a candidate for general secretary-treasurer. The Election Officer has determined that Mr. Sever became a candidate for reelection when he declared his intention to run for general secretary-treasurer as part of the Ron Carey Slate on August 2, 1995.

³The Election Officer has determined that Mr. Hoffa became a candidate for general president within the meaning of the **Rules** in March 1994. Crawley, P-027-LU988-PNJ, et seq. (August 23, 1995).

Certain non-written articles, such as a pad of “ three-dollar bills” containing Mr. Carey’s picture and bearing the inscriptions “New Teamster Bankruptcy Note” and “This note is legal tender for all New Teamster dues hikes” and pens inscribed with “Bill Hogan, Jr., Chairman, Central States Area Conference, Vote Teamsters,” are also available at the distribution table.⁴

As to literature distribution tables, the **Rules** require to the extent that these tables contain campaign literature, these materials must be made available on a non-discriminatory basis. Thus, the **Rules**, at Article VIII, Section 5(a)(4), provide:

A Local Union shall not discriminate or permit discrimination in favor of or against any candidate in conjunction with its meetings or otherwise. This requirement shall apply not only to formal presentations by or on behalf of candidates, but also to informal campaign activities, such as, for example, comments on candidates during meetings, literature distribution at meetings, literature distribution tables, etc.

(Emphasis supplied.)

Members of unions are generally “free to discuss union policies and criticize the leadership without fear of reprisal.” The “vigorous debate” envisioned by Congress in Section 101(a) of the Labor-Management Reporting and Disclosure Act and by the **Rules** increases in significance as the election approaches. United Steelworkers of America v. Sadlowski, 457 U.S. 102, 112 (1982). Communications which relate to legitimate union business must be scrutinized with particular care. The right of union officers to operate the union must be protected. The right of union members to take issue with the manner in which union business is conducted must be preserved.

In Kilmury, P-021-LU230-CAN (August 23, 1995), the protester objected to a publication which castigated her for incurring business expenses which, in the author’s opinion, were wasteful, illegitimate and excessive. Mr. Carey and his administration were criticized for permitting such conduct while the union “plunged” toward bankruptcy. These remarks were formulated in a style which was clearly derogatory. Because the timing, manner and purposes for which the International expends fund is currently an issue of great importance to union members, no violation was found.

⁴Mr. Hogan was chairman of the Central States Area Conference. The Conference was abolished in 1994.

Similarly, the Election Officer concludes here that, although some of these written and non-written materials abruptly criticize Mr. Carey and employ harsh terms, they predominantly relate to issues of legitimate concern to union members and, at the time they were distributed, cannot be said to constitute "campaigning" within the meaning of the **Rules**. Other materials made available in the union hall appear to be informational and part of the ongoing policy debates within the IBT at this time. The Election Officer finds, therefore, that the materials examined in these protests that were placed on the literature distribution table did not "discriminate in favor of or against any candidate," and therefore the Local Union has not violated the **Rules**.

III. Allegations of Retaliation in Grievance Processing

The protester states that Ron Rawes and Gary Mecklenberg, supporters of the protester's candidacy for delegate to the International convention and of Mr. Carey, suffered delays or refusals to process their grievances, and were given misinformation concerning their status.

There is no evidence that any violation of the **Rules** occurred with respect to the protester's campaign for the office of delegate. Further, no evidence was presented during the investigation establishing the occurrence of any coercion, retaliation or misinformation of any kind with respect to grievances filed by Mr. Rawes or Mr. Mecklenberg.

Based on the foregoing, the protests are 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.
Mudge, Rose, Guthrie, Alexander & Ferdon
180 Maiden Lane, 36th Floor
New York, NY 10038
Fax (212) 248-2655

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

Clifford T. Chentnik
September 13, 1995
Page 6

cc: Kenneth Conboy, Election Appeals Master
Judith Kuhn, Regional Coordinator