

July 21, 1995

**VIA UPS OVERNIGHT**

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Teamsters Local Union 745  
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Hicks & Associates  
1420 West Mockingbird Lane, Suite 760  
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**RE: Election Office Case No. P-060-LU745-EOH**

Gentlemen:

This protest was filed pursuant to Article XIV, Section 2(a) of the ***Rules for the 1995-96 IBT International Union Delegate and Officer Election*** (“***Rules***”)<sup>1</sup>. The protesters, James Jacob, a member of Local Union 251, Darryl Sullivan, a member of Local Union 745, and Michael Ruscigno, a member of Local Union 138, allege that Local Union 745 Secretary-Treasurer T.C. Stone, Local Union 745 President Charles Rogers, and the Local Union’s attorney, James L. Hicks, Jr., Esq., have made forbidden union and employer campaign

<sup>1</sup>This “reach-back” protest was filed within the thirty 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 issuance of the ***Rules*** must be filed within thirty (30) days of the date of issuance, or such protests shall be waived.

contributions by using their control of the podium at Local Union 745 membership meetings to attack General President Ron Carey. Protesters also allege that Local Union 745 may be making unlawful campaign contributions by producing or distributing “Impeach Ron Carey” t-shirts and by making sizeable payments to Attorney Hicks which have been diverted to the Real Teamsters Caucus for campaign activities.

The protest was investigated by Regional Coordinator Bruce Boyens.

The protesters cite numerous examples, all occurring in 1993, of criticisms of General President Carey by Secretary-Treasurer Stone and Attorney Hicks claimed to be unlawful campaign activity, including criticisms of Mr. Carey’s financial policies, his appointment of Union members to grievance committees, and his collective bargaining strategy. The protesters further allege that Local Union 745 officers have unlawfully campaigned against the General President by making frequent attacks on Teamsters for a Democratic Union, which is, according to the protesters, “a political caucus associated in the minds of many members with the Carey administration” and by a speech made at a membership meeting by James P. Hoffa, candidate for General President, denouncing incumbent General President Carey.

In response, Attorney Hicks argues that the Local Union 745 representatives and Mr. Hoffa speaking from the podium have been exercising their protected rights to free expression. Attorney Hicks also advises that he has been sole retained counsel for Local Union 745 since 1978, regularly attends Local Union 745 membership meetings as an invited guest, and by speaking at a Local Union 745 meeting he contributes “nothing of pecuniary value.”

The **Rules** at Article XII, Section 1(b), prohibit employers and unions from making any “campaign contribution”, which is defined by the **Rules** as any contribution “where the purpose, object or foreseeable effect of that contribution is to influence, positively or negatively, the election of a candidate for [the 1996 International] Convention delegate or alternate delegate or International Officer position.”

Article VIII, Section 11 of the **Rules** reads:

Union funds, facilities, equipment, stationery, personnel, etc. may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance. Union officers and employees provided with Union-owned or leased cars, if otherwise afforded the right to utilize those cars for personal activities, may use the cars for campaign activities, provided no costs, or expenses incurred as a consequence, of such use are paid out of Union funds or other prohibited sources.

To determine if a communication supports or attacks a candidacy in violation of the **Rules**, the Election Officer reviews the “tone, content and timing” of the communication. See,

Sullivan, Case No. P-053-LU391-EOH (July 10, 1995). The Election Officer has confirmed that T.C. Stone, Charles Rogers and Local Union Attorney Hicks have made remarks from the podium of Local Union 745 membership meetings that were critical of Ron Carey and his administration. However, just as it is proper for incumbent Union officers to expend Union resources for the conduct of legitimate Union business, it is permissible for a Union member to criticize the manner in which the incumbent conducts such business. See, United Steelworkers v. Sadlowski, 457 U.S. 102, 112 (1982); Salzhandler v. Caputo, 316 F.2d 445, 448-49 (2nd Cir. 1962), cert. denied, 375 U.S. 946 (1963).

The Election Officer finds the criticisms of the General President at Local Union 745 meetings to fall within this protection. In so finding, the Election Officer also takes into consideration that the remarks at issue all occurred in 1993, far in advance of the elections that are the subject of the **Rules**. The Election Officer recognizes that “[c]onsidered under the totality of the circumstances otherwise permissible statements may take on a different hue when viewed against the backdrop of an election campaign.” See, Dole v. Federation of Postal Police Officers, 744 F.Supp. 413, 417 (E.D.N.Y. 1990).

Protesters have submitted no evidence to support their claims that the Local Union is unlawfully producing and distributing anti-Carey t-shirts, or improperly supporting the Real Teamsters Caucus or advocating on behalf of a candidate through payments to the Local Union attorney.<sup>2</sup>

For the foregoing reasons, 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:

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<sup>2</sup>In Stone, Case No. P-085-IBT-EOH (July 21, 1995), the Election Officer found the provision of legal services to a proponent or opponent of a candidate to be permissible to assure compliance with the **Rules** or to defend or clarify the legal rights of a candidate and to be prohibited only when such services constitute advocacy on behalf of a campaign.

James Jacob, et al.

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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, 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

cc: Election Appeals Master Kenneth Conboy  
Dolores C. Hall, Regional Coordinator