

July 28, 1995

VIA UPS OVERNIGHT

James Jacob
1377 Sassaquin Avenue
New Bedford, MA 02745

Teamsters Joint Council 3
3245 Eliot Ave.
Lower Level
Denver, CO 80211

Michael Ruscigno
302 Summit Avenue
Jersey City, NJ 07306

Paul Alan Levy, Esq.
Public Citizen Litigation Group
2000 P Street, NW, Suite 700
Washington, DC 20036

Darryl Sullivan
2059 Richmond
Arlington, TX 76014

RE: Election Office Case No. P-062-JC3-EOH

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(a), of the ***Rules for the 1995-1996 I.B.T. International Union Delegate and Officer Election (“Rules”)***.¹ The protesters, James Jacob, a member of Teamsters Local 251, Michael Ruscigno, a member of Local Union 138, and Darryl Sullivan, a member of Local Union 745, allege that Joint Council 3 has improperly used its official publication, the *Rocky Mountain Teamster*, a union-financed publication, to attack and oppose General President Ron Carey and other candidates for International office, while promoting other candidates.

¹This “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.

The protesters cite articles in four issues of the publication: the March, 1994 issue which contained disparaging remarks concerning the impact on union members of certain administration policies and simultaneously supports Michael Riley, alleged to be a candidate for International office; the April, 1994 issue which commented adversely on certain activities of Mr. Carey and discusses charges filed against Mr. Carey under the IBT Constitution by Joint Council 9 President R.V. Durham; the June/July, 1994 issue which attributed a dues assessment increase to Mr. Carey and criticizes him for favoring abolition of Local Unions, Joint Councils and Area Conferences; and the August/September, 1994 issue which disapproved of International performance concerning finances, hiring and collective bargaining.

Joint Council 3 responds by challenging the protest on grounds of rule applicability, timeliness and the protesters' lack of standing.² They also dispute the "candidacy" status of Mr. Carey, Mr. Durham and Mr. Riley.

The **Rules**, at Article VIII, Section 8(a), provide the following prohibition, "No publication or communication financed, directly or indirectly, by a Union may be used to support or attack any candidate or the candidacy or any person . . ." Section 8(a) also sets forth specific illustrations of improper support of a candidate by a Union-financed publication.

A union-financed publication does not violate the **Rules** unless the subject of the printed matter was a "candidate" at the time it is published. Ruscigno, P-067-LU20-EOH (July 19, 1995)³.

² Joint Council 3's positions on applicability, timeliness and standing are not sustainable. The **Rules** apply to any alleged violative conduct occurring prior to date of their issuance and the protest is timely. *See Note 1.* Pursuant to Article XIV, Section 1, any member may file a protest.

³Under the **Rules**, "candidate" is defined as:

[A]ny member who is actively seeking nomination or election for any Convention delegate position or International Officer position. The term includes any member who has accepted any campaign contribution as defined by the **Rules** or made any expenditure, where the purpose, object or foreseeable effect of the contribution or expenditure is to influence the election of that member to any such position.

James Jacob, et al.
July 28, 1995
Page 3

It does not appear that Mr. Carey was a candidate within the meaning of the **Rules** at the time of these publications. There is no evidence that Mr. Riley was a candidate for Local Union delegate to the 1996 International Convention or International office at the time of the challenged publication. The Election Officer has previously found that Mr. Durham was not a candidate. See, Ruscigno, P-065-JC37-EOH (July 21, 1995).

Moreover, the publications make no mention of the IBT election or the candidacy of any union member and are too remote from the 1996 International officer elections to be considered campaign activity. The protested material was of interest to the membership. The Joint Council may express opinions on the manner in which incumbent officers conduct affairs of the union. 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).

Based on the foregoing, 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.
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

cc: Election Appeals Master Kenneth Conboy