

July 25, 1995

VIA UPS OVERNIGHT

Gary L. Gregory
10815 Bakeway Drive
Indianapolis, IN 46231

John Neal, President
Teamsters Local Union 135
1233 Shelby Street
Indianapolis, IN 46203

RE: Election Office Case No. P-080-LU135-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")* by Gary L. Gregory, a member of Local Union 135.¹ The protester alleges that *Teamster Local 135*, the

¹This protest was filed pursuant to Article XIV, Section 2(a), which permits a "reach-back" protest alleging a violation of the *Rules* occurring prior to the issuance of the *Rules* to be filed within the thirty-day period following the final promulgation of the *Rules* on April 24, 1995:

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.

Local Union 135 has asserted that the protest is untimely. The protest, dated May 24, 1995, was not received by the Election Office until May 30, 1995, which is after the thirty-day period during which filing is permitted by Article XIV, Section 2(a). Nevertheless, given the date on the protest letter the Election Officer will review the merits of this protest in order to provide guidance to the parties.

monthly Local Union 135 newspaper, unlawfully opposed the candidacy of General President Ron Carey for re-election and unlawfully supported the candidacy of Local Union 135 President John Neal for delegate to the 1996 International Convention in Mr. Neal's column in the March 1994 issue.

Local Union 135 disavows any intent to campaign for Mr. Neal or against Mr. Carey, and points out that it has published articles stating positions of the General President, giving his views coverage and prominence equivalent to that devoted to the opinions of the Local Union President in the March 1994 *Teamsters Local 135*.

The investigation was conducted by Election Office Staff Attorney Helene Boetticher.

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 of any person . . ." Section 8(a) also sets forth specific illustrations of improper support of a candidate by a Union-financed publication.

As the Election Officer stated in Ruscigno, P-067-LU20-EOH (July 19, 1995), in determining whether a Union-financed publication violates the **Rules**, she must first determine if the subject of the publication was a "candidate" at the time of publication.²

It does not appear Mr. Carey was a "candidate" within the meaning of the **Rules** for International office in March 1994. Nor was it clearly established that Mr. Neal was a candidate for Local Union delegate to the 1996 International Convention at the time of the challenged publication. Furthermore, the article in question does not support or attack any candidate or the candidacy of any person and, therefore, does not violate the **Rules**. In his column in the March 1994 *Teamster Local 135*, Mr. Neal reprinted an article from *Southern California Teamster* published by Joint Council 42 discussing a one-day strike by the Union on February 7, 1995 against the United Parcel Service.

² Under the **Rules**, "candidate" is defined as:

[A]ny member who is actively seeking nomination or election for any Convention delegate or alternate 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.

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The Local Union President may express his opinion in the Local Union paper on the manner in which an incumbent conducts his 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).

In accordance with 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
Bruce Boyens, Regional Coordinator