

October 13, 1995

VIA UPS OVERNIGHT

Gene Giacumbo, Vice President
International Brotherhood of Teamsters
15 Village Road
Sea Bright, NJ 07760

Ron Carey, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

General Executive Board
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

John Sullivan
Associate General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Election Office Case No. P-100-IBT-PNJ

Gentlepersons:

This protest was filed pursuant to Article XIV, Section 2(b) of the ***Rules of the 1995-96 IBT International Union Delegate and Officer Election*** (“***Rules***”) by IBT Vice President Gene Giacumbo. The protest consists of four letters, all dated June 24, 1995, which allege that General President Ron Carey and partisan members of the General Executive Board (“GEB”) have discriminated against him by: (1) refusing nearly all of his travel requests for the past three years; (2) refusing his request for office space and/or staff; (3) refusing him reimbursement for union-related expenses; and (4) refusing him access to the TITAN system and to IBT offices between GEB meetings.

In its response, the IBT claims that the protest was untimely and failed to cite a specific violation of the ***Rules***. As to the merits, the IBT contends that Mr. Carey and the GEB’s treatment of Mr. Giacumbo is consistent with provisions of the IBT Constitution and was in no way motivated by an attempt to retaliate against Mr. Giacumbo because of his candidacy or any other conduct protected by the ***Rules*** or the Labor-Management Reporting and Disclosure Act, as amended (“LMRDA”).

The protest was investigated by Regional Coordinator Peter V. Marks, Sr.

The IBT contends that Mr. Giacumbo did not file his complaint on a timely basis pursuant to Article XIV, Section 2(a) or (b) of the ***Rules***.¹ While the requirement to promptly file

protests is an important part of the election process, the Election Officer has not treated time limits as an absolute jurisdictional requirement but, rather, as a prudential restriction. The Election Officer finds here that it will better serve the underlying purposes of the *Rules* to resolve this protest on the merits. The conduct underlying the alleged violation is ongoing. Moreover, at this early stage of the election process, the Election Officer is cognizant of heightened concern over allegations of retaliation activity. See Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995). Therefore, the Election Officer will exercise her authority to resolve this protest.

Further, Mr. Giacumbo's protest does comply with the *Rules* as it states a "concise written statement of the alleged improper conduct." Article XIV, Section 2(d). He alleges instances of retaliation against him by Mr. Carey and the GEB that place him "at a severe disadvantage with Mr. Carey's partisans in the 1996 election."

Article VIII, Section 11(f) of the *Rules* prohibits any retaliation against any union member by the union or its agents for exercising any right guaranteed by the *Rules*.² The Election Officer and the Election Appeals Master have interpreted the *Rules* to "prohibit any retaliation relating to the exercise of members' rights under the *Rules*, including the right to run for union office." In re: Wsol, supra citing Parisi, Case No. P-1095-LU294-PGH (December 2, 1991).

Thus, if Mr. Giacumbo can demonstrate that he has been retaliated against because of his candidacy³ or other conduct protected by the *Rules*, a violation will have been established. The Election Officer finds, however, that Mr. Giacumbo has failed to demonstrate that his

¹Under Article XIV, Section 2(a), for conduct occurring before or within the first 28 days after the promulgation of the *Rules* on April 24, 1995, the protest must be filed within 30 days of the issuance of the *Rules*.

²Article VIII, Section 11(f) states:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* is prohibited.

³The Election Officer determines that Mr. Giacumbo has been a candidate for International office since December 1994. During a telephone conversation in December 1994, Mr. Giacumbo advised then-Election Officer Amy Gladstein of his candidacy.

candidacy precipitated retaliatory conduct by the IBT.

To the contrary, the evidence presented demonstrates that the IBT's treatment of Mr. Giacumbo has been consistent since December 1992 and has not changed since Mr. Giacumbo became a candidate. The protester has proffered no evidence that he has been treated worse since announcing his candidacy.

Nor has the protester presented evidence suggesting that he has been retaliated against for engaging in other protected conduct under the *Rules*. While it may or may not be true that Mr. Giacumbo has been denied access to the items and other benefits listed in his June 24 letter, such access is not protected by the *Rules*. To the contrary, the use of union resources for campaign purposes is expressly prohibited by the *Rules*. See Article XII, Section 1(b)(3).⁴

For the foregoing reasons, this 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. Request 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

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: Kenneth Conboy, Election Appeals Master
Peter V. Marks, Sr., Regional Coordinator

⁴Article XII, Section 1(b)(3) states in relevant part that "[n]o union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual."