

October 31, 1996

VIA UPS OVERNIGHT

John Steger
8229 Bubbling Spring
Laurel, MD 20723

Joseph H. Fahey
480 Vega Road
Watsonville, CA 95076

Ron Carey, General President
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

Ron Carey Campaign
c/o Nathaniel K. Charny
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

Bradley T. Raymond
Finkel, Whitefield, Selik, Raymond,
Ferrara & Feldman, P.C.
32300 Northwestern Highway, Suite 200
Farmington Hills, MI 48334

Re: Election Office Case No. P-1020-IBT-PNJ

Gentlemen:

John Steger, a member of Local Union 639 and a candidate for International trustee on the Jim Hoffa-No Dues Increase-25 & Out Slate ("Hoffa slate"), filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* alleging violations of the *Rules* on the part of the International union and certain International employees. Specifically, Mr. Steger states that he and other IBT members were campaigning for the Hoffa slate in front of IBT headquarters (the "International") on September 24, 1996 when several persons, who appeared to come from the nearby Carey campaign headquarters, began campaigning for the Ron Carey No Corruption-No Dues Increase Slate ("Carey slate"). Mr. Steger alleges that "a dozen or more IBT employees . . . came out of the headquarters building, some

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of them carrying stacks of Carey campaign flyers and other literature” and joined the Carey slate campaigners. Thus, Mr. Steger alleges that Carey campaign materials have been stored improperly at the International and that the International employees who joined the Carey campaigning did so on union time. He further alleges that one IBT employee took pictures of the Hoffa demonstrators, in violation of the *Rules*.

The IBT responds that any campaign materials which were brought to the rally were brought over from nearby Carey campaign headquarters. In addition, the IBT asserts that any International employees who joined the rally either took vacation time or were done with work for the day.

Regional Coordinator Peter V. Marks, Sr. investigated this protest.

The investigation revealed that on September 24, 1996 at approximately 4:00 p.m., John Murphy and several Hoffa supporters campaigned in the area in front of the IBT headquarters in Washington, D.C. Mr. Murphy and others carried “Hoffa ’96” banners and handed out flyers and literature.

A short time after the Hoffa supporters began campaigning, a group of counter-demonstrators came from the direction of the Carey campaign headquarters. The group included campaign workers Angela Manso, Dale Irwin and Mike Murphy. All of the Carey campaign employees told the Regional Coordinator that they brought literature from Carey campaign headquarters and handed it out.

A few minutes after the arrival of the counter-demonstrators from Carey campaign headquarters, approximately a dozen persons exited the International to join the counter-demonstration. Among those persons, the protesters recognized the following union employees: Trustee candidate Eddie Kornegay (Carey slate), Claude Brown, Gene Moriarty, Sam Carter, Bill Wenzel and Joe Fahey. The investigation revealed that IBT employees

Hugh Thompson and Colleen Dougher were also present.

Mr. Fahey took pictures of several of the Hoffa supporters. He claims that he took the pictures because he thought that they would be useful in campaign literature as “caricatures,” and stated that he found some of the campaigners “interesting” to look at. He denied using these photographs for anything but personal use.

As noted above, the protesters allege *Rules* violations relating to the persons who formed the counter-demonstration from the International. They state that those persons must have been on union time. Mr. Steger and John Murphy also contend that two persons unknown to them exited IBT headquarters carrying stacks of Carey campaign literature, from which the protesters conclude that such literature must have been stored improperly on International premises. Lastly, they object to Mr. Fahey’s picture-taking.

The Regional Coordinator interviewed all the persons named above and reviewed time and attendance records where applicable.

1. Allegation Concerning Campaigning on Union Time

Article VIII, Section 11(a) of the *Rules* states that “[a]ll Union members retain the right to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.” However, Section 11(a) adds the proviso that “[n]o candidate or member may campaign during his/her working hours.”

The Regional Coordinator reviewed the time sheets and expense sheets submitted by IBT employees present at the counter-demonstration. Ms. Dougher and Messrs. Kornegay, Thompson and Fahey submitted evidence that they took vacation time on the afternoon of September 24, 1996. Mr. Carter was finished with his work day. Messrs. Brown, Moriarty and Wenzel are International representatives and were not on working time during the period in which they were present at the counter-demonstration. In Hoffa, P-812-IBT-NYC (August 16, 1996), the Election Officer recognized that “International representatives and organizers often work long, irregular hours [without] regular starting and stopping times, meals and breaks,” and therefore may exercise reasonable flexibility in stopping work or taking breaks. See Caraballo, P-653-LU272-NYC (April 3, 1996).

The Election Officer finds that none of the IBT members identified engaged in campaigning on union-paid time.

2. Allegation Concerning Campaigning Using Union Resources

Mr. Steger alleges that International employees violated the *Rules* by storing Carey campaign materials at the International.

Article VIII, Section 11(c) of the *Rules* states:

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 . . .

Messrs. Steger and John Murphy provided the only testimony regarding this allegation. They described the individuals whom they saw carrying flyers and stated that they believed that the flyers had been brought by these individuals from inside the International. Misses Manso and Irwin generally agree with the protester's and John Murphy's descriptions. Misses Manso and Irwin told the Regional Coordinator that they brought literature to the demonstration from the Carey campaign headquarters. Based upon the Regional Coordinator's interviews of people present at the demonstration and counter-demonstration, a survey of the area, and an examination of the literature, the Election Officer does not find any evidence that the literature was brought from the International.

The Election Officer finds that the counter-demonstrators did not improperly use union resources to store campaign materials.

3. The Allegation Regarding Prohibited Surveillance

Mr. Steger alleges that he saw Mr. Fahey, an IBT employee, taking pictures of Hoffa demonstrators, in violation of the *Rules*.

Article VIII, Section 11(a) of the *Rules* guarantees members "the right to participate in campaign activities, including the right to . . . support or oppose any candidate [and] to aid or campaign for any candidate." This basic right, essential to the goal of a free and fair election, is reinforced in Section 11(f)'s prohibition of retaliation against any IBT member "for exercising any right guaranteed by this or any other Article of the *Rules*."

The Election Officer has found on several occasions that photographing members during protected campaigning, or otherwise conducting surveillance of such activities, chills the free exercise of such activities and is "destructive of the fundamental safeguards of . . . free and fair elections outlined in the Consent Decree and the *Election Rules*." Pollack, P-008-LU732-NYC (October 29, 1990), aff'd, 90 - Elec. App. - 8 (November 7, 1990). "[T]he appearance of surveillance of IBT members engaging in campaign activities violates the right of

members to support candidates free from coercion, interference or harassment.” In Re: Giacumbo et al., 95 - Elec. App. - 45 (KC) (December 18, 1995); Halberg, P-259-IBT-SCE (January 2, 1996), aff’d, 95 - Elec. App. - 58 (KC) (January 23, 1996); Sheibley, P-1010-LU653-ENG (October 14, 1996).

In finding retaliatory surveillance on this record, the Election Officer credits the protesters’ testimony and Mr. Fahey’s admission that he openly took photographs of the protesters. Accordingly, the Election Officer finds that Mr. Fahey’s surveillance of the Hoffa campaigners violated the ***Rules***.

Based upon the foregoing, Mr. Steger’s protest is DENIED as to the allegations of campaigning on union time and using union resources and GRANTED as to the allegation of surveillance.

When the Election Officer determines that the ***Rules*** have been violated, she “may take whatever remedial action is appropriate.” Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process.

The Election Officer orders the following:

1. Mr. Fahey shall cease and desist from engaging in surveillance and interfering with the campaign rights of IBT members.

2. Within three (3) days of receipt of this protest, Mr. Fahey shall turn over the negatives and all copies of the photographs he took during the demonstration on September 24, 1996 to the Election Officer. Mr. Fahey shall also submit an affidavit confirming that the photographs and negatives submitted are all of the existing photographs and negatives of the September 24, 1996 demonstration.

3. Within three (3) days of the receipt of this protest, the IBT shall post the attached notice on all bulletin boards at its headquarters. The notice shall remain on the bulletin boards for thirty (30) consecutive days and shall not be covered or obstructed in any manner.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the ***Rules***. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1996).

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

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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.
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 N. Capitol Street, Suite 855, Washington, DC 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

NOTICE TO IBT MEMBERS

The Election Officer has found that a member working at IBT headquarters attempted to interfere with legitimate campaigning by other members by photographing their campaigning.

The IBT does not condone such activity.

In order to prevent any further such incidents, the IBT is reminding you that all IBT members have the right to participate in campaign activities on behalf of candidates for International office in the IBT, at appropriate times and places, free from any interference, restraint or coercion.

Attempting to interfere with legitimate campaigning by subjecting members to surveillance is a violation of the *Election Rules*.

Anyone subject to such conduct should file a protest with the Election Officer at 400 N. Capitol Street, N.W., Suite 855, Washington, D.C. 20001; telephone (800) 565-VOTE or (202) 624-3500; facsimile (202) 624-3525.

Date

Ron Carey, General President

IBT

This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.

Approved by Barbara Zack Quindel, IBT Election Officer.