

October 28, 1996

VIA FACSIMILE & UPS OVERNIGHT

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Re: Election Office Case Nos. P-1053-LU952-CLA  
P-1088-LU952-CLA

Gentlemen:

Related pre-election protests were filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* by James P. Hoffa, a member of Local Union 614 and a candidate for general president, and J. Allen Hobart, a member of Local Union 760. Both protesters allege that the coverage received by Ed J. Mireles, secretary-treasurer of Local Union 952 and a candidate for Western Region vice president on the Ron Carey No Corruption-No Dues Increase Slate, in the summer 1996 edition of Local Union 952's magazine, *952*

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*Reporter*, is excessive and amounts to campaigning in a union-financed publication, in violation of the *Rules*.

Mr. Mireles responds that the protests are untimely and denies that the content of the publication constitutes campaigning as defined by the *Rules*. He states that the issue contained a regularly scheduled annual report with content similar to other annual reports issued in prior years. He also states that the proximity of the publication of the issue and the International officer election occurred because of printer error.

Regional Coordinator Dolly M. Gee investigated the protest.

1. Timeliness

Mr. Mireles argues that because the protested publication “was published in the Summer of 1996,” Mr. Hoffa’s protest, filed on October 3, 1996, and Mr. Hobart’s protest, filed on October 15, 1996, are untimely.

Article XIV, Section 2(b) of the *Rules* requires protesters to file “within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested.” The short time limits are important in ensuring that alleged violations of the *Rules* are quickly brought to the attention of the Election Officer in order to afford the greatest opportunity for applying an effective remedy if a violation is found.

Mr. Mireles states that the protested magazine was published in the “Summer of 1996.” The magazine is labeled as the Summer 1996 edition. During the investigation, however, Mr. Mireles explained that because of a printer’s error, the printing and distribution of the magazine was delayed until September 26, 1996. Mr. Mireles provided the Election Officer with documentary evidence to support this assertion. Thus, the delay between the actual distribution date of the magazine and the

filing of the protests is not unreasonable given the reality of the postal system. As a result, Mr. Mireles' argument that the protests are untimely is without merit.

## 2. Content of the Publication

Article VIII, Section 8(a) of the *Rules* states that a union-financed publication or communication may not be "used to support or attack any candidate or the candidacy of any person." In reviewing union-financed communications for improper campaign content, the Election Officer looks to the tone, content and timing of the publication. Martin, P-010-IBT-PNJ et al. (August 17, 1995) (decision on remand), aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995). The Election Officer also considers the context in which the communication appeared.

In Martin, the Election Officer recognized that union officers and officials have a "right and responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern" (quoting Camarata v. International Bhd. of Teamsters, 478 F. Supp. 321, 330 (D.D.C. 1979), aff'd, 108 L.R.R.M. (BNA) 2924 (D.C. Cir. 1981)). The Election Officer also recognized in Martin that:

. . . an otherwise acceptable communication may be considered campaigning if it goes on to make a connection with the election or election process, if it involves excessive direct or indirect personal attacks on candidates, or, alternatively, involves lavish praise of candidates. Otherwise, legitimate coverage of the activities of a union official running for office may constitute campaigning if it is excessive.

Messrs. Hoffa and Hobart argue that the coverage received by Mr. Mireles in the protested publication is excessive under the Martin standard, especially given the proximity of the upcoming election.

The investigation revealed that Volume 7, Issue 1 of the *952 Reporter*, dated summer of 1996 and subtitled, "Annual Report: Looking At The Pace-Setting Contracts," was mailed to the membership of Local Union 952 on September 26, 1996. The publication is 24 pages long, including the front and back covers, and contains 85 photographs. The content of the publication is divided into a general message by Mr. Mireles and reports on negotiation progress and accomplishments in the freight, food and car haul industries and with United Parcel Service ("UPS").

Inspection of the content of the publication discloses that Mr. Mireles appears in 10 of the 85 photographs and is mentioned by name 32 times. The content of the publication portrays Mr. Mireles' experience and accomplishments, and his ongoing efforts for each industry. In the initial

“Secretary-Treasurer’s Message,” written by Mr. Mireles himself, he lists in detail the different capacities in which he serves the IBT and its membership.

In the section of the publication devoted to the freight industry, the author of the column describes Mr. Mireles as “committed to bringing Teamster members job security and work preservation in the unionized freight industry.” The author continues:

Secretary-Treasurer Ed J. Mireles has a keen understanding of the industry. He began his Teamster career as a freight driver for Hecht Fast Freight 35 years ago, and served as a business agent and executive coordinator for Local 952. He is now serving his third term in the top leadership position. He serves on the National Freight Negotiating Committee and National Grievance Panel and monitors the industry on a daily basis.

Mr. Mireles’ concerns, plans and observations concerning the freight industry are described in the next four paragraphs and in the final paragraph of the article.

The next article describes the efforts of the local union and Joint Council 92 to end damaging practices in the car haul industry. The article highlights statements made by Mr. Mireles concerning the effectiveness of local union efforts in that area.

The article following the car haul report concerns developments in contract negotiations with UPS. Towards the end of the article, Mr. Mireles is identified as serving on the National Negotiating Committee and National Premium Service Committee. In his secretary-treasurer’s column, Mr. Mireles also identified himself as serving on these committees.

The next article is entitled, “The Food Industry: How Negotiations Evolve” and contains a section which appears under the heading “Mireles Helps Turn the Tide with Significant Contract Gains.” This section details Mr. Mireles’ participation in efforts to upgrade the pensions of food industry workers, reform the retirement qualification and improve the health plan.

The last article, entitled, “‘Rule of 84’ An Early Retirement Proposal” contains the following passage:

‘Rule of 84’ didn’t come easy. It took the tenacity of Secretary-Treasurer Ed J. Mireles, who is a principal negotiator on all the major contracts. It was Mireles who first proposed the new benefit to the Western Conference Pension Trust and fought fiercely to win its approval.

The frequent mention of Mr. Mireles, his frequent appearance in photographs, the repetition of his service record and the praise he receives for his actions, when considered together, constitute excessive coverage of Mr. Mireles, in violation of the *Rules*. The coverage of Mr. Mireles was not simply to report on events in which Mr. Mireles was a participant or speaker. Rather, the coverage was largely gratuitous in that it praised his experience and his general role in the affairs of the local union. As the Martin standard indicates, the test of what is excessive becomes much more stringent as the election approaches. Coverage of a candidate's fulfillment of his or her duties of office that may not be excessive at a time more remote from the election becomes excessive in the more sensitive period prior to the mailing of ballots. The protested publication was not sent to members until the end of September 1996. Ballots will be mailed to members on November 10, 1996. Given the proximity of the publication and the mailing of ballots, the coverage received by Mr. Mireles violates the *Rules*.

Mr. Mireles argues that the timing of the distribution occurred because of printer error. He has provided persuasive evidence to indicate that he intended the publication to be distributed to the members prior to the close of summer. The evidence indicates that Local Union 952 submitted copy materials for the protested publication to its printer, A to Z Printing, on July 12, 1996. Revisions and proofreading were completed by August 7, 1996. On August 22, 1996, the printer received final approval to produce the publication from the local union. Production delays, caused by a personnel shortage at the printer, postponed the mailing of the publication until September 26, 1996.

While Mr. Mireles has adequately demonstrated that the late print date was caused by the shortcomings of A to Z Printing, his argument that he and the local union should not be held responsible for the ultimate distribution date is not persuasive. As the principal officer of Local Union 952, Mr. Mireles is responsible for the communications issued by the local union. Because of the delay in printing, Mr. Mireles should reasonably have taken steps to ensure that material that could be interpreted as campaigning under the *Rules* be removed from publications distributed so close to the ballot mail date.

In addition, Mr. Mireles failed to submit a copy of the protested publication for review and approval by the Election Officer. Article VIII, Section 8(e) of the *Rules* establishes a procedure whereby local unions are required to submit the proposed copy of union-financed publications and communications to the Election Officer for review and approval if such communications will potentially be received by members between October 1, 1996 and December 20, 1996. In her *Publication Review Advisory* ("Advisory"), sent to all IBT affiliated bodies on August 16, 1996, the Election Officer clearly stated that publications reasonably likely to reach members after October 1, 1996, including those mailed in "mid to late September," must be submitted for review and approval. Had Local Union 952 complied with this requirement, it would have had an opportunity to receive the determination of the Election Officer as to whether the content of the publication would have violated the *Rules* if distributed. Since the local union failed to follow this procedure, the details of which

were transmitted to it in August 1996, the local union cannot now argue that it was unaware of the heightened scrutiny or the importance of timing in the distribution of its publication.

Mr. Mireles argues that the coverage is not excessive because it is substantially equal to the coverage received by Mr. Mireles in prior annual reports. The circumstances of the publication of these reports, however, are not identical. Mr. Mireles states that the prior annual reports were published in July or August. Had the protested publication been published at the time customary for the release of the annual report, it might not have violated the *Rules* because the coverage of Mr. Mireles may not have been excessive when compared to the prior reports. Such an analysis is inapplicable here because the protested publication was not released until late September. This delay represents a departure from the customary practice of the local union and leads the Election Officer to apply a more stringent test to determine whether the coverage received by Mr. Mireles is excessive under the Martin standard. Such a stringent analysis is even more important because of the close proximity of the election, in which Mr. Mireles is a candidate.

Accordingly, the protests are GRANTED.

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 has determined that resources of Local Union 952 were used to promote the candidacy of Mr. Mireles, who is a candidate for vice president of the Western Region on the Ron Carey No Corruption-No Dues Increase Slate. A similar benefit will be provided allowing the opposing regional vice-presidential candidates to present themselves to the membership of the local union. Accordingly, the Election Officer orders the following:

1. By Thursday, October 31, 1996, the three candidates for Western Region vice president on the Hoffa slate, Jon Rabine, Jim Santangelo and Chuck Mack, may submit to Mr. Mireles one piece of campaign literature each. This literature shall relate solely to these individual candidates and not to their slate or other slate candidates. It must be on 8½×11-inch paper and blank on one side.
2. Within three (3) working days of receipt of the literature, Mr. Mireles, at local union expense, will copy this material and mail one copy of each candidate’s literature to every member of Local Union 952. All three copies may be mailed in the same envelope or package.
3. Within one (1) day of the mailing of this material, Mr. Mireles will submit an affidavit to the Election Officer indicating compliance with this order.

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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 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, 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  
Dolly M. Gee, Regional Coordinator