

November 15, 1996

VIA UPS OVERNIGHT

Todd Hartsell
1823 Green Park Circle
Ankeny, IA 50021

Martin Warrick
4960 Pine Valley Drive
Des Moines, IA 50317

Anderson Erickson Dairy
2420 E. University Street
Des Moines, IA 50317

Leslie Turner, Secretary-Treasurer
Teamsters Local Union 90
2425 Delaware Avenue
Des Moines, IA 50317

Robert Blackford, Secretary-Treasurer
Teamsters Local Union 387
2425 Delaware Avenue
Des Moines, IA 50317

Mike Klootuyk, President
Teamsters Local Union 387
2425 Delaware Avenue
Des Moines, IA 50317

Bryan Perry
647 Marlow Parkway
Des Moines, IA 50320

Ron Carey, General President
International Brotherhood of Teamsters

John Suacker
2924 E. Douglas
Des Moines, IA 50317

Bruce King
3219 74th
Des Moines, IA 50322

Ronald Berger
P.O. Box 81-A
Colfax, IA 50054

Roger Neff
615 S.E. Rose
Des Moines, IA 50315

Joseph Nehring
105 S. G Street
Indianola, IA 50125

Rusty Myers
923 W Street
Perry, IA 50220

Ray Robinette
812 E. 22nd Court
Des Moines, IA 50317

25 Louisiana Avenue, N.W.
Washington, DC 20001

Ron Carey Campaign
c/o Nathaniel 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

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

**Re: Election Office Case Nos. P-1120-LU387-MOI
P-1125-LU387-MOI**

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 Todd Hartsell, president of Local Union 90,¹ and by nine members of Local Union 387 who are employed by Anderson Erickson Dairy ("Anderson" or "employer").² Mr. Hartsell, in P-1120-LU387-MOI, alleges that he was verbally assaulted and threatened with physical harm by a steward at Anderson after he distributed DRIVE material at the facility on October 21, 1996. In P-1125-LU387-MOI, the protesters allege that Mr. Hartsell campaigned for Ron Carey, IBT general president and a candidate for reelection, at Anderson on October 21, 1996 while on union time and distributing DRIVE material.

Mr. Hartsell responds that he distributed DRIVE material only while at Anderson and did not campaign for Mr. Carey. The steward denies threatening or assaulting Mr. Hartsell. As these protests involve similar legal and factual issues, the Election Officer has consolidated them for decision.

Regional Coordinator Michael D. Gordon investigated the protests.

1. Factual Background

¹At the time he filed his protest, Mr. Hartsell was on leave from his job and working for the International union on its voter registration project known as DRIVE (Democratic Republican Independent Voter Education).

²The nine members and protesters in P-1125 are: Martin Warrick, Bryan Perry, John Suacker, Bruce King, Ronald Berger, Roger Neff, Joseph Nehring, Rusty Myers, and Ray Robinette.

The Election Officer's investigation revealed the following. Anderson employs about 250 members of Local Union 387 at its Des Moines dairy, about 130 of whom work on the day shift. On October 21, 1996, shortly before 5:00 a.m., Mr. Hartsell met Local Union 90 members Richard Olson and Deborah Sturm in a parking lot close to the dairy. Mr. Hartsell wore an IBT jacket with his name printed on it and a Carey campaign sticker attached. In the back of his van, Mr. Hartsell carried a brochure for DRIVE along with Carey campaign literature. Mr. Hartsell and Mr. Olson drove to Anderson's employee parking lot in Mr. Hartsell's van while Ms. Sturm took her own vehicle.³ Mr. Hartsell and Mr. Olson remained at the dairy until about 7:00 a.m. while Ms. Sturm left at approximately 6:15 a.m.

Mr. Olson and Ms. Sturm took the Carey campaign material, which consisted of a pamphlet with the heading "Action Agenda," a newsletter entitled, "Teamster Pension Report," and a packet of leaflets, from Mr. Hartsell's van and proceeded to place this material on the wind-shields of cars parked in the three lots. When they completed this activity, Mr. Olson and Ms. Sturm stood with Mr. Hartsell in an area leading from the large parking lot to the entrance of the dairy.

The day shift at Anderson begins at 7:00 a.m. At some point close to this time, Mr. Hartsell and Mr. Olson were approached by the day-shift steward, Mike Klootuyk, who took the DRIVE brochure from Mr. Hartsell and asked whether both gentlemen were from the International union.⁴ When Mr. Olson replied that he was campaigning for the Carey slate, Mr. Klootuyk refused to accept his literature and stated that Mr. Olson and Mr. Hartsell did not have permission to be on Anderson's property. Mr. Olson asserted that he had a right to be there; to which Mr. Klootuyk made a rude response, threw the DRIVE brochure to the ground, and went into the building.

Gregg Wilkinson is the plant manager at Anderson. He states that Mr. Klootuyk and about 10 other employees approached him about Mr. Olson and Mr. Hartsell, stating that they wanted these gentlemen to leave the premises. Some of the employees, according to Mr. Wilkinson, complained that they did not want anyone touching their personal vehicles, that "Carey people" had no right to campaign on Anderson's property, and that the IBT should not pay for people to campaign for Mr. Carey.

Mr. Wilkinson went outside to speak with Mr. Hartsell and Mr. Olson. He asked them how long they intended to stay at Anderson, and stated that they were disrupting his work force, which supports James Hoffa for general president. Mr. Olson again asserted that he had a right to campaign in the employee parking lot. Mr. Hartsell asked Mr. Wilkinson if the steward had requested that he speak with them. Mr. Wilkinson replied that the steward had done so but did not reveal the steward's name. Mr. Wilkinson then told Mr. Hartsell and

³Anderson has one large parking area for employees and two smaller lots which are accessed from a road that dead-ends on the employer's property.

⁴In P-1120-LU387-MOI, Mr. Hartsell does not identify the steward by name. However, it is clear from Mr. Hartsell's physical description of Mr. Klootuyk and the fact that the latter is the only "inside" steward on the day shift, that Mr. Klootuyk is the person whose conduct Mr. Hartsell is protesting. Mr. Klootuyk is president of Local Union 387.

Mr. Olson that he was not asking them to leave the premises but he did not want any trouble. Mr. Hartsell stated that they were preparing to leave. After the three men shook hands, Mr. Wilkinson returned inside and Mr. Hartsell and Mr. Olson soon left the premises. Mr. Hartsell drove Mr. Olson back to his own vehicle.

2. Allegations of Verbal and Physical Assault

Mr. Hartsell states that he returned to the Anderson facility after leaving Mr. Olson at his car to check whether the material placed by Mr. Olsen on employee cars had remained there. Mr. Hartsell alleges that he was not on work time at this point. As he drove by the parking lot, Mr. Hartsell saw Mr. Klootuyk removing the campaign literature from the windshields of the cars. Mr. Hartsell describes his encounter with Mr. Klootuyk as follows:

He [Mr. Klootuyk] saw me and he approached my vehicle very quickly. My passenger window was down and I told him that 'he just broke the law.' He reached into my car and threw torn up flyers into my face. He said 'fuck you, cocksucker do you want a piece of me?' Then he hit my mirror on the passenger side with his arm. He then ran around to the driver side of the car. As he was doing this I was putting my windows up and locking the doors. He then hit my drivers side window with his fist. The window did not break and at this point I quickly drove away and went to the police station to report the attack.

An officer at the local police station took Mr. Hartsell's statement at 7:29 a.m. There was no damage done to Mr. Hartsell's automobile.

Mr. Klootuyk denies that this incident took place. He claims that after his conversation with Mr. Hartsell and Mr. Olson, he went into the dairy and worked an overtime assignment in the case room until 9:00 a.m., at which time he began his regular shift in refrigeration. According to Mr. Klootuyk, Mr. Wilkinson knew of his whereabouts during these time periods. Mr. Wilkinson told the Regional Coordinator that he kept an eye on Mr. Klootuyk during the morning of October 21 to make sure that no trouble resulted from the campaigning in the parking lot. While the Election Officer has no reason to doubt Mr. Wilkinson, she finds that Mr. Klootuyk could have exited the building for a short time without Mr. Wilkinson's knowledge.

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**." Section 11(f) is violated when members engage in physically or verbally aggressive behavior that threatens actual harm. Passo, P-469-LU705-CHI et seq. (February 29, 1996) (finding intent to provoke physical confrontation violates **Rules**), aff'd in relevant part, 96 - Elec. App. - 124 (KC) (March 13, 1996); Lopez, P-456-LU743-CHI (April 10, 1996) (finding "I'll kill you" to violate the **Rules**, in light of ongoing animosity between the parties); Smith, P-600-LU150-CSF (April 30, 1996) (finding remark "you'll be taken out of here in a body bag" to violate the **Rules**); Cecere, P-935-LU122-

ENG (October 23, 1996) (charged party violated the **Rules** by driving his car at campaigners).

After reviewing all the evidence and statements in this matter, the Election Officer credits the protester's allegation that a confrontation took place between him and Mr. Klootuyk when Mr. Hartsell returned to Anderson around 7:00 a.m. on October 21. Mr. Klootuyk plainly displayed his animosity towards Mr. Carey by his earlier actions that morning, *i.e.*, his response to Mr. Olson's statement that he was campaigning for Mr. Carey and his request to Mr. Wilkinson to remove Mr. Hartsell and Mr. Olson from the property.⁵ The Election Officer finds that Mr. Klootuyk went outside to the parking lot for the purpose of removing the Carey literature from the cars and saw Mr. Hartsell.

The Election Officer finds that Mr. Klootuyk's actions in the parking lot, specifically, throwing the flyers in Mr. Hartsell's face, hitting the mirror on the passenger's side, and punching the driver's side window, surpass the level of "heated and emotional" exchange permitted under the **Rules**. Mee, et al., P-1153-LU853-CSF et seq. (November 13, 1996) (finding that "nasty exchange" between Carey and Hoffa supporters did not violate the **Rules**). See also Furst, P-949-LU430-PNJ (October 9, 1996); Dunn, P-110-LU250BOS (July 28, 1995); Corriea, P-930-LU150-CSF (September 12, 1996). This display on the part of Mr. Klootuyk constitutes retaliation against Mr. Hartsell, in violation of the **Rules**.⁶

3. Allegations of Campaigning by Mr. Hartsell

In P-1125-LU387-MOI, nine Anderson employees, all members of Local Union 387, allege that Mr. Hartsell distributed Carey campaign literature to them on October 21, 1996 on time paid for by the IBT. Mr. Hartsell, supported by Mr. Olson, contends that he distributed only a DRIVE pamphlet to Anderson employees on that date and did not engage in campaigning for Mr. Carey.

Article VIII, Section 11(b) of the **Rules** protects the right of union officers and employees, if members, "to participate in campaign activities, including the right . . . to openly support or oppose any candidate [and] to aid or campaign for any candidate." Officers and employees may not, however, "campaign on time that is paid for by the Union" unless such campaigning is "incidental to regular Union business." This section protects the personal right of union officers and employees to campaign, while ensuring that their exercise of that right is not subsidized by the union.

⁵The Election Officer also notes a report from the investigator stating that when Mr. Hartsell and Mr. Olson returned to Anderson on October 28, 1996 in order to campaign, Mr. Klootuyk made a vulgar remark about Mr. Carey in their presence.

⁶The Election Officer credits Mr. Hartsell's statement that when he drove by Anderson's parking lot after parting from Mr. Olson, he was on his own time. Thus, Mr. Hartsell was engaging in activity protected by Article VIII, Section 11(a) of the **Rules**.

In the instant protest, five of the charging parties gave statements to the Regional Coordinator about Mr. Hartsell's alleged campaigning. Four of these statements identified Mr. Hartsell, not Mr. Olson, as the person who gave them Carey campaign materials in addition to the DRIVE brochure.⁷ In addition, Mr. Wilkinson stated that Mr. Hartsell handed him campaign literature when he crossed the parking lot to enter the dairy.

The Election Officer further notes that by his own admission, as well as the testimony of Mr. Olson and Ms. Sturm, Mr. Hartsell carried campaign literature for Mr. Carey in the back of his van. As described above, Mr. Hartsell met Mr. Olson and Ms. Sturm around 5:00 a.m. on the morning of October 21, and transported them in his van to the Anderson parking lot.

The Election Officer credits the testimony of the charged parties and Mr. Wilkinson that Mr. Hartsell distributed Carey campaign literature to them along with the DRIVE brochure. It is undisputed that when Mr. Hartsell appeared at Anderson from approximately 5:00 to 7:00 a.m. on October 21, 1996, he was being paid by the IBT as an employee of its DRIVE voter registration project. Thus, the Election Officer finds that Mr. Hartsell's conduct violated Article VIII, Section 11(b) of the **Rules**.

For the foregoing reasons, the protests in P-1120-LU387-MOI and P-1125-LU387-MOI 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 orders the following remedy:

1. The Carey campaign shall reimburse the IBT for two hours of Mr. Hartsell's salary, representing the time he spent at Anderson on October 21, 1996. Within three (3) days of the date of this decision, the IBT shall submit a statement to the Carey campaign indicating this amount. Within three (3) days of receipt of this statement, the Carey campaign shall submit payment of this amount to the IBT.

2. Within five (5) days of the date of this decision, the Carey campaign and the IBT shall each submit affidavits to the Election Officer demonstrating their compliance with this order.

3. Mr. Klootuyk is hereby ordered to immediately cease and desist from threatening Mr. Hartsell. In addition, for the duration of the International election (until December 10, 1996), Mr. Klootuyk is ordered not to come within 20 feet of Mr. Hartsell at any time.

4. Within three (3) days of receipt of this decision, the Election Officer orders

⁷The fifth member, Mr. Berger, stated that one of the two men gave him campaign literature.

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Mr. Klootuyk to post the attached "Notice to IBT Members Employed at Anderson-Erickson Dairy" on all union bulletin boards at the dairy.

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, 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
Michael D. Gordon, Regional Coordinator

NOTICE TO IBT MEMBERS EMPLOYED AT ANDERSON-ERICKSON DAIRY

You have the right to participate in campaign activities on behalf of any candidate for International office. It is a violation of the ***Election Rules*** for any IBT member to threaten, coerce, intimidate, or harass a member because he or she exercises rights guaranteed under the ***Election Rules***.

Any member believing the ***Election Rules*** have been violated may 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

Barbara Zack Quindel
Election Officer

This is an official notice which must remain posted through December 10, 1996 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.