

November 8, 1996

VIA FACSIMILE

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Re: Election Office Case No. P-1190-LU728-CHI

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the **Rules** by Doug Mims, a member of Local Union 728 and a candidate for reelection as Southern Region vice president. Mr. Mims alleges that a portion of the "1996-Special Bulletin," issued by the Central States Southeast and Southwest Areas Health and Welfare and Pension Funds ("Funds"), contains campaign material, in violation of the **Rules**.

Specifically, Mr. Mims contends that a four-page color glossy insert rebutting claims made in the November/December 1996 *Teamster* magazine is a campaign document "meant to impede the Carey campaign and cast aspersions on Ron Carey and his leadership of the IBT." Mr. Mims further alleges that the publication and distribution of this four-page piece in the special bulletin is a campaign contribution to the Hoffa campaign and, as such, violates the **Rules**.

The Funds denies that the flyer is a campaign document and asserts that the trustees were acting pursuant to their fiduciary obligation to the Funds participants and beneficiaries to

“correct material factual misstatements which, if uncorrected, could result in confusion and prejudice to participants in making decisions about their benefit rights and options.”

Regional Coordinator Julie Hamos investigated this protest.

The **Rules** define “campaign contribution” as follows:

[a]ny direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence positively or negatively, the election of a candidate for . . . International officer position.

Rules, Definitions, Section 5 (p. xii).

The **Rules** prohibit campaign contributions from employers, representatives of an employer, foundations, trusts or any similar entity. Article XII, Section 1. Pursuant to this section of the **Rules**, the Funds would be prohibited from making a contribution to a campaign for International office. As a result, it must be determined whether the protested portion of the Funds “Special Bulletin” constitutes a campaign contribution, such that its “purpose, object or foreseeable effect is to influence positively or negatively the election of a candidate.”

The protested portion of the publication, which was mailed to participants along with a two-page “Special Bulletin” regarding revisions of continuation coverage rules, consists of four pages. The first page is a cover sheet with a retiree’s picture and the headline: “DON’T BE FOOLED . . . Know the Real Truth About Your Central States Benefits.” In the lower right-hand corner is a picture of the cover of the November/December 1996 *Teamster* magazine, above which the text, “Recent Teamster Magazine Publishes Misleading DISTORTIONS About Your Funds,” appears. The second page is a letter to participants, beneficiaries and pensioners from the executive director of the Funds, Ronald Kubalanza. The letter introduces a two-page comparison between claims made in the November/December 1996 issue of *The Teamster* magazine regarding the pension fund and what the Funds describes as “the truth about your pension.”

The letter from the executive director begins by noting that in a previous communication in June 1996, he had predicted that the fund could come under unfair criticisms during the period of local and national Teamster elections. Mr. Kubalanza goes on to indicate that this has, indeed, happened with the publication of an article in the November/December 1996 issue of *The Teamster* magazine. He states that this criticism has necessitated producing the response that follows. He further urges the recipients of the communication “not to be fooled by the rhetoric of the election campaign” and to review objectively the facts surrounding the benefits paid by the fund.

On the page that follows there is a two-column comparison. The left-hand column, under the heading “*Teamster* magazine DISTORTIONS,” shows the face of the November/December 1996 *The Teamster* magazine with quotations from the article. The right-hand column, entitled, “THE TRUTH About Your Pension,” contains assertions countering statements

made in *The Teamster* magazine. The fourth page is similar in layout to the third, with the right-hand column entitled, "THE TRUTH About Your Union Trustees."

The protester claims that this material distributed by the Funds is "an obvious campaign document meant to impede the Carey Campaign and cast aspersions on Ron Carey and his leadership of the IBT."

The Funds denies that the material is campaign literature, but contends that it was an authorized and required communication by trustees, pursuant to their fiduciary duty. Specifically, the Funds provided evidence that this communication was discussed and authorized at an October 24, 1996 meeting of the Health and Welfare Board attended by Trustees Ray Cash, R. Jerry Cook, Joe Orrie, Jerry Younger, Howard McDougall, Robert J. Baker and Arthur H. Bunte, Jr.; Independent Special Counsel William B. Saxbe and his attorney, Virginia S. Lewey; Executive Director Ronald J. Kubalanza; and Fund attorneys Russell N. Luplow, William J. Nellis (Secretary to the Board) and David L. Uelman. The minutes of this meeting reflect that all of these individuals had received and reviewed a series of earlier communications from Mr. Carey containing what they believed to be "inaccurate and misleading communications about the Funds and their benefits and Trustees, as well as accurate communications by the Funds intended to correct these inaccurate and misleading statements." These "communications" included letters to the trustees from Mr. Carey on September 19, 1996 and October 2, 1996 critical of the Funds and the trustees and requesting the trustees' resignation. The meeting attendees also reviewed a TITAN electronic mail message to all local unions transmitting to them the text of Mr. Carey's September 19 letter. While the trustees believed that, based on these earlier communications to local unions, participants and beneficiaries had likely received distributions of some of the misstatements, the receipt of the November/December *The Teamster* magazine created a new situation, as this was distributed to the entire Teamster membership and retirees. The minutes of the Board meeting reflect that, because of the now widespread distribution of false and misleading statements about the Funds, the trustees believed they had:

"[a] fiduciary responsibility to make material fact disclosures to the Funds' participants and beneficiaries and to correct material factual misstatements which, if uncorrected, could result in confusion and prejudice to participants in making decisions about their benefit rights and obligations."

The trustees were advised that their fiduciary responsibility to correct the material factual misstatements in the magazine was "real and immediate." This led to their authorization of corrections of factual misstatements allegedly published in the November/December 1996 *Teamster* magazine "in a style designed to receive the participant's attention and thus to achieve the corrections needed."

The November/December 1996 issue of *The Teamster* magazine included an article leveling a variety of criticisms at the Funds. The centerpiece of that article recounted a letter sent by Mr. Carey to the Funds' trustees stating that they have:

“ . . . failed to provide the kind of pension increases that appear to be possible given the huge increases in employer contributions Teamster members won in recent contract negotiations at UPS, Freight and Car Haul.”

The letter calls upon the trustees of the pension fund to resign in order that “locals would democratically choose their replacements.” The article also refers to the fact that in 1991, the Funds “suddenly raised pensions by a much higher percentage than the increases in employer contributions the fund was receiving.”

As the Election Officer has noted on several occasions, union officers 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.” Martin, P-010-IBT-PNJ et al. (August 17, 1995) (decision on remand), aff’d, 95 - Elec. App. - 18 (KC) (October 2, 1995) (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 magazine’s coverage of the concerns over the Funds constitutes legitimate reporting that has not been prohibited by the Election Officer, despite the fact that this issue has also been a campaign theme for the Carey campaign.

Based upon the appearance of this issue as legitimate union business in the November/December 1996 magazine, the Election Officer finds that the response to this article by the Funds, in the form of the publication here protested, was a legitimate exercise of the Funds’ perceived responsibility to provide information to its members. This purpose outweighs any claim that the communication’s purpose, object or foreseeable effect was to campaign against Mr. Carey.

In support of its claim that the material distributed by the Funds constitutes campaign material, the protester relies upon Committee to Elect Ron Carey, P-291A-LU70-CSF, P-278-LU70-CSF (March 14, 1991); In Re: Western Conference of Teamsters Pension Fund, P-291A-LU70-CSF, aff’d, 91 - Elec. App. - 106, aff’d, slip op. (SDNY May 13, 1992); rev’d ___ F.2d ___, 92 U.S. App. LEXIS 12352 (2d Cir. May 20, 1992). In 1991, the Carey campaign prepared a video tape which discussed, among other things, the features of a pension plan which Mr. Carey had negotiated for the members of his local. The union trustees on the Western Conference of Teamster Pension Trust Fund--all political opponents of Mr. Carey--arranged a letter from a fund trustee to another IBT member who also opposed Mr. Carey, criticizing the Carey negotiated pension plan and comparing it unfavorably to the Western Conference plan. In that case, the Election Officer held that the letter was a prohibited campaign contribution since it was clearly motivated by the Carey campaign tape and had the purpose, object or foreseeable effect of adversely affecting the Carey campaign.

In The Committee to Elect Ron Carey case, the impetus for the prohibited campaign material came from a Carey campaign piece. In this case, however, the impetus came from an article that appeared in *The Teamster* magazine, not as campaign literature, but as a position of the International union. Furthermore, the article directly attacked the Funds. The Funds’ response in such case to specific attacks in the magazine is far different from the spontaneous effort in 1991 to debunk the Local Union 804 pension plan which was a pillar of Mr. Carey’s campaign and publicized in his campaign material.

The Election Officer has previously noted in Martin, supra, that:

Incumbency, however, is a two-edged sword. Mr. Carey is subject to blame when union policies fail or when negotiations result in a less advantageous collective bargaining agreement. [citing cases] Moreover, just as the incumbent may conduct union business without having it labeled as campaigning, potential rivals are also free to criticize the policies of the incumbent without having such conduct automatically be labeled campaigning.

The fact that the Funds, in the course of conducting its business, would respond critically to statements made by the general president, who is also a candidate for reelection, does not convert this publication to campaigning.

The Election Officer has considered the timing of the issuance of the Funds' bulletin. While it comes at a critical time in the election process, the timing of the letter is reasonably related to the October 24, 1996 board meeting that determined that an immediate response to the November/December 1996 magazine article was required.

The Election Officer notes that the cover letter introducing the comparison does make reference to the Teamster elections, the political debate they have engendered and the "rhetoric of the election campaign." While inclusion of this language could have a tendency to place the response itself in a political context, taking the material as a whole, the Election Officer finds that the material does not meet the standard of being for the "purpose, object or foreseeable effect of influencing the election." Rather, the Election Officer finds that the purpose of this piece was to communicate with members as to what it believed to be inaccurate claims that were disseminated to the membership through the just-released issue of *The Teamster* magazine.

Accordingly, 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:

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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
Julie E. Hamos, Regional Coordinator