

February 14, 1997

VIA UPS OVERNIGHT

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Re: Election Office Case Nos. P-1337-IBT-EOH
P-1342-IBT-EOH

Gentlemen:

Related pre-election protests have been filed pursuant to the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* (“*Rules*”) by Tom Gilmartin, a member of Local Union 559 and International vice president for the Eastern Region. In P-1337-IBT-EOH, the protester alleges multiple violations of the *Rules* based on the Campaign Contribution and Expenditure Reports (“CCERs”) filed by various International union officer candidates on the Jim Hoffa-No Dues Increase-25 & Out slate (“Hoffa slate”). In P-1342-IBT-EOH, the protester alleges violations of the *Rules* by James Hoffa and the Hoffa slate in failing to timely file their CCERs by December 1, 1996, for the reporting period ending November 20, 1996. The alleged violations will be addressed separately below. Because of the related nature of these protests, they were consolidated by the Election Officer.

The protests were investigated by Election Office Staff Representative Kathryn Naylor.

I. ALLEGED VIOLATIONS OF PATRICK FLYNN

A. Not Reporting All Contributions

The protester alleges that Mr. Flynn’s CCER covering the reporting period from August 21, 1996 through November 20, 1996 only reflects Mr. Flynn’s contributions and expenditures through November 12, 1996. The protester notes that on Mr. Flynn’s CCER for the period ending November 20, 1996, the reported expenditures exceed reported contributions by approximately \$30,000. However, an ending fund balance of approximately \$6,000 is reported. Based on this discrepancy in the difference in contributions and expenditures and the reported fund balance, the protester argues that Mr. Flynn has not reported approximately \$36,000 in contributions. A review of Mr. Flynn’s CCERs confirm the protester’s assertions.

Mr. Flynn explained that James Ramirez, who had prepared the two CCERs submitted on his

behalf, had neither completed the CCERs correctly nor fully. Mr. Flynn submitted two amended CCERs for the periods ending August 20, 1996 and November 20, 1996. The amended CCER for the period ending November 20, 1996 indicates that Mr. Flynn has received a total of \$115,679.18 in contributions, \$107,849.40 in expenditures and an ending fund balance of \$7,829.78. Based on this review of Mr. Flynn's two amended reports, the

Election Officer is satisfied that Mr. Flynn has reported all contributions received and expenditures made as of November 20, 1996.

Accordingly, this aspect of the protest is RESOLVED.

B. Not Filing Supplemental Form #1

The protester also alleges that Mr. Flynn has not filed the Supplemental Form #1 for reporting contributions to a candidate's legal and accounted fund. Mr. Flynn has submitted these Supplemental Forms #1 for the periods ending August 20, 1996 and November 20, 1996.

Accordingly, this aspect of the protest is RESOLVED.

C. Unreported Expenditure to Mr. Singer's Campaign

The protester asserts that Mr. Singer's CCER for the period ending November 20, 1996 reports contributions from Flynn '96 that are not reported on Mr. Flynn's CCER. A review of Mr. Singer's CCER for the period ending November 20, 1996 reveals that a contribution of \$375 from Flynn '96 was received on October 25, 1996. A review of Mr. Flynn's amended CCER for the period ending November 20, 1996 reveals that an expenditure of \$375 was made to Ohio Campaign '96, Mr. Singer's campaign committee, on October 17, 1996.

Accordingly, this aspect of the protest is RESOLVED.

II. ALLEGED VIOLATIONS OF LESTER SINGER

A. Not Reporting All Contributions and/or Expenditures

The protester notes that Mr. Singer's CCER Summary for the period covering August 21, 1996 through November 21, 1996 reports \$249,120 in total contributions to date. However, the protester contends that the sum of individual contributions and contributions raised from fundraising events is actually \$247,803. The protester also alleges that Mr. Singer's total expenditures reported on the CCER Summary of \$248,108 exceeds his total contributions of \$247,803. The protester notes that Mr. Singer's CCER reports an ending fund balance of \$1,811.06. Thus, the protester contends that Mr. Singer has not reported all contributions

made and/or expenditures.

A review of all of Mr. Singer's CCERs reveal errors in reporting total contributions and expenditures to date on the CCER Summaries. In response to the protester's allegations, Cheryl Johnson, the treasurer of Mr. Singer's campaign committee, Ohio Campaign '96, reviewed all contributions received and expenditures made by the committee since its inception on June 28, 1995 through January 15, 1997. Based on Ms. Johnson's review of the committee's contributions, expenditures and fund balances, Mr. Singer filed an amended CCER that covers all contributions received and expenditures made from June 28, 1995 through January 15, 1997. The amended CCER reveals that Mr. Singer's campaign committee has received a total of \$253,802.05 in contributions and a total of \$252,722.51 in expenditures as of January 15, 1997. The amended CCER also reveals that the difference in contributions and expenditures as of January 15, 1997 of \$1,079.54 matches the committee's ending fund balance as of this date.

Based on a review of this amended CCER, the Election Officer is satisfied that Mr. Singer has reported all contributions received and expenditures made as of January 15, 1997.

Accordingly, this aspect of the protest is RESOLVED.

B. Receipt of Prohibited Employer Contribution

The protester asserts that John Mozena's contributions of approximately \$4,000 to Mr. Singer's campaign are prohibited employer contributions since Mr. Mozena is a management representative of CF Motor Freight.

A review of all of Mr. Singer's CCERs reveals that Mr. Mozena made a total of \$3,950 in contributions to Mr. Singer's campaign from August 1995 through April 1996. The investigation revealed that Mr. Mozena was employed as an organizer for the Ohio Conference of Teamsters until May 3, 1996 and did not assume his current position with CF Motor Freight until June of 1996. Thus, Mr. Mozena's contributions were made while he was still a member and therefore do not violate the *Rules*.

Accordingly, this aspect of the protest is DENIED.

C. In-Kind Legal Services

The protester asserts that the reported in-kind contributions of legal services reported on Mr. Singer's CCER for the period ending November 20, 1996 "do not appear to be at fair market value." A review of Mr. Singer's CCER for the period ending November 20, 1996 indicates that Mr. Singer's campaign received in-kind contributions of legal services from attorneys Jeff Julius and Sorrell Logothesis. The CCER reported that Mr. Julius provided 24.25 hours of services during the period

August 21, 1996 through November 20, 1996.

Mr. Julius' services were valued at \$4655, which was based on an hourly rate of \$95.

Mr. Julius bills all the local unions that he represents in Toledo at an hourly rate of \$95. The CCER reported that Mr. Logothetis provided 4.5 hours of services while at the IBT Convention, regarding a protest on the campaign's van. Mr. Logothetis' services were valued at \$450, based on an hourly rate of \$100. In Mr. Logothetis' case, any billable work performed for IBT entities is performed at an hourly rate of \$100.

The *Advisory on Campaign Contributions and Disclosure*, issued December 14, 1995, provides that if:

the legal services are provided at less than fair market value or the professional's normal fees or rates, an in-kind contribution has been received. The value of the contribution would be the difference in the amount paid by the candidate, slate . . . and the market value or the professional's normal rate for such services.

The Election Officer finds that Mr. Julius' services to Ohio Campaign '96 have been valued at fair-market value since the basis is Mr. Julius' hourly rate for all of his local union clients. The Election Officer also finds that Mr. Logothetis' services to Ohio Campaign '96 have been valued at fair-market value since the basis is Mr. Logothetis' hourly rate for all IBT clients.

Accordingly, this aspect of the protest is DENIED.

III. ALLEGED VIOLATIONS OF SAM THEODUS

A. Not Reporting All Contributions and Expenditures

The protester alleges that the difference between Mr. Theodus' reported total contributions, expenditures and fund balance does not account for \$315.96. The protester further alleges that Mr. Theodus' total contributions reported on his prior CCER for the period ending August 20, 1996, plus total contributions received in the period from August 21, 1996 through November 20, 1996, does not match total contributions reported to date. In light of these discrepancies, the protester asserts that Mr. Theodus has not reported all contributions and expenditures.

A review of Mr. Theodus' CCER for the period ending November 20, 1996 indicates that Mr. Theodus made contributions to the Hoffa slate from his personal funds that he reported on his CCER. Moreover, the CCER did not properly reflect all contributions Mr. Theodus has made to his own campaign.

On January 10, 1997, Mr. Theodus submitted an amended CCER for the period May 30, 1996 through November 25, 1996 that accurately reports all contributions received and

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expenditures made by his campaign committee, including those to the Hoffa slate. The amended CCER also properly reflects contributions Mr. Theodus has made to his campaign. The amended CCER reports a total of \$29,808.19 in contributions, \$29,572.33 in expenditures and an ending fund balance of \$245.74 as of January 15, 1997. The \$9.88 discrepancy in the difference in contributions and expenditures and the fund balance represents interest earned on Mr. Theodus' account.

Accordingly, this aspect of the protest is RESOLVED.

B. In-Kind Contribution from American Trucking Report

The protester alleges that the endorsement by American Trucking Report ("ATR") of Mr. Theodus' candidacy, which is reported on his CCER as an in-kind contribution valued at \$100, "appears improper and under-valued."

In Rockstroh, P-1003-JHC-EOH (November 5, 1996), the Election Officer addressed the issue of whether ATR's broadcast of approximately 28 minutes, featuring Messrs. Hoffa and Theodus on-site at the IBT Convention, constituted an improper employer contribution by ATR and its host and founder, Michael Fry.¹ The Election Officer determined that the media exception generally applied to the program, with the exception of two short portions of the programs. As to these portions, the Election Officer assigned \$600 as the value to the Hoffa campaign and \$100 as the value to the Theodus campaign. The Election Officer directed the Hoffa and Theodus campaigns to report in-kind contributions of \$600 and \$100, respectively, from ATR on their CCERs.

Accordingly, this aspect of the protest is DENIED.

IV. ALLEGED VIOLATIONS OF TOM O'DONNELL

A. Discrepancy in the Difference between Contributions and Expenditures and Ending Fund Balance

The protester alleges that on Mr. O'Donnell's CCER for the period ending November 20, 1996 there is a discrepancy of \$369 in the difference between contributions and expenditures to date and the reported fund balance.

A review of Mr. O'Donnell's CCER for the reporting period from August 21, 1996 through November 20, 1996 indicates that during this period, Mr. O'Donnell expended \$369 to cover travel expenses for Mr. Volpe, a fellow candidate on the Hoffa slate. However, on Mr. O'Donnell's CCER, this expenditure of \$369 was reported only under "In-Kind Contributions Made" and not reported under "Campaign Expenditures." In determining Mr. O'Donnell's actual total for expenditures to date, expenditures reported under "In-Kind Contributions Made" must be considered with those reported under "Campaign Expenditures." Thus, when the \$369 payment for Mr. Volpe's travel expenses are added to Mr. O'Donnell's other expenditures, the difference between contributions and expenditures to date reconcile with the reported fund balance as of November 20, 1996.

Accordingly, this aspect of the protest is DENIED.

¹ATR is a television program dedicated to coverage of the trucking industry.

B. Contributors Identified as Casual Drivers

The protester notes that Mr. O'Donnell's CCER for the period ending November 20, 1996 reports contributions from several casual employees, without listing their local affiliations or employers as required by the instructions on the CCER.

The investigation revealed that the contributors listed on Mr. O'Donnell's CCERs as "casual drivers" are neither formally affiliated with any IBT entity, nor employed by any specific employer. Mr. O'Donnell explained that Local Union 817 maintains a pool of casual drivers who are referred by Local Union 817 to various movie companies. Mr. O'Donnell stated that these casual drivers work during especially busy periods for the movie companies when the companies require more truck drivers and helpers than Local Union 817 has members available for these assignments. Mr. O'Donnell further noted that casual drivers work for extremely short periods of time, averaging from one day to three months, with any specific movie company.

Considering the short-term and non-supervisory nature of assignments for these casual drivers with any particular movie company, the Election Officer finds that Mr. O'Donnell's identification of these contributors solely as "casual drivers" on the CCER is sufficient for reporting purposes, under the *Rules*.

Accordingly, this aspect of the protest is DENIED.

C. In-Kind Contributions of Accounting Services

The protester notes that Mr. O'Donnell's CCER for the period ending November 20, 1996 reports payments of \$600 to Matthew Dapolito, an accountant, for professional fees. The protester also notes that Mr. O'Donnell's Supplemental Form #1 for the period ending November 20, 1996 reports in-kind contributions from Mr. Dapolito for \$800 during this period and \$2,400 to date. The protester asserts that the nature of the expense for professional fees is unexplained and the charges appear artificially deflated in light of the bulk of Mr. O'Donnell's reports.

The investigation revealed the following. Mr. Dapolito's firm, Dapolito and Company prepares Mr. O'Donnell's CCERs. All of Mr. O'Donnell's CCERs that were reviewed by the protester include a letter from Mr. Dapolito to Mr. O'Donnell which states that the CCERs were prepared by Dapolito and Company in accordance with the guidelines established by the Election Officer. Mr. Dapolito provided these services free of charge to Mr. O'Donnell's campaign. Mr. Dapolito stated that junior level staff compile the CCERs, which he then reviews for accuracy and completeness. Mr. Dapolito stated that each CCER takes approximately eight hours to prepare. Based on an hourly rate of \$100, Mr. Dapolito valued the preparation of each CCER at \$800. Since Mr. Dapolito had prepared three CCERs for

Mr. O'Donnell as of November 20, 1996, \$2400 was reported as the total for in-kind contributions of accounting services provided to date. Mr. Dapolito notes that the \$600

payment to Dapolito and Company reported on Mr. O'Donnell's CCER represented reimbursement of actual expenses for obtaining tax-related research/advice.

The Election Officer finds that, upon reviewing Mr. O'Donnell's CCER forms, it is readily apparent that Dapolito and Company prepared them and that the reported in-kind contributions from Dapolito and Company to Mr. O'Donnell's legal and accounting fund fairly represent the value of these services.

Accordingly, this aspect of the protest is DENIED.

V. ALLEGED VIOLATIONS OF RON McCLAIN

A. Not Reporting All Campaign Contributions and/or Expenditures

The protester alleges that on Mr. McClain's CCER for the period ending November 20, 1996 the amount of total contributions to date are miscalculated as \$35,125.33, but rather appear to be \$35,113.33. The protester also asserts that there is a discrepancy in the difference between the contributions and expenditures to date and the reported fund balance. Furthermore, the protester claims that the total contributions to date as reported on Mr. McClain's CCER for the period ending November 20, 1996 does not match the sum of (1) total contributions to date reported on the prior CCER as of August 20, 1996; and (2) total contributions received during the period of August 21, 1996 through November 20, 1996. The protester therefore argues Mr. McClain has not reported all contributions and expenditures.

A review of Mr. McClain's CCER for the period ending November 20, 1996 reveals that the reported total for contributions to date is \$35,113.33, which appears to be an error since the sum of reported individual contributions and contributions received from fundraising events is \$35,125.33. Michael Stanfill, who prepares Mr. McClain's CCERs, confirmed that \$35,113.33 is the correct amount for total contributions to date as of November 20, 1996. Mr. Stanfill explained that he inadvertently over-reported the non-itemized contributions from fundraising events by \$12 for the period August 21, 1996 through November 20, 1996 on the CCER Summary. Moreover, this over-reporting by \$12 explains the other discrepancies asserted by the protester regarding Mr. McClain's CCERs.

The protester also notes that Mr. McClain failed to file a Supplemental Form #1 for the period ending November 20, 1996. On December 29, 1996, Mr. McClain filed this form.

Accordingly, this aspect of the protest is RESOLVED.

B. Unreported Receipt of Contribution from Young Support Team

The protester asserts that Mr. Young's CCER for the period ending November 20, 1996, reports an expenditure of \$4,900 to the Hoffa/McClain Committee that is not reported on Mr. McClain's CCER. The investigation revealed that the \$4,900 contribution was reported under the fundraising event, "Hoffa/Hogan/Young/McClain Pancake Breakfast Rally" on Schedule A, Part 2. Mr. McClain's CCER does report a total of \$5,517.35 in contributions from this event. Mr. Stanfill noted that \$4,900 represented monies received by the Young Support Team for raffle ticket sales at this event and the remaining \$617.35 represented additional contributions received by the Hoffa/McClain Committee from the event.

Accordingly, this aspect of the protest is DENIED.

VI. ALLEGED VIOLATIONS OF RICHARD VOLPE

A. Not Reporting In-kind Contributions

The protester notes that Mr. O'Donnell's CCER reports in-kind contributions made to Mr. Volpe for travel expenses. However, the protester claims that Mr. Volpe has not reported these payments made by Mr. O'Donnell for his benefit. Additionally, the protester asserts that Mr. O'Donnell's CCER reports other expenditures to Mr. Volpe that are not reported on Mr. Volpe's CCER.

A review of Mr. O'Donnell's CCERs for the periods ending May 20, 1996 and November 20, 1996 indicates that Mr. O'Donnell has spent \$1,674 on Mr. Volpe's travel expenses, and in addition, has reimbursed Mr. Volpe for \$373.84 worth of supplies. Mr. Volpe's CCER for the period ending November 20, 1996 properly reported as in-kind contributions all payments by Mr. O'Donnell for these travel expenses. However, since Mr. O'Donnell reimbursed Mr. Volpe for purchasing supplies that were used by Mr. O'Donnell's campaign, this expenditure/reimbursement does not constitute an in-kind contribution to Mr. Volpe. Consequently, Mr. Volpe was not required to report this expenditure on his CCER.

Accordingly, this aspect of the protest is DENIED.

B. Not Reporting In-kind Contributions of Accounting Services

The protester asserts that although all of Mr. Volpe's CCERs have been prepared by Dapolito and Company, Mr. Volpe has reported neither any expenditures to Mr. Dapolito nor any in-kind contributions from Mr. Dapolito for these services.

A review of Mr. Volpe's CCER for the period ending May 20, 1996 reveals that Mr. Volpe reported receipt of \$100 worth of in-kind contributions from Mr. Dapolito to his legal and accounting fund. Mr. Dapolito asserts that \$100 adequately reflects the value of his services to prepare Mr. Volpe's CCERs since the CCERs contain de minimus amounts of information and involved a minimal amount of time to prepare. In this regard, the Election Officer notes that the only information reported on Mr. Volpe's CCERs was the in-kind contributions received from Mr. O'Donnell for travel expenses, and therefore finds that Mr. Dapolito has not under-valued his services for preparing Mr. Volpe's CCERs.

Accordingly, this aspect of the protest is DENIED.

VI. ALLEGED VIOLATIONS OF DAN DESANTI

A. Receipt of Prohibited Employer Contributions

The protester alleges that Mr. DeSanti's CCER for the period ending November 20, 1996 reports contributions from Schuetzen Park Garage and Casino in the Park that are prohibited employer contributions.

The investigation revealed that Mr. DeSanti's campaign committee held fundraisers on November 30, 1996 at Schuetzen Park Garage in Jersey City and at Casino in the Park, Municipal Harbor in Atlantic Highlands, New Jersey. The contributions reported on the CCER from these entities represent contributions raised from persons attending the fund-raisers, and not Schuetzen Park Garage or Casino in the Park. On Mr. DeSanti's CCER for the period ending December 20, 1996, the entries for Schuetzen Park and Casino in the Park have been amended to reflect that these monies constitute cash donations received at the fundraisers. Thus, the contributions did not violate the *Rules*.

Accordingly, this aspect of the protest is DENIED.

B. Unidentified Contributors

The protester notes that several contributors are listed without identifying either their union affiliation, or their position and employer. Mr. DeSanti submitted his CCER for the period ending December 20, 1996 that properly identifies these contributors with the exception of Mr. J. Andrews. Mr. DeSanti could not provide the local union affiliation or position and employer of Mr. Andrews, and at the Election Office's direction, Mr. DeSanti returned Mr. Andrews' contribution.

Accordingly, this aspect of the protest is RESOLVED.

C. Payments for Accounting Services

The protester also asserts that although Mr. DeSanti's CCERs have been prepared by an accountant, Mr. Kalasin, Mr. DeSanti has reported only a \$400 payment to Mr. Kalasin for these services. George Quinn, the treasurer of Mr. DeSanti's campaign committee, stated that he maintains the committee's account and ledgers and Mr. Kalasin only completes the CCER forms based on records maintained by Mr. Quinn.

The investigation revealed that Mr. Kalasin charges Mr. DeSanti's campaign at an hourly rate of \$40 for preparing the CCERs. Mr. Kalasin stated that this hourly rate is commensurate with the rate charged to his other clients. Mr. Kalasin has billed Mr. DeSanti's campaign an average of five hours for completing one CCER, or \$200. On September 6, 1996, Mr. DeSanti's campaign paid Mr. Kalasin \$400 that covered two CCERs for the reporting periods ending May 20, 1996 and August 20, 1996. On January 20, 1996, Mr. Kalasin billed the DeSanti campaign for \$440 that covered the CCERs for the periods ending November 20, 1996 and December 20, 1996.

The Election Officer finds that Mr. DeSanti's campaign has not paid Mr. Kalasin below the fair-market value for his services.

Accordingly, this aspect of the protest is DENIED.

D. Not Filing Supplemental Form #1

The protester also notes that Mr. DeSanti failed to file a Supplemental Form #1 for the period ending November 20, 1996. Mr. DeSanti has filed this form.

Accordingly, this aspect of the protest is RESOLVED.

VII. ALLEGED VIOLATIONS OF PHIL YOUNG

A. Not Reporting All Contributions or Expenditures

The protester notes that Schedule A, Part 1 of Mr. Young's CCER for the period ending November 20, 1996 reports a total of \$128,388.72 in itemized individual contributions to date. However, on the CCER Summary, Mr. Young reports a total \$115,496 in itemized individual contributions to date. The protester argues that this discrepancy regarding Mr. Young's reported totals on Schedule A, Part 1 and the CCER Summary for itemized individual contributions to date indicates that Mr. Young has not reported all contributions or expenditures.

The investigation revealed that the alleged discrepancy in the different totals for itemized individual contributions reported on the Schedule and the CCER Summary is solely a result of reporting contributions on the third CCER for the period ending January 20, 1996 that were already reported on the prior two CCERs for the periods ending May 20, 1995 and September 20, 1995.

On December 14, 1995, the Election Officer issued an *Advisory on Campaign Contributions and Disclosure*, including revised CCER forms and instruction for completing the new forms. The Election Officer finds that Mr. Young's representative double-counted these contributions due to her unfamiliarity with the revised form.

A review of the Young Support Team's CCER for the third period ending January 20, 1996 reveals a total of \$56,974.69 in itemized individual contributions to date on the Schedule, while the CCER Summary reports a total of \$41,718.41 for this entry. The difference of \$15,256.28 between these two figures for itemized individual contributions represents the amount in contributions that were essentially "double-reported." Moreover, every subsequent CCER for the Young Support Team since the third CCER has also shown this difference of \$15,256.28 between these two entries. Accordingly, the sixth CCER for the period ending November 20, 1996, to which the protester refers, also contains the \$15,256.28 difference between the figure of \$128,388.72 reported on the Schedule and the figure of \$113,132.44 reported on the CCER Summary, as the total for all itemized individual contributions to date.² Based on this investigation, the Election Officer is satisfied that the Young Support Team has reported all contributions.

Accordingly, this aspect of the protest is DENIED.

B. Contributions Reported on Young's CCER but Not Reported as Expenditures on other Candidates' CCERs

The protester asserts that Mr. Young's CCER for the period ending November 20, 1996, reports contributions from Messrs. O'Donnell, Volpe, DeSanti, Singer, Lytle and Zimmerman; however, these candidates have not reported these expenditures to Mr. Young on their CCERs. A review of Mr. Young's CCER indicates that the following contributions were received: on July 26, 1996, \$100 each from Messrs. Volpe, DeSanti, Singer, Lytle, and Zimmerman, and a total of \$700 from Mr. O'Donnell (\$200 on June 9, 1996, and \$500 on September 8, 1996). The investigation revealed that these donations made by Messrs. O'Donnell, Volpe, DeSanti, Singer, Lytle and Zimmerman to the Young Support Team were made with personal funds. As such, these candidates were not required to report these expenditures on the CCERs for their campaign committee.

²The protester incorrectly referred to the figure of \$115,496.44 as the total for itemized individual contributions reported to date on the CCER Summary. This amount actually represents the total of itemized *and not-itemized* individual contributions to date.

Accordingly, this aspect of the protest is DENIED.

C. Payment to Local Union 245 for Rent

The protester notes that Mr. Young's CCER for the period ending November 20, 1996, reported an expenditure of \$150 to Local Union 245 for rent. The protester alleges that Local Union 245 violated Article II, Section 1(b)(3) of the *Rules* since notice was not provided to all candidates that space was available for rent.

The investigation revealed that the Young Support Team held a rally on September 27, 1996 at Local Union 245's hall in Springfield, Missouri, that lasted approximately four hours. The event was originally scheduled as an outdoor event at a park in Springfield, but because of inclement weather the venue was changed unexpectedly--at most, two days before it was to occur. The \$150 reported on the CCER covered the use of the hall for this event only.

Jim Kabell, the secretary-treasurer of Local Union 245, confirmed that the local union did not provide written notice, in advance, to the other candidates/slates. Mr. Kabell asserts that he understood that the local union was obligated to grant equal access to candidates on opposing slates to use the hall, but did not realize that notice was necessary. The evidence indicated that the \$150 fee paid by the Young campaign for the use of the hall was the standard amount for a one-day event that was charged to any group, regardless of its IBT affiliation, in September of 1996.

Under Article XII, Section 1(b)(3) of the *Rules*, if a local union allows a candidate or his/her campaign to use union resources, the candidate must compensate the local union for the fair-market value of the resources and the local union is required to advise all candidates, in advance and in writing, of the availability of such resources. The local union is obligated to provide equal access to such resources to all candidates. The fact that Local Union 245 allowed the Young Support Team to use the hall on very short notice does not excuse the local union from its obligation to advise other candidates of the availability of such resources.

Accordingly, this aspect of the protest is GRANTED. However, the Election Officer finds that no further remedy is necessary in this case since Mr. Young's campaign has already paid Local Union 245 for the fair rental value of using the hall, the election has been concluded and there is no evidence that any other candidate was prejudiced by the lack of advance notice.

D. Payments to Non-IBT Unions for Phone-Banking

The protester notes that Mr. Young's CCER reported the following payments for phone banking: (1) \$50 to the Asbestos Workers Local Union 27 ("Asbestos Workers"), (2) \$50 to the Pipefitters Local Union 533 ("Pipefitters"); and (3) \$25 to the Plumbers Local Union 8

("Plumbers"). The protester asserts that these local unions could not make their phones available for phone banks as such activity is not allowed in the ordinary course of their business. Additionally, the protester alleges that the payments by the Young Support Team for use of these resources are so small that they cannot represent the fair-market value for telephone calls and rent.

The investigation revealed the following. The Young Support Team used the phones at the offices of the Asbestos Workers and Pipefitters Union for phone banking, after regular business hours. The phone bank operation lasted for approximately three and a half hours on some weekday nights during the periods of November 11-26, 1996 and December 2-3, 1996. The Asbestos Workers and Pipefitters Union have allowed other organizations to use their offices for phone bank operations after regular business hours, free of charge, other than reimbursement for long distance calls. In this regard, the \$50 payments by the Young Support Team to the Asbestos Workers and Pipefitters Union covered only reimbursement for long distance calls made during phone banking. The \$25 payment to the Plumbers Union was made in line with the arrangement between the Pipefitters and Plumbers to share expenses.

Under the *Rules*, the fair-market value of the phones and facilities of the Asbestos Workers and Pipefitters for the Young campaign's phone bank operations is based on the rate and conditions that the Asbestos Workers and Pipefitters have established in the past for other persons or organizations. Here, the Asbestos Workers and Pipefitters have allowed other groups to conduct phone banking at their offices after regular business hours, free of charge, other than reimbursement for long distance calls. Thus, the Election Officer finds that the Young Support Team paid fair-market value for the use of these facilities and did not violate the *Rules* by receiving a discounted rate or prohibited in-kind contribution from the Asbestos Workers and Pipefitters.³

Accordingly, this aspect of the protest is DENIED.

E. Cash-on-Hand Not Reported on CCER Summary

The protester asserts that Schedule D, Part 3 of Mr. Young's CCER for the period ending November 20, 1996, reports \$350 cash-on-hand that was not reported on the CCER Summary.

³In Thompson, P-1193-LU41-MOI (November 13, 1996), the Election Officer investigated the allegations that Local Union 41 sold its telephone system at a discounted rate of no more than \$100 to the Young Support Team, and that this telephone system was being utilized for office and phone banking at the Hoffa/Young campaign headquarters in Harrisonville, Missouri. In Thompson, the Election Officer noted that "the Young Support Team has conducted phone bank operations out of the Asbestos Workers and Pipefitters offices during evening hours when those offices are otherwise closed. Although not raised in the protest, the Young Support Team has provided documentation showing that they are paying fair market value for the use of these facilities."

A review of Schedule D, Part 3 indicates that at the beginning of the reporting period on August 21, 1996 the Young Support Team had \$350 in cash-on-hand and at the end of the reporting period on November 20, 1996, the Young Support Team had zero cash-on-hand. The CCER Summary reflects the zero cash-on-hand at the end of the reporting period, but failed to note the \$350 in cash-on-hand at the beginning of the reporting period. The Election Officer finds that this inadvertent error is insignificant in that it does not change the total fund balance at the end of the reporting period.

Accordingly, this aspect of the protest is DENIED.

F. Unreported Contribution from and Expenditure to Mr. Singer's Campaign

The protester asserts that Mr. Singer's CCER for the period ending November 20, 1996 reports a \$2,000 expenditure to the Young Support Team that is not reported on Mr. Young's CCER. A review of Mr. Young's CCER for the period ending November 20, 1996 indicates that a \$2,000 contribution was reported from Ohio Campaign '96.

The protester also asserts that Mr. Singer's CCER for the period ending November 20, 1996 reports a \$500 contribution from the Young Support Team that is not reported on Mr. Young's CCER. A review of the CCER for the Young Support Team indicates that an expenditure of \$492.50 was reported to Ohio Campaign '96 during this period.

The investigation discloses that during the period ending November 20, 1996, the Young Support Team purchased certain sale items, in cash, from Ohio Campaign '96, for \$7.50. The treasurer of the Young Support Team explained that the \$492.50 expenditure reported on their CCER was inadvertently under-reported in the amount of \$7.50. The under-reporting explains the discrepancy between the amount of the contribution reported by Ohio Campaign '96 and the expenditure reported by the Young Support Team.

Accordingly, this aspect of the protest is RESOLVED.

VIII. ALLEGED VIOLATIONS OF WALT LYTLE

The protester alleges that there is a \$12,000 discrepancy in the difference between Mr. Lytle's reported contributions and expenditures to date and the campaign's fund balance.

A review of Mr. Lytle's CCERs revealed the following. The CCER Summary for the period ending November 20, 1996 indicates that Mr. Lytle's campaign committee (1) received \$87,155 (\$82,155 in contributions and a \$5,000 loan); and (2) made \$70,041.98 in expenditures to date. Additionally, the CCER for the period May 21, 1996 through August 20, 1996 indicated that the

committee had incurred \$16,805.48 in extensions of credit at the beginning of the reporting period that were fully paid by the end of the reporting period. While the expenditures of \$16,805.48 were reported under the section for "Extensions of Credit to the Campaign," they were not reported under "Campaign Expenditures." So, the actual total of expenditures made by the Lytle campaign as of November 20, 1996 is \$86,847.46, not \$70,041.98.⁴ Therefore, the difference in total contributions of \$87,155 and total expenditures of \$86,847.46 is \$307.54. The fund balance reported at the end of the reporting period on November 21, 1997 is \$221.86. Ken Henry, the treasurer of Mr. Lytle's campaign committee explained that the discrepancy of \$85.68 between the difference in contributions and expenditures and the reported fund balance occurred because he did not fully report all cash-on-hand on the CCER. Mr. Lytle's CCER for the period ending December 20, 1996 accurately reports the campaign's fund balance.

Accordingly, this aspect of the protest is RESOLVED.

⁴This total represents the sum of \$70,041.98 in total expenditures reported on the CCER for the period ending November 20, 1996 and \$16,805.48 in expenditures indicated on the CCER for period ending August 20, 1996.

The protester also asserts that Mr. Singer's CCER for the period ending November 20, 1996 reports a \$250 contribution from Lytle '96 that is not reported on Mr. Lytle's CCER. A review of Mr. Lytle's CCER for the period ending November 20, 1996 reveals that an expenditure of \$287.50 was made to Ohio Campaign '96 during this period for "campaign mailing and related material donation."

The investigation reveals that the \$287.50 contribution from the Lytle '96 Campaign to Ohio Campaign '96 was in fact the \$250 contribution reported on Mr. Singer's CCER for the period ending November 20, 1996. However, the \$37.50 remainder of the contribution from Lytle '96 was reported by the Ohio Campaign '96 under "Sale of Campaign Paraphernalia" under "Fundraising Events, Collections, Tickets and Other Sales."

Accordingly, this aspect of the protest is RESOLVED.

IX. ALLEGED VIOLATIONS OF GARNET ZIMMERMAN

A. Prohibited Union Contribution

The protester notes that the address for Mr. Zimmerman's campaign on his CCERs is Local Union 31. Based on this notation, the protester argues that Mr. Zimmerman's campaign has not reported rent paid to Local Union 31, and that Local Union 31 did not provide notice to other candidates regarding the availability of space for rent, in violation of the Article XII, Section 1(b)(3) of the *Rules*.

Kathy Peters, the person who prepares Mr. Zimmerman's CCERs, denies that the Zimmerman campaign has rented space from Local Union 31 for a campaign office. A review of Mr. Zimmerman's CCER indicates that the campaign has paid rent to Goddard & Smith for its campaign office. Ms. Peters explained that the local union's address is used on the CCERs because the Election Officer has directed correspondence to Mr. Zimmerman as a candidate to the local union.

The Election Office has routinely sent correspondence to candidates at their affiliated local unions. Thus, the use of Local Union 31's address on the CCERs does not violate the *Rules*.

Accordingly, this aspect of the protest is DENIED.

B. Inconsistencies in Reporting Contributions and Expenditures

The protester notes that Mr. Zimmerman's CCER for the period ending November 20, 1996 reports \$147,184.22 in contributions, \$131,820.73 in expenditures and \$23,474.60 as a fund balance at the end of the period. Based on these figures, the protester contends that Mr. Zimmerman has failed to report all contributions and/or expenditures. The protester further

alleges that Mr. Zimmerman's total contributions reported on his prior CCER for the period ending August 20, 1996, plus total contributions received in the period from August 21, 1996 through November 20, 1996, does not match total contributions reported to date; the protester notes that this sort of error also applies to Mr. Zimmerman's contributions from fundraising events and expenditures. A review of Mr. Zimmerman's CCER for the period ending November 20, 1996 confirm the protester's assertions.

The investigation revealed that the discrepancies between the difference in contributions and expenditures and ending fund balance are a result of the following: (1) not reporting campaign contributions received from the sales of promotional wear not connected with specific fundraising events; (2) reporting contributions received and expenditures made in U.S. and Canadian dollars on the prior CCERs without converting the U.S. dollars into their Canadian equivalent; and (3) reporting fund balances on the CCERs as of the closing day of the respective reporting period.⁵ A review of all of Mr. Zimmerman's CCERs also reveal mathematical errors in reporting total contributions and expenditures to date on the CCER Summaries.

At the direction of the Election Office, Kathy Peters, the treasurer of Mr. Zimmerman's campaign committee, reviewed all contributions received and expenditures made by the committee since its inception in May 1995 through February 10, 1997. Based on Ms. Peter's review of the committee's contributions, expenditures and fund balances, Mr. Zimmerman filed two amended CCERs that cover all contributions received and expenditures made from May 1995 through February 10, 1997, in U.S. and Canadian funds, respectively. The amended CCER for Canadian funds reveals that Mr. Zimmerman's campaign committee has received a total of \$151,795.19 in contributions and a total of \$151,795.19 in expenditures made as of February 10, 1997. The amended CCER for U.S. funds reveals that Mr. Zimmerman's campaign committee has received a total of \$3,440.67 in contributions and a total of \$3,440.67 in expenditures. In accord with these reported figures, both CCERs report zero fund balances as of February 10, 1997.

Based on a review of both amended CCERs, the Election Officer is satisfied that Mr. Zimmerman has reported all contributions received and expenditures made as of February 10, 1997.

The protester also notes that only a total of \$16,137.50 is itemized on the CCER under individual contributions, while Mr. Zimmerman's campaign raised a reported total of \$147,184.22 in total contributions. Based on this, the protester contends that Mr. Zimmerman must explain why such a small percentage of his contributions are itemized.

⁵Reporting in this fashion did not necessarily account for (a) contributions, received and reported on the CCERs, but not yet deposited into one of the campaign's accounts, or (b) expenditures, made and reported on the CCERs, but the corresponding checks had not yet cleared the account.

A review of Mr. Zimmerman's amended CCERs indicates that Mr. Zimmerman reported (1) \$16,913.30 in itemized individual contributions and \$131,442.15 in itemized fundraising events and sales of campaign paraphernalia/raffle tickets, in Canadian funds; and (2) \$3,440.67 in itemized fundraising events and other sales in U.S. funds. Although Mr. Zimmerman has raised the majority of his campaign contributions through fundraising events and sales, such contributions have been properly itemized as required by the *Rules*, as such on the amended CCER as of February 10, 1997 and prior CCERs.

The protester notes that the expenditures to "Superior Ideas and Promotions" and to "Rob Kruyt" were reported on the Schedule without specifying the purpose of such expenditures. Ms. Peters stated that the expenditure to Superior Ideas and Promotions was for the purchase of campaign watches and the expenditure to Mr. Kruyt was for his services as campaign fundraiser photographer. Ms. Peters explained that these descriptions were inadvertently not included.

Accordingly, this aspect of the protest is RESOLVED.

C. Unreported Expenditure to Mr. Singer's Campaign

The protester asserts that Mr. Singer's CCER for the period ending November 20, 1996 reports a \$275 contribution from Garnet Zimmerman that is not reported as an expenditure on Mr. Zimmerman's CCER. A review of Mr. Zimmerman's CCER for the period ending November 20, 1996 reveals that an expenditure of \$275 to Ohio Campaign '96, Mr. Singer's campaign committee, was reported.

Accordingly, this aspect of the protest is DENIED.

X. ALLEGED VIOLATIONS OF RANDALL COPELAND

The protester asserts that there is a \$1,000 discrepancy between the difference in Mr. Copeland's total contributions and expenditures to date and the fund balance, as of November 20, 1996. The protester also notes that Mr. Copeland had not filed the Supplemental Form #1.

A review of Mr. Copeland's CCER Summary for the period ending November 20, 1996 reveals totals to date of \$24,757 in contributions, \$17,410.95 in expenditures and \$6279.05 as an ending fund balance. The investigation revealed that Pat Witzel, the treasurer of Mr. Copeland's campaign committee, reported \$1,248 in contributions from "mass collections" twice, under fundraising events and under not-itemized individual contributions. As a result, the total amount of reported contributions was inflated by \$1,248. Ms. Witzel asserts that other reporting errors are responsible for any remaining discrepancies between the difference in total contributions and expenditures and the fund balance as of November 20, 1996. To this end, Mr. Copeland submitted

three amended CCERs for the periods ending August 20, 1996, November 20, 1996 and December 20, 1996. The amended CCER for the period ending December 20, 1996 indicates that Mr. Copeland has received a total of \$24,421.03 in contributions, \$24,061.94 in expenditures, including those expenditures for in-kind contributions made to others, and an ending fund balance of \$359.69. Based on a review of Mr. Copeland's three amended CCERs, the Election Officer is satisfied that Mr. Copeland has reported all contributions received and expenditures made as of December 20, 1996.

Accordingly, this aspect of the protest is RESOLVED.

XI. ALLEGED VIOLATIONS OF JAMES HOFFA AND THE HOFFA SLATE

In P-1342-IBT-EOH, the protester alleges that CCERs for Mr. Hoffa and the Hoffa slate for the period ending November 20, 1996, were not timely filed, as required by the *Rules*. Specifically, the protester alleges that while the *Rules* require candidates to file CCERs with the Election Office by December 1, 1996, the Hoffa campaign failed to do so. The protester contends that "the *Rules* fix December 1, 1996, as the date for the filing of a CCER so that the contents of these reports would be subject to review prior to the close of the balloting period." Furthermore, the protester argues that the Hoffa slate's CCER and Mr. Hoffa's CCER, as a candidate for IBT General President, are of "particular concern . . . for obvious reasons." Thus, the protester asserts that the members on the Ron Carey No Corruption-No Dues Increase slate ("Carey slate") were irreparably harmed by the failure of Mr. Hoffa and the Hoffa slate to file their CCERs by December 1, 1996.

The protester seeks reimbursement of the travel expenses for his attorney's "wasted" trip to Washington, D.C. from New York, since his attorney was unable to review the CCERs of Mr. Hoffa and the Hoffa slate. Additionally, the protester requests that the CCERs of the Carey slate and Ron Carey not be made available for inspection until (1) the Hoffa slate and Mr. Hoffa have filed their CCERs, and (2) a representative of the protester or another Carey slate member has been permitted an opportunity to inspect the CCERs of Mr. Hoffa and the Hoffa slate.

The investigation revealed that on December 5, 1996 a representative of the protester, accompanied by counsel, reviewed CCERs for the period ending November 20, 1996 for several members on the Hoffa slate. Because the CCERs for Mr. Hoffa and the Hoffa slate were not submitted as of December 5, 1996, the protester's representatives were unable to review these CCERs. On December 9, 1996, the Election Officer received the CCERs for Mr. Hoffa and the Hoffa slate for the period ending November 20, 1996. On that same day, the protester's representative inspected these CCERs. Hoffa slate representatives made an appointment with the Election Office to inspect the CCERs for the Carey slate and slate members on December 9, 1996 that was canceled at their request.

Article XII, Section 2(vi) of the *Rules* requires the CCER for the period August 21, 1996 through November 20, 1996, to be filed by December 1, 1996, with the Election Office. In enforcing

this provision, however, the Election Officer has not penalized candidates who have submitted reports shortly after the deadlines stated in the *Rules*.

The Election Officer finds that the protested reports, while filed nine days after the deadline stated in the *Rules*, were not so untimely filed as to constitute a violation of the *Rules*. Further, the Election Officer rejects the protester's claim that the Carey slate was irreparably harmed by the late submissions of Mr. Hoffa and the Hoffa slate. Before the counting of ballots commenced on December 10, 1996, the protester's representatives reviewed CCERs timely filed by several candidates on the Hoffa slate. Moreover, when the CCERs of Mr. Hoffa and the Hoffa slate were submitted on December 9, the protester's representative was notified that these were now available for review. The Election Officer also denies the protester's request for reimbursement of travel expenses for his attorney's "wasted" trip. In fact, the trip was used to review several of the Hoffa slate members' CCER submissions and formed the basis for filing P-1337-IBT-EOH, the other protest addressed in this decision, which alleged multiple reporting violations on the CCERs filed by 10 members of the Hoffa slate.

Accordingly, this aspect of the protest is DENIED.

Where the Election Officer has indicated that amended or revised CCER forms have been filed, those forms are available for inspection, pursuant to Article XII, Section 2(e) of the *Rules*.

Any interested party not satisfied with these determinations 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,

Tom Gilmartin
February 14, 1997
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Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master