

March 7, 1996

VIA UPS OVERNIGHT

John Carter
494 Kime Avenue
West Islip, NY 11795

Richard Volpe, Secretary-Treasurer
Teamsters Local Union 550
6 Tuxedo Avenue
New Hyde Park, NY 11040

Re: Election Office Case No. P-457-LU550-NYC

Gentlemen:

John Carter, a member of Local Union 550, filed a protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* against Local Union 550 Secretary-Treasurer Richard Volpe, who is a candidate for International vice president. The protester alleges that Mr. Volpe violated the *Rules* by using union resources to mail a flyer announcing a fundraiser for his own candidacy, for James P. Hoffa, candidate for general president, and for Tom O'Donnell, also a candidate for International vice president. The protester also alleges that because the fundraiser was held at a restaurant, it was supported by an employer contribution in violation of the *Rules*.

Mr. Volpe admits that he used mailing labels obtained from Local Union 550 to mail the announcements for the fundraiser, but states that the labels are available free of charge to any candidate. Mr. O'Donnell states that the restaurant charged the slate \$1,000 to hold the fundraiser at the restaurant and also received profits from the cash bar.

New York City Protest Coordinator Barbara C. Deinhardt investigated the protest.

1. Alleged Union Contribution

Mr. Hoffa, and two members of his slate of candidates for International vice president, Mr. Volpe and Mr. O'Donnell, held a fundraiser on February 11, 1996 at O'Neill's Restaurant in Maspeth, New York. Local Union 550 supplied mailing labels with the addresses of members of the local union which were used to mail an announcement for the fundraiser. Mr. Volpe's campaign supplied the envelopes, duplicating and stamps for the mailing. Mr. Volpe and another member of Local Union 550 did the work required for the mailing on their own time.

Article VIII, Section 11(c) of the *Rules* provides in pertinent part:

Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.

At the time of the mailing, there were candidates for International office other than Mr. Hoffa, Mr. Volpe and Mr. O'Donnell. Local Union 550 has long had a policy of providing labels to all candidates and the protester admits he was aware of this policy. However, Local Union 550 did not provide written notice to any other candidate for International office that the local union's mailing labels were available for a candidate's use, free of charge. Hence, Local Union 550 failed to observe the requirement of Article VIII, Section 11(c) that all candidates be notified in advance, in writing, of the availability of the local union's mailing labels. Accordingly, this allegation of the protest is GRANTED.

2. Alleged Employer Contribution

Article XII of the *Rules* prohibits an employer from making any campaign contributions to the campaign of a candidate for delegate or International office. The *Rules* define "campaign contributions" to include "any direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate." *Rules*, Definitions, 5. As stated in the Election Officer's *Advisory on Campaign Contributions and Disclosure*, such contributions can include any goods, compensated services or any material things of value. The *Rules* also define campaign contributions to include discounts in the price or cost of goods. *Rules*, Definitions, 5(c). The term "employer" is defined under the *Rules* to include "any individual, corporation, trust, organization or other entity that employs another, paying monetary or other compensation in exchange for that individual's services." *Rules*, Definitions, 17.

The purchase of goods or services by a member does not constitute a campaign contribution by the vendor if the terms of the purchase are commercially reasonable. See, Halberg, P-019-LU174-PNW (December 14, 1995) (decision on remand); In Re: Gilmartin, 95 Elec. App. 45 (KC) (December 18, 1995); Gilberg, P-284-IBT, aff'd in pertinent part, 91 - Elec. App. - 194 (SA) (October 2, 1991). In Gilberg, supra, the Election Officer advised:

The determination of whether the terms of sale are commercially reasonable will also depend on whether the vendor offers similar terms to other purchasers of his product. In the instant case, where it appears that [there] . . . was a unique product produced by a single producer with a limited purpose and customer base, a determination of whether the purchase price of the [goods] was at commercially reasonable terms will depend on whether all of the costs of production and distribution, as well as a reasonable profit were covered by the sale price.

The protester argues that the restaurant could not have served the food provided at the fundraiser for the \$30 attendance charge. However, the restaurant advises that the \$1,000 fee paid by the campaign more than paid for the food provided, and that the restaurant made money on the cash bar at the event. The Election Officer therefore concludes that O'Neill's Restaurant did not make an employer contribution to the campaigns of Mr. Hoffa, Mr. Volpe and Mr. Donnelly in violation of the *Rules*. This allegation in the protest is DENIED.

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. Here, a remedy is required for Mr. Volpe's provision of union mailing labels to candidates without providing notice to other candidates of the availability of the labels. The Election Officer therefore orders that Mr. Volpe shall, within five (5) days of the date of this decision, send the Notice to Candidates for International Office from Local Union 550 Secretary-Treasurer Richard Volpe attached hereto to all candidates for International office. A list of candidates and their addresses is being provided to Mr. Volpe for this purpose. Any candidate who so requests will receive mailing labels. Within three (3) days of providing notice, Mr. Volpe shall file an affidavit with the Election Officer demonstrating his compliance with this order.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the

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Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

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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
Barbara C. Deinhardt, New York City Protest Coordinator

NOTICE TO CANDIDATES FOR INTERNATIONAL OFFICE
FROM LOCAL UNION 550 SECRETARY-TREASURER RICHARD VOLPE

The *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* prohibit the use of union funds, facilities, equipment, stationery, personnel, etc. to assist in campaigning unless the union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance in writing of the availability of such assistance.

A violation of this provision occurred when I provided mailing labels with the addresses of members of Local Union 550, free of charge, to the campaigns of James P. Hoffa, Richard Volpe and Tom Donnelly without providing advance, written notice of the availability of these labels to other candidates for International office. Accordingly, you are hereby notified that the Local Union 550 mailing labels are available to you, free of charge.

If you wish to obtain a set of these labels, please notify me at the address below.

Signed:

Richard Volpe, Secretary-Treasurer
Teamsters Local Union 550
6 Tuxedo Avenue
New Hyde Park, NY 11040