

May 1, 1996

VIA UPS OVERNIGHT

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Louis Lacroix, Vice President  
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International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

Re: Election Office Case No. P-733-IBT-SCE

Gentlepersons:

James P. Hoffa, a candidate for general president, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*. The protest charges that Louis Lacroix, a candidate for International vice president on the Ron Carey slate, improperly utilized union resources in the production and dissemination of a union-financed communication.

Mr. Hoffa focuses his allegation on a letter signed and distributed by Mr. Lacroix in his capacity as president and International director of Teamsters Canada, an affiliate of the IBT. The letter, dated March 29, 1996, supports and generally promotes the passage of the proposed Canadian sovereignty amendment to the IBT Constitution.

To assist in explaining the basis of his charge, Mr. Hoffa cites the Election Office decision in Youngerman, P-588-LU688-MOI (November 14, 1996), aff'd, 96 - Elec.

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App. - 137 (KC) (March 20, 1996). He theorizes that Youngerman applied the tone, content and timing test to determine that “a local union communication that identified the place of employment of delegate candidates violated the [*Rules*] because that identification mirrored the campaign themes of one slate over another.” He then asserts that “Mr. Lacroix’s mailing” is a “similar” item of campaign material.

To demonstrate that the Canadian sovereignty amendment is one of Mr. Lacroix’s campaign themes, Mr. Hoffa encloses a document copied from the campaign material submitted by the Ron Carey slate for publication in the *Teamster* magazine for March 1996. The page begins with the headline, “Ron Carey Is Making A Difference for Canadian Teamsters.” Several features of the proposed amendment are set forth. The text continues with the imperative, “That’s Why Canadian Teamsters Are Supporting The Ron Carey Team.” Mr. Lacroix is pictured. Mr. Hoffa urges that “all of the campaign pieces of Mr. Lacroix” be reviewed in order to verify his claim.

The protest was investigated by Regional Coordinator Bruce Boyens.

The letter to which Mr. Hoffa objects is three typed pages in length. A copy of the “Resolution On Canadian Sovereignty” is attached. The purpose of the letter is clearly set forth in the first paragraph:

I am writing on behalf of our 88,000 Canadian members to request your local union’s support for an important Constitutional amendment at the 1996 International Convention. It officially recognizes Canadian sovereignty within the International Union and has been endorsed by the Executive Board of Teamsters Canada and the International. With your approval, and the approval of your sister U.S. locals and delegates, this amendment will enable us to more effectively represent the Canadian membership and further strengthen the bond of solidarity between Teamsters in Canada and the United States.

The letter continues with an explanation as to why, in the opinion of Mr. Lacroix, the issue of Canadian sovereignty is important to members on both sides of the border. It states that Teamsters Canada has the same responsibilities as its counterpart in the United States. It lists some of these responsibilities and attempts to demonstrate the ways in which the proposed amendment would assist Teamsters Canada in rendering improved services to its members. The letter concludes with a plea for non-partisan support:

To make this happen, we need your support. That is why I am writing to you now, before all of us are caught up in the Convention in July, to ask you to consider the Canadian sovereignty amendment on

its merits, separate and apart from the union politics that will be taking place at that time.

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.” Correspondingly, Article VIII, Section 11(c) provides that no union funds or union resources may be used to assist in campaigning. 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).

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 LRRM (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.

Mr. Lacroix’s letter does not contain any direct or indirect attacks on any candidate. Nor does it support or praise any contestant for office. The letter is devoid any reference or connection whatsoever to the pending International delegate and officer election. Standing alone, it is a clear and proper exercise of the right of Mr. Lacroix, as a union officer, to communicate, advise and report to the membership on an issue of general concern and an ongoing policy debate within the IBT--the status of the Canadian members within the union.

While the protester’s argument pays nominal respect to the tone, content and timing test, the actual basis for his protest is that Mr. Lacroix’s letter violates the *Rules* because Mr. Lacroix’s campaign has produced or endorsed material which also embraces the passage of the amendment.

The Youngerman decision cited by the protester did not rest on the theory that the union-financed communication “mirrored” a campaign theme. To the contrary, the Election Officer concluded that the communication was intended to convey support for a slate of candidates, without any purpose related to legitimate union business. Nothing in the *Rules* required the local union to

identify the employers for which the candidates for delegate worked. At the same time, the Galli Team slate was campaigning by repeatedly reminding voters that it was more diverse in terms of where its candidates worked. The violation in Youngerman was based on the lack of a union purpose, where the campaign theme of the Galli slate made clear that the union-financed communication was intended, and would be perceived, as a communication supporting the Galli slate.

Here, by contrast, the communication in question is directly and facially connected to legitimate union business: the resolution on Canadian sovereignty which will put to a vote at the International Convention in July 1996. It is proper and necessary for there to be debate on important policy issues in union-financed publications, so long as the discussion of such issues is not then linked to the election process or campaign of a particular candidate. Moreover, there is nothing about the communication that links it, implicitly or explicitly, to the election for International officers.

In Martin, supra, the protester alleged that because many of the themes in an IBT-financed three-year progress report were also adopted as themes in Mr. Carey's campaign materials, the IBT-financed publication should be considered union-financed campaign material, in violation of the *Rules*. Rejecting this argument, the Election Officer wrote:

Just because Mr. Carey may use his campaign literature to praise his accomplishments does not automatically make the reporting of those accomplishments to the members campaigning. As one Court has stated, "[P]articipants must have some latitude to speak freely about matters of current concern to members, although these may often be campaign issues as well, and even though their statements may be made with that fact in mind." Donovan v. Metro Dist. Council of Carpenters, 797 F.2d at 145 (3d Cir. 1986).

(Emphasis added). If the protester's view here was adopted, no union publication could comment on any issue of concern to the membership if one or more candidates for International office had taken a stand on it. As a result, union publications would be barred during election campaigns from discussing the most important issues facing the membership. Far from effectuating the goals of the Consent Decree, such a result would cripple the free expression of ideas among IBT officers and members.

The rationale in this case is consistent with other decisions of the Election Officer. For example, Mr. Carey has adopted as a campaign theme the imposition of trusteeships on local unions determined to be corrupt and the discipline of union leaders deemed to have acted improperly. Despite Mr. Carey's use of this topic in his campaign, the IBT has the right and responsibility to inform and advise the membership of these official actions by means of factual, campaign neutral press releases.<sup>1</sup> These communications do not violate the *Rules* because they focus on legitimate

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subjects and because they do not support or attack on candidate for International office. Communications which cross that line and discuss legitimate union issues in the context of the election campaign are violative of the *Rules*. See Hoffa, P-133-IBT-CHI (October 12, 1995), aff'd, 95 - Elec. App. - 28 (KC) (October 26, 1995).

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<sup>1</sup>See Tusino, P-639-IBT-SCE (April 12, 1996), aff'd, 96 - Elec. App. - 178 (KC) (April 24, 1996); Gilmartin, P-032-LU245-PNJ (January 5, 1996), aff'd, 95 - Elec. App. - 75 (KC) (February 6, 1996); Stone, P-247-IBT-SCE (January 22, 1996), aff'd, 96 - Elec. App. 74 (KC) (February 6, 1996); Blake, P-245-JC42-CLA (December 18, 1995).

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Viewing Mr. Lacroix's letter under the standard described above, the Election Officer determines that it was a proper exercise of the union officer's duties to advise the members of an important item of current union business. The communication does not become campaigning because the same subject is also referred to in campaign literature by the same or other union officers who are also candidates for election.

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:

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  
Bruce Boyens, Regional Coordinator