

July 11, 1996

VIA UPS OVERNIGHT

Joseph Rockstroh
6154 Old Washington Road
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William Hogan, Jr., Secretary-Treasurer
Teamsters Local Union 714
6815 W. Roosevelt Road
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Jon Rabine, Secretary-Treasurer
Teamsters Local Union 763
553 John Street
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James P. Hoffa
2593 Hounds Chase
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Mary Lou Salmeron
Teamsters Local Union 986
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Les Singer, President
Teamsters Local Union 20
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Garnet Zimmerman, President
Teamsters Local Union 31
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T.C. Stone, Secretary-Treasurer
Teamsters Local Union 745
1007 Jonelle Street
Dallas, TX 75217

Paul Alan Levy
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009

Re: Election Office Case No. P-764-IBT-EOH

Gentlepersons:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* (“*Rules*”) by

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Joseph Rockstroh, a member of Local Union 355. The protester alleges multiple violations of the *Rules* that are reflected on the Campaign Contribution and Expenditure Reports (“CCERs”) filed by various International union officer candidates. The alleged violations will be addressed separately below.

The protest was investigated by Election Office Representative Kathryn Naylor.

1. Alleged Violations of James Hoffa

A. Not Reporting Protest-Related Activity on Union Time

The protester alleges that James Hoffa, a candidate for general president, has engaged in a large amount of legal protest activity, at union expense, during his working day for Joint Council 43, and that these alleged union contributions are not reflected on the CCERs. The protester contends that since the Election Officer and the Election Appeals Master have deemed it permissible for Mr. Hoffa to use union resources for his election protest activity, Mr. Hoffa should be required to report on his CCER the amount of salary and benefits he has spent on election protest activity, including the value of union supplies and equipment he has used.

Mr. Hoffa denies the protester’s allegation that he personally has engaged in a large amount of legal protest activity during his working day for Joint Council 43. Mr. Hoffa acknowledges that on sporadic occasions, he has participated in or audited hearings before the Election Appeals Master, which have been scheduled during normal business hours; otherwise, filings and submissions before the Election Officer and Election Appeals Master have generally been prepared by Mr. Hoffa’s legal counsel, the law firm of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman (“Finkel, Whitefield”) or his campaign staff.

The protester’s argument that Mr. Hoffa should be required to report his receipt of union resources for “permissible” protest-related activity would be inappropriate under the *Rules* or the Advisory on Campaign Contributions and Disclosure (“Advisory”), issued December 14, 1995. Candidates running for International union office are required to report items deemed “campaign contributions” under the *Rules* on their CCERs. The Election Officer has permitted the use of union resources for protest-related activity when the protests further the independent, institutional interests of the union. Therefore, protest-related activity that implicates institutional interests of the union is not considered campaign activity under the *Rules*.¹ See Jordan, P-269-LU337-SCE (January 18, 1996) aff’d, In Re: Jordan, 95 - Elec. App. - 84 (KC) (February 12, 1996). The nature of a local union’s participation in such protests extends to paying the time of officers or employees for handling

¹On the other hand, the Election Officer has barred the use of union resources to finance protest activity which advances or opposes a candidacy without implicating the institutional interests of the union.

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such protests, hiring a lawyer or paying a consultant. In Re: McGinnis, 91 - Elec. App. - 150 (SA) (April 17, 1991). Accordingly, the "permissible" use of union resources for protest activity would not be regarded as campaign contributions from the union to the member-candidate, and Mr. Hoffa is not required to report on his CCER the amount of his salary and benefits, or the value of supplies and equipment use, that is spent on such election protest activity.

Accordingly, this aspect of the protest is DENIED.

B. Failure to Completely Report Expenditures for Legal Services

The protester asserts that Mr. Hoffa "has received extensive legal assistance" from Finkel, Whitefield which has not been accurately reflected on Mr. Hoffa's Supplemental Form No. 1 of his CCER. The protester argues that because Mr. Hoffa's CCER covering the period from September 21, 1995 through January 20, 1996 reports "an absurdly low amount" of fees for the firm's work for the entire reporting period, Finkel, Whitefield is either contributing its services free of charge to Mr. Hoffa's campaign or, alternatively, that another person or entity is paying for the services provided by Finkel, Whitefield to Mr. Hoffa.

The protester reviewed the CCER filed by Hoffa '96 National Legal and Accounting Fund that covered the period September 21, 1995 through January 20, 1996 and reflects a total expenditure to Finkel, Whitefield for legal services for less than \$300.

Mr. Hoffa responds that this total expenditure to Finkel, Whitefield only covers the work that was performed for his campaign prior to December 1, 1995. After December 1, 1995, Finkel, Whitefield performed significantly more legal services for his campaign. Invoices from Finkel, Whitefield are sent to his campaign on a monthly basis. The first invoice for services performed by Finkel, Whitefield in December 1995 was submitted in mid-January 1996 and paid in full by Mr. Hoffa's campaign in early February 1996. Mr. Hoffa's most current CCER, covering the reporting period from January 21, 1996 through May 20, 1996, reflects payments to Finkel, Whitefield that support Mr. Hoffa's contention.

The *Rules* and *Advisory* contemplate that candidates will report campaign contributions and expenditures when they are *actually received and made* by a candidate or campaign committee. Since Hoffa's payment to Finkel, Whitefield for services provided in December was actually made in February 1996, this expenditure would not have to be reported on the CCER covering the reporting period which ended on January 20, 1996. Considering the payments by Mr. Hoffa's campaign to Finkel, Whitefield that were reflected in the most recent report, the protester's suspicion that Finkel, Whitefield is contributing its services free of charge to Mr. Hoffa's campaign is without factual basis. Furthermore, there is no evidence to support the protester's conclusion that another person or entity is paying for the services provided by Finkel, Whitefield to Mr. Hoffa's campaign.

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Accordingly, this aspect of the protest is DENIED.

2. Alleged Employer Contributions to Mr. Hoffa's Campaign

The protester asserts that the contributions of \$1,000 from James Rankin, \$250 from Frank Stupar and \$500 from Daniel Kerins to Mr. Hoffa's campaign are impermissible contributions from employers, under the *Rules*. Prior to the filing of this protest, the Election Office, in a letter dated April 16, 1996, required Mr. Hoffa to provide further information on these three contributors, regarding their occupations or positions with their affiliated organizations, so that the Election Office could determine if any of them would be considered employers under the *Rules*. In response to the Election Office's inquiry, Mr. Hoffa informed the Election Office that the contributions had been returned to Messrs. Rankin, Stupar and Kerins. In accordance with the *Rules*, Mr. Hoffa submitted an affidavit attesting to the return of these contributions to the above-named contributors on or about May 1, 1996.

Accordingly, this aspect of the protest is RESOLVED.

3. Alleged Violations by Organizations that Receive Local Union Resources

A. Local Union 745's Retiree Chapter

The protester asserts that the \$1,000 contribution received by Mr. Hoffa's campaign from the Teamsters Local 745 Retiree Chapter ("Retiree Chapter") is impermissible under the *Rules* since the Retiree Chapter receives local union resources to support its activities.

The Retiree Chapter was established in 1984. Only retired Teamster members are eligible to join the Retiree Chapter. Membership in the Retiree Chapter is on a strictly voluntary basis and does not affect retiree rights, such as pension or health and welfare benefits. The officers of the Retiree Chapter are unpaid volunteers.

The Retiree Chapter is funded solely by dues collected from its members. The Retiree Chapter currently has 600 members who pay such annual dues to the organization. These monies are used primarily to sponsor social events, such as barbeques, for the members of the organization. The Retiree Chapter pays for all food, supplies and equipment required to hold these events. All notices sent to the membership of the Retiree Chapter are mailed through a mailing service and paid for by the Retiree Chapter.

The Retiree Chapter does not have any office space in Local Union 745's building. The Retiree Chapter does, however, receive mail at Local Union 745 that is either forwarded to or picked up by the president of the Retiree Chapter. Messages may be left with Local Union 745's

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receptionist for the president of the Retiree Chapter, but the officers of the Chapter do not have access to the phone system of Local Union 745 for Chapter business.

In 1991, the issue of IBT Retiree Chapters making campaign contributions was addressed by the Election Officer in Jones, P-983-LU147-MOI (October 29, 1991), where the Election Officer held:

[a]ll retiree chapters, being voluntary associations of retired IBT members, membership in which is not compulsory, fall within the ambit of a caucus as defined by the *Rules*. Accordingly, as a caucus, a retiree chapter . . . may make campaign contributions on behalf of a candidate for International Union office, or a slate of candidates, provided that the organization with respect to its campaign activities is financed exclusively from contributions from persons or entities permitted to make campaign contributions under the *Rules*.

Additionally, the Advisory provides that a caucus meet the following requirements in order to participate in campaign activities:

If a caucus of union members receives contributions or funding from sources prohibited under the *Rules*, such as foundations or labor organizations, [including IBT-affiliated entities], the caucus can still make campaign contributions if 1) the caucus properly allocates and segregates resources obtained from prohibited sources obtained from prohibited sources from those received from permissible sources under the *Rules*, and 2) utilizes only the resources obtained from permissible sources under the *Rules* for campaign activities. See, In Re: Gully, 91 - Elec. App. - 158 (SA) (June 12, 1991), aff'g Sargent, Case No. P-249-LU283-MGN (May 21, 1991).

The Retiree Chapter's contributions to International union officer candidates,² including the contribution to Mr. Hoffa, does not violate the *Rules*. In accordance with Jones, supra, the Retiree Chapter is deemed a caucus, based on the nature of the organization, and may make campaign contributions to candidates so long as their campaign activities are financed exclusively from permissible contributors under the *Rules*. In accordance with the Advisory, the Retiree Chapter made its contributions to International union officer candidates solely from the annual dues collected from its members who are all retired Teamsters and permissible contributors under the *Rules*.

²The Retiree Chapter also made campaign contributions to International union officer candidates other than Mr. Hoffa.

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Accordingly, this aspect of the protest is DENIED.

The protester also claims that the Retiree Chapter's May 4, 1996 barbeque held at Local Union 745's hall was a campaign event and, therefore, a violation of the *Rules* by Local Union 745's Secretary-Treasurer, T.C. Stone. On Saturday, May 4, 1996, the Retiree Chapter held its annual barbeque for its members at Local Union 745's hall. The Retiree Chapter has traditionally held its social events at Local Union 745's hall and does not pay rent to use the hall on these occasions. Other groups of retired Local Union 745 members are frequently allowed to use the local union's hall without paying rent for such use.

Members of Local Union 745's Executive Board are routinely invited to attend the Chapter's barbeque. Mr. Stone attended this event. He acknowledges that when he addressed the gathering of retired members, he made comments about International union officer candidates Mr. Hoffa and Ron Carey. A member of the Retiree Chapter who attended the event has stated that Mr. Stone criticized Mr. Carey for his misuses of union funds by purchasing real estate in Florida. Mr. Stone's campaign sold raffle tickets to Retiree Chapter members at this event to benefit his campaign. The raffle tickets were sold by Mr. Stone's campaign workers at the entrance of Local Union 745's building as people entered and left the building. No Retiree Chapter members were involved in selling any such raffle tickets.

In Cook, P-955-IBT and P-1005-IBT (November 8, 1991), former Election Officer Michael Holland addressed the issue of whether the conduct and content of a meeting held by the National Black Caucus ("NBC") constituted a campaign contribution to International union officer candidates in violation of the *Rules*. The Election Officer stated that:

A caucus of Union members may at its convention take a partisan political position with respect to the International Union officer election. See Election Office Case No. P-965-IBT (TDU as a caucus of Union members not required to invite all competing candidates for any International Union officer position to appear or speak at its convention). To the extent that the caucus engages in partisan political activity at its conferences or conventions--in other words, makes campaign contributions within the meaning of the *Rules*--the resources for that portion of its conference or convention must be derived from persons or entities otherwise entitled to make campaign contributions under the *Rules*. To the extent that the conference or convention concerns matters unrelated to the International Union officer election, that portion of the conference or convention may be funded by persons or entities otherwise prohibited from making campaign contributions under the *Rules*.

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In Cook, the Election Officer found that to the extent that the NBC was the recipient of in-kind contributions from the IBT, it was required to allocate and refund the value of such usage either to the IBT or to its non-campaign-related funds. Based on the investigation of the protests, the Election Officer determined that five percent of the conference must be considered a campaign contribution and, accordingly, to the extent that the NBC received union funds through local union reimbursement for membership fees, fundraiser tickets and Convention expenses, it would be required to refund five percent of these funds that had been expended on campaign activities at the Convention.

The partisan comments made at the Retiree Chapter by Mr. Stone regarding Messrs. Hoffa and Carey, converts that portion of the event into a campaign event. Although retired members do not have the right to vote in the International union officer election, they are, nevertheless, permitted to influence the election by making campaign contributions to International union officer candidates' campaigns. Based on the findings of the investigation that the barbeque lasted for no more than three hours and that Mr. Stone spoke for no more than 10 minutes, the Election Officer determines that five percent of the barbeque is considered a campaign contribution to Mr. Stone's campaign.

Therefore, if Local Union 745's funds or resources were used for the event, the Retiree Chapter must refund five percent of such funds or value of such resources to the local union. Although Local Union 745 did not give any money to the Retiree Chapter for the barbeque, the Retiree Chapter was allowed to use the local union's hall free of charge. In this regard, the use of the hall free of charge is considered an in-kind contribution. The value of this contribution is the fair market value or normal commercial rate that Local Union 745 would charge *candidates* to use the hall for a campaign event, not the special or exclusive rate that is afforded any retired group of Local Union 745 members, including the Retiree Chapter, to use the hall free of charge.

Accordingly, this aspect of the protest is GRANTED.

Within seven (7) days of this decision, the secretary-treasurer of Local Union 745 shall inform the Retiree Chapter and the Election Officer, in writing, of the fair market value or normal commercial rate that Local Union 745 would charge *candidates* to use the hall. Within seven (7) days of receipt of this information, the Retiree Chapter shall refund to Local Union 745, five percent of this specified rate. Within three (3) days of making such payment, the Retiree Chapter shall also provide the Election Officer with an affidavit attesting to when payment was made to Local Union 745 and the amount of such payment. The Retiree Chapter shall attach to its affidavit a copy of the letter from Local Union 745 and a copy of the check to Local Union 745.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1966).

B. Business Agent Fund for Local Union 20

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The protester requests that the Election Office investigate the Business Agent Fund for Local Union 20 that contributed \$6,880 to International union officer candidate Lester Singer, to ensure that this Fund is not receiving union resources, either direct payments or the use of union facilities.

Local Union 20's Business Agent Fund ("Local 20 Fund") was created on or about April 1979, by various employees of Local Union 20. Currently, there are 13 participants in the Local 20 Fund. Participation in the Fund is strictly voluntary. Any employee/member of the local union wishing to participate in the Local 20 Fund is required to sign a voluntary authorization provided by Local Union 20's credit union. This authorization allows an amount designated by the employee/member to be deducted from the employee/member's wages by the local union and deposited in the Local 20 Fund.

All participants in the Local 20 Fund are given an opportunity to be involved in all decisions regarding how the money is spent. Although there are no officers of the Local 20 Fund, Cheryl Johnson, an employee and member of Local Union 20, acts as the unofficial treasurer for the Fund.

Article XII, Section 1(b) of the *Rules* states, in pertinent part:

No labor organization, including but not limited to the International Union, Local Unions and all other subordinate Union bodies, whether or not an employer, may contribute, or shall be permitted to contribute, directly or indirectly anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate . . . No candidate may accept or use any such contribution. These prohibitions extend beyond strictly monetary contributions made by a labor organization and include contributions and the use of the organization's stationery, equipment, facilities and personnel.

Although the Local 20 Fund is ostensibly a group of members who are joining together to make voluntary campaign contributions, the campaign contribution is being facilitated by the local union through a wage authorization mechanism. Thus, local union resources, e.g., accounting, bookkeeping, checks, are being indirectly used to make a campaign contribution.

A local union employee made the deduction from the payroll check and cut a check to the Fund in the amount of the deduction. A local union employee or bookkeeper is responsible for the necessary record-keeping to ensure reconciliation of these deductions with Fund balances. In these and possibly other ways, the local union is providing resources to facilitate this type of voluntary fund. Therefore, the use of local union resources and personnel to facilitate the wage authorization to the Fund was a union contribution rendering contributions from such a fund to an International officer candidate a violation of the *Rules*.

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Such funds for political purposes are also troublesome because of the potential for coercion of contributions. The Election Office found no such evidence in this case or in the case of the Local Union 986 Fund described below. However, whenever there is a formal fund established and administered through the local union administration, there is a greater chance that employees will feel compelled to make contributions to the fund in order to retain their positions or to curry favor with their employer. For this reason, the Election Officer believes that voluntary political contributions made directly from the employer to the International officer are preferable.

Accordingly, this portion of the protest is GRANTED.

Within seven (7) days of receipt of this decision, Mr. Singer is directed to return the \$6,880, and any subsequent contributions, to the Fund. So long as the Fund receives its monies through the wage authorizations described above, it is ordered to cease and desist from making any contributions to International officer candidates. International officer candidates may not accept such contributions. Employees and members of Local Union 20 who made such contributions to Mr. Singer through the Fund are, of course, permitted to make personal contributions to Mr. Singer's campaign.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1966).

C. Business Agent Fund for Local Union 986

The protester requests that the Election Office investigate the Business Agent Fund for Local Union 986 that contributed \$8,000 to International union officer candidate Mary Lou Salmeron, to ensure that this Fund is not receiving union resources, either direct payments or the use of union facilities.

Local Union 986's Business Agent Fund ("Local 986 Fund") was established approximately in 1981. Approximately 15-20 business agents of Local Union 986 have participated in the Fund at any given time throughout its existence. Contributions to the Fund are on a strictly voluntary basis. Business agents authorize that monthly deductions be made from their paychecks, which are deposited in the Fund's separate bank account.

All business agents participating in the Fund meet to decide how the money should be spent. There are no appointed or elected officers of the Fund. However, two members of the Fund are designated as authorized signatories for check-signing purposes.

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As set forth in Section B above, because the Local 986 Fund is facilitated by the local union through the participation of the local union's bookkeeper, who makes the deductions and remits them to the Fund, the Fund's contribution to Ms. Salmeron's campaign is an improper union contribution, in violation of the *Rules*.

Accordingly, this portion of the protest is GRANTED.

Within seven (7) days of the date of receipt of this decision, Ms. Salmeron is directed to return the \$8,000 contribution, and any subsequent contributions, to the Local 986 Fund. So long as the Fund receives its monies through the wage authorizations described above, it is ordered to cease and desist from making any contributions to International officer candidates. Business Agents of Local Union 986 who made such contributions to Ms. Salmeron through the Fund are, of course, permitted to make personal contributions to Ms. Salmeron's campaign.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1966).

4. Alleged Violations of William Hogan, Jr.

The protester asserts that the contribution to William Hogan, Jr. from Jarvis Williams, the president of SEIU Local 46, is a prohibited contribution from an employer, under the *Rules*. Prior to the filing of this protest, the Election Office, in a letter dated March 19, 1996, required Mr. Hogan to provide further information on Mr. Williams' position with SEIU Local 46, so that the Election Office could determine if he would be considered an employer under the *Rules*. In response to the Election Office's inquiry, Mr. Hoffa informed the Election Office that the contribution had been returned to Mr. Williams. In accordance with the *Rules*, Mr. Hogan submitted an affidavit attesting to the return of the contribution to Mr. Williams on April 29, 1996.

Accordingly, this aspect of the protest is RESOLVED.

The protester also asserts that the contribution from Robert Block to Mr. Hogan is an impermissible employer contribution under the *Rules*. The *Rules* prohibit any candidate for International union office from receiving campaign contributions from employers or employer representatives. Any person or entity who employs another, paying monetary or other compensation in exchange for that individual's services, is an employer. All individuals having supervisory or managerial authority on behalf of an employer are deemed employer representatives. Advisory, page 8. Dr. Block is a retired physician with no employees. Furthermore, Dr. Block is not an employer representative since he has no managerial or supervisory authority on behalf of any organization. Therefore, Dr. Block's contribution to Mr. Hogan is permitted under the *Rules*.

Accordingly, this aspect of the protest is DENIED.

5. Alleged Violation of Jon Rabine

The protester asserts that Jon Rabine has violated the *Rules* by not reporting on his CCER a \$10,000 campaign contribution to Ms. Salmeron that appears on her CCER. The protester argues that if Mr. Rabine has not reported a \$10,000 expenditure on his CCER, he has also not reported \$10,000 worth of campaign contributions.

Ms. Salmeron reported on her CCER the receipt of a \$10,000 contribution from Mr. Rabine on August 18, 1995. However Mr. Rabine's CCER does not reflect this expenditure of \$10,000 to Ms. Salmeron's campaign. Mr. Rabine did in fact make the \$10,000 contribution from his personal funds to Salmeron's campaign in mid-August 1995, as evidenced by his canceled check for this transaction.

Under the *Rules*, all candidates for International union office must report all campaign contributions and expenditures made on behalf of their campaign. Insofar as Mr. Rabine has used personal funds, not campaign funds, to make a contribution of Ms. Salmeron's campaign, he is not obligated to report this contribution on his CCER.

Accordingly, this aspect of the protest is DENIED.

6. Alleged Violation of Garnet Zimmerman

The protester asserts that the contribution to Garnet Zimmerman from Murray McGown, the principal partner in the law firm of McGown, Johnson is an impermissible contribution from an employer, under the *Rules*. Prior to the filing of this protest, the Election Office, in a letter dated March 27, 1996, required Mr. Zimmerman to provide further information on Mr. McGown's position with his employer, so that the Election Office could determine if he would be considered an employer under the *Rules*. In response to the Election Office's inquiry, Mr. Zimmerman presented evidence to the Election Office that the contribution had been returned to Mr. McGown by check dated April 22, 1996.

Accordingly, this aspect of the protest is RESOLVED.

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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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