

August 21, 1996

VIA UPS OVERNIGHT

James P. Hoffa  
2593 Hounds Chase  
Troy, MI 48098

Ron Carey, General President  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

Bradley T. Raymond  
Finkel, Whitefield, Selik, Raymond  
Ferrara & Feldman  
32300 Northwestern Highway, Suite 200  
Farmington Hills, MI 48334

Re: Election Office Case No. P-843-IBT-NYC

DECISION ON REMAND

Gentlemen:

James P. Hoffa, candidate for general president, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* against the IBT and the Carey campaign. The protester alleges that the use of union resources by International Organizer Mike Curcio to campaign for Ron Carey violated the *Rules*. Specifically, the protester alleges that on June 19, 1996, Mr. Curcio telephoned Joe Traver, delegate from Local Union 317, while the latter was at work and encouraged him to sign a pledge to support Mr. Carey at the IBT Convention. The protester further alleges that Mr. Curcio, after calling Mr. Traver, used a union telecopier to transmit a copy of the pledge to Mr. Traver.

The IBT denies the allegations and contends that the protest is untimely.

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

The protester first brought his allegations to the attention of the Election Officer on July 4, 1996, asking that they be added to P-812, a protest he had filed on June 12, 1996 protesting the use

by the IBT of its Organizing Department to pressure its International organizers and representatives to give money and to work for the campaign of Mr. Carey. See Hoffa, P-812-IBT-NYC (August 16, 1996), appeal pending. Ms. Deinhardt, who was one of the investigators of P-812, advised the protester that the allegations concerning Mr. Curcio would not be treated as an amendment to P-812, and therefore, he should file a new protest. On July 9, 1996, the protester filed a separate protest.

Article XIV, Section 2(b) of the *Rules* requires protesters to file “within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested.” The short time limits are important to ensure that alleged violations of the *Rules* are quickly brought to the attention of the Election Officer in order to afford her the greatest opportunity for applying an effective remedy if a violation is found.

The protester argues that his protest should be considered filed on July 4, 1996 because that was the day he first brought the allegations to the attention of an Election Office representative. In view of the fact that July 4 was indeed the date that Mr. Hoffa’s attorney brought the matter to the attention of the Election Officer, the Election Officer shall treat this as the filing date of the protest. Ten working days elapsed between the alleged incident and the filing of the protest. Such a delay would not bar an analysis of the protest on its merits only if the protester could not have reasonably acquired the information upon which the protest was based within the time limitation required by the *Rules*.

The protester states that he became aware of the alleged facts within two days prior to July 4, 1996. He also advised the investigator that he learned about the protested incident from Terry Majka, president of Local Union 182 and Joint Council 18, and “someone in Syracuse, maybe [Everett] Campbell,” who is secretary-treasurer of Local Union 317. Initially, Mr. Majka told the investigator that he believed he had spoken to Mr. Hoffa about the events involved in the protest on June 20 or 21. Mr. Campbell recalled that he had spoken to Mr. Hoffa about the matter on June 25 or 26. In a later conversation with the investigator, Mr. Majka stated that he had learned about the protested events on either June 19 or 26 and that he went home that night and called Mr. Hoffa about it. Mr. Hoffa called him back the next day (June 20 or 27).

Mr. Hoffa states that on or about June 21, 1996, he received general information concerning a possible *Rules* violation involving a delegate from Rochester, New York. He states that it was not until July 3 that he obtained the name and telephone number of Joe Traver. The Election Officer observes that Mr. Hoffa’s recollection of the timing of the conversations he had before filing the protest was less specific than that of Mr. Majka or Mr. Campbell. The Election Officer finds that Mr. Hoffa had knowledge of the events giving rise to this protest by June 27, four working days prior to filing the protest.

Mr. Hoffa asserts that the allegations here were covered by P-812 and should be, nevertheless, considered timely on that basis. However, “[w]hile a protester may supplement an allegation of

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improper conduct with supporting evidence, the Election Officer need not make findings about additional acts of misconduct brought to her attention in the course of her investigation.” Ruscigno, 96 - Elec. App. - 55 (KC) (January 17, 1996) (citing Pope, 95 - Elec. App. - 35 (KC) (November 14, 1995)). The then-pending investigation of P-812 does not entitle the protester to delay filing a protest.

The protester also argues that any delay in bringing the allegations to the attention of the Election Officer was justified based on the protester’s efforts to investigate the information first provided to him. However, once the protester had sufficient knowledge to file a protest, he was not entitled to delay filing the protest in order to verify his allegations or obtain further information. See Martinez, P-684-LU 657-SOU (April 16, 1996).

The protester argues that Feeley, P-810-LU550-NYC (July 1, 1996), aff’d, 96 - Elec. App. - 211 (KC) (July 11, 1996) also requires the Election Officer to decide this case on the merits notwithstanding any delay in filing. Feeley, however, is distinguishable. There, the Election Officer permitted the protester to file a protest several weeks after he received a letter from Mr. Hoffa that had been posted with postage from a meter owned by a union benefits fund. When the protester learned that the postage meter was registered to the fund, he immediately filed his protest after. Here, the protester delayed filing a protest despite having sufficient knowledge of the allegations.

The protest is untimely. 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, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

James P. Hoffa  
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Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Barbara C. Deinhardt, New York City Protest Coordinator