

September 17, 1996

VIA UPS OVERNIGHT AND FACSIMILE

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Farmington Hills, MI 48334 *Fax (810) 855-6501*
Re: Election Office Case No. P-874-LU817-MGN

Gentlemen:

Tom Feeley, a member of Local Union 804, 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")* alleging that members of Local Union 817 have affixed Hoffa campaign material to trucks and other equipment belonging to their employers, which are often parked in prominent locations in and around New York City. He lodges his protest against Local Union 817 President Thomas O'Donnell, Local Union 817 member Jimmy Whalen, other unknown members of Local Union 817 and unknown employers of Local Union 817 members.

Mr. O'Donnell is the principal officer of the local union and a nominated candidate for vice president-at-large on the Hoffa No Dues Increase slate. He denies any involvement in affixing Hoffa campaign material to employer trucks or equipment.

During the course of this investigation, the Hoffa campaign was served with this protest. The Hoffa campaign states that neither Mr. Hoffa nor the campaign had any knowledge of the actions being alleged, nor did they authorize or condone the defacement of the trucks or other employer equipment.

This protest was investigated by Regional Coordinator William A. Wertheimer, Jr.

Local Union 817 supplies driver/operators for trucks, trailers and other equipment used in movie shoots in the New York City area. Members are employed by the production company making the movie. The production company itself does not own the trucks and equipment, which are supplied to it by other employers.

Mr. Feeley states that on August 12, 1996, he passed a movie shoot at a building at 330 W. 42nd Street in New York City. He alleges that between 10 and 15 trucks and mobile trailers were parked outside, and nearly all were affixed with a Hoffa bumper sticker or a two by three foot Hoffa sign. Mr. Feeley states that he objected to the presence of such material to job captain Jimmy Whalen, but Mr. Whalen shrugged and acted as if he had been involved with the signs being up. Mr. Whalen responds that he remembers joking with Mr. Feeley about how was he (Mr. Whalen) to know that Mr. Feeley had not affixed the signs. Mr. Whalen denies having had anything to do with putting them up.

During the investigation of this protest, Mr. Feeley's counsel, Nathaniel K. Charny, reported witnessing Hoffa campaign material affixed to trucks at a movie shoot at Tompkins Square Park (Avenue A between 6th and 8th Streets) in New York City on August 19, 1996.

Also during the investigation, Mr. Feeley reported visiting a location near W. 55th Street and 12th Avenue where a number of trucks used for movie shoots are stored when not in use. He states that about 10 trucks were parked at that location and seven had Hoffa bumper stickers or placards on them.

Mr. Feeley supplied the Election Officer's investigator with photographs of five movie industry trucks from the New York City area bearing Hoffa campaign material. A truck supplied by Haddad's, Inc. is shown with an approximately two-by-three foot "Hoffa '96 Restore Teamster Pride" placard on each side of the truck body. A truck supplied by Panavision is shown with a circular Hoffa sticker on the front of the cab above the center of the grill and a Hoffa bumper sticker positioned beneath a Local Union 817 logo on the inside of the left rear door of the truck body. A truck supplied by New York on Location is shown with a Hoffa bumper stick on the outside of the left rear door of the truck body. A truck supplied by Budd Enterprises, Ltd. is shown with a Hoffa bumper sticker on the front bumper. A truck supplied by Gala Catering is shown with a Hoffa bumper sticker on the rear bumper.

The investigator spoke with representatives of Haddad's, Panavision, New York on Location and another truck supplier, Life Styles. All state that their trucks and equipment are sticker-free when rented and that they often return with Hoffa campaign material attached. The companies all assert that they do not authorize the affixing of such material and that they remove it when they see it. Three of the four representatives characterized the appearance of Hoffa material on their trucks as a "problem."

The investigator interviewed Mr. O'Donnell on several occasions. Initially, Mr. O'Donnell stated that he was not aware of the posting of campaign material on trucks except for a few trucks with Carey stickers and a few with Hoffa stickers. Later, he acknowledged seeing Hoffa campaign material on trucks in the New York City area. He also acknowledged purchasing approximately 5,000 Hoffa bumper stickers with his own campaign funds in three lots in the spring, which have been distributed by the Hoffa campaign from its regional office on Porter Avenue in

Brooklyn, New York. Mr. O'Donnell denies authorizing, encouraging or participating in the appearance of Hoffa material on movie industry trucks driven or operated by Local Union 817 members.

Mr. O'Donnell stated to the investigator that he would make an announcement at Local Union 817's annual picnic on August 31 that everyone should "clean up their act" with respect to putting campaign material on trucks. He later stated to the investigator that he had made the announcement and that he had distributed a memorandum to Local Union 817 stewards about stopping members from affixing campaign literature to employer-owned and employer-supplied trucks.

Article VIII, Section 11 of the *Rules* provides that "All Union members retain the right to participate in campaign activities, including the right to . . . support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions." As the Election Officer made clear, however, in Phelan, P-711-LU550-NYC (April 23, 1996), aff'd, 96 - Elec. App. - 184 (KC) (May 6, 1996), "[t]he *Rules* protect campaigning as a personal right of IBT members and require that it be exercised that way." See Hoffa, P-812-IBT-NYC (August 16, 1996). Therefore, the *Rules* strictly prohibit IBT members, whether union officials or rank-and-file, from appropriating union or employer property in order to make personal campaign statements. Nothing in Article VIII or any other article of the *Rules* authorizes members to affix campaign material to employer-owned or employer-supplied trucks, trailers or other equipment under the circumstances presented here.

Accordingly, the Election Officer finds that all of the instances cited in this decision of affixing campaign material to movie industry trucks and equipment are separate violations of the *Rules*. Together, they show a pattern of improper campaigning for Mr. Hoffa at Local Union 817 work sites using employer-owned and/or employer-supplied trucks, trailers and other equipment.

A pattern of putting Hoffa campaign material on employer-owned and employer-supplied trucks and equipment results in improper contributions by those employers to the Hoffa campaign, as well as the false impression that the employers endorse Mr. Hoffa, in violation of Article XII, Section 1(b)(1) of the *Rules*.¹ The consistent and widespread campaigning by Local Union 817 members for Mr. Hoffa at their work sites using employer-owned or employer-supplied property presents a serious situation.

¹"No 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." Knowledge on the part of the employer is not an element of this violation. See Railway Carmen, Local 886, Case No. 30-1406, 66-(LM)-318 (DOL, Labor-Management Services Division 1966) (construing Section 401(g) of the Labor-Management Reporting and Disclosure Act).

The Election Officer also finds that this situation has continued unabated during the investigation of this protest. On September 13, 1996, Mr. Feeley filed a declaration with the Election Officer stating:

I have personally observed Local 817 members working around employer trucks with Hoffa campaign banners and posters almost every singl[e] day since I filed the election protest. For example, I observed employer trucks, driven and occupied by Local 817 members, with Hoffa campaign banners today (September 13, 1996) at 56th Street and 5th Avenue (Employer: N.Y. on Location); yesterday (September 12, 1996) at 56th Street and 5th Avenue (Employer: N.Y. on Location); and September 11th at 8th Avenue and 14th St. (Employer: Budd Transport). Since filing the election protest, I have not noticed any decrease in such trucks with Hoffa campaign literature. In fact, I have observed an increase in this misconduct by Local 817 members.

On September 16, 1996, New York City Protest Coordinator Barbara C. Deinhardt investigated three entertainment shoots in New York City: at 16th Street between 9th and 10th Avenues; at 8th Street between Astor Place and Broadway; and at Washington Square Park. At each location, Ms. Deinhardt observed five or six trucks on which there was Hoffa campaign material. Such material consisted of one or more bumper stickers affixed to each truck (often not on the bumper), as well as larger signs.

The Election Officer finds that several measures that should have corrected this situation have had little or no effect. As part of the remedy in Willett, P-863-LU331-PNJ (August 16, 1996), which involved the improper affixing of campaign material to the outside of a local union hall, the Election Officer directed all International officer candidates to take reasonable measures to ensure that their supporters do not put campaign material on private property. On September 6, 1996, the Hoffa campaign issued a memorandum from Mr. Hoffa discouraging such defacement of union and private property, which the Hoffa campaign states was posted at Hoffa campaign headquarters and faxed to Hoffa slate members, campaign staff, volunteers and supporters. In any event, the Hoffa campaign's corrective measure was insufficient to deter the continuing violations found on this record.

Election Officer representatives put Mr. O'Donnell on notice of the widespread and serious nature of these violations during several interviews, as noted above. The Election Officer notes that the direction in Willett, supra, also applied to Mr. O'Donnell as a candidate for International office. Mr. O'Donnell offers that he discouraged such activity at the local union's annual picnic and by sending a memorandum to stewards. Despite such measures, the Election Officer finds that such activity continues unabated. The Election Officer finds that Local Union 817's officers, stewards

and job captains have not made an effective attempt to curb these violations, despite notice and the opportunity to do so.

Lastly, the Election Officer notes that Mr. Whalen's response to Mr. Feeley's complaint about Hoffa stickers and placards on August 12, 1996, discussed above, was inadequate. Instead of joking about how the campaign material came to be affixed to the trucks, he should have immediately removed the prohibited materials.

The pattern of violations by Local Union 817 members is found above. Notice of those violations and a failure to take effective action by Messrs. O'Donnell and Whalen warrant a finding of violation against Local Union 817. Accordingly, the protest is GRANTED as to Local Union 817.

The affixing of campaign material to employer-owned and/or employer-supplied trucks, trailers and other equipment also results in employer contributions, in violation of the *Rules*. The Election Officer recognizes that the owners and suppliers of such trucks and equipment have limited ability to prevent the affixing of campaign material when their trucks and equipment have been rented by, and are under the control of, movie production companies. The owners and suppliers of such trucks and equipment contacted during the investigation of this protest have agreed to communicate to all production companies that use their property through the date of the International officer election that the *Rules* prohibit the affixing of campaign material and that such material must be removed when found. In view of this agreement, the Election Officer finds that the protest as to employers has been RESOLVED. However, the Election Officer will continue to monitor this situation and will consider further action if this problem is not remedied immediately.

Under Article XII, Section 1(b)(9) of the *Rules*, International officer candidates "are strictly liable to insure that each contribution received is permitted under the *Rules*." Therefore, the Hoffa campaign is strictly liable for the improper receipt of campaign contributions from employers and Local Union 817, and the protest as to the Hoffa campaign is GRANTED.

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.

The Election Officer finds that the widespread appearance of Hoffa campaign material on truck, trailers and other equipment used at locations in the New York area warrants both corrective and remedial relief. Certain relief ordered is designed to immediately stop the unlawful conduct. However, the violations found here have benefitted Mr. Hoffa's candidacy for general president without providing a similar campaign opportunity for Mr. Carey, who is the only other candidate for general president. Members of Local Union 817 working at production sites have been exposed on a regular basis over the last month to a campaign message from Mr. Hoffa. In order to fully remedy

this violation, an opportunity for Mr. Carey to reach these members must be provided. The following remedy is therefore ordered:

1. Members of Local Union 817 shall cease and desist from affixing campaign stickers, placards or other material to employer-owned and/or employer-supplied trucks, trailers and other equipment.
2. Within three (3) working days of this decision, Local Union 817 shall provide the Election Officer with the following information as to the current locations where its members work: (1) the program or movie being shot; (2) the location(s) of the shoot; (3) name of the production company, its address, a contact person and a telephone number for the contact person; and (4) all firms that supply trucks, trailers or other equipment for the shoot, including addresses, contact persons and telephone numbers for the contact persons. Until the conclusion of the International officer election, Local Union 817 shall continue to provide, within three (3) days of the date on which local union members start work on a television or movie production site, the information in (1) through (4) above.
3. Local Union 817 President Thomas O'Donnell shall mail the attached "Notice to Members" of the local union within three (3) working days of the date of this decision. No other material should accompany the notice other than the second notice to those members described in paragraph 4 below. Local Union 817 shall bear the cost of mailing this notice. This notice shall also be posted on all bulletin boards in the local union office for the duration of the International officer election.
4. Mr. O'Donnell shall mail the notice from the Election Officer of the attached notices to all Local Union 817 officers, trustees, business agents, stewards, transportation captains and all other members who may act in a coordinating or supervisory role at work sites, within three (3) days of the date of this decision. This order is continuing in nature through the conclusion of the International officer election, such that the notice must be mailed to any person who assumes any role listed above after initial distribution. Local Union 817 shall bear the cost of mailing this notice. This notice shall also be posted on all bulletin boards in the local union office for the duration of the International officer election.
5. Local Union 817 shall afford an opportunity to the Carey campaign to send a mailing to all Local Union 817 members. The Carey campaign may submit one 8½ × 11-inch sheet of campaign material, printed on one side, to Local Union 817 within five (5) days of the date of this decision. If the Carey campaign supplies such material, Local Union 817 shall mail it, without any other enclosure or reference to it, to all Local Union 817 members. The costs of the mailing shall be borne by the Hoffa campaign.

6. Within five (5) days of this decision, Local 817 shall file an affidavit with the Election Officer demonstrating its compliance with paragraphs 1 through 4 of this order. Within two (2) days after completion of the mailing for the Carey campaign, Local Union 817 shall file an additional affidavit with the Election Officer describing its compliance with paragraph 5 of this order, including the invoice sent to the Hoffa campaign. The Hoffa campaign will immediately forward to Local Union 817 the amount of the invoice.

7. The Hoffa campaign shall cease and desist from accepting campaign contributions resulting from the actions of Local Union 817 members in affixing pro-Hoffa material to employer-owned and/or employer-supplied trucks, trailers and other equipment. The Hoffa campaign is further ordered to take all steps necessary to ensure compliance with this cease and desist order, including but not limited to patrolling production sites and removing any campaign material on employer trucks and equipment. Within two (2) days of paying the invoice from Local Union 817, the Hoffa campaign will file an affidavit with the Election Officer detailing its compliance with this order, including what steps it has taken to ensure compliance with this paragraph of the order, and attaching a copy of the check confirming payment to Local Union 817 for the mailing for the Carey campaign.

The Election Officer will rigorously monitor compliance with all orders in this matter and will continue to monitor entertainment shoot locations in the New York City area to determine that improper campaigning ceases. Local Union 817 and the Hoffa campaign will be held strictly accountable for any continuing violations. The Election Officer will consider progressively stricter remedies and penalties as necessary to ensure compliance.

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, 1996).

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

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(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
William A. Wertheimer, Jr., Regional Coordinator
Barbara C. Deinhardt, New York City Protest Coordinator
Arthur A. Wasserman, Regional Coordinator
Leroy Ellis, Jr., Stand Up for Teamsters Slate
Lawrence Brennan, Brennan, Davis, Majka Slate

TO ALL MEMBERS OF LOCAL UNION 817

The Election Officer has found that Hoffa bumper stickers, signs and placards have been affixed to many of the trucks, trailers and other equipment that Local Union 817 members drive and operate at movie shoots. This activity has resulted in violations of the *Election Rules* on the part of Local Union 817 and the Hoffa campaign.

No member has any right to affix any International officer campaign material to employer-owned or employer-supplied vehicles or equipment.

Local Union 817 does not endorse or support any candidate in the International officer election. The local union directs any member engaged in this activity to immediately stop putting International officer campaign bumper stickers, signs or placards on the employer-owned or employer-supplied trucks that they drive or equipment that they operate.

As part of the remedy for the improper campaigning that has occurred, the Election Officer has ordered that Local Union 817 and the Hoffa campaign pay for a mailing to Local Union 817 members for the campaign of Ron Carey for general president.

The Election Officer has also stated that production sites will be monitored for any further violations and strict remedies will be imposed if they are found. Members should call to report such violations to Barbara C. Deinhardt, Protest Coordinator for the New York City region, at (212) 856-7084.

Date

Thomas O'Donnell, President
Teamsters Local Union 817

Approved by Barbara Zack Quindel, IBT Election Officer.

NOTICE FROM THE ELECTION OFFICER

To: All Local Union 817 officers, trustees, business agents, stewards,
transportation captains and other members who act in a coordinating or supervisory
role at work sites

Re: Improper affixing of campaign material to employer-owned or employer-
supplied trucks, trailers and other equipment

Putting International officer campaign material on employer-owned or employer-supplied
trucks, trailers and other equipment violates the ***Election Rules***.

The Election Officer has found that Local Union 817 members have violated the ***Rules*** by
putting Hoffa campaign bumper stickers, signs and placards on many of the trucks, trailers and other
equipment that members drive and operate at movie shoots.

The Election Officer has also found that Local Union 817 violated the ***Rules*** by failing to stop
such activity after being notified of the problem.

You are hereby instructed to stop such activity if you see it and to remove any International
officer campaign material from employer-owned and employer-supplied trucks when you find it.

Date

Barbara Zack Quindel
Election Officer