

July 8, 1998

VIA UPS OVERNIGHT

Anthony M. D'Andrea
4742 Cherimoya Avenue
Akron, OH 44319

C. Sam Theodus
202 James Circle
Avon Lake, OH 44012

Thomas W. Leedham
18763 South Highway 211
Molalla, OR 97038

Gary M. Tiboni, President
Teamsters Joint Council 1
6051 Carey Drive
Valley View, OH 44125

Re: Election Office Case No. PR-117-JCI-NCE

Gentlemen:

Anthony M. D'Andrea, a member of Local Union 507, filed a pre-election protest pursuant to the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* ("*Rules*") against Gary Tiboni, President of Joint Council Number 1 and a member of Local Union 436, Tom Leedham, a candidate for general president, and C. Sam Theodus, a declared candidate for general president in the supplemental nomination process. The protester alleged that Mr. Tiboni permitted campaign activity at a steward training seminar paid for by Joint Council No. 1. The protester also alleged that Messrs. Leedham and Theodus attended the conference in an official capacity, at union expense and on union time, in order to campaign.

Messrs. Leedham and Theodus deny that they improperly used union resources to campaign during the steward training session. Mr. Tiboni denied that any improper campaigning occurred at the steward training seminar and stated that he attempted to have all of the candidates for general president attend in order to hold a candidates forum.

This protest was investigated by Regional Coordinator Judith E. Kuhn.

Joint Council No. 1 held its biennial steward leadership and training seminar on Saturday and Sunday, May 30 through May 31, 1998. The planners had reserved a location for the 700 participants in April 1997, more than one year before the seminar. The agenda for the seminar provided for registration and a cocktail party Saturday afternoon and evening, and instructional and political speakers on Sunday. The seminar included speeches by candidates for state and local political offices, as well as time for speeches by candidates for general president.

On April 23, 1998, Mr. Tiboni sent letters to the two candidates for general president declared at the time, James P. Hoffa and Ken Hall, inviting them to participate in a candidate

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forum scheduled at the end of the seminar. Both candidates responded to the invitation orally. David Lyle, Mr. Hoffa's assistant campaign manager, declined explaining that Mr. Hoffa had prior commitments elsewhere. Mr. Hall initially accepted, but later declined when he unofficially withdrew from the election. Neither Mr. Hall nor Mr. Hoffa attended the seminar.

In the meantime, Mr. Leedham declared his candidacy on May 22, 1998. Once he became aware of the seminar, Mr. Leedham contacted Mr. Tiboni. Mr. Tiboni verbally issued Mr. Leedham a general invitation to attend the seminar, not just the candidate forum. Mr. Leedham accepted and attended the events on both days, including the Saturday evening cocktail party.

Several days prior to the seminar, Mr. Tiboni learned that Mr. Theodus also had declared himself a candidate for general president. Mr. Tiboni orally invited Mr. Theodus to attend both days of the seminar, and Mr. Theodus accepted. Mr. Theodus understood he had been invited to the cocktail party on Saturday, but did not attend. He did attend the events on Sunday.

Mr. Leedham attended the conference at his own expense. He traveled to Ohio using an airline ticket purchased with frequent-flyer miles and stayed with friends to avoid lodging and food expenses. Mr. Leedham took leave on Friday, May 29, 1998, in order to travel to the Ohio campaign.

Both Mr. Leedham and Mr. Theodus gave campaign speeches at the end of the seminar session on Sunday. Mr. Theodus was scheduled first, and spoke for about 15 minutes from 12:00 noon until approximately 12:15 p.m. Mr. Leedham followed, speaking for approximately 20 minutes.

The **Rules** prohibit candidates from using any union resources to further their campaigns unless they compensate the union at fair-market value and all other candidates are given access to the same resources. **Rules**, Article XII, Section 1(b)(3). Additionally, candidates cannot campaign during time that is paid for by the union or another employer. **Rules**, Article XII, Section 1(b)(4).

The Election Officer has consistently denied protests when the protester offers no evidence to corroborate and support his allegations. Hoffa, PR-081-IBT-NCE (May 13, 1998). The protester bears the burden of proof to present evidence that a violation has occurred. **Rules**, Article XIV, Section 1. In the instant case, the protester has presented no evidence that either Mr. Leedham or Mr. Theodus used union resources and union time to campaign. Mr. Leedham specifically presented evidence that he used his own resources to attend the event. Neither Mr. Leedham nor Mr. Theodus violated the **Rules** by campaigning at the seminar.

Under the **Rules**, a local union cannot "discriminate or permit discrimination in favor of or against any candidate in conjunction with its meetings or otherwise." Article VIII, Section 5(a)(4). Unions do not have to allow campaigning at their meetings, but if they do, they must

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give all the candidates equal access to campaign at the meeting, including prior written notice of the meeting and equal time for the candidates. Article VIII, Section 5(a)(3).

Mr. Tiboni gave Mr. Hoffa and Mr. Hall prior written notice about the seminar. With the field of candidates for general president changing around the time of the seminar, Mr. Tiboni's verbal invitations to Messrs. Leedham and Theodus were not deficient under the **Rules**. Mr. Tiboni's actions clearly indicate an intent to give prior notice to all candidates for general president.

However, Mr. Tiboni's verbal invitations to Messrs. Leedham and Theodus were substantively different than the written invitations to Messrs. Hall and Hoffa. Although the difference appears to be inadvertent and unintentional, Messrs. Hall and Hoffa received invitations to only the 20 minute candidate forum, while Messrs. Leedham and Theodus received general invitations to the entire two-day event. Mr. Tiboni stated that he did not believe he had issued different invitations to the various candidates. Nonetheless, the difference is material enough to constitute discrimination for the purposes of the **Rules**.

Accordingly, this protest is hereby GRANTED in part and DENIED in part.

When the Election Officer determines that the **Rules** have been violated, he "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 orders Mr. Tiboni and Joint Council 1 to cease and desist in discriminating against candidates.

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 (1) 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

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Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

MGC:chh

cc: Kenneth Conboy, Election Appeals Master
Judith E. Kuhn, Regional Coordinator