

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

Michael H. Holland  
Election Officer

November 4, 1991

Chicago Office:  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922-2800

**VIA UPS OVERNIGHT**

Mark Franks  
c/o Paul A. Levy, Esq.  
Teamsters for a Democratic Union  
Public Citizen Litigation Group  
2000 P Street, NW  
Suite 700  
Washington, DC 20036

Dan Kane  
c/o IBT Local Union 111  
50 Broad Street  
New York, NY 10004

Phil A. Feaster  
c/o IBT Local Union 639  
3100 Ames Place, NE  
Washington, DC 20018

**Re: Election Office Case No. P-1019-LU-IBT**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Paul A. Levy on behalf of Mark Franks, an IBT member and a contributor to the Teamster Rank and File Education and Legal Defense Fund ("TRF"). The protest contends that Dan Kane, a nominated International Union officer candidate on the R. V. Durham Unity Team slate utilized names and addresses gleaned from the Campaign Contribution and Disclosure Report filed by TRF with the Election Officer. The protest claims that Mr. Kane mailed campaign literature to persons whose names and addresses were obtained from TRF's filings with the Election Officer.

The protest was investigated by Regional Coordinator Amy Gladstein and the Washington, D.C. staff of the Election Officer. Assuming for the purposes of this decision that Mr. Kane utilized information obtained from the Campaign Contribution and Disclosure Report filed with the Election Officer by TRF, that is, obtained the names and addresses of the individuals to whom he sent his campaign literature from the representatives who reviewed that filing on behalf of the Durham Unity Team,<sup>1</sup> the Election Officer finds no violation of the *Rules*.

---

<sup>1</sup> Given this assumption, this decision is written as if Mr. Kane in fact so obtained the names and addresses.

Mark Franks  
November 4, 1991  
Page 2

The *Rules* require that nominated International Union officer candidates and independent committees who participate in the 1991 IBT International Union officer election process file reports with the Election Officer disclosing the names and addresses of all persons contributing more than \$100 to such candidate or independent committees. See Advisory Regarding Convention Expenses, issued April 19, 1991. The *Rules* at Article X, § 2(e) permit inspection of the reports filed. While the *Rules* prohibit copying the reports, the nominated candidate or their representatives may make notes from the reports as they review them.

The *Rules* do not limit the purposes for which the candidates may use the information gleaned from reviewing the reports. Analogy to provisions of the *Rules* other than the section dealing with the filing and inspection of contribution and disclosure reports, might suggest that it would violate the *Rules* to utilize the information obtained from inspection for any purpose other than the International Union officer election. *Rules*, Article VIII, § 1(d) (information obtained from collective bargaining agreements or work-site lists not to be used "for any purpose other than campaigning for a delegate, alternate delegate, or International officer position"). See also Advisory on Membership List Distribution to Credit Candidates, issued August 23, 1990. The letter sent by Mr. Kane pertained to the 1991 IBT International Union officer election. The information he gained from the inspection by the R. V. Durham Unity Team of TRF's reports was used in connection with the election for which the reports were filed.

Mr. Levy argues, however, that the use made by Mr. Kane of the information garnered from the disclosure reports filed by TRF would constitute a violation of the Federal Election Campaign Act. See 2 USC, § 438(a)(4) ("any information copied from such reports or statements [reports required to be filed under the Federal Election Campaign Act] may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes..."). The *Rules*, of course, do not contain a similar prohibition.

The legislative history with respect to this provision of the statute, which was an amendment to the act proposed by Senator Bellmon of Oklahoma, demonstrates that its only purpose was to prevent harassment of individuals who contributed to political campaigns and whose names would then be reported by the candidates or committees to whom such contributions were made. As Senator Bellmon stated:

We all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment . . .

Mark Franks  
November 4, 1991  
Page 3

117 Cong. Rec., 30,057 (daily ed., August 5, 1971). For the colloquy during the debate on this amendment underscores that the amendment was adopted to prevent the required disclosure list from being used for commercial purposes by third persons:

Mr. NELSON. Do I understand that the only purpose is to prohibit the lists from being used for commercial purposes?

Mr. BELLMON. That is correct.

Mr. NELSON. The list is a public document, however.

Mr. BELLMON. That is correct.

Mr. NELSON. And newspapers may, if they wish, run lists of contributors and amounts.

Mr. BELLMON. That is right; but the list brokers, under this amendment, would be prohibited from selling the list or using it for commercial solicitation.

117 Cong. Rec., 30,058 (daily ed., August 5, 1971).

Courts construing this provision of the Federal Election Campaign Act have also recognized that the prohibition should be narrowly construed, in accord with its purpose, which was to prevent "public spirited" citizens who contribute to political campaigns from "all kinds of solicitations." See, e.g., Federal Election Commission v. Political Contributions Data, Inc., \_\_\_ F. 2d \_\_\_; 1991 U.S. APP. LEXIS 19767, 21 (Docket No. 91-6084) (2nd Cir., 1991).

Mr. Kane certainly did not make use of the list for commercial purposes. His letter was not even a solicitation of contributions for his campaign or the campaign of any other candidate on his slate. Rather, Mr. Kane's letter, a five-page document entitled "On the Teamster Election, an Open Letter by Dane Kane, Candidate for Teamster Eastern Region Vice President, R. V. Durham Unity Team" claims that Mr. Kane is a liberal, committed trade unionist and sets forth the reasons why he, as a liberal, committed trade unionist, has concluded that General President Candidate R. V. Durham--not General President Candidate Ron Carey--is the "reform" candidate for IBT General President. Presumably, Mr. Kane believes that contributors to TRF are liberal, committed trade unionists, as he maintains he is. The letter constitutes Mr. Kane's argument to them why they should not be part of "an uncritical Carey bandwagon," but should "open their minds to the fact that there is more than one way to see the coming

Mark Franks  
November 4, 1991  
Page 4

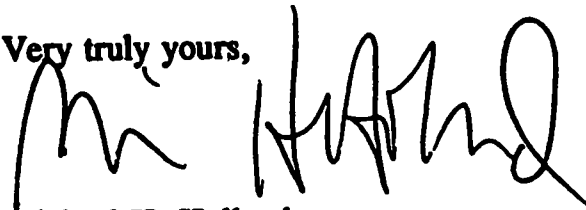
**Teamster Election."**

The underlying fundamental purpose of the March 14, 1989 Consent Order and the *Rules*, as approved by the United States District Court and the Court of Appeals for the Second Circuit to implement that Consent Order, is to provide for a fair, honest, and open election. Both the Consent Order and the *Rules* do so by encouraging vigorous debate about the candidates and their platforms. To that end, the *Rules* not only prohibit the regulation or censorship of the content of campaign literature, but provide for unprecedented access to encourage all members to participate in that debate and to receive campaign literature and other materials on the various candidates and their positions. To prevent Mr. Kane from disseminating his campaign message or to limit the audience to which such message may be distributed would be antithetical to the purposes of both the Consent Order and the *Rules*.

In accordance with the foregoing, the protest is **DENIED**.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

**Mark Franks**  
**November 4, 1991**  
**Page 5**

**Ron Carey**  
**c/o Richard Gilberg, Esquire**  
**Cohen, Weiss & Simon**  
**330 West 42nd Street**  
**New York, NY 10036-6901**

**R. V. Durham**  
**c/o Hugh J. Beins, Esquire**  
**Beins, Axelrod, Osborne & Mooney**  
**2033 K Street, NW**  
**Suite 300**  
**Washington, DC 20006-1002**

**Walter Shea**  
**c/o Robert Baptiste, Esquire**  
**Baptiste & Wilder**  
**1919 Pennsylvania Avenue, NW**  
**Suite 505**  
**Washington, DC 20006**

**Michael Goldberg**  
**c/o Widener School of Law**  
**3800 Vartan Way**  
**Harrisburg, PA 17110**