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Election Officer

November 8, 1991

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VIA FACSIMILE AND UPS OVERNIGHT

Committee to Elect Ron Carey
c/o Susan Davis, Esquire
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330 West 42nd Street
New York, NY 10036-6901
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R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
Suite 300
Washington, D.C. 20006-1002
(FAX: 202-835-3821)

Re: Election Office Case No. P-1041-IBT

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by the Committee to Elect Ron Carey ("CERC"). The protest alleges that the R. V. Durham Unity Team sent by facsimile transmission a memorandum to all principal officers of Local Unions directing the principal officers to take certain actions to aid the Durham campaign. CERC contends that the memorandum violates the *Rules*, in particular Article X, §§ 1(b)(1) and 1(b)(3).

The memorandum which is the subject of the protest is a two-page document, the first page of which is reproduced on R. V. Durham Unity Team letterhead. The return address, phone number and fax number contained on the stationery are the address, phone number and fax number of the R. V. Durham Unity Team campaign headquarters. The memorandum is dated October 30, 1991 and is addressed to principal officers from R. V. Durham. The memorandum concerns the upcoming IBT International Union officer election.

The memorandum is clearly campaign material. Three-quarters of the memorandum is a narrative which discusses the election process and contains opinions of Mr. Durham or his campaign concerning the outcome of the election and negative references to the Shea-Ligurotis Action Team, General President candidate Ron Carey, the Ron Carey Slate and Teamsters for a Democratic Union ("TDU"). The remaining one-quarter of the memorandum advises the recipients of the actions they can take to

assist in the election of the R. V. Durham Unity Team candidates. The memorandum suggests a mailing to members, distribution of sample ballots and literature, phone banks, and a campaign to get out the vote for the R. V. Durham Unity Team. The memorandum further indicates that any principal officer who wishes to do a mailing to members or organize a phone bank should contact the R. V. Durham Unity Team campaign office. The memorandum cites--with approval--the use of vacation time by many Local Union officers and business agents to distribute literature on behalf of the R. V. Durham Unity Team.

CERC alleges that the R. V. Durham Unity Team memorandum violates the *Rules* by requesting principal officers to engage in campaign activities on its behalf. The protest focuses on one sentence in the memorandum which states: "Already we have commitments from over 300 locals, representing nearly 800,000 members, to send a postcard or letter telling their members how to vote for the Durham Unity Team." From this sentence, CERC concludes that the alleged commitments from the 300 Locals--and any future commitments by any other Local principal officer to engage in any of the campaign activities suggested in the memorandum--must necessarily entail the use of Union funds and resources. Even if Local funds are not used, CERC contends that it must be concluded that a Local commitment, as referenced in the memorandum, constitutes an endorsement by a Local of the candidates on the R. V. Durham Unity Team, a prohibited campaign contribution under the *Rules*.

Article VIII, § 10(b) of the *Rules* provides that Union officers and employees have a right to engage in campaign activities provided only that such participation does not occur on Union paid work time or involve the expenditure of Union funds. In accordance with Article VIII, § 10(b), any Union officer or employee, if an IBT member, may openly support or oppose a candidate, aid in a campaign or make personal campaign contributions. Thus, the *Rules* are not violated by a request by an International Union officer candidate for campaign assistance from any Union member regardless of his/her position within the IBT or any subordinate body of the IBT.

Article X, § 1(b)(3) of the *Rules* prohibits the use of Union funds or goods to promote the candidacy of any individual. The endorsement of an International Union officer candidate or slate of candidates by any IBT entity, including a Local Union, constitutes a campaign contribution in violation of the *Rules*. See Election Office Case No. P-963-LU67-ENG, affirmed as modified 91-Elec.App.-212 (SA).

However, contrary to the conclusion reached by CERC, a commitment by an officer of an IBT entity to engage in campaign activities on behalf of the R. V. Durham Unity Team does not constitute an endorsement of that slate by the Local Union. A mailing by a Local Union officer--provided no Union stationery, or funds, are used to accomplish the mailing--also does not constitute an endorsement by the Union entity, even if signed by the officer and even if the officer's official position is noted on the

document mailed. See Advisory on Campaign Contributions and Disclosure, issued August 14, 1991, at page 5. The protest does not allege that any of the mailings allegedly performed by the "300 locals representing 800,000 members" utilized Union funds or stated thereon that the Local Union entity was endorsing the R. V. Durham Unity Team. Under these circumstances, that the memorandum stated that the R. V. Durham Unity Team had received commitments from 300 Locals, instead of saying that the slate had received commitments from officers or principal officers of 300 Locals, does not violate the *Rules*.

Further, the protest submitted by CERC does not contain any allegation that Local Union funds or resources have been utilized to promote the candidates on the R. V. Durham Unity Team or to engage in any of the activities suggested in the memorandum. The Durham memorandum itself does not ask that Union funds or facilities be utilized when undertaking any of the activities suggested in the memorandum. Indeed, it could be argued that the memorandum notifies the recipients that the suggested activities should be undertaken without utilization of Union resources; it notes that officers and business agent are taking vacation days to campaign on behalf of the R. V. Durham Unity Team. Neither the contents of the memorandum nor its transmittal to the principal officers of IBT Local Unions violates the *Rules*.

The protest is DENIED. However, to ensure that all officers and employees of all Local Unions are aware that (1) no campaign undertaking--whether the activities suggested in the October 30, 1991 R. V. Durham memorandum or otherwise, by or on behalf of any candidate or campaign--can utilize Union funds, equipment, stationery, facilities or personnel unless the Union is compensated for such use by the International Union officer candidate or slate of candidates, and all candidates and slates are provided equal access and notified in advance of the availability of such goods and services and (2) no Local Union entity, including a Local Union Executive board, may endorse any candidate or slate of candidates or International office, copies of this decision will be sent all IBT subordinate bodies, copies of this decision being forwarded to all IBT Local Unions.

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

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& 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/mjv

cc: Frederick B. Lacey, Independent Administrator

IBT Local Unions

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