



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

November 12, 1991

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VIA UPS OVERNIGHT

Don L. West
c/o IBT Local Union 612
50 Bagby Drive
Birmingham, AL 35219

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

Re: Election Office Case No. P-1060-IBT

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") on behalf of Don L. West, a nominated candidate for IBT International Union Vice President and a member of the R. V. Durham Unity Team slate. Mr. West protests the content of the campaign material published on behalf of the Ron Carey slate in the November 1991 issue of The International Teamster.

The protest contends that the material printed contains false and misleading information, specifically the statements made with respect to Mr. West. The sixth page of the Carey campaign material contains a picture of Mr. West with the word "Charged" printed on it; below the picture, Mr. West's name is printed with the notation "Employer Kick-Backs." Mr. West states that he has not been charged with anything relating to employer kick-backs. While Mr. West acknowledges that there is a charge pending against him before the Independent Administrator, he states that that charge does not concern the issue of employer kick-backs. Mr. West finally states that he has not been charged with a crime but contends that the campaign material published on behalf of the Ron Carey Slate so implies.

Assuming, as Mr. West contends, that the campaign material printed in the November 1991 issue of The International Teamster on behalf of the Ron Carey Slate contains false, scandalous, defamatory and misleading information, the Election Officer finds that there has been no violation of the *Rules*. Underlying the *Rules* is a firm policy against censorship or the regulation of the content of campaign literature. Article VIII, § 6(g) of the *Rules* specifically states that "[t]he Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's literature on the basis of its contents." This policy reflects the right of union members to engage in vigorous internal union

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debate free from the threat of internal union discipline for their campaign statements. See e.g., Petramale v. Laborers Local 17, 736 F. 2d 13 (2nd Cir. 1984); Semanik v. UMW District 5, 80 LRRM 3475 (3rd Cir. 1972); Salzhandler v. Caputo, 316 F. 2d 445 (2nd Cir. 1963). Similarly, the United States Supreme Court has recognized that internal union affairs " . . . are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions." Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 272 (1974).

Thus, and assuming that the campaign statements contained in the material printed in the November 1991 issue of The International Teamster were false, misleading, or even defamatory, those facts do not remove such literature from the protection of the *Rules*. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertion, allegation, statement of opinion or even of alleged fact without legal sanctions for truth or falsity. The cardinal principle is that the best remedy for untrue speech is more speech, with the electorate being the final arbiter.

The *Rules* were not violated by the content of the material printed on behalf of the Ron Carey Slate. Accordingly, 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

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