

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

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November 15, 1991

VIA FACSIMILE AND UPS OVERNIGHT

Larry Brennan
President
IBT Local Union 337
2801 Trumbull Avenue
Detroit, MI 48216
(FAX: 313-965-0570)

Robert E. Knox
President
IBT Local Union 1038
2741 Trumbull Avenue
Detroit, MI 48216
(FAX: 313-964-9741)

Gary L. Thompson
Secretary-Treasurer
Powers Distributing Co.
2000 Pontiac Drive
Sylvan Lake, MI 48320

Jay Yula
General Manager
Don Lee Distributor, Inc.
14301 Prospect
Dearborn, MI 48126

Re: Election Office Case No. P-1075-LU337/1038-MGN

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*"). In his protest, Larry Brennan alleges that the *Rules* were violated by Powers Distributing Company ("*Powers*")¹ when it posted anti-Durham campaign literature and a memorandum to employees on the bulletin board at its facility in Sylvan Lake, Michigan. Mr. Brennan further alleges that an identical violation of the *Rules* was committed by Don Lee Distributor, Inc. ("*Don Lee*"). The Election Officer's investigation revealed the following.

On or about October 30, 1991, Powers posted a memorandum to its employees and excerpts from the campaign material printed in the September, 1991 edition of the International Teamster on the bulletin board at its facility. While the memo, which is signed by Gary L. Thompson, states that the company does not endorse any candidate and that the decision of who to vote for is a personal one, the memo also states that

¹ Employees of Powers are represented by IBT Local Union 1038. While Powers bargains with the IBT on an individual basis it coordinates that bargaining with five other beer distributors in the Southern Michigan area, all of whom also employ Local 1038 members. These other distributors include Don Lee, Oak Distributors, Donnley Warren, Herbert Distributors and East Town Distributors.

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"[t]he purpose of posting this material is only to show what other union officials say about the slate endorsed by Bob Knox." The campaign material posted consists of the cover of the September, 1991 edition of the International Teamster and portions of the negative campaign material published in that edition on behalf of the Ron Carey Slate and the Shea-Ligurotis Action Team against R. V. Durham and his slate.

A virtually identical posting, on Don Lee letterhead and signed by Don Lee's General Manager Jay Yula, appeared on the bulletin board at the Don Lee facility in Dearborn, Michigan. The Don Lee posting was discovered by Mr. Knox on a visit to the facility on November 14, 1991. While the posting was removed at Mr. Knox's request it is unclear how long it was posted.

Under the *Rules* all members and officers of the IBT have the right to support or oppose candidates of their own choosing. *Rules*, Article VIII, §§ 10(a) and 10(b). Accordingly, it was appropriate for Mr. Knox to endorse a particular slate of candidates seeking International Union office and to publicize his endorsement and his support among the membership of Local 1038.

However, it is a violation of both the *Rules* and the Labor Management Reporting and Disclosure Act ("LMRDA") for an employer, and particularly an interested employer, i.e., an employer of IBT members, to interfere in any way with the IBT International Union officer election. Both the LMRDA and the *Rules* prohibit any employer from contributing anything of value "the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate." See, *Rules*, Article X, § 1(b)(1) and Definition of "campaign contribution". A prohibited employer contribution can take the form of "negative campaigning" as well as efforts to further the campaign of a particular candidate. See, In Re: Western Conference of Teamsters Pension Trust, P-291A-LU278-CSF, aff'd 91-Elec. App.-106 (SA), aff'd U.S. v. IBT, F. Supp., appeal pending docket No. 91-6140.

The Election Officer concludes that the reproduction and posting of the negative Durham campaign literature on the Power and Don Lee company bulletin boards is a contribution of something of value, which the foreseeable effect of which may influence the outcome of the election of International officers in the IBT. It is irrelevant whether the purpose or object of that posting was to influence the International Union officer election; posting campaign material derogatory of a candidate or a slate of candidates for viewing by the IBT members who are voters in that election will necessarily have that effect regardless of the intent of the posting.

For the same reasons, the employers' statement of neutrality is irrelevant posted with the campaign material does prevent the posting from constituting an improper employer contribution under LMRDA and the *Rules*. Assuming that both Powers Distributing and Don Lee are, in fact, neutral with respect to the outcome of the 1991

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IBT International Union officer election, posting material derogatory of one of the slates of candidates competing in that election for voters in that election to see, to read, and to be influenced by, has a foreseeable effect on the election; the posting thus constitutes an employer campaign contribution. This employer campaign contribution is violative of the *Rules* for which an immediate remedy is required.²

Powers and Don Lee are hereby directed to cease and desist from making any further campaign contributions or engaging in any similar violations of the *Rules*. Powers and Don Lee are each further directed to copy and distribute to each of its employees represented by the IBT campaign material provided it by the R. V. Durham Unity Team.

Such campaign literature shall be 8.5" x 11" and shall be in a form suitable for self mailing without an envelope. The R. V. Durham Unity Team shall provide a camera-ready copy of the literature in the form specified and in a form suitable for xerographic duplication. The R. V. Durham Unity Team shall simultaneously provide the Election Officer with a copy of the literature provided to Powers and Don Lee.

Powers and Don Lee shall each duplicate and mail, via first class mail, to each of its IBT-represented employees a copy of the campaign literature by the close of business on the business day following its receipt of the original of the literature from the Durham campaign. For example, if the material is received by the close of business on Friday it shall be duplicated and mailed by the close of business on Monday; if received by the close of business on Monday, it shall be duplicated and mailed by the close of business on Tuesday, and so on. Powers and Don Lee shall each file an affidavit with the Election Officer, within three days thereafter demonstrating that the required mailing has been accomplished.

Finally, the Secretary-Treasurer of Powers and the General Manager of Don Lee shall sign and post a copy of the attached notice in the same manner as they posted the materials which are the subject of this protest.

No appeal of this determination shall stay the effectiveness of any part of this order. See, e.g., *Rules*, Article XI, § 2(z).

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,

² The other four members of the group of distributors, i.e., Oak Distributors, Donnley Warren, Hubert Distributors and East Town Distributors are hereby put on notice that similar violations of the *Rules* by them will not be tolerated and immediate remedial orders shall issue from the Election Officer if any similar violations are found.

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael H. Holland

cc: Frederick B. Lacey, Independent Administrator, IBT

James DeHaan, Regional Coordinator

George R. Geller, Esq.
30833 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
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Ron Carey
c/o Richard Gilberg, Esquire
Cohen, Weiss & Simon
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(FAX: 212-695-5436)

Eddie Burke
26 Bradford Street
Main Front Door
Charleston, WV 25301
(FAX: 304-342-8348)

R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne

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& Mooney
2033 K St., NW
Suite 300
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(FAX: 202-547-1990)

Chris Scott
R. V. Durham Unity Team
508 Third Street, N.E.
Washington, D.C. 20003
(FAX: 202-835-3821)

Walter Shea
c/o Robert Baptiste, Esquire
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1919 Pennsylvania Avenue, N.W.
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Shea-Liguoris Action Team
c/o James Smith
c/o IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149
(FAX: 215-333-4146)

Chris Thomas, Esq.
American Consulting Group
170 Knowles Dr.
Suite 210
Los Gatos, CA 95030
(FAX: 408-378-5414)

**NOTICE TO ALL IBT MEMBERS
FROM
GARY L. THOMPSON
SECRETARY/TREASURER
POWERS DISTRIBUTING CO., INC.**

All IBT members have a right to support or oppose candidates of their own choosing.

All IBT members have a right to cast a secret mail ballot for candidates for International Office in the IBT.

Powers Distributing Co. will not interfere with your right to support candidates or cast your secret ballot on behalf of the candidates of your own choosing.

Powers Distributing Co. is totally neutral with respect to the outcome of the IBT International Officer elections and does not support or oppose any candidate. The previous posting of campaign literature on the Powers Distributing Co. bulletin board along with a memorandum signed by me does not mean that the Company opposes R. V. Durham, or the members of his slate, for IBT International office or supports candidates who oppose Mr. Durham or members of his slate.

Gary L. Thompson
Secretary/Treasurer

This is an official notice which must remain posted through December 10, 1991. This notice must not be defaced or altered in any manner and must not be covered over with any other material.

**NOTICE TO ALL IBT MEMBERS
FROM
JAY YULA
GENERAL MANAGER
DON LEE DISTRIBUTOR, INC.**

All IBT members have a right to support or oppose candidates of their own choosing.

All IBT members have a right to cast a secret mail ballot for candidates for International Office in the IBT.

Don Lee Distributor, Inc. will not interfere with your right to support candidates or cast your secret ballot on behalf of the candidates of your own choosing.

Don Lee Distributor, Inc. is totally neutral with respect to the outcome of the IBT International Officer elections and does not support or oppose any candidate. The posting of anti-Durham campaign literature on the Don Lee Distributor, Inc. bulletin board along with a memorandum signed by me does not mean that the Company opposes Mr. Durham, or the members of his slate, or supports candidates who oppose Mr. Durham or members of his slate.

**Jay Yula
General Manager**

This is an official notice which must remain posted for a period of not less than forty five days from the initial date of posting. This notice must not be defaced or altered in any manner and must not be covered over with any other material.

Larry Brennan, President of Local Union No. 337, and a candidate for International Vice President on the R.V. Durham Unity Team Slate, alleges that two employers of members of Local Union No. 1038 interfered with the IBT election process by posting at their work places a copy of material opposing R.V. Durham and his slate. In accordance with the decision of the Election Officer issued on November 15, 1991, the R.V. Durham Unity Team by Robert E. Knox, the President of Local Union 1038, submitted to the employers a piece of campaign literature to be mailed to the employees.

After decision by the Election Officer finding a violation, Powers Distributing Company and Don Lee Distributor, Inc., by their representative, agreed to post a notice to employees affirming the right of IBT members to participate in the IBT election without interference by the employers. However, the companies initially declined to comply with the portion of the remedial relief requiring them to mail campaign literature to the employees on behalf of the candidate it derogated in the posting on the basis that a mailing was not justified. Subsequently, the employers stated that they would comply with the totality of the Election Officer remedy but refused to distribute a leaflet that disparaged the employers and their personnel rather than adhering to a campaign message on behalf of the candidate.

A copy of the second page of the campaign literature in question is attached hereto. At the hearing before me all the parties involved, including the Election Officer, agreed that the literature would be distributed with the following revisions:

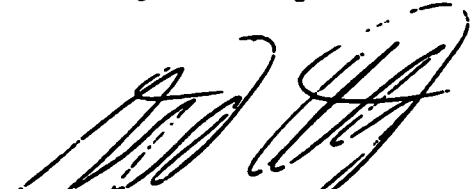
1. The reference to "DOPEH" in the Re: caption shall be deleted;

2. The fifth and sixth paragraphs of the literature shall also be deleted.

Mr. Geller stated that he would have the literature reprinted with those revisions and delivered to Powers and Don Lee by 10:00 a.m. the morning following the hearing. Powers and Don Lee were ordered to make their best efforts to distribute the literature to their employees by the close of business that same day or in any

event, to have the literature distributed no later than 24-hours after delivery to them.

The agreement of the parties resolving this protest is approved and so ordered.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: December 2, 1991

TO: Local 1038 Members Employed by Don Lee and Powers Distributing

FROM: Local 1038 President Bob Knox

RE: DOPEH Employers Illegal Interference in Teamsters Election

On Friday, November 15 the court-appointed Election Officer conducting the IBT election of International Officers, ruled that two of the union-busting employers in DOPEH had violated the election rules by posting literature critical of the R.V. Durham Unity Team.

The Election Officer ruled that both Don Lee and Powers must "cease and desist" their illegal activity against the Durham campaign and that they must pay for this mailing to go to all of our members employed at these two distributorships.

This interference in our election campaign by your employers is just another example of the illegal activities these people will utilize in their effort to bust our union.

It should be obvious to you that both Powers and Don Lee are unhappy that individual members of the Local 1038 Executive Board are supporting the R.V. Durham Unity Team for IBT General President. Durham has already pledged his full support to Local 1038's campaign against the DOPEH distributors if, and when, he is elected General President.

The actions by Gary Thompson of Powers and Jay Yule of Don Lee are another example of the arrogance and total disregard they have for our union and its members. They have worked overtime to do their boss's bidding to destroy the intent and spirit of collective bargaining and the basic principle of freedom of association.

One would think that Thompson would be ashamed by his latest failed attempt at foul play. But what can you really expect from someone who would unlawfully "bug" our negotiating sessions? As for Jay Yule, he has injected himself with the venom of the union busting consultant. Like Gary Thompson, Yule has stepped over the boundary of human decency and become an advocate of human destruction.

The ruling by the Election Officer against two of the DOPEH employers is a sad day for labor relations. But you have the opportunity to send Don Lee and Powers Distributors a powerful message — by voting for the R.V. Durham Unity Team.

Your vote for R.V. Durham will tell Gary Thompson and Jay Yule that we will not stand for their interference in our union's internal affairs.

**Remember — A vote for the Durham Unity Team
is a vote against DOPEH's union-busting!**