



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

November 20, 1991

VIA UPS OVERNIGHT

Joseph M. Davis
Trustee
IBT Local Union 1149
4040 Marlton Cir.
Liverpool, NY 13090

James Howe
Secretary-Treasurer
IBT Local Union 1149
7272 Van Buren Road
Baldwinsville, NY 13027

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

Re: Election Office Case No. P-1080-LU1149-PGH

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 Joseph M. Davis, a member and Trustee of Local Union 1149. Mr. Davis alleges that a campaign mailing was prepared and distributed on behalf of the R.V. Durham Unity Team by Local 1149 in violation of the *Rules*; he further contends that the literature mailed violates the *Rules* because it constitutes an endorsement by the Local Union of the R.V. Durham Unity Team.

This protest was investigated by Regional Coordinator William Kane. The investigation revealed that by letter dated November 7, 1991 Steve Richmond, on behalf of the R.V. Durham Unity Team, requested the Local to distribute, by mail, campaign literature promoting the R. V. Durham Unity Team, the costs of the mailing to be paid by the R.V. Durham Unity Team. Mr. Richmond is a member of Local 1149; while he is a steward, he is not a Local Union officer. The Local's Secretary-Treasurer did

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not inform the other officers or members of the Local's Executive Board of this request. However, pursuant to the request, the Local prepared mailing labels for the R.V. Durham Unity Team campaign mailing. Mr. Richmond was billed \$18.00 by the Local for the cost of the labels and the time utilized to prepare the labels by the Union's office staff.¹

On November 8, 1991, Mr. Richmond arrived at the Union hall with stamped envelopes partially stuffed with campaign literature plus additional literature. Mr. Richmond and other Local 1149 members, none of whom are presently Local Union officers, completed stuffing the envelopes and performed the remaining clerical tasks associated with processing the literature for distribution. Mr. Richmond and the other Local 1149 members performed these tasks as volunteers; none were on Union or employer paid work time during the period they were preparing the R.V. Durham campaign literature for mailing.

The campaign literature ultimately mailed is a letter signed by nine members of Local 1149, including the current President and Secretary-Treasurer of the Local. The letter contains only the signatures of these nine members; the letter does not indicate their present or former positions, if any, in the Local or with the IBT.

Article VIII, §6 of the *Rules* provides that a Local Union is to honor requests to distribute campaign materials by or at the behest of any candidate, as long as the distribution is made at the expense of such candidate. Article VIII, §6(h) also requires the Local to permit volunteers designated by the candidate to perform the tasks associated with the processing and distribution of the literature.

The investigation revealed that Local 1149 did not violate Article VIII, §(6) of the *Rules*. Mr. Richmond, on behalf of the R.V. Durham Unity Team, requested that Local Union 1149 distribute campaign material on behalf of the Unity Team. In accordance with the requirements of the *Rules*, the Local prepared mailing labels to be utilized for such distribution; Mr. Richmond was charged for the costs associated in preparing the labels and accomplishing the mailing. There is no evidence that the Local would have refused a similar request from or on behalf of any other International Union officer candidate or slate of candidates; indeed the *Rules* require the Local to honor all such requests provided that the candidate pays the costs associated with such literature

¹ The Executive Board subsequently voted to charge the R. V. Durham Unity Team \$100.00 for use of the hall and the time spent on the mailing by Local Union office staff.

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distribution. Since the *Rules* require the Local to honor all properly made requests for literature distribution by or on behalf of a candidate for International Union office, consultation between the Local's Secretary-Treasurer -- the officer receiving the request - - and the other members of the Local's Executive Board is unnecessary, indeed meaningless, and not required by the *Rules*.

Article VIII, §10(c) of the *Rules* requires a Union, if it makes its facilities, equipment or other goods and services available to any candidate, make such goods and services equally available to all candidates and notify all candidates in advance of the availability of such goods and services. With respect to the campaign literature distribution, however, the *Rules* on their face notify all candidates of the availability of such Union resource; the *Rules* in Article VIII, §6 require all Local Unions to distribute campaign literature on behalf of all candidates upon a request by such candidates and/or his representative and the payment of the associated costs by the candidate. Accordingly there is no requirement that the Union notify the candidates of the availability of their right to have campaign literature distributed by the Local; the *Rules* provide such advance notice. Accordingly, Local 1149 was not required to provide advance notification to candidates other than the candidates on the R. V. Durham Unity Team prior to distributing the literature as requested on behalf of the Unity Team.

The literature distributed is also not violative of the *Rules*. All members of the IBT including members who are officers or former officers of the IBT or any subordinate body of the IBT are entitled to participate in campaign activities, to openly support or oppose any candidate or to aid or campaign for any candidate. Article VIII, §10(a)(b). Accordingly, that current or former officers of Local 1149 and/or current or former Local Union stewards signed the letter distributed on behalf of the R. V. Durham Unity Team does not violate the *Rules*. Further the letter does not constitute, nor can it be read to constitute, an endorsement of the R. V. Durham Unity Team by Local 1149; the present or former offices held by the signatories to the letter are not even noted on the letter. The letter constitutes an endorsement of the R. V. Durham Unity Team by the members who signed the letter, an activity specifically permitted by the *Rules*.

For the reasons set forth above, this 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

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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/mjv

cc: Frederick B. Lacey, Independent Administrator
cc: William B. Kane, Regional Coordinator (by Hand Delivery)

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

Walter Shea
c/o Robert Baptiste, Esquire
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20006