



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

Michael H. Holland
Election Officer

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November 20, 1991

VIA UPS OVERNIGHT

John B. Wilson
4304 Oldwyck Drive
Janesville, WI 53546

Brendan F. Kaiser
Secretary-Treasurer
IBT Local Union 579
2214 Center Avenue
Janesville, WI 53546-8999

Re: Election Office Case No. P-1097-LU579-NCE

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"), by John B. Wilson, a member of Local Union 579 located in Janesville, Wisconsin. Mr. Wilson challenges a mailing of campaign literature by members of the Executive Board and Business Agents of Local 579 in favor of the R. V. Durham Unity Team. The mailing consists of three separate items: a card entitled "Elect the R. V. Durham Unity Team," a leaflet attacking General President candidate Ron Carey, and a leaflet from the officers of Local 579. This protest was investigated by Regional Coordinators Barbara Z. Quindel and Peggy A. Hillman.

Mr. Wilson's protest raises several, discrete contentions: (1) although the mailing used Local 579's non-profit bulk rate permit, there is no disclaimer on the envelope, in violation of the *Rules*; (2) the leaflet authored by the officers of Local 579 states that members may come to the office of Local Union 579 to read or buy copies of a transcript of Ron Carey's testimony, which constitutes an improper use of union resources; and (3) the leaflet contains laudatory comments about Local Union 579, an improper subject in Mr. Wilson's view. Each of these matters will be considered separately.

I. The Disclaimer

The mailing was sent to members of Local Union 579 in a plain, white envelope with no return address listed. The envelope bears the postage label of Local 579's non-profit organization bulk-rate permit. There is nothing on the envelope besides an address label and the mail stamp. There is no disclaimer on the envelope.

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The last page of the campaign leaflet from the officers of Local 579 states: "Typing time donated by a Local 579 member on a rented word processor. Copying and dissemination paid for personally by your Exe. Bd. mbrs. & B.A.s. Only I.B.T. members or persons who are not Employers may contribute to R. V. Durham's campaign. Employers, representatives of any Employer, Unions, charitable organizations, Trusts, Foundations, or other similar institutions may not contribute any money, goods, services or facilities to his campaign." (emphasis in original)

Article VIII, § 6 (a) (3) of the *Rules* requires the IBT or any IBT Local Union to honor requests to use a non-profit organization bulk rate permit. This section further states that "All literature distributed through use of the non-profit organization bulk-rate permit shall clearly state that it is campaign literature the contents of which are not endorsed by the Union." This so-called disclaimer is alleged to be missing from the mailing at issue.

The reason for requiring a disclaimer is to make certain that members understand that the Union itself does not endorse the contents of the mailing. In most instances, a mailing using a non-profit permit bears a return address of the holder of that permit, i.e., the Local Union's return address is listed as the sender. In that situation, a disclaimer on the envelope is necessary to dispel the implication that the sender endorses the campaign literature. The member should be on notice when receiving an envelope which explicitly lists his Union as the sender that the Union has not endorsed the campaign literature.

In this situation, there is no return address on the envelope. The fact that Local Union 579's postal permit has been utilized can be discovered only if one knows (or discovers) that permit no. 698 belongs to Local 579. There is no indication from the envelope that Local Union 579 is in any way involved in the mailing.

The actual campaign material does contain the disclaimer language as quoted above. While it does not use the language set forth in the *Rules*, the disclaimer adequately notifies Local Union members that Local Union 579 has not endorsed the contents of the mailing.

The Election Officer concludes that the mailing at issue does not violate the *Rules*, given the absence of the Local Union's number and/or address on the envelope and since the disclaimer language in the campaign literature sufficiently complies with the *Rules*.

II: References to Local Union 579

Mr. Wilson complains about laudatory comments concerning Local Union 579 in the campaign material: "I question...the fact that Local 579 appears to be doing some campaigning of their own..." The leaflet written by the officers of Local 579 does contain some references to the Local Union. There is nothing in the *Rules* which limits or constrains the content of campaign literature; indeed, the *Rules* prohibit the censorship of campaign literature and require the Union to distribute proffered literature regardless of its contents. *Rules*, Article VIII, § 6(g). In sum, nothing precludes the authors of this campaign material from including material which the protestor views as irrelevant. Accordingly, this aspect of the protest is denied.

III. The Use of the Local Union's Facilities

The second page of the campaign literature mailed to Local 579 members states:

BAD NEWS

Ron Carey- Tom Sever - 3rd Runner Up

RON CAREY - WAS GRANTED IMMUNITY IF HE TESTIFIED AND WOULD NOT PLEAD HIS 5TH AMENDMENT RIGHTS. IF HE WAS CLEAN HE WOULD NOT HAVE BEEN NAMED IN THE RACKETEERING INFLUENCE CORRUPT ORGANIZATIONS ACT (R.I.C.O) INDICTMENT, SSS 87 Cr. 943 (DNE) where he and John Long wrote and signed checks on Feb. 4, 1981 for \$100,000.00 and on May 26, 1981, for another \$50,000.00 to "PENVEST" who's "Investment Manager", Jesse Hyman associated with the Mafia. The last \$50,000.00 is over the F.D.I.C. limit. DO YOU WANT HIM HANDLING YOUR I.B.T. TREASURY? WE HAVE THE FULL UNABRIDGED TRANSCRIPT OF HIS TESTIMONY IN THIS LAWSUIT. COME TO THE LOCAL UNION OFFICE AND READ IT OR WE'LL MAKE A COPY @ \$.10 PER PAGE.... [emphasis in original].

The transcript referred to in the mailing consists of 85 pages of what purports to be Mr. Carey's testimony, although there is no cover sheet or other identifying caption on the materials. Local Union 579 Secretary Treasurer Brendan F. Kaiser, one of the authors of the literature, states that he obtained the transcript from Mr. Richard Leebove of Teamsters Election News in Detroit. Mr. Kaiser states that he has the transcript in his office at Local Union 579 and that if any member comes to the Local Union office and

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asks for the transcript, the member will be referred to him and that he personally will either show the transcript or make copies. As of November 19, 1991, only one member had asked to see the transcript.

The question posed is whether this reference to and use of the offices and equipment of Local Union 579 constitutes an improper use of union resources in violation of Article VIII, § 10(c) and Article X, § 1(b)(3) of the *Rules*. Although reference to the transcript is only a small portion of a much longer campaign document, the reference is intended to validate charges made against candidate Ron Carey in the campaign document. Clearly, making a piece of partisan campaign material available at the Local Union offices constitutes a use of the Union's facility in connection with a campaign.

For instance, instead of the Local's office, Mr. Kaiser could have suggested that members contact him at his home to see the document in question, but that would have required someone to be present at his home and would have required him to have a copier service available should anyone wish copies; this was clearly a less convenient alternative than using the Local Union office, a location with which presumably most members are familiar. Use of the Union's office provided a benefit to validate the negative campaign statements made in the mailed literature.

The *Rules* prohibit the IBT or any subordinate body of the IBT from making contributions to any International officer candidate's campaign. Campaign contributions include both direct or indirect contributions where the purpose, object or foreseeable effect of the contribution is to influence the election of an International Union officer candidate. *Rules*, Definitions, § 6 at page A-2. A campaign contribution remains a campaign contribution where its purpose, object or foreseeable effect is to negatively impact upon an International Union officer candidate's campaign. See Election Office Case No. P-284-IBT, reversed on other grounds 91-Elec. App.-194.

Here the document referring to a transcript housed in the Local Union office was clearly campaign material; the purpose of the material was to impact--albeit negatively--on the candidacy of General President candidate Ron Carey. Referring to the transcript, and making it available for inspection, is to provide further support for the negative message of the previously distributed leaflet. Utilizing the Local Union Hall for this purpose contributes the use of that facility to the International Union officer election, i.e., to influence the election of General President candidate Ron Carey by persuading IBT members not to vote for him. Accordingly, the use of the Local Union offices for these purposes constitutes a campaign contribution by the Local; since the Local is prohibited from making campaign contributions under the *Rules*, the *Rules* have been violated.

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Finally, asking members to come to the Local Union offices to see the document creates the implication that the Local Union has endorsed the contents of the campaign material. An endorsement by a Local Union--whether a positive endorsement or, as in this case, a negative endorsement--also constitutes a campaign contribution violative of the *Rules*. See Election Office Case No. P-963-LU677-ENG, affirmed 91-Elec. App.-212.

For these reasons, the Election Officer concludes that this aspect of Mr. Wilson's protest should be granted. The Election Officer directs Mr. Kaiser to immediately, within one (1) day of the date of this decision, remove the transcript from the offices of Local Union 579. In order to dispel the confusion which may exist as a result of the improper reference in the campaign material and the improper use of the Union's facilities, the Election Officer further orders that Mr. Kaiser sign and Local Union 579 duplicate on Local 579 stationary the attached notice. Within two (2) business days of the date of this decision, Local 579 shall post the signed notice on all Union bulletin boards at the Local's hall and at all worksites where Local 579 members are employed. Within three (3) days of the date of this decision, an affidavit shall be filed with the Election Officer demonstrating that the transcript has been removed from Local 579's office and that the notice has been signed, duplicated and posted as directed. Under and in accordance with Article XI, § 2(z) of the *Rules*, an appeal from this decision shall not stay the implementation of these requirements.

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

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cc: Frederick B. Lacey, Independent Administrator

Barbara Z. Quindel, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esquire

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

Walter Shea
c/o Robert Baptiste, Esquire

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**NOTICE
TO ALL MEMBERS OF IBT LOCAL 579
FROM IBT LOCAL UNION 579 EXECUTIVE BOARD**

All members of Local Union 579 have the right to support or oppose any candidate or slate of candidates for IBT International Union office. Campaign activities for or against any candidate for election to any IBT International Union office must not involve the expenditure of Union funds.

Recently, members of Local Union 579 received a mailing from certain members, including officers and business agents, of Local Union 579 which stated that certain campaign materials were available at the office of Local Union 579. Local 579 and/or its Executive Board cannot and have not endorsed any IBT International Union officer candidate. Use of the Local's office to make campaign material available--as described in the recent mailing--constitutes an improper use of Union resources in support of a particular candidate. No such campaign material will be made available at the offices of Local Union 579.

**Brendan F. Kaiser
Secretary-Treasurer
on behalf of the Executive Board
of IBT Local Union 579**

***This is an official notice and must remain posted until December 10, 1991,
and must not be altered, defaced, or covered with any other material.***

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December 26, 1991

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4304 Oldwyck Drive
Janesville, Wisconsin 53546

Brendan F. Kaiser
Secretary-Treasurer
IBT Local Union 579
2214 Center Avenue
Janesville, WI 53546-8999

**Re: Election Office Case No. P-1097-LU579-NCE
(Compliance)**

Gentlemen:

On November 20, 1991, the Election Officer issued his decision in the above numbered case ordering Brendan F. Kaiser as Secretary-Treasurer of Local Union 579 to remove certain material from the offices of Local 579 and to sign and have posted a notice on all Local Union bulletin boards at the Local Union hall and at all worksites where Local 579 members are employed. An affidavit was received from Mr. Kaiser attesting that the material was removed from the Local Union premises on November 21, 1991 and that the notice was signed and delivered for posting at the Janesville Auto Transit and Fleet Carriers and mailed for posting to stewards at all other Local Union worksites on November 22, 1991. By letter transmitted by facsimile on November 30, 1991, John Wilson claimed that the notice had not been posted at all worksites where Local 579 members are employed.

The issue of compliance was investigated by Regional Coordinator Barbara Z. Quindel. Mr. Wilson claims that the notice was not posted at at least three worksites where Local 579 members are employed, at Janesville Transit, at one of the two bulletin boards at Lycon Garage and at Mr. Karl's. The Election Officer investigation revealed that the notice had been mailed to stewards at all three worksites. At Lycon Garage, the steward was away from work on or after about November 22, 1991 but claims that he posted the notice on both bulletin boards prior to leaving. At Mrs. Karl's, the steward had been absent from work during the Thanksgiving week, but posted the notice when he first received it, after his return from his holiday.

Local 579 members are employed at approximately forty-five (45) separate worksites distributed in a geographical area approximately 110 by 40 miles in size. Mailing the

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notices to stewards at these worksites for posting, as Mr. Kaiser did, was appropriate, practical and the only reasonable method for obtaining the postings in a timely fashion.

The notices were eventually posted at all worksites. That the notice may have been posted somewhat tardily at two or three of the forty-five sites employing Local 579 members is insufficient to establish a failure on the part of Local 579 to comply with the Election Officer's decision of November 20, 1991.

Further, the remedy ordered by the Election Officer on November 20, 1991 was to counteract the potential implication that the Local Union had as an entity taken a political position negative to the then-candidacy of Ron Carey as IBT General President. Mr. Carey was, however, the winning candidate in the recently concluded IBT International Union officer election. Accordingly, any failure of Local 579 to comply with the Election Officer's November 20, 1991 decision -- assuming that the Local in fact failed to comply -- did not affect the outcome of the election. See e.g. *Rules*, Article XI §(1)(b)(2).

For the foregoing reasons, the Election Officer determines that Local 579 has substantially complied with his November 20, 1991 decision in the above matter and that no further remedial order is required under the circumstances of this case.¹

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.

¹ In his compliance complaint, Mr. Wilson also states that Local 579 has refused to respond to his request to use its facsimile transmission machine for transmitting protests and protest materials to the Election Officer. (In Election Office Case No. P-1033-LU579-NCE, another protest involving Mr. Wilson, the Election Officer found that it did not violate the *Rules* for the Local to allow Robert W. Cleaton, a Local 579 Business Agent, to use the Local Union's fax machine to transmit information in support of his protest to the Election Officer.) Local 579 has advised the Election Officer that all members are permitted to use the facsimile machine for transmittal of materials upon payment to the Local Union of \$1.00 per page or the actual cost of transmittal, whichever is greater.

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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,



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