

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

Michael H. Holland
Election Officer

(202) 624-8778
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December 24, 1991

VIA UPS OVERNIGHT

Gerald Brown
1304 Hanger St.
Little Rock, AR 72202

Robert Fitts
Business Agent
IBT Local Union 878
6000 Patterson Ave.
Little Rock, AR 72219

Billy Patrick
President
IBT Local Union 878
6000 Patterson Ave.
Little Rock, AR 72219

Re: Election Office Case No. P-1140-LU878-SOU

Gentlemen:

A protest was filed by Gerald Brown pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Mr. Brown alleges that Robert Fitts, a business agent for Local Union 878, violated the *Rules* when he asked Mr. Brown for whom he voted in the recently concluded International Union officer election. Brown further alleges that Fitts violated the *Rules* when, after Brown disclosed for whom he had voted, Fitts said "That's bad". The investigation of this protest was conducted by Election Office Adjunct Regional Coordinator Frances Cusack.

Gerald Brown is a member of Local Union 878 and a part time employee of United Parcel Service ("UPS"). Robert Fitts is a business agent employed by Local Union 878. Fitts stated that on December 3, 1991, he was making telephone calls to Local Union 878 members to determine whether they had received a ballot and if they had cast a ballot in the International Union officer election. If the members told Fitts that they had not cast their ballot Fitts encouraged them to cast their ballot for the R. V.

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Durham Unity Team Slate. Fitts denies asking members who stated that they had cast their ballots for whom they voted.

Brown stated that on December 3, 1991, he received a call from Fitts and was asked whether he received a ballot and if he had voted. Brown further stated that when he informed Fitts that he had cast his ballot, Fitts asked for whom he voted and Brown replied that he voted for Ron Carey. In response Brown alleges that Fitts stated "That's not good, but I'm glad you voted".

Brown contends in his protest that Fitts' inquiry concerning how he voted was a form of intimidation that compromised the secret ballot. Even assuming the facts are as Brown alleged, Fitts' inquiry regarding how Brown voted, and Fitts' response upon learning that Brown had cast his ballot for Ron Carey, were not violative of the *Rules*. It is not violative of the *Rules* to ask a member how he voted as long as the response to such inquiry is not coerced and the member is free to not respond. Similarly, the voluntary disclosure by a member of how he or she voted does not wrongfully destroy the secrecy of the ballot.

Fitts' reaction upon learning that Brown cast his ballot for the Ron Carey Slate is not coercive, threatening or otherwise violative of the *Rules*. The statement appears to be spontaneous. It does not threaten retribution or retaliation for the vote. Brown does not allege that the statement was made in a threatening or belligerent tone of voice. In fact, the portion of the statement focused on in the protest, "That's not good", could reasonably be interpreted as "not good" for Durham's candidacy and not an implied threat to Brown. This is particularly true given the fact that in the next breath Fitts informs Brown that "I'm glad you voted".

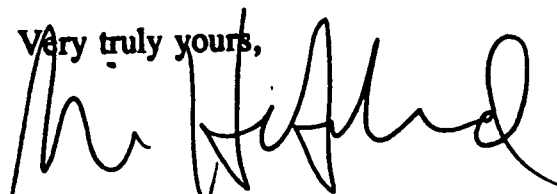
Based upon the foregoing the Election Officer concludes that neither Fitts' inquiry concerning how Brown voted nor Fitts' response to Brown's voluntary disclosure that he voted for Ron Carey were coercive or otherwise violative of the *Rules*. The protest is therefore DENIED.

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,

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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 large initial "M" and a long, sweeping tail.

Michael H. Holland
Election Officer

cc: Frederick B. Lacey, Independent Administrator
Larry R. Daves, Regional Coordinator