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February 5, 1991

**VIA UPS OVERNIGHT**

Ron Carey  
c/o Committee to Elect  
Ron Carey  
26 Bradford Street  
Main Front Door  
Charleston, WV 25301

R.V. Durham  
Twelfth Vice President, IBT  
25 Louisiana Ave., N.W.  
Washington, D.C. 20001

Weldon L. Mathis  
General Secretary-Treasurer, IBT  
25 Louisiana Avenue, N.W.  
Washington, D.C. 20001

Mr. Richard Gilberg  
Cohen, Weiss & Simon  
330 West 42nd Street  
New York, N.Y. 10036

William J. McCarthy  
General President, IBT  
25 Louisiana Avenue, N.W.  
Washington, D.C. 20001

Mr. Hugh Beins  
Beins, Axelrod & Osborne  
2033 K Street, N.W.,  
Suite 300  
Washington, D.C. 20006

**Re: Election Office Case No. P-250-IBT**

Gentlemen:

A pre-election protest was filed pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In that protest, filed on behalf of the Committee to Elect Ron Carey ("Carey Campaign"), the complainant alleges that the December, 1990 and January, 1991 editions of the International Teamster magazine promoted the candidacies of members of the "Durham-Mathis Unity Team in violation of Article VIII, Section 7 of the Election Rules. Specifically, the Carey Campaign alleges that these editions of the magazine promoted the candidacy of the R.V. Durham and Weldon L.

Mathis and the other members of the "Durham-Mathis Unity Team"<sup>1</sup> through the extensive coverage and numerous coverage of these individuals. The Election Officer reviewed the two magazines in question, as well as many previous editions of the International Teamster, and makes the following determinations.

The Carey Campaign's objections to the December 1990 issue of the magazine concern the ". . . 3 prominent pictures of Mr. Durham . . ." in the issue. The first two (2) photographs of Durham are contained in a two page article reporting on the progress of the ongoing National Master Freight Negotiations. Durham is the Director of the IBT's National Freight Division and is co-chairing, with General President McCarthy, the National Master Freight negotiation committee. The two page article about these negotiations is appropriate given the importance of these negotiations to a significant segment of the IBT's membership. Similarly, given the central role of Mr. Durham in those negotiations, his photographs in that article (one of which is not identified in the picture's caption and is a back/side view of Mr. Durham as seated), is not unreasonable or violative of the Election Rules. In fact, the magazine in the past has contained far more extensive coverage of previous National Master Freight negotiations and of the role of the Director of the IBT's National Freight Division in those negotiations; see February, 1988, International Teamster, pp., 2-3, 8-9.

The third photograph of Durham in the December, 1991 Teamster Magazine, is in an item concerning an award given to Dr. Michael E. DeBakey by the Baylor College of Medicine where Dr. DeBakey serves as the College's Chancellor and Chairman of its Department of Surgery. Dr. DeBakey is a charter member of the IBT Medical Advisory Committee. Durham is the IBT's health and safety director (a position he has held since the inception of the department in 1973), and has been active in the work of the IBT Medical Advisory

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<sup>1</sup>. The protest questions the coverage of R.V. Durham, Frank Hackett, Robert Simpson, Charles Piscitello and Ernie Tusino. R.V. Durham is an announced candidate for General President of the IBT. Mr. Durham is a Vice President of the International Union; Director of the International Department of Safety and Health; and a member of the IBT Medical Advisory Committee. Frank Hackett is a Vice President of the IBT and a candidate for reelection to that position and is associated with the Durham-Mathis Unity Team. Robert Simpson is an appointed International Trustee of the IBT; Charles J. Piscitello is the newly appointed Executive Assistant to the General President of the IBT; Ernie Tusino is the co-chairman of the National Automobile Industry Negotiating Committee. Mr. Simpson is depicted on campaign literature as part of the Durham-Mathis Unity Team; Messrs. Piscitello and Tusino are not.

Committee, since its creation in 1973. Pictured in the photograph are Durham, DeBakey, IBT International Trustee (and Medical Advisory Committee member and International Union Office candidate on the Durham-Mathis Slate) Ben Leal, Medical Committee Chairman Dr. Donald Dawson, and Tom Robertson of the IBT Central States Health and Welfare Fund. Durham was present at the event honoring DeBakey and the event is newsworthy given Dr. DeBakey's long association with the IBT and the IBT Medical Advisory Committee. The photograph does not violate the Election Rules.

The Carey Campaign alleges that the January, 1991 edition of the International Teamster is violative of the Election Rules because of the coverage of the annual meeting of the IBT Medical Advisory Committee meeting, in which Durham's photograph appears twice; the coverage of the ongoing National Master Freight negotiations, containing a single photograph of Mr. Durham; and, the separate photographs of Frank Hackett, Robert Simpson, Charles Piscitello, Ernie Tusino, who the Carey Campaign maintains are members, or supporters, of the Durham-Mathis Unity Team.

The Carey Campaign alleges that the three page article on the annual meeting of the IBT Medical Advisory Committee in the January, 1991 edition of the International Teamster is "unusual". A review of the past editions of the International Teamster reveals that this assertion is not true. The IBT Medical Advisory Committee has been in existence since 1973 and its annual meeting has received regular coverage in the magazine. In January 1989, in 1990 and in the subject 1991 edition, that coverage has consisted of a three page article with photographs of the meeting's participants. Mr. Durham has been active in the work of the Committee since its inception and chairs its annual meetings. Mr. Durham is the head of the IBT's Health and Safety Department. He has held that position since 1973. The coverage of the 1988 annual meeting of the Medical Advisory Committee, contained in the January, 1989 edition of the magazine, included seven photographs, with a prominent photograph of Mr. Durham leading the article. The January, 1990 article had five photographs, with Mr. Durham prominently identified in one. These two magazines appeared well before Mr. Durham announced his candidacy. The January, 1991, article has seven photographs of the participants in the meeting with Mr. Durham prominently identified in one photograph and as part of a group, but not individually identified, in another. The coverage of the annual meeting of the Medical Advisory Committee in the January, 1991 edition is consistent with the previous coverage of that event. Similarly, the photographs and coverage of Durham in the article is not inconsistent with previous articles or with Durham's participation in the work of the committee.

The photograph of R.V. Durham on page 11 of the January 1991 edition of the International Teamster, in the article concerning the start of the National Master Freight Negotiations, like the

coverage of the negotiations in the December, 1990 issue, is not violative of the Rules. The photograph shows Durham seated as part of a group of IBT negotiating committee members. Durham is a member of that committee, as is Frank Hackett who is also pictured as part of the group. The single page article reports on the start of negotiations that will affect a significant number of the IBT's membership and is newsworthy. )R

Another photograph of International Vice President Frank Hackett on page 3 of the January International Teamster appears in an article regarding a demonstration in Boston, MA on the issue of replacement workers. Hackett is a Vice President from the New England region which includes Boston. Hackett attended the demonstration. The coverage of the demonstration in the International Teamster is appropriate because it relates to an issue of great concern to the IBT, as well as to the Labor Movement generally, i.e., the legal status of "replacement workers;" the coverage also relates to a strike by IBT members against a company owned by a large food and consumer goods conglomerate.

The photographs of Robert Simpson and Charles J. Piscitello, appear in stories concerning their appointment as International Trustee and Executive Assistant to the General President, respectively. The photograph of Piscitello and Ernie Tusino accompanies in an article on the preparations for the upcoming car-haul negotiations. Each of these items are newsworthy.<sup>2</sup>

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<sup>2</sup>The Carey Campaign does not specifically object to the coverage of Weldon J. Mathis, the General Secretary-Treasurer of the IBT and an announced candidate for re-election to that position as part of the Durham-Mathis Unity Team. There is a photograph of Weldon Mathis in the December magazine at page 23. That photograph is in an item reporting on a benefit golf tournament for the Little City Foundation of Palatine, Illinois. The Little City Foundation has been a favored charity of the IBT for a number of years. Among the various fund raising activities for the Little City Foundation supported by the IBT is an annual golf tournament. In fact, the IBT has been a major sponsor of that event. The annual golf tournament has been covered in the International Teamster and that coverage has included photographs of the participants. See, eg., December, 1988, pp. 10-11. Mr. Mathis has attended those golf tournaments on behalf of the IBT in the past and his photograph has appeared in articles reporting on the tournaments. see, January, 1990, p. 7. Given the IBT's long standing support of the Little City Foundation, its sponsorship of the golf tournament and Mr. Mathis' participation in that event, the coverage of the event in the December, 1990 issue of the International Teamster was not unreasonable or violative of the Election Rules.

The Carey Campaign also alleges that the International Teamster failed to carry newsworthy items on Ron Carey's campaign activities. While, Mr. Carey's campaign, and the fact that he is the only candidate to secure sufficient signatures to become an accredited candidate for General President of the IBT, are newsworthy events, the International Teamster has not reported on any campaign activities of any candidate for delegate or International Officer, nor do the Rules require such coverage. See, e.g., Article VIII § 8 and 9. Moreover, the fact that Mr. Carey is an accredited candidate means that he has actual access to the pages of the magazine for communicating with the entire membership of the IBT. As such, the members of the IBT will be informed that Ron Carey is an accredited candidate for General President and will be able to, at a minimum, infer that he is the only candidate for General President to be so accredited.

The Carey Campaign further alleges that Mr. Carey's opposition to the proposed United Parcel Service ("UPS") collective bargaining agreement was newsworthy and should have been reported in the magazine. The fact that a principal officer of a Local Union was opposed to the ratification of the UPS agreement, an agreement which covers IBT members in a great many Local Unions, is not in itself newsworthy. This is particularly true given the fact that ratification of the UPS agreement was opposed by the committee that negotiated the agreement. Thus, Mr. Carey's position was no different than numerous members of the IBT holding similar or higher office in the IBT; his opposition therefore did not require separate coverage.

Article VIII, Section 7 of the Election Rules provides that "[n]o Union-financed publication or communication may be used to support or attack the candidacy of any person. . ." The Election Rules go on to prohibit the use, in a Union-financed publication, of larger more attractive photographs than previously used, unless there is a valid journalistic reason for it; article and accompanying photographs of candidates about insignificant or unnewsworthy events; and, a substantial number of articles or photographs featuring a particular candidate.

The Election Officer has carefully reviewed the December, 1990 and January, 1991 editions of the International Teamster, as well as the previous editions of the magazine, and concludes that the violations of the Elections Rules alleged in the Carey Campaign protest are not supported by fact. Each of the articles and accompanying photographs at issue concern valid journalistic subjects that are newsworthy and of interest and concern to the IBT membership. Taken as a whole, the kinds and quality of the articles in the editions of the magazine which are the subject of the protest are consistent with previous editions published prior to the formation of the Durham-Mathis Unity Team. Indeed, similar news articles and features with accompanying photographs regarding

National Master Freight negotiations and the IBT Medical Advisory Committee were published prior to the entry of the Consent Order. The portrayal of the members and supporters of the Durham-Mathis Unity Team in those articles is neither excessive nor out of proportion with their involvement in the activities reported on. The portrayal, including photographs, of these members is no different, and in certain respects less extensive, than the portrayal and coverage of IBT members and officers engaged in similar events in prior years. For the foregoing reasons, the instant 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  
Election Officer

cc: Frederick B. Lacey, Independent Administrator, IBT

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IN RE:

COMMITTEE TO ELECT RON  
CAREY, et al.

COMPLAINANT,

and

WILLIAM J. MCCARTHY,  
PRESIDENT, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

RESPONDENT.

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DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal of a February 5, 1991, decision of the Election Officer concerning a pre-election protest in Case No. P-250-IBT. A hearing was held before me on February 11, 1991, in which the following persons were heard by way of teleconference: Barbara Hillman and Michael Holland of the Election Office; Richard Gilberg, Esq., on behalf of the complainant/appellant, the "Committee to Elect Ron Carey" (hereinafter sometimes referred to as the "Carey proponents"); Hugh Beins, Esq., on behalf of R. V. Durham; Patrick Szymanski, Esq., on behalf of Walter Shea, Joseph Treretola, and Daniel Ligurotis; IBT General President William McCarthy; and Louis Riga, Secretary Treasurer of Local 879. James Zazzali, Esq., appeared in person on behalf of Mr. Durham. Written submissions, including the Election Officer's Summary, were also received.

The Committee to Elect Ron Carey maintains that the December 1990 and January 1991 issues of The International Teamster



magazine gave undue prominence in articles and pictures to candidates for International offices who are members of the "Durham-Mathis Unity Team." The protest questions the coverage afforded R. V. Durham (a candidate for IBT General President) in particular, as well as Frank Hackett, Robert Simpson, Charles Piscitello and Ernest Tusino. The Committee to Elect Ron Carey also contends that The International Teamster unfairly and improperly denied coverage to Mr. Carey.

Daniel C. Ligurotis, an International Vice President and a candidate for General Secretary-Treasurer, joined in the objections to the coverage given Mr. Durham and made similar objections as to coverage of Frank Hackett, an International Vice President and candidate for that office. In addition, Mr. Ligurotis seeks to hold General President McCarthy responsible for the willful violation of the Rules for the IBT International Union and Delegate Officer Election ("Election Rules").

Walter Shea and Joseph Treretola, both candidates for International office, also joined in the protest and adopted by reference the contentions of Mr. Ligurotis. In his February 5, 1991, decision, the Election Officer did not find any violation of the Election Rules and thus denied the protests. As stated in the Election Officer's Summary, pp. 5-6:

The Election Officer has carefully reviewed the December, 1990 and January, 1991 editions of the International Teamster, as well as the previous editions of the magazine, and concludes that the violations of the Elections Rules alleged in the Carey Campaign protest are not supported by fact. Each of the articles and

accompanying photographs at issue concern valid journalistic subjects that are newsworthy and of interest and concern to the IBT membership. Taken as a whole, the kinds and quality of the articles in the editions of the magazine which are the subject of the protest are consistent with previous editions published prior to the formation of the Durham-Mathis Unity Team. Indeed, similar news articles and features with accompanying photographs regarding National Master Freight negotiations and the IBT Medical Advisory Committee were published prior to the entry of the Consent Order. The portrayal of the members and supporters of the Durham-Mathis Unity Team in those articles is neither excessive nor out of proportion with their involvement in the activities reported on. The portrayal, including photographs, of these members is no different, and in certain respects less extensive, than the portrayal and coverage of IBT members and officers engaged in similar events in prior years. For the foregoing reasons, the instant protest is DENIED.

This appeal followed.

As noted, the Committee to Elect Ron Carey contended that the December 1990 and January 1991 editions of The International Teamster magazine promoted the candidacies of members of the Durham-Mathis Unity Team in violation of Article VIII, Section 7 of the Election Rules. In the December 1990 issue there are three photographs of Mr. Durham. The first two are embodied in an article reporting on the progress of the ongoing National Master Freight negotiations. As the Election Officer found, Mr. Durham is the director of the IBT's National Freight Division and is co-chairing with General President McCarthy the IBT National Master Freight negotiations committee. The article about these negotiations is appropriate, given the importance of the negotiations to the IBT membership. Also, given the role that Mr. Durham was playing in those negotiations, his photographs in

that article are not unreasonable in their size or showing or violative of the Election Rules. It is undisputed that in the past this magazine has contained far more extensive coverage of previous National Master Freight negotiations and of the role of the Director of the IBT National Freight Division in those negotiations.

The third photograph of Mr. Durham in the December 1990 magazine concerns an award given to Dr. DeBakey by the Baylor College of Medicine where Dr. DeBakey is on the faculty. It is not disputed that Dr. DeBakey is a charter member of the IBT Medical Advisory Committee and that Mr. Durham is the IBT's Health & Safety Director and has been such since the beginning of that department in 1973.

In the picture with Mr. Durham and Dr. DeBakey are Messrs. Ben Leal, an International Trustee and Medical Advisory Committee member; and Tom Robertson of the IBT Central States Health & Welfare Fund. Mr. Durham was present at the event honoring Dr. DeBakey. The Election Officer found that the event was a newsworthy event in view of Dr. DeBakey's long association with the IBT and the Medical Advisory Committee.

Again, I find that this photograph does not violate the Election Rules.

Next, the Carey proponents allege that the January 1991 of The International Teamster is violative of the Election Rules because of the coverage of the Annual Meeting of the IBT Medical

Advisory Committee. Again, Mr. Durham's photograph appears twice. The Carey proponents also point to the coverage of the National Master Freight negotiations, with reference to a single photograph of Mr. Durham; and the separate photographs of Messrs. Hackett, Simpson, Piscitello and Tusino, as to whom the Carey proponents state they are members or supporters of the Durham-Mathis Unity Team. In connection with the article on the Medical Advisory Committee in this issue, the Carey proponents say that the article therein is "unusual." However, the Election Officer reviewed past editions of the magazine. On this basis he was able to say that such coverage was "not unusual." He noted that the IBT Medical Advisory Committee has been in existence since 1973 and that its annual meetings have received regular coverage in the magazine. In January 1989, January 1990 and of course in the January 1991 edition that coverage has consisted of a three-page article with photographs of the participants at the meeting. The Election Officer's decision, p. 3.

I agree with the decision of the Election Officer that the coverage of the annual meeting of the Medical Advisory Committee as reflected in the January 1991 edition is consistent with previous coverage of that event, deals with a newsworthy event, and the coverage afforded was reasonable given the nature of the event.

Reference is also made to the photograph of Mr. Durham on page 11 of the January 1991 edition of the magazine, tied to the

article concerning the start of the National Master Freight negotiations. This, like the coverage of the negotiations in the December 1990 issue, is not violative of the Election Rules. The photograph shows Mr. Durham seated as part of a group of negotiating committee members and he is a member of that committee, as is Frank Hackett who is also pictured as part of the group. The one-page article reports on the start of negotiations. As I have indicated above, these negotiations are of great significance to a large part of the IBT membership and the event certainly is newsworthy. Once again, the coverage was reasonable.

There is also a photograph of Vice President Frank Hackett of page 3 of the January 1991 issue. This deals with an article regarding a demonstration in Boston on the issue of replacement workers. Mr. Hackett is a Vice President from the New England region which includes Boston. He obviously had attended the demonstration. The coverage of that demonstration is, as found by the Election Officer, appropriate because it deals with an issue that is of great concern to the IBT and to the labor movement generally, the legal status of "replacement workers"; and the coverage also relates to a strike by IBT members against a company owned by a large food and consumer goods conglomerate. Again, I find the subjects of the articles newsworthy and agree with the Election Officer that the coverage was reasonable, considering the nature of the event.

Dealing with the photographs of Messrs. Simpson and Piscitello, these appear in stories concerning their appointments as International Trustee and Executive Assistant to the General President. The photograph of Messrs. Piscitello and Tucino is in connection with an article dealing with preparations for the upcoming car haul negotiations. Again, I agree with the Election Officer that these were newsworthy events and that the coverage was reasonable.

The Election Officer notes that the Carey proponents do not specifically object to the coverage of Mr. Mathis, the General Secretary-Treasurer of the IBT and a candidate for reelection to that position as part of the Durham-Mathis Unity Team. Nonetheless, the Election Officer notes that there was a photograph of Mr. Mathis in the December 1990 magazine at page 23. As the Election Officer reports, the photograph is with an item reporting on a benefit golf tournament for a charity that has been favored by the IBT for many years. This tournament has been covered in the past in the magazine and that coverage has often included photographs of the participants. See Election Officer's Decision, p. 4, n.2. Again, I agree with the Election Officer and find that the event was a newsworthy event and that the coverage was not unreasonable and not violative of the Election Rules.

The Election Officer next deals with the claim of the Carey proponents that the magazine failed to carry newsworthy items on

Mr. Carey's campaign activities. It is true that Mr. Carey's campaign and the fact that he is the only candidate to secure sufficient signatures to become an accredited candidate for General President of the IBT are newsworthy events. It is also true that the magazine has not reported on these events. However, it must be noted that the magazine has not reported on any campaign activities of any candidate or delegate or International officer and the Rules do not require such coverage. See Article VIII, Sections 8 and 9. As the Election Officer also notes, Mr. Carey, as an accredited candidate, has actual access to the pages of the magazine for communicating with the entire membership of the IBT. Thus he is able to inform the members that he is an accredited candidate and they will be able to infer that at the moment he is the only candidate to be so accredited.

It was argued to the Election Officer, and also argued before me, by the Carey proponents that Mr. Carey's opposition to the proposed United Parcel Service collective bargaining agreement was newsworthy and should have been reported in the magazine. However, the Election Officer notes that the fact that a principal officer of a Local Union was opposed to ratification of the agreement which covers IBT members in many Locals is not in itself newsworthy, particularly since said ratification was opposed by the committee that negotiated the agreement. Mr. Carey's position, the Election Officer found, was no different than was the position of numerous members of the IBT holding

similar or higher office in the IBT; thus his opposition did not require separate coverage. I agree.

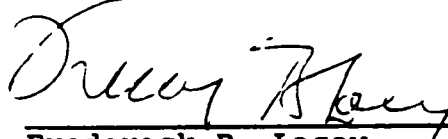
It is further noted that the protesters before me conceded that they had not submitted any "newsworthy" items to The International Teamster for publication. Thus they are not in a position to argue that they made such submissions but that their submissions were rejected. In any event, I am in full agreement with the Election Officer's determination, in his decision at pp. 5-6, that violations of the Election Rules alleged by the Carey proponents in their protest have not been established. As the Election Officer found, each of the articles and photographs at issue dealt with newsworthy subjects that are of interest and concern to the IBT membership and were reasonable under the circumstances. Moreover, what was published is consistent with prior editions of the magazine published before the formation of the Durham-Mathis Unity Team. Thus coverage was neither excessive nor out of proportion with the involvement of the participants in the activities reported. There is no violation of the Election Rules (Article VIII, Section 7) which provide that "no Union-financed publication or communication may be used to support or attack the candidacy of any person." While it is clear that Union officers cannot use a Union magazine to promote their own candidacy, realistically it must be recognized that incumbent officers involved in newsworthy events may find that their activities have been publicized. Camarata v. Teamsters,



478 F.Supp. 321, 330 (D.D.C. 1979). In the event the claim is one of "overinclusion," the claim is rejected by me. To the extent there is a claim of exclusion, as I have already indicated, the Carey proponents have not demonstrated that Mr. Carey has engaged in newsworthy union-related activity and that the IBT refused to report in the magazine on that activity when asked to do so, or with full notice of such activity. In conclusion, the determination of the Election Officer is amply supported by the evidence and will be affirmed.

Turning to the protests on behalf of Messrs. Shea, Ligurotis and Treretola, the arguments here are essentially the same and my determination is as it is with respect to the claims by the Carey proponents.

One further point should be considered. It was said that the Election Officer on December 17, 1990, issued an opinion which to some extent he departs from in his determinations in the matters now before me. A close reading of his decision here indicates to me that there is no such departure. Accordingly, the Election Officer's decision is affirmed in all respects.

  
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Frederick B. Lacey  
Independent Administrator

Dated: February 13, 1991