

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

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September 20, 1991

VIA UPS OVERNIGHT

Richard N. Gilberg, Esq.
Cohen, Weiss and Simon
330 West 42nd Street
New York, NY 10036-6901

Richard Leebove
RL Communications
1959 E. Jefferson Ave
Detroit, MI 48207

Re: Election Office Case No. P-284-IBT

Gentlemen

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protest was filed on behalf of the Committee to Elect Ron Carey ("Carey") and was assigned the above-referenced case number. In that protest Carey alleges that the *Rules* were violated as a result of the publication and distribution of a four page multi-colored tabloid entitled "Teamster Election News."

The original protest was supplemented by various additional filings denoting the locations and Local Unions where the material was allegedly distributed. In addition to both the initial and subsequent Carey filings, the Election Officer also received nineteen other protests covering the Local Unions cited by Mr. Gilberg plus additional Local Unions. The nineteen protests alleged that the *Rules* were violated as a result of the distribution of the "Teamster Election News."

The Election Officer divided all of the protests concerning the "Teamster Election News" into two categories for investigation and decision. In the first category, the Election Officer considered protests alleging specific allegations of violations of the *Rules* with respect to the purchase and distribution of the publication by IBT members and officers. Included in this category were allegations that the content of the "Teamster Election News" was violative of the *Rules*, that Local Union funds were used for the purchase of the tabloid, and/or that the publication was distributed in a manner violative of the *Rules*, e.g. in a work area during work time. These allegations were raised in the nineteen individual protests referred to above, the Election Officer issued decisions in each case, absent voluntary withdrawal of the protest, prior to the time of the 1991 IBT International Union Convention. The second group of allegations concern the initial production and marketing of the "Teamster Election News" by Richard Leebove and RL Communications.

While there is some overlap in the allegations contained in this matter and those nineteen individual protests previously decided, the primary focus in this protest is the

initial production of the "Teamster Election News" and its bulk distribution to IBT officers and members who then, in turn, distributed the tabloid as part of their campaigns in the delegate and alternate delegate elections, or with respect to the International Union officer election. The Carey protest raises three principal issues: did the "Teamster Election News" violate the *Rules* because of its scandalous and defamatory content; were Union funds or resources used in its production or distribution; and did the publication and distribution of "Teamster Election News" constitute an employer campaign contribution in violation of the *Rules*. The Election Officer's investigation of these allegations revealed the following

"Teamster Election News" is a four page publication which is critical of Ron Carey and his candidacy for General President of the IBT. The publication alleges that Mr Carey may be ruled ineligible to run for the office of General President because of "Organized Crime, Corruption and 'Sweetheart Contracts'" in his Local Union. The publication also alleges that "Ron Carey's TDU Backers Have Accepted Over One Million Dollars in Employer-Linked Contributions." Carey takes great exception with the allegations contained in the "Teamster Election News."

The question, however, before the Election Officer is whether campaign literature is violative of the *Rules*, not whether it contains false, scandalous or defamatory material. Underlying the *Rules* is a firm policy against censorship or the regulation of the content of campaign literature. Article VIII, Section 6 (g) of the *Rules* specifically states that "[t]he Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's literature on the basis of its contents." This policy reflects the right of union members to engage in vigorous internal union debate free from the threat of internal union discipline for their campaign statements. See, e.g., Petramale v. Laborers Local 17, 736 F.2d 13 (2nd Cir 1984), Semancik v. UMW District 5, 80 LRRM 3475 (3rd Cir 1972), Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir 1963). Similarly, the United States Supreme Court has recognized that internal union affairs ". . . are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions." Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 272 (1974).

Thus, and assuming that the campaign statements contained in the "Teamsters Election News" were false or even defamatory, those facts do not remove such literature from the protection of the *Rules*. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertion, allegation, statement of opinion or even of alleged fact without legal sanctions for truth or falsity. The cardinal principle is that the best remedy for untrue speech is more speech with the electorate being the final arbiter. The *Rules* were not violated by the content of "Teamster Election News."

The "Teamster Election News" is published by RL Communications of Detroit

Michigan¹ RL Communications is owned by Richard Leebove. Both RL Communications and Mr Leebove are, as they acknowledge, employers as defined by the *Rules*. Mr Leebove has been retained by the IBT and various of its subordinate entities as a consultant, independent contractor and service provider for a number of years. Mr. Leebove has been involved in the production of Union newsletters and magazines and has provided services in IBT organizing campaigns. In addition, Mr. Leebove has been active in the editing and production of publications critical of dissidents within the IBT in general and Teamsters for a Democratic Union ("TDU") in particular, e g , "Rank and File Defender, National Newspaper of B L.A.S.T." As a result of his activities on behalf of the IBT and its affiliates, as well as his opposition to dissidents within the IBT, Mr Leebove has come into contact with various IBT officers and members

Mr Leebove was the author of all of the articles contained in "Teamster Election News." The material contained in the publication comes from court and IRS records and from other publications such as the "Rank and File Defender." RL Communications paid an outside organization for layout services and paid the printing and shipping costs of the publication. In addition, RL Communications paid an attorney to secure copies of the court records in United States of America v. John F. Long and John S. Mahoney, Jr., 87 Cr. 943 (S D N. Y) (DNE) which are reproduced and discussed in the newspaper. The source of funds for the production, printing and distribution of "Teamster Election News" was the proceeds of the sale of the publication

Other than approximately 200 to 300 copies of the "Teamster Election News" that were distributed by Mr Leebove as part of his efforts to promote the sale of the publication, all other copies were distributed by selling them to IBT members and officers. Mr Leebove established a set selling price, the price per copy decreasing depending upon the number of copies purchased, and distributed that price list to all IBT members who inquired about obtaining the "Teamster Election News." The selling price so established was \$ 50 per copy for quantities of less than 500 copies; \$ 40 per copy for quantities between 600 and 1000 copies, \$ 35 per copy for quantities between 1100 and 2000 copies, and \$ 30 per copy for quantities in excess of 2100 copies.

Other than the small promotional distribution, as described above, the Election Officer's investigation revealed that the remaining approximately 70,800 copies of the "Teamster Election News" that were distributed were sold to approximately 60 IBT members and officers. Approximately 42,250 copies were sold at the listed sales price; approximately 28,550 copies were sold at a price below the listed sales price

¹ On the last page of the tabloid there is an item which states "For information on obtaining additional copies of this newspaper contact Teamsters For An Informed Membership" with a post office box in Washington, D C. The Election Officer's investigation revealed that "Teamsters For An Informed Membership" is not a functioning organization. RL Communications responds to all requests for information regarding "Teamster Election News."

The Election Officer's investigation uncovered that twenty-seven members purchased between 50 and 5000 copies of the "Teamster Election News" but paid an amount less for the newspapers they obtained than the price specified on the price list prepared and distributed by Mr Leebove Exhibit A to this decision lists by invoice number all these members, specifying the number of copies of the "Teamster Election News" each received, the amount each paid, the list price cost and the discount. Additionally, two IBT members each ordered 10,000 copies of the "Teamster Election News" and were quoted and paid a price which was discounted below the discount price of \$ 30 per copy otherwise offered to purchasers of 2100 or more copies. Finally, 1500 copies were provided to a group of candidates for delegate and alternate delegate to the 1991 IBT Convention from Local Union 728 without charge. All customers were charged for, and paid, shipping costs The investigation revealed that the copies of the tabloid provided were distributed by IBT members for use in various campaigns for the election of delegates and alternate delegates to the 1991 IBT International Convention and/or to influence the campaign for International Union officers.

The total proceeds for the sale of the "Teamster Election News," excluding shipping costs, were approximately \$20,000 and the costs of production of the publication were approximately \$8,800 The purchase price of the newspaper and the shipping costs were paid by checks drawn on personal or campaign accounts of IBT members or by money orders obtained by IBT members The Election Officer found no evidence that Union funds were used for the purchase of "Teamster Election News."

Mr Leebove marketed the publication by sending copies to a group of 25 IBT officials and by distributing copies at a charity dinner sponsored by Mercy Hospital honoring Jack Yager held in Chicago, Illinois on December 12, 1990. In addition, a sample copy of "Teamster Election News" and a price sheet was sent to individuals who wrote to "Teamsters for An Informed Membership" requesting additional information. The costs of these marketing activities were paid out of the proceeds of the sale of the tabloid

As noted above, certain copies of the "Teamster Election News" were sold to IBT members and officers at a price below the listed price for copies of such publication. When Mr Leebove and/or RL Communications received the order from these members or officers, an invoice was sent reflecting a charge discounted below the discounted rate for large orders as reflected the selling price list Thus, some members and officers obtained the copies of the "Teamster Election News" which they distributed in connection with the delegate, alternate delegate or International Union officer election at a cost below the established price for this material

Further, and also as stated above, 1,500 copies of the "Teamster Election News" were sent without charge to two IBT members running for the position of delegate to the 1991 IBT Convention from Local Union 728 These members spoke with Mr. Leebove by phone in February, 1991 and requested copies of "Teamster Election News" for use in their campaign Mr Leebove informed them of the cost of the publication and the members replied that they did not have the funds to pay for the literature Mr. Leebove

informed these members that he would send them 1,500 copies of the newspaper with an invoice and that they should pay for the literature when they could. While the members agreed to pay for the literature at some point, no agreement was reached regarding when payment, or partial payments, would be made or the amounts or other terms of payment.² In fact, as of the date our investigation concluded, no payments had been made for the 1,500 copies of "Teamster Election News" sent by Mr. Leebove to the members of Local Union 728 in February, 1991.

Article X of the *Rules* prohibit employers from making any campaign contributions in the delegate and alternate delegate campaigns or the International Union Officer campaigns. The *Rules* define "campaign contributions" to include "any direct or indirect contributions where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate." Definitions, (6), A-2. Such contributions can include any goods, compensated services or any material things of value. The *Rules* also define campaign contributions to include discounts in the price or cost of goods. Definitions, (6), A-2. The term "employer" is defined under the *Rules* to include "any individual, corporation, trust, organization or other entity that employs another, paying monetary or other compensation in exchange for that individual's services." Definitions (17), A-4.

The Election Officer finds that the publication "Teamster Election News" is something of value which was intended to influence the outcome of the delegate and International Officer elections. The Election Officer further finds that Mr. Leebove and RL Communications are each employers as defined by the *Rules*.

The purchase of goods or services by an IBT member from a vendor does not constitute a campaign contribution by the vendor if the terms of the purchase are commercially reasonable. In situations where there is more than one producer of an item, the commercial reasonable price is set by the market for that item. The determination of whether the terms of sale are commercially reasonable will also depend on whether the vendor offers similar terms to other purchasers of his product. In the instant case, where it appears that the "Teamster Election News" was a unique product produced by a single producer with a limited purpose and customer base, a determination of whether the purchase price of the "Teamster Election News" was at commercially reasonable terms will depend on whether all of the costs of production and distribution, as well as a reasonable profit, were covered by the sale price.

The Election Officer finds that the listed price for copies of the "Teamster Election News" was set at a level that not only covered all expenses associated with the production and distribution of the publication, but also would have generated a profit for

² The invoice for the shipment of "Teamster Election News" to the members of Local Union 728 was for 2000 copies. However, the Election Officer's investigation revealed that only 1,500 were actually shipped. Further, the invoice was in the amount of \$300.00. According to the price sheet circulated by Mr. Leebove the price for 1,500 copies of "Teamster Election News" is \$525.00.

Mr Leebove and RL Communications The Election Officer's investigation determined that even with the exceptions noted below, Mr Leebove and RL Communications received ample return on their investment The Election Officer concludes therefore, with the exception of the sales discussed below, the publication and distribution of the "Teamster Election News" did not constitute an employer contribution in violation of the *Rules*

The Election Officer finds, however, that a campaign contribution was made to those IBT members who purchased the "Teamster Election News" at a cost below the listed price. The *Rules* define campaign contributions to include the amount of a discount in the price or cost of goods. Other than the discount established by Mr. Leebove and RL Communications for larger orders of the "Teamster Election News," no evidence was produced indicating that other discounted rates were generally established or available. Some customers paid the full price when ordering the same number of copies as ordered by others charged at a lower rate. Thus, the difference between the discounted price and the price at which the "Teamster Election News" was normally sold would constitute a campaign contribution by Mr. Leebove and RL Communications.³ Since the Election Officer finds that both Mr Leebove and RL Communications are employers within the meaning of the *Rules*, such contributions are violative of the *Rules*.⁴

The Election Officer does not find that the "sale" of the 1,500 copies of the "Teamster Election News" to the members of Local Union 728 was on commercially reasonable terms. The "sale" was made despite Mr Leebove's clear knowledge that the invoice was unlikely to be paid. No payment or partial payment terms were established; "pay when you can" is not a payment system accepted in the commercial market. As such, the Election Officer finds that the 1,500 copies of the "Teamster Election News" provided to the members of Local Union 728 were a campaign contribution by Mr. Leebove and RL Communications to the campaign of these individuals for election as

³ The Election Officer does not find, however, that the further discount afforded those members who each purchased 10,000 copies of "Teamster Election News" constitutes a campaign contribution. The price per copy of "Teamster Election News" was, by the terms of the written pricing information, reduced depending in the number of copies ordered. The largest quantity set forth in the price list, however, was 2,100 copies. The Election Officer finds that the difference between ordering 10,000 copies and 2,100 copies is sufficiently large to justify a further discount. The further discount provided was proportional to the discounts otherwise set forth in the price list and both members who bought 10,000 copies of the "Teamster Election News" were charged and paid identical amounts.

⁴ As the Election Officer has previously held in the nineteen individual cases referenced above, all of which have previously been decided, the remedy for this violation imposed by this decision is sufficient to eradicate the impact of this impermissible contribution on the election campaigns in which the "Teamster Election News" was distributed.

delegates from Local Union 728⁵ Such contribution from an employer is violative of the *Rules*

The Election Officer investigation revealed that the improper campaign contributions made by Mr. Leebove and RL Communications were not solicited by the members who received such contributions. Indeed, with respect to the delegate candidates from Local Union 728, Mr Leebove knew that they were unable to pay for the copies of the "Teamster Election News" prior to the time that he shipped the publication. With respect to the IBT members who received copies of the "Teamster Election News" at below the listed price, they paid the price shown on the invoice submitted to them by Mr Leebove and RL Communications.

The "Teamster Election News" disparaged Ron Carey, his campaign for election to General President of the IBT, and at least indirectly the campaigns of other International Union officer candidates seeking election aligned with him and the campaigns of delegate and alternate delegate candidates who sought election committed to Mr Carey and his candidacy The campaigns of other candidates, and particularly the campaigns of other candidates seeking election as General President of the IBT were benefitted campaign literature denigrating the candidacy of one of their opponents was distributed without their incurring any expense

The improper employer campaign contributions were not solicited by the individual IBT members who received such contributions The contributions, while simultaneously benefitting the campaigns of General President candidates opposed to Mr. Carey and harming Mr Carey's campaign, were not solicited by any candidate or by any other IBT member.

The Election Officer finds that the *Rules* were violated. His investigation discloses, however, that the violation was not at the behest of any candidate for an International Union officer position, of any candidate for delegate or alternate delegate to the 1991 IBT International Union Convention, of any such candidate's campaign or of any member who ordered the newspaper Accordingly, it would be inappropriate to provide a remedy against any candidate or IBT member

However, as noted above, the *Rules* have been violated, Mr Carey's candidacy has been harmed and the candidacies of his opponents benefitted. Under these circumstances, the Election Officer has determined that the appropriate remedy for the violation of the *Rules* occasioned by Mr Leebove's and RL Communications' improper campaign contribution is to provide the campaign of General President candidate Ron Carey with an equal benefit

⁵ The recipients of this campaign contribution were unsuccessful in their effort to be elected as delegates from Local Union 728 In fact, a slate of delegates identified with Ron Carey were elected and certified from Local Union 728. Therefore, the Election Officer finds that this impermissible employer campaign contribution had no effect on the outcome of the Local Union 728 delegate election

Accordingly, the Election Officer determines that to remedy the violation of the Rules, Mr Leebove and RL Communications shall pay to the Carey campaign the amount of \$4,765 00 representing the difference between the list price of the copies of the "Teamster Election News" and the charge to those IBT members and officers who received it at less than the list price or without any charge whatsoever, the amount of \$4240 00 as shown on Exhibit A plus the amount of \$525 00 which constitutes the list price for the copies provided the members of Local 728 Such monies shall be forwarded to the Carey campaign within 15 days of the date of this decision and may be used by the Carey campaign for campaign purposes.

Further, Mr Richard Leebove and RL Communications shall cease and desist from any further contributions of goods or services on other than commercially reasonable terms where the purpose, object or foreseeable effect of such contribution is to influence the election of a candidate for International Office in the IBT.

Mr Leebove and RL Communications shall submit to the Election Officer, with 15 days of the date of this decision, an affidavit describing their compliance with this order

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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive.

Michael H Holland

MHH/mjv

cc. Frederick B Lacey, Independent Administrator, IBT

Richard N Gilberg, Esq.
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Exhibit A

<u>Invoice Number</u>	<u>Number of Copies</u>	<u>Amt Paid (\$)</u>	<u>List Price (\$)</u>	<u>Discount (\$)</u>
809	1,000	250	400	150
810	1,000	350	400	50
819	1,000	300	400	100
823	300	120	150	30
820	2,000	500	700	200
820	2,000	600	700	100
825	500	200	250	50
825	200	70	100	30
825	1,000	380	400	20
908	200	40	100	60
1001	300	100	150	50
11123	2,000	400	700	300
11129	2,000	300	700	400
11125	1,000	225	400	175
2000	2,000	400	700	300
2001	1,500	375	525	150
2006	400	100	200	100
2009	1,000	200	400	200
2100	500	125	250	125
2101	500	125	250	125
2106	1,000	200	400	200
2106	500	100	250	150

Exhibit A, Page 2

<u>Invoice Number</u>	<u>Number of Copies</u>	<u>Amt Paid (\$)</u>	<u>List Price (\$)</u>	<u>Discount (\$)</u>
2107	200	50	100	50
2108	50	10	25	15
2109	1,000	200	400	200
2113	400	100	200	100
806	5,000	690	1500	<u>810</u>
				<u>3,430</u>

KM ~~Capitol grounds~~
into my bible

IN RE:

COMMITTEE TO ELECT RON CAREY

and

RICHARD LEEBOVE
RL COMMUNICATIONS

91 Elec. App. - 198 (SA)

10/7/81

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from a decision of the Election Officer in Case No. P-284-IBT. A hearing was held before me by way of teleconference at which the following persons were heard: Marc Whitefield and Russell Linden, on behalf of Richard Leebove and RL Communications; Susan Davis, on behalf of the Committee To Elect Ron Carey; Hugh Beins, on behalf of the Durham Unity Team; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer. In addition, Paul Levy, on behalf of the Public Citizen Litigation Group audited the hearing. Still further, the Election Officer submitted a written summary in accordance with Article XI, Section 1.a.(7) of the Rules For the International Union Delegate and Officer Election (the "Election Rules").

BACKGROUND

This matter concerns Article X of the Election Rules which limits the opportunity for "employers" to make campaign contributions. Both Mr. Leebove and his company, RL Communications

("RL"), are "employers" as defined by the Election Rules. Definition (17) at p. A-4. Mr. Leebove and RL have injected themselves into IBT affairs before, often producing "anti-dissident" products, such as leaflets, newsletters, bumper stickers, buttons, etc.

The Committee To Elect Ron Carey alleges that Mr. Leebove and RL violated the Election Rules' prohibition on employer campaign contributions in connection with its publication of the "Teamster Election News." The Teamster Election News is a four-page tabloid devoted to attacking Ron Carey and his candidacy for General President of the IBT. The Teamster Election News was marketed during the Local Union delegate elections, and was purchased by individuals involved with the delegate races all of whom were opposed to Ron Carey and his delegates.

Mr. Leebove, the owner and operator of RL, denies any violation of the Election Rules and he also reserves the right to challenge the jurisdiction of the Election Officer and the Independent Administrator.¹

¹ The jurisdiction of the Election Officer and the Independent Administrator over third parties to enforce the provisions of the Election Rules is now well-settled. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op., pp. 3-8 (S.D.N.Y. April 3, 1991). See, also, In Re: Committee To Elect Ron Carey, 91 - Elec. App. - 106 (SA) (March 22, 1991), aff'd, United States v. IBT, 764 F. Supp. 817, 821-822 (S.D.N.Y. 1991).

001-2704-100-100

THE CONTENT OF THE TEAMSTER ELECTION NEWS

The Committee To Elect Ron Carey first requests that Mr. Leebove and RL be sanctioned because of the content of the Teamster Election News. It is contended that the material published in the Teamster Election News is offensive and defamatory.

The Election Officer refused to find any violation of the Election Rules based upon the content of the publication. This approach is consistent with the Election Rules' firm policy against censorship or regulation of the content of any campaign literature. See Election Rules, Article VIII, Section 6.g. (prohibiting the Union from censoring, regulating, altering, or inspecting the contents of any candidate's campaign literature); Article VIII, Section 9.c. (prohibiting the Election Officer from regulating, altering or revealing the content of any candidate's or slate's material prior to its publication in The International Teamster magazine).

Accordingly, the Election Officer's finding that the Teamster Election News did not violate the Election Rules because of its content, is affirmed.

THE FUNDING OF THE TEAMSTER ELECTION NEWS

The Committee To Elect Ron Carey also contends that the Teamster Election News was improperly funded by Union and/or employer subsidies. This allegation, however, was simply not supported by the facts and thus, dismissed by the Election Officer.

The Election Officer's investigation found that the cost of publishing the Teamster Election News was borne fully by RL. The Election Officer also found that the material used in the Teamster Election News was gleaned from court and IRS records, and from other publications readily accessible to RL. Further, it was found that RL hired attorneys to secure copies of the court records which are reproduced and discussed in the Teamster Election News. In addition, the Election Officer found that RL paid for the cost of layout services by an outside provider and for the printing and shipping cost of the Teamster Election News. It was also found that the source of the funds expended in the production, printing and distribution of the Teamster Election News was the proceeds of the sale of the publication itself. The Election Officer found no evidence that Union funds were used for the purchase of "Teamster Election News." All purchases of the Teamster Election News were paid by checks drawn on personal or campaign accounts of IBT members or by money orders obtained by IBT members.

Given these facts, none of which were disputed at the hearing, I concur with the Election Officer's decision to dismiss this particular allegation.

THE DISTRIBUTION OF THE TEAMSTER ELECTION NEWS

At the hearing, the Committee To Elect Ron Carey argued that given that RL, an employer, was disseminating campaign material, albeit negative campaign material, it was violating the Election Rules. The Election Officer, however, rejected this approach

finding that the purchase of goods or services by an IBT member from a vendor does not constitute a campaign contribution by the vendor, as long as the terms of the purchase are commercially reasonable. But cf., United States v. IBT, 764 F. Supp. 817 (S.D.N.Y. 1991) (distribution of negative campaign material by IBT-affiliated pension fund found to constitute an improper campaign contribution).

The Committee To Elect Ron Carey urged, however, that RL cannot be viewed as an independent entrepreneur, but rather must be viewed as an agent or operative of the IBT. The Committee To Elect Ron Carey points to Mr. Leebove's and RL's long history of association with the IBT in support of its position. The Election Officer found, however, that despite Mr. Leebove's and RL's past associations with the IBT, Mr. Leebove and RL, in this instance, were acting independent of the IBT.

THE DISCOUNTS

Relying on yet another theory, the Election Officer did find a violation of the Election Rules. The Election Officer obtained a "price list" from RL, and discovered that RL had extended a discount, beyond that contemplated in the price list, to some 27 IBT members who had purchased copies of the Teamster Election News.

The Election Officer found that the discounts extended by RL constituted improper employer campaign contributions. In making this finding, the Election Officer relied on the Election Rules'

definition of the term "campaign contribution." That definition includes:

Discounts in the price or cost of goods or services, except to the extent that commercially established discounts are available to the customers of the supplier. [Definition (6)(c) at p. A-2]

The Election Officer found that the discounts extended by RL, below that set forth in RL's price list, were not "commercially established discounts" which were "available to [RL's] customers," and thus constituted improper campaign contributions.

For the reasons set forth below, the Election Officer's conclusion is reversed.

At the hearing Mr. Leebove and RL illustrated that out of the 61 sales made, discounts below that set forth in the price list were afforded in 28 cases. It was further illustrated that in each case where a discount was extended, there was a legitimate business reason for doing so.

For example, pursuant to the price list the more copies of the Teamster Election News purchased, the less it costs. In other words, the price list reflected a price of \$0.50 per copy for a quantity of less than 500; \$0.40 per copy for quantities between 600 and 1,000; and so on.² When a customer ordered a quantity at

² The Election Officer found that the offering of a reduced price for larger orders is a fact of market life, and thus did not find such discounts to constitute an improper "campaign contribution." Moreover, the Election Officer did not question the sample copies of the Teamster Election News that RL distributed to IBT officials, finding such distribution to be a marketing technique.

or close to the next highest discount threshold, RL oftentimes extended the increased discount.


In addition, RL took into account other purchases by the customer and prior business dealings, and discounted the price of the Teamster Election News accordingly. Moreover, as the end of the delegate elections drew to a close, RL further discounted the price of the Teamster Election News so that RL could sell-out its stock. RL also negotiated the price list quotes and often extended increased discounts as a result of such negotiations. The bottom line, however, is that RL realized a profit on each sale and realized an overall profit of over \$11,000. Given this track record, it cannot be said that the discounts available were not commercially reasonable. Moreover, given that the discounts were extended to nearly 50% of RL's purchasers, the discounts were clearly "commercially established" and "available to" RL's customers. Accordingly, the discounts cannot be considered a "campaign contribution" as that term is defined in the Election Rules.³

³ The Election Officer also relies on the fact that one purchaser has yet to pay for a \$300 order of the Teamster Election News. The Election Officer points to this failure to pay as evidence that RL made a campaign contribution to that purchaser. RL explained, however, that none of its deliveries were "C.O.D." and that out of 61 sales, it only has had trouble collecting from this one purchaser. RL continues in its attempt to collect the \$300. There is simply no evidence that RL expected that it would not be paid for this order. Rather, its trouble collecting on this one transaction appears to be a mere hazard of doing business.

I also reject the Election Officer's suggestion that RL had a "monopoly" on the Teamster Election News and could have demanded the prices set forth in its price list. Such an approach ignores the fact that RL was dealing with a limited customer base and within a limited time frame to sell its product.

CONCLUSION

Accordingly, the Election Officer's decision is affirmed in part and reversed in part.



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

Dated: October 2, 1991