

OFFICE OF THE ELECTION OFFICER
% INT'NATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

Michael H. Holland
Election Officer

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May 21, 1991

VIA UPS OVERNIGHT

Gary Haskell
Box 161
West Chenago Road
Binghamton, NY 13905

Eugene Briggs
President
IBT Local Union 693
41 Howard Avenue
Binghamton, N.Y. 13902

Thomas Thayne
Secretary-Treasurer
IBT Local Union 693
41 Howard Avenue
Binghamton, NY 13902

Re: Election Office Case No. P-415-LU693-PGH

Gentlemen:

A protest was filed with the Election Officer pursuant to Article XI of the *Rules for the International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Mr. Gary Haskell alleges that the *Rules* were violated by the distribution of literature attacking Ron Carey, an accredited candidate for the office of General President of the IBT¹. The Election Officer's investigation of this protest revealed the following.

The literature in question is a five page reproduction of portions of a tabloid publication entitled "Teamster Election News". The "Teamster Election

¹ Mr. Haskell also contends that the *Rules* were violated by the preparation and distribution of a letter dated November 5, 1990. The letter was mailed to the membership on or about the date it bore but no protest was filed until January 29, 1991. Thus this portion of the protest is untimely. *Rules*, Article XI, § 1(a)(1)

News" is a four page tabloid published by RL Communications of Detroit, Michigan. The publication is critical of Ron Carey and his candidacy for General President of the IBT.

Mr Haskell alleges that the photocopy of portions of "Teamster Election News" were distributed by Thomas Thayne and Gene Briggs, the Local Union Secretary-Treasurer and President respectively. The investigation revealed that the Local Union received a single copy of the literature in question in the mail. Neither Thayne nor Briggs can recall from whom or where the letter came. The Local Union officers also received another single copy of the literature in question from a member of the Local Union who received it from another IBT member in Pennsylvania. No payment was made for the literature,² and no additional copies were made by Mr Thayne or Mr Briggs or by the Local Union.

It is the practice of the Local Union to place literature it receives about candidates for at large or Eastern Conference International Officer positions on a conference table inside the Local Union hall. The Local Union does not discriminate between candidates in its display of such candidate literature. On February 17, 1991 Stewart Fox, a Local Union shop steward, was at the Local Union hall for a meeting. When Mr Fox came into the office Gene Briggs asked him if he had seen the latest literature on Ron Carey, Thomas Thayne was standing nearby. Fox picked up a copy of the literature up from the table and took it with him. Neither Briggs or Thayne were involved in any further "distribution" of the literature.

² Although not specifically raised in the protest, in the investigation of this protest, and other protests concerning the "Teamsters Election News", the Election Officer is examining the source(s) of funding of the publication and distribution of "Teamsters Election News" by RL Communications. The Election Officer has concluded that if the publication and distribution of the Teamster Election News involved the use of Union or employer contributions in violation of the **Rules**, such violation can and will be remedied by a reimbursement, with interest, of the prohibited contributions. Such remedy and, if appropriate, other remedies directed to RL Communications and the Union and/or employers making improper contributions are sufficient under the **Rules** to eradicate any such violations. See, e.g. Election Office Case No. P-249-LU283-MGN.

Article VIII, Section 10 of the *Rules* guarantees the right of all IBT members, including Union officers and employees, to participate in campaign activities, including the distribution of campaign literature, on behalf of or in opposition to and candidate for International Office. However, subsection (b) of that section prohibits campaigning on time paid for by the union unless that campaigning is incidental to regular Union business or on paid time off from work. The Election Officer finds that Mr. Briggs' statement to Mr. Fox about the literature was incidental to regular Union business.

Article VIII, Section 10(d) of the *Rules* provides that no restrictions shall be placed upon an IBT member's pre-existing right to distribute campaign literature on union premises. The *Rules* further provide that such facilities shall be made equally available on the same basis to all members. The Local Union is free to permit the display and distribution of campaign literature inside its union hall so long as it does not discriminate among candidates. There has been no allegation that the Local Union has discriminated against Ron Carey, or any other International Officer candidate, with respect to the placement of literature inside of the Local Union hall and the Election Officer finds no such discrimination.

Mr. Haskell also objects to the content of the anti-Carey literature. However, 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, eg, 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 labor disputes " . 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).

The fact that the campaign statements contained in the "Teamsters Election News" were allegedly false or even defamatory does 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

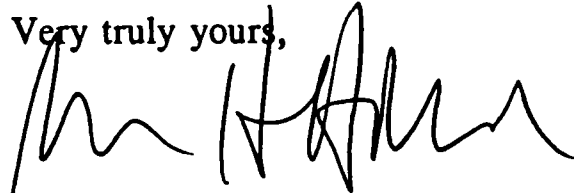
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are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.

For the forgoing 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

MHH/pjm

cc Frederick B. Lacey, Independent Administrator, IBT
William Kane, Election Office Regional Coordinator
Ron Carey Campaign, c/o Richard Gilberg, Esquire