



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue NW
Washington DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H. Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago IL 60604
(312) 922 2800

March 22, 1991

VIA UPS OVERNIGHT

Joseph Di Prisco
Secretary-Treasurer
IBT Local Union 302
492 C Street, Suite A
Hayward, CA 94541

Tony Bustos
c/o Safeway Milk Plant
2551 Toltec Circle
San Ramon, CA 94583

David P. Perry
820 Lawn Ct
Tracy, CA 95376

Re: Election Office Case No P-689-LU302-CSF

Gentlemen

A pre-election protest was filed in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest was filed by Joseph Di Prisco who is the Secretary-Treasurer for Local 302 and a candidate in Local 302's upcoming delegate election In his protest, Mr Di Prisco claims that Mr David Perry, Vice President of Local 302, who is also a candidate in Local 302's upcoming delegate election, is falsely telling members that the FBI is investigating Local 302 for embezzlement and misappropriation of funds Mr Di Prisco claims that Mr Perry is spreading these rumors to discredit him in the upcoming delegate election and other elections to follow

Mr Perry and Mr Di Prisco have each run a highly contentious delegate campaign Both Mr Perry and Mr Di Prisco have filed numerous protests alleging that the other has committed campaign violations under Article VIII of the *Rules*

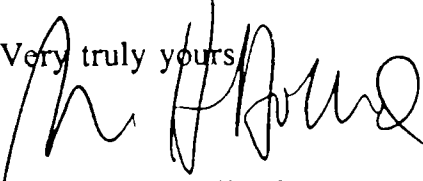
The model for free and fair union elections is that of partisan political elections In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged fact without legal sanctions for their truth or falseness The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter As long as the literature in question does not purport to be the official voice of the organization, as opposed to

Joseph Di Prisco
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being the opinion of candidates who may be officers, inquiry will not generally be made as to its truthfulness

Thus, the fact that the campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the Election *Rules* National Association of Letter Carriers v Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected) The policy encouraging robust political debate in the selection of delegates and International Officers of the IBT is reflected in the Election *Rules*' prohibition against the censorship of campaign literature See *Rules*, Article VIII, § 6 (b) In accordance with the reasons stated above, the statements made by Mr Perry do not violate the *Rules* Accordingly, the protest must be 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/mca

cc Frederick B Lacey, Independent Administrator
Donald E Twohey, Regional Coordinator