

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

Michael H. Holland  
Election Officer

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October 9, 1991

**VIA UPS OVERNIGHT**

Diana Kilmury  
c/o Ron Carey Campaign  
c/o Harold E. Burke  
26 Bradford Street  
Main Front Door  
Charleston, WV 25301

Dan Johnson  
President  
IBT Joint Council 56  
4501 Van Brunt Blvd.  
Kansas City, MO 64130

Paul A. Levy, Esq.  
Public Citizen Litigation Group  
2000 P Street, NW  
Suite 700  
Washington, DC 20036

**Re: Election Office Case No. P-843-JC56-MOI**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") on behalf Diana Kilmury, a nominated candidate for the position of International Union Vice President At-Large and a co-chair of Teamsters for a Democratic Union ("TDU"). The protest contends that the June, 1991 issue of Teamsters Joint Council 56 newspaper, "TeamWork" violated the election *Rules*. The protest contends that resources of the IBT were utilized through its publication and distribution of the June, 1991 issue of "TeamWork," to promote the campaign of General President candidate R.V. Durham and the other International Officer Union officer candidates aligned with him by (1) The content of the column from Joint Council President Dan Johnson and (2) the comments with respect to TDU, with whom certain nominated International Union officer candidates aligned with the General President Ron Carey are affiliated, contained in a reprint of a news article from the March 19, 1991 issue of the Detroit News.

The column by Joint Council President Don Johnson comments favorably on the fact that members of the IBT will elect IBT International Union officers by direct rank and file vote. The column does not refer to any particular candidate or campaign; no candidates names are mentioned in the column. The suggestion contained in the column, "It is my hope we don't overreact", does not constitute a violation of the *Rules*. Similarly Mr. Johnson's advice to the membership not to listen to unfounded rumors, to weigh the pros and cons of all candidates and to be aware of unsubstantiated promises by candidates is not violative of the *Rules* nor does it constitute support for a particular candidate or group of candidates.

Mr. Johnson ends his column by urging all members to participate in the IBT International Union officer election. His asking the membership to discuss the election with their elected Local Union officers prior to casting their vote does not provide support for any candidate or group of candidates.

The Detroit News article reprinted on page 3 of the June 1991 issue of "TeamWork," an article by Bruce A. Miller, an attorney who represents labor organizations, takes issue with the thesis that labor organizations are undemocratic. The article is also critical of groups within the labor movement that Mr. Miller labels as "dissident" and/or "reformers." The article suggests that such dissidents and reformers are often funded by contributions other than from labor union members and have interests which are divergent to that of the members. The article specifically names TDU and its Teamsters Rank and File Education Foundation [sic] as such a dissident group. Certain nominated candidates for IBT International office are members of TDU, including Ms. Kilmury.

The reprinted Detroit News article does not focus on any particular labor organization or any candidate for Union office. Neither the 1991 IBT International Union delegate or office election is mentioned. No candidate for election to any position or office in the IBT is mentioned.

The *Rules* at Article VIII, §7(a) prohibit a Union financed publication from being used to support or attack the candidacy of any person. Such prohibition is a direct descendant of the more general proscription against Union contributions to a candidate or his campaign. See *Rules* Article X, §1(b)(1)(3). The *Rules* further define campaign contribution to mean "any direct or indirect contribution where the purpose, object or foreseeable effect of the contribution is to influence the election of a candidate." The *Rules*, Definitions (6) at A-2.

The reprinted Detroit News article is openly critical of TDU. To the extent that nominated IBT International Union officer candidates are recognized members or leaders of TDU, the foreseeable affect of that article is to influence the election of these candidates. The reprinting of the article in the Joint Council newspaper thus constitutes an attack on the candidacy of those nominated IBT International Union officer candidates who are acknowledged to be members or leaders of TDU.

However, the reprinted article does not mention any candidate by name nor is it directed to the IBT International Union Officer Election in general. Reprinting the article violates the *Rules* only to the extent that such article is critical of TDU and there are now nominated IBT International Union officer candidates who are acknowledged to be members and/or leaders of TDU.

To remedy this violation, at least one issue of "teamWork" shall be published and distributed prior to November, 1991 and shall include a letter from Diana Kilmury, in her capacity as the co-chair of TDU. The letter shall be no longer in length than one-half of one column and shall be signed by Ms. Kilmury as co-chair of TDU. The letter shall be preceded by the following statement: "By decision of the Election Officer,<sup>1</sup> the following letter is being published as a response to the article printed on page 3 of the June, 1991 issue of "TeamWork." The space necessary for the introductory notation and Ms. Kilmury's signature is to be excluded from the half column otherwise available to Ms. Kilmury.

Ms. Kilmury's letter shall be limited to a discussion of TDU and/or other dissident groups and their role in the IBT and/or other labor organizations. No candidate for IBT International Union officer shall be named.

In accordance with the foregoing, Joint Council 56 within 10 days of this decision shall notify Ms. Kilmury of the date by which her letter is to be submitted to Joint Council for inclusion in the issue of "TeamWork" which will be published and distributed prior to November 8, 1991. A copy of such letter shall be sent to the Election Officer. Ten days prior to the date that Ms. Kilmury submits her letter to Joint Council 56, she is to provide a copy of such letter including the signature to such letter, to the Election Officer. The Election Officer reserves the right to require changes or alterations in such letter as necessary for the letter to comply with the parameters and limitations of this decision.

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

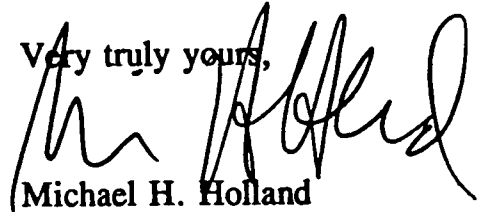
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<sup>1</sup>If the instant decision is appealed and affirmed by the Independent Administrator the notation preceding Ms. Kilmury's letter shall read as follows: By decision of the Election Officer, as affirmed by the Independent Administrator, the following letter is being published as a response to the article on page 3 of the June, 1991 issue of "TeamWork."

Diana Kilmury  
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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 "H".

Michael H. Holland

MHH/ss

cc: Frederick B. Lacey, Independent Administrator  
Michael Gordon, Regional Coordinator  
James G. Walsh, Jr., Esq.

IN RE:

DIANA KILMURY

and

IBT JOINT COUNCIL 56

91 - Elec. App. - 216 (SA)

DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from a decision of the Election Officer in Case No. P-843-JC56-MOI. All of the parties to this appeal agreed that none of the facts were in dispute and, thus, they also agreed that there was no need for a hearing. Accordingly, the matter was decided on the papers. The Election Officer did, however, submit a Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

Diana Kilmury, a nominated candidate for the position of International Union Vice-President At-Large and Co-Chair of the Teamsters for a Democratic Union ("TDU"), filed a protest against Joint Council 56, relating to certain material which had been contained in the June, 1991, issue of the Joint Council's newspaper "TeamWork." The Election Officer found that a Detroit News article that had been reprinted in the June issue of "TeamWork" was openly critical of the TDU. The Election Officer further found that to the extent that nominated IBT International Union officer

candidates are recognized members or leaders of TDU, the foreseeable effect of that article is to influence the election of these candidates. Thus, the Election Officer found that the reprinting of the Detroit News article in the Joint Council's newspaper constituted an attack on the candidacy of those nominated IBT International Union officer candidates who are acknowledged members or leaders of the TDU.

As a remedy, the Election Officer ordered that a letter from Diana Kilmury, in her capacity as the Co-Chair of TDU, shall be published in at least one issue of "TeamWork" prior to November, 1991. The Election Officer ordered that the letter shall be preceded by the following statement:

By decision of the Election Officer<sup>1</sup> the following letter is being published as a response to the article printed on page 3 of the June, 1991 issue of "TeamWork."

The Election Officer further found that Ms. Kilmury's letter must be limited to a discussion of TDU and/or other dissident groups and their role in the IBT and/or other labor organizations. The Election Officer directed that no candidate for IBT International Union officer shall be named. The letter Ms. Kilmury proposed reads as follows:

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<sup>1</sup> The Election Officer further provided that if his decision was appealed and affirmed by the Independent Administrator, the notation preceding Ms. Kilmury's letter should read as follows:

By decision of the Election Officer, as affirmed by the Independent Administrator, the following letter is being published as a response to the article on page 3 of the June, 1991 issue of "TeamWork."

## A New Day for All Teamsters

Each and every one of you has the power to make our union great again, because you will this month have the Right to Vote for International officers.

Teamsters for a Democratic Union (TDU) fought for ten years to win that right, against all odds. We fought the old guard Teamster officials -- the 170 of them who make over \$100,000 off your dues. And we won!

Now we have the Right to Vote. So the old guard are suddenly pretending they are reformers. The same people who have gotten rich off your dues while saying that you're lucky to have a job.

It's up to you to see through the lies. The people with the multiple salaries, multiple pensions, and who used your money to try to block your Right to Vote, now want your vote. To keep their positions, they're spreading lie after lie.

TDU is not running candidates in this historic election. Instead, we have joined with many other concerned Teamsters to back a slate of Teamster leaders with the intelligence and guts to get rid of the multiple salaries and fat-cat unionism. And to start working for better contracts, real representation, and better pensions, including 25-and-out.

The power is in your hands to elect a new leadership for our Teamsters Union.

Joint Council 56 objects to the publication Ms. Kilmury's letter because it believes that it does not comply with the Election Officer's ruling. As stated by Joint Council 56's counsel, in an October 29, 1991, letter to the Election Officer:

The letter is a blatant political attack on any candidate who fits the description "old guard", and the most naive member in the Union could not help but know who fits into that category. The entire letter is no more than a diatribe against Messrs. Durham and Shea, due to their long service with the Union, as well as any other candidate who has been involved with the Union for a substantial period of time. And yet this is exactly what your letter prohibited. Ms. Kilmury would

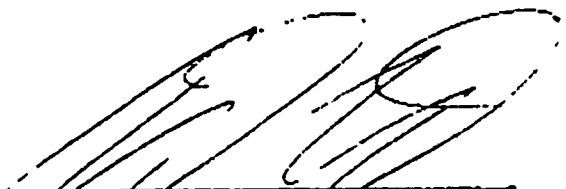


undoubtedly counter with the argument that she has not named any candidate, but any fair reading of her letter shows that she does just that. For years, TDU has been using the buzzword "old guard" as a synonym for the Teamster leadership. She not only attacks the "old guard" candidates with scurrilous accusations ("pretending they are reformers", "people who have gotten rich off your dues", "lies", "multiple salaries", "multiple pensions", "block your right to vote", "spreading lie after lie", "fat-cat unionism"), she also praises the "concerned Teamsters" who are TDU candidates. The message is loud and clear -- the actual names are not necessary. Finally, aside from violating your instructions in this regard, the letter also defies you by failing to even attempt a discussion of TDU, other dissident groups, or their role in the IBT or other labor organizations.

Over Local 56's objections, the Election Officer determined that Ms. Kilmury's letter complied with the requirements established. I agree. As stated by the Election Officer in his Summary:

Moreover, its critical comments about the "old guard" are directly responsive to the denigration of TDU in the June 1991 newspaper to which Ms. Kilmury is responding. Under the Rules, it is accepted and even encouraged that one partisan discussion will be met in kind. The membership will be the ultimate judge.

Accordingly, the decision of the Election Officer, as modified by him to permit a distribution of Ms. Kilmury's letter by first class mail, is affirmed in all respects.



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

Dated: November 5, 1991

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
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Michael H. Holland  
Election Officer

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November 29, 1991

VIA UPS OVERNIGHT

Diana Kilmury  
c/o Eddie Burke  
26 Bradford Street  
Main Front Door  
Charleston, WV 24301

Dan Johnson  
President  
IBT Joint Council 56  
4501 Van Brunt Blvd.  
Kansas City, MO 64130

Paul A. Levy, Esq.  
Public Citizen Litigation Group  
2000 P Street, NW  
Suite 700  
Washington, DC 20036

Re: Election Office Case No. P-843-JC56-MOI  
(Compliance)

Gentlemen:

In a letter to the Election Officer dated November 25, 1991, Paul Alan Levy, counsel for Diana Kilmury, alleges that Joint Council 56 has failed to comply with the order of the Election Officer, as affirmed by the Independent Administrator, in the above referenced protest. Specifically, Mr. Levy alleges that the mailing to the membership of Joint Council 56 was violative of the Election Officer's order because it was in the form of a post card as opposed to a letter, was not reproduced on the official letter head of Teamsters for a Democratic Union ("TDU") and was not mailed to members in a Joint Council 56 envelope. For the reasons set forth below, it is the Election Officer's determination that the mailing of the post card containing the text of the letter provided by Ms. Kilmury, by first class mail on or before November 5, 1991, to the membership of Joint Council 56 constitutes substantial compliance with the Election Officer's order as affirmed by the Independent Administrator.

In her protest Ms. Kilmury alleged that the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") were violated as a result

of two articles which appeared in the June 1991 edition of "Teamwork".<sup>1</sup> The first article appears on the front page and is captioned "A message from the President". The article is signed by Dan Johnson, in his capacity as President of the Joint Council, and is accompanied by Mr. Johnson's photograph. The "Message" discussed the upcoming direct membership election of International Officers and encourages members to contact elected delegates to the IBT International Convention regarding the merits of the various candidates. The Election Officer found no violation with respect to the "Message" column.

Ms. Kilmury also objected to an article which appeared on the third page of the June, 1991 edition of "Teamwork". That article consisted of a reprint of an article appearing in the March 19, 1991 edition of the Detroit News. In his determination, dated October 9, 1991, the Election Officer found that:

The reprinted Detroit News article is openly critical of TDU. To the extent that nominated IBT International Union officer candidates are recognized members or leaders of TDU, the foreseeable affect of that article is to influence the election of these candidates. The reprinting of the article in the Joint Council newspaper thus constitutes an attack on the candidacy of those nominated IBT International Union officer candidates who are acknowledged to be members or leaders of TDU.

Having found a violation of the *Rules* the Election Officer ordered the Joint Council to publish, in its next edition of Teamwork, a letter from Ms. Kilmury, in her capacity as co-chair of TDU, not exceeding half a column in length.

However, subsequent to the issuance of the Election Officer's determination it was learned that Joint Council 56 was not planning to publish another issue of Teamwork prior to November 8, 1991. As a result the Election Officer modified his remedial order as follows:

On or before November 5, 1991, Ms. Kilmury shall resubmit to Joint Council 56 on the letterhead stationary of TDU a copy of the same letter previously submitted to the council and quoted above. Ms. Kilmury will add to the top of her letter the same disclaimer, also quoted above, that the Election Officer required over the letter as prepared for publication in

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<sup>1</sup> "Teamwork" is a publication of Joint Council 56 which is mailed to all members of Local Unions affiliated with the Joint Council 56 and is paid for with Joint Council funds.

Teamwork.<sup>2</sup> Joint Council 56 will then bear the expense and labor of (a) xerographic reproduction of the letter and (b) mailing of the letter to its membership in envelopes imprinted with the Joint Council name and address. Such mailing shall be accomplished on or before November 8, 1991.

The gravamen of the Kilmury protest -- as granted by the Election Officer -- is that Joint Council violated the *Rules* by distributing a reprint of an article from the Detroit News, which is in part critical of TDU and its activities, in the Joint Council's newspaper. The Election Officer found that such republication was violative of the *Rules* not because the article was critical of TDU, but because the republication of that article, using Union resources, was intended or had the foreseeable effect of influencing the election of candidates who were publically identified as members or supporters of TDU. The appropriate remedy for such violation was to permit a response to the reprinted article. The remedy, as modified by the Election Officer and as upheld by the Independent Administrator, permitted Ms. Kilmury to rebut the reprinted article in a mailing to the entire readership of Teamwork.

Mr. Levy alleges that the Joint Council failed to comply with the remedy imposed in this case because the letter from Ms. Kilmury, while prominently displaying the name "Teamsters for a Democratic Union", was not reproduced on official TDU stationary. Similarly, Mr. Levy contends that the failure of the Joint Council to mail the letter in an official Joint Council envelope was also violative of the Election Officer's order. While the Joint Council did not comply with the letter of the Election Officer's order, it is clear that it mailed Ms. Kilmury's rebuttal to the Detroit News article to the readership of Teamwork in a timely manner before the distribution of ballots. Such action by the Joint Council substantially complies with the order of the Election Officer and effectively remedies its violation of the *Rules*.

In his letter of November 25, 1991 Mr. Levy suggests that a sanction should be imposed on Joint Council 56 for its failure to comply with the Election Officer's order, i.e., the payment by Joint Council 56 to TDU of "the difference between the cost of printing, stuffing, and mailing a letter in an envelope to its entire membership and the costs of printing and mailing the postcard." Mr. Levy's proposed sanction against Joint Council 56 is inappropriate for a number of reasons. First, he does not explain how such a sanction would further the purposes of the *Rules* or remedy the violation of the *Rules* found by the Election Officer. Second, since the additional sanctions would serve no remedial purpose under the *Rules* they are no more than punitive sanctions. Finally,

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<sup>2</sup> The required disclaimer provides that "By decision of the Election Officer, as affirmed by the Independent Administrator, the following letter is being published as a response to the article printed on page 3 of the June, 1991 issue of Teamwork."

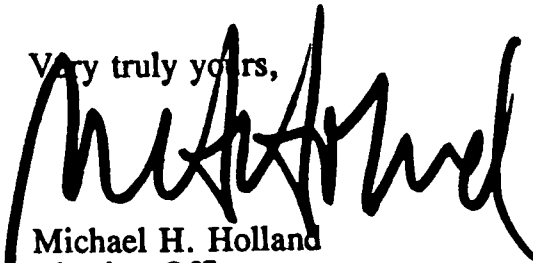
Diana Kilmury  
November 29, 1991  
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the payment of money to TDU is antithetical to the violation of the *Rules* found by the Election Officer in this case. The violation is premised not on criticism of TDU but on the effect that criticism may have on the candidacy of an IBT member for International Office. TDU was not entitled to relief under the Election Officer's original order and is not entitled to any relief because of an alleged failure to fully comply with that order.

For the forgoing reasons the Election Officer determines that Joint Council 56 has complied with the remedial order in the above reference proceeding.

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

MHH/ca

cc: Frederick B. Lacey, Independent Administrator