

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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September 23, 1991

VIA UPS OVERNIGHT

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c/o IBT Local Union 878
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Paul A. Levy, Esquire
Public Citizen Litigation Group
2000 P Street, N.W., Suite 700
Washington, D.C. 20036

Re: Election Office Case No. P-898-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 ("*Rules*") on behalf of Ron Naslanic, a supporter of the nominated candidates on the Ron Carey Slate, by Paul A. Levy, Esq. Mr. Levy contends that the Durham Unity Team and unslated candidates George T. Mueller, Billy Patrick and M.L. Griswold violated the *Rules* when nominated candidates Mueller, Patrick and Griswold used their campaign space in the September, 1991 issue of The International Teamster to campaign for candidates other than themselves, specifically using their space to campaign for the entire Durham Unity Team slate. Mr. Levy also contends that the *Rules* were violated by the receipt by Mr. Durham and/or his slate of a complete list of officers, stewards and business agents of the Union. Mr. Levy contends that this list is unavailable to other candidates and therefore Mr. Durham obtained a thing of value from the IBT in violation of the *Rules*. The Election Officer's investigation revealed the following.

Concerning the first allegation, Article VIII §9(c) of the *Rules* prohibits the Election Officer from regulating or altering any candidates' material prior to its publication in The International Teamster. Thus, the Election Officer has no authority

Rob Naslanic
September 23, 1991
Page 2

to determine the contents of any candidates campaign materials and no authority to direct candidates Mueller, Patrick and Griswold - or any other candidates - concerning the material any of them publishes in The International Teamster. Further Article VIII §10(a) permits all union members (including candidates Mueller, Patrick and Griswold), among other things, ". . . to openly support or oppose any candidate . . ." Under the *Rules*, all candidates have the affirmative right to utilize their space in The International Teamster to support the candidacy of any other candidate or to oppose any candidate.

Mr. Levy, on behalf of Mr. Naslanic, contends however that to allow nominated candidates to use the space in The International Teamster -- to which they became entitled by reason of such nomination -- to advance the candidacy of candidates to the exclusion of advancing their own candidacies permits such candidates to commit a "fraud." Mr. Levy contends that a slate of candidates and their supporters could gain additional campaign advocacy space in The International Teamster by obtaining the nomination of additional candidates who have no intention of becoming International officers, whose only purpose in being nominated is to gain further space in The International Teamster for their nominated candidates. All delegates to the 1991 IBT International Union Convention were elected and certified pursuant to processes carefully supervised by the Election Officer. The nomination voting by those delegates was also under the direct supervision of the Election Officer. The members nominated for International office were fairly and openly nominated by delegates, who, in turn, were chosen in a rank and file supervised nomination and election process.

That the campaign strategy of those delegates or the International Union officer candidates to whom those delegates were committed was to dilute the number of nomination votes received by certain nominated candidates in order to gain nomination for additional candidates - regardless of the purpose - does not demonstrate a violation of the *Rules*. It is for the candidates and the members who support them to determine campaign strategy. The Election Officer does not control or oversee those types of campaign decisions. The candidates pay a political price for a strategy which requires that they and their supporters nominate a multitude of candidates; each candidate receives fewer nomination votes and, for example, is thus subject to adverse publicity by other candidates with respect to the number of nomination votes received. The Election Officer will not direct or utilize the *Rules* to direct campaign decisions by any candidate any more than he will direct or use the *Rules* to direct the identity of the candidate to be supported by any member or members of the IBT. Therefore, the Election Officer finds, as to the first allegation, that there is no violation of the *Rules*, and accordingly, the first allegation of the protest is DENIED.

The second allegation of the protest is based upon the statement contained in the R. V. Durham Unity Team campaign material printed in the September issue of The International Teamster stating "73% of all Local officers, business agents and stewards

Rob Naslanic
September 23, 1991
Page 3

support Durham." Assuming, as apparently Mr. Levy on behalf of Mr. Naslanic does, that the statement is accurate and is based upon some manner of communications by and between R. V. Durham or his campaign and each officer, business agent and steward of all IBT Locals, Mr. Durham's possession of the names and/or addresses of the officers, business agents and stewards does not demonstrate a violation of the *Rules*. Each nominated candidate who so requested has been supplied a membership list from the Election Officer pursuant to Article VIII §2(a) of the *Rules*. The list, if so requested, was provided to all candidates or their slates on computer tape. All such lists provided to candidates, including Mr. Durham and Ron Carey, contained a status code field identifying Local Union stewards. The list may be sorted in accord with any of the codes provided. Accordingly, from the membership list provided to the Carey and Durham campaigns, it is possible to obtain a list of the names and addresses of stewards (assuming the local inputs such information into the International Union's database), either for the Union as a whole or divided by region or Local. Such sorting can be accomplished by both campaigns and thus the information was and is as readily available to Ron Carey and his slate as it was R. V. Durham and his slate.

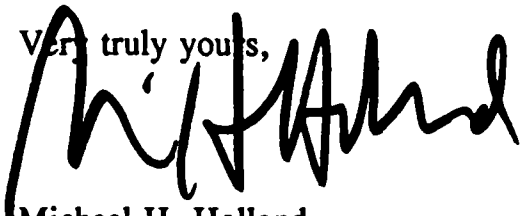
With respect to the names and addresses of Local Union officers and business agents, the Election Officer previously determined in his investigation and determination of another protest filed with him that the R.V. Durham Unity Team obtained the names and addresses of Local Union officers and business agents by review of the LM-2 reports filed by each Local pursuant to the Labor Management Reporting and Disclosure Act. See Election Officer Case No. P-719-IBT. These reports, once filed, are public documents available for review by all IBT members and nominated candidates. Accordingly, information as to the identity of IBT Local Union business agents is publicly and readily available to each nominated candidate or slate of candidates in the International Union officer election.

Since the information the protest contends was improperly available to Mr. Durham was or - upon request - will be provided to all other candidates by the Election Officer, or is available to all other candidates by the same methodology used by Mr. Durham to obtain such information, neither Mr. Durham nor the other members of his slate have received or obtained anything not similarly received or similarly obtainable by all candidates. Accordingly, the second portion of this protest is also 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)

Rob Naslanic
September 23, 1991
Page 4

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

cc: Frederick B. Lacey, Independent Administrator

James De Haan, Regional Coordinator (For Information Only)

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