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Michael H Holland
Election Officer

October 15, 1991

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VIA UPS OVERNIGHT

Anthony Veltry
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Dan Kane
c/o IBT Local Union 111
50 Broad Street
New York, NY 10004

Paul A. Levy
Public Citizens Litigation Group
Suite 700
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Washington, D.C. 20036

Barbara Briggs
c/o New York Labor Committee in
Support of Democracy and Human
Rights in El Salvador
c/o Amalgamated Clothing and Textile
Workers Union
15 Union Square
New York, NY 10003

Re: Election Office Case No. P-927-IBT

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"), by Paul Levy on behalf of Anthony Veltry, a member of IBT Local Union 810. The protest contends that Dan Kane, the President of Local Union 111, a candidate for International Vice President and a member of the R. V. Durham Unity Team slate, has violated the *Rules* by accepting contributions from an organization known as the New York Labor Committee in Support of Democracy and Human Rights in El Salvador ("*Labor Committee*").

Mr. Levy, on behalf of Mr. Veltry, contends that Barbara Briggs and Charles Kernaghan, who Mr. Levy alleges are managers of the Labor Committee, solicited funds for Vice President candidate Dan Kane. Mr. Levy states that the Labor Committee is an employer, as well as a foundation, and derives its financial support, in large part, from labor organizations. Mr. Levy contends that Mr. Kernaghan and Ms. Briggs used assets of the Labor Committee and/or the Committee's supporting labor organizations to create and send the fundraising letter. Mr. Levy claims that the solicitation letter was an

employer, a foundation, or similar entity, prepared and distributed with funds derived from improper sources. Since the solicitation does not contain a disclaimer regarding improper contributors Mr. Levy also notes that some of the funds received as a result of the solicitation are most likely from ineligible contributors.

The protest was investigated by Regional Coordinator Amy Gladstein. The investigation of this protest revealed that Barbara Briggs is not employed by the Labor Committee, but rather provides services for the Committee as an independent contractor.^{1/} She has been compensated for such services by the Labor Committee. The Labor Committee has no employees.

Charles Kernaghan is the Co-Director of the National Labor Committee in Support of Democracy and Human Rights in El Salvador ("National Labor Committee"), and has no official capacity with the Labor Committee. He is employed by the Amalgamated Clothing and Textile Workers Union ("ACTWU"). He has no managerial or supervisory authority over any other ACTWU employees, and is thus not an employer representative within the meaning of the *Rules*. See, Advisory on Campaign Contributions and Disclosure, issued August 14, 1991, at pp. 11-12.

Ms. Briggs is also employed by ACTWU on a part-time basis. She also has no supervisory or managerial authority over other ACTWU employees. She keeps a computer owned by the Labor Committee at her work station at ACTWU.

The Labor Committee maintains a bank account. It derives its funds from contributions from small foundations and an annual fundraising dinner. The Labor Committee has received contributions from labor organizations and employers, primarily through their purchase of tickets for the fundraising dinner. The Labor Committee also receives in-kind contributions from labor organizations such as space for telephones and, in the case of Ms. Briggs, workspace for herself and the Labor Committee computer at ACTWU.

Local Union 111 has made both monetary and in-kind contributions to the Labor Committee. Local Union 111 has previously provided the Labor Committee workspace at the Local Union's office, and presently provides space for a telephone and answering machine for the Committee, and allows the Committee to use the Local 111 office as a mailing address.

^{1/} Ms. Briggs herself employs no one.

Based on the foregoing facts, the Election Officer determines that the Labor Committee is an impermissible contributor to the campaign of Dan Kane or any other candidate for International Union Office in the IBT. Although the Labor Committee may not itself be an employer,^{2/} a labor organization, or a foundation, it is clear that its funds are obtained from sources who may not under the *Rules* contribute to the campaigns of any candidate for International Union Office: the Committee is funded, at least in part, by foundations, employers, and labor organizations. The issue remains, however, as to whether the Labor Committee did in fact contribute anything of value to the campaign for Dan Kane.

The fundraising letter which is the subject of this protest was typed by Ms. Briggs on the computer owned by the Labor Committee. The Election Officer's investigation determined that the Labor Committee permits Ms. Briggs to use, and she does use, the computer for personal and other business unrelated to Committee work. Ms. Briggs typed the solicitation letter on her personal time, time that was not paid for by the Labor Committee, ACTWU, or any other entity.

The letter itself was reproduced and mailed at Ms. Briggs' own expense. The letter is not printed on letterhead but on paper bearing the name of Mr. Kernaghan and Ms. Briggs at a private address, not the mailing address used by the Labor Committee. Any response to the solicitation is directed to the Kane campaign post office box. The solicitation does not contain a disclaimer concerning contributions by improper contributors, e.g., employers, labor organizations, etc.

The letter was sent to both individuals who were personal or business associates of Ms. Briggs and Mr. Kernaghan, as well as individuals whose names appear on the Labor Committee's mailing list. The Labor Committee mailing list is maintained on the computer owned by the Labor Committee which, as indicated above, is in the possession of Ms. Briggs. The labels for the solicitation were printed from the Labor Committee computer using, in part, the Committee's mailing list.

Neither Mr. Kernaghan or Ms. Briggs are employers or representatives of employers within the meaning of the *Rules* or the Advisory on Campaign Contributions and Disclosure, issued August 14, 1991. See, Advisory at pp. 11-13. Accordingly, both Mr. Kernaghan and Ms. Briggs can make personal contributions to the campaign for

^{2/} The Election Officer determines that the Labor Committee does not have any employees. Ms. Briggs's work for the Committee as an independent contractor is insufficient to qualify the Committee as an employer.

candidates for IBT International Union office. Ms. Briggs' preparing a campaign solicitation letter on her own time, Mr. Kernaghan and Ms. Briggs signing that letter, and reproducing and sending it on their own time and at their own expense, would not constitute a violation of the **Rules**. Since the Election Officer finds that Mr. Kernaghan and/or Ms. Briggs prepared, reproduced, and distributed the solicitation letter on their own time and at their own expense, using personal not organizational stationery, the preparation and distribution of such solicitation letter does not in and of itself constitute a violation of the **Rules**. Further, since Ms. Briggs and Mr. Kernaghan are permissible contributors, and the solicitation letter was prepared on their own time and distributed at their own expense, the contents of that solicitation letter - even assuming that the letter constituted an endorsement of Mr. Kane's candidacy - would not constitute a violation of the **Rules**.

Neither the National Labor Committee nor the Labor Committee are employers within the meaning of the **Rules**. Neither employs individuals as that term is commonly understood and defined in the Advisory on Campaign Contributions and Disclosure. However, both the National Labor Committee and the Labor Committee may be a foundation, trust, or similar entity as defined the March 14, 1989 Consent Order and Article X, § 1 of the **Rules**. Further, the Labor Committee is itself funded, at least in part, by individuals and entities such as employers, employer representatives, foundations, and trusts, which individuals and entities may not make contributions to International Union Officer candidates under the **Rules**.

The Labor Committee did contribute the use of its mailing list to Ms. Briggs and/or Mr. Kernaghan, who utilized that list for the purpose of soliciting campaign funds on behalf of Mr. Kane. Neither Mr. Kernaghan, Ms. Briggs, Mr. Kane, nor Mr. Kane's campaign paid for the use of the Labor Committee's mailing list. See, e.g., Election Officer Case No. P-928-IBT, finding that a mailing list is a commodity which, when its use is purchased, does not constitute a campaign contribution by the person or entity compiling or maintaining the list.

A campaign contribution is defined in the **Rules** as "any material thing of value." **Rules**, Definitions at ¶ 6(a). A mailing list is clearly a material thing of value. A mailing list provides names and addresses of individuals who might otherwise be unknown to the candidate, enabling a candidate to solicit funds from those with whom he/she would otherwise have no contact. The use on behalf of Mr. Kane's campaign of the mailing list of an organization with whom he is identified, and which he supports, is likely to provide a more fertile source of contributions than a blind mailing.

Permitting the uncompensated use of a mailing list constitutes a contribution of a material thing of value to a candidate for IBT International Union Office, and is, accordingly, a campaign contribution within the meaning of the *Rules*. Since the Labor Committee is an impermissible contributor under the *Rules*, the contribution by it to Mr. Kane's campaign of its mailing list constitutes an improper campaign contribution, and requires that all funds received as a result of the solicitation be returned by Mr. Kane and his campaign. See, Election Officer Case No. P-651-IBT, affirmed 91-Elec.App.-183.^{3/}

Accordingly, the protest is **GRANTED**. As a remedy for this violation, the Election Officer directs the following actions:

1. The New York Labor Committee in Support of Democracy and Human Rights in El Salvador shall cease and desist from making campaign contributions to Dan Kane or any other candidate or slate of candidates for International Union Office in the IBT.
2. The Committee to Elect Dan Kane shall, within 15 days of the date of this decision, return to the individual donors all contributions received in response to the solicitation prepared by Mr. Kernaghan and Ms. Briggs; and
3. The Committee to Elect Dan Kane shall file with the Election Officer, within 21 days of the date of this decision, an affidavit setting forth, in detail, its compliance with this order. Such affidavit shall include a list of all contributions returned, including the amounts returned and the individuals to whom they were returned.

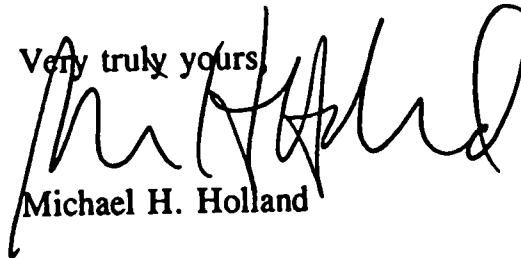
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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-

^{3/} In light of his findings with respect to utilization of the Labor Committee's mailing list, the Election Officer was not required to, and did not, determine whether the use by Ms. Briggs of the computer owned by the Labor Committee for preparing the solicitation letter and/or printing the address labels constituted a contribution from the Labor Committee to Mr. Kane's campaign in violation of the *Rules*.

Anthony Veltry
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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/mjv

cc: Frederick B. Lacey, Independent Administrator
Amy Gladstein, Election Office Regional Coordinator

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