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October 18, 1991

VIA UPS OVERNIGHT

Chris Scott
R.V. Durham Unity Team
508 Third Street, N. E.
Washington, D.C. 20003

Jim Woodward
Editor
Labor Notes
7435 Michigan Ave.
Detroit, MI 48210

Re: Election Office Case No. P-969-IBT

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the Rule for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest Chris Scott alleges that Labor Notes violated the Election Rules as a result of its coverage of the election campaign of Ron Carey. The Election Officer's investigation of this protest revealed the following.

Labor Notes is a monthly publication which has been published by the Labor Education & Research Foundation for approximately twelve years. Labor Notes reports on the Labor Movement, labor disputes, legislation, labor management cooperation programs, race and gender discrimination, sex harassment and economic issues affecting workers and their families. Labor Notes also contains columns such as "Steward's Corner", "Resources", "News Watch" and "Notes from the Editor". Labor Notes has regularly reported on the IBT, the Consent Order, the implementation of that Order by the court appointed officers and the campaigns of IBT members in the delegate and International officer elections.

The Labor Education & Research Foundation (LERF) is a Section 501(c)(3) tax exempt educational foundation organized under the laws of the state of Michigan. LERF is a foundation as defined by the Election Rules. It shares and is the part owner of the Detroit, Michigan building housing Teamsters for a Democratic Union ("TDU"). None of the members of the board of directors of LERF are members of the IBT or TDU. Labor Notes carries a list of individual and institutional "endorsers" on the second page of the publication. Among the endorsers are members of the IBT and staff members of TDU. Neither TDU nor the Teamsters Rank and File Legal Defense and Education Fund (TRF) are listed as endorsers. The endorsers are simply individuals and organizations who support Labor Notes and who have agreed to permit their names to be listed as endorsers. The endorsers do not participate in the administration of Labor Notes or of the LERF nor do they participate in the formulation of Labor Notes' editorial policy.

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Mr. Scott alleges in his protest that the coverage of the Carey campaign appearing in Labor Notes constitutes an improper foundation contribution in violation of the Election Rules.¹ The Election Rules define "campaign contribution" to include:

any direct or indirect contribution where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate

The definition of the term "campaign contribution" in the Election Rules is intended to be broad to further the propose of the Consent Order and the Election Rules. However, the Election Officer does not believe the term campaign contribution should be construed to include newspaper or magazine articles published by entities which are not owed or whose editorial policies are not controlled by candidates or committees acting on behalf of candidates.

In an analogous situation the Federal Election Campaign Act contains an exemption from the definition of campaign expenditure "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate" 2 U.S.C. §431(9)(B)(i).² Under this exception the Federal Election Commission and the Federal Courts have refused to find an impermissible federal campaign contribution in news reports or favorable comment regarding a candidate in news papers, magazines or broadcasts. Similar media exemptions are found in state laws governing the financing of state and local election campaigns. See, e.g., Michigan Campaign Finance Act, Mich. Comp. Laws §169.254(1)(1979).

The protestor may argue that it is inappropriate to distinguish between "media employers" or "media foundations" and other employers or foundations when applying the prohibition on employer campaign contributions contained in the Election Rules. The United States Supreme Court addressed a similar objection, founded on the equal

¹ Labor Notes is not a Union publication. Accordingly, the provisions of the Election Rules dealing with Union publications, Article VIII, §7, are inappropriate.

² The exemption of the press and other news media from content regulation under the Federal Election Campaign Act was presumably inserted into the act to avoid First Amendment concerns. To the extent that such concerns are applicable here, which the Election Officer does not concede, the interpretation of the Election Rules applied in this case would avoid such concerns.

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protection clause of the Fourteenth Amendment to the United States Constitution³ to the Michigan Campaign Finance Act, supra in Austin v. Michigan Chamber of Commerce, - U.S.-, 110 S. Ct. 1391 (1990). In Austin the Supreme Court held that it was not a violation of equal protection to exempt "media corporation" from the ban on campaign contributions imposed on other corporations. The Court based this holding on its recognition that:

Although the press' unique societal role may not entitle the press to greater protection under the Constitution . . . it does provide a compelling reason for the State to exempt media corporations from the scope of political expenditure limitations.

110 S. Ct. at 1402 (citations omitted).

The Election Officer found no evidence that Labor Notes is owned, or its editorial policy controlled, by Ron Carey or the Carey campaign. Similarly, the Election Officer found no evidence that Labor Notes is owned or controlled by any independent committee that supports Carey or members of his slate, e.g. TDU. The Labor Notes article attached to Mr. Scott's protest was clearly newsworthy and was printed by an entity not controlled by any candidate or campaign. The article is part of the ongoing coverage by this publication of the 1991 IBT International Union officer election. Neither the decision to publish the article, nor its content, was controlled by any candidate or independent committee supporting any candidate.⁴

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

³ Presumably the protestor would base a similar challenge in the case on the Fifth Amendment.

⁴ Having said this however it is important to emphasize that the Election Rules would prohibit direct contributions, either monetary or in kind, by Labor Notes or by LERF to a candidate for International Office in the IBT.

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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

cc: Frederick B. Lacey, Independent Administrator

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