

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 22, 1991

VIA UPS OVERNIGHT

Chris Scott
c/o R. V. Durham Unity Team
508 Third Street, N.E.
Washington, D.C. 20002

Ron Carey
c/o Richard Gilberg, Esquire
Cohen, Weiss & Simon
330 West 42nd Street
New York, NY 10036-6901

Re: Election Office Case No. P-972-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 Chris Scott on behalf of the R. V. Durham Unity Team slate. In his protest, Mr. Scott contends that campaign literature being distributed by supporters of the Ron Carey Slate violates the *Rules*. Specifically, Mr. Scott contends that certain campaign literature published by or on behalf of the Carey slate and distributed in North Carolina included a clip-out coupon which solicited support for the Carey slate; the coupon listed the telephone number of IBT Local Union 804 as the contact phone number.

Article X, §1(b)(3) of the *Rules* provides that, "No Union funds or goods shall be used to promote the candidacy of any individual. The use of Union equipment, stationary, facilities and personnel in connection with any campaign is prohibited unless the Union is compensated for such use by the candidate and unless all candidates are provided equal access to such goods and services." This admonition is repeated in the *Rules* under Article VIII, §10(c). Further, the Election Officer's Advisory on Campaign Contributions and Disclosure issued August 14, 1991, ("Advisory") defines campaign contributions as "any direct or indirect contribution of any material thing of value. . . ." Advisory at page 3. The Advisory also states at page 21 that "candidates and their campaigns are strictly liable to ensure that all campaign contributions received and utilized are campaign contributions permitted under the *Rules*." (emphasis added).

The investigation was conducted by Regional Coordinator Amy Gladstein and the Election Officer's Washington, D.C. office. The investigation showed the following.

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Further, the remedial action taken by the Carey campaign does not eliminate the utilization of Local 804 resources. Campaign calls may continue to be received by Local 804, with the telephone being answered by Local 804's receptionist. Even under the policy promulgated, Local 804's receptionist will perform at least the following functions: (1) answer and identify calls solely related to the Carey campaign; (2) refer such calls to the Carey campaign number; and (3) maintain separate records of such calls. These functions are services of value to the Carey campaign and are tantamount to converting the Local 804 receptionist into at least a part-time answering service for the Carey campaign. The need for these services has clearly been activated by the placement of Local 804's telephone number in the literature distributed in North Carolina starting October 1, 1991. The difficulties in retrieving literature already issued is compounded by the near impossibility of monitoring the utilization of the Local 804 receptionist during the remaining campaign period.

The effect of the violations is to create a situation where Local 804's receptionist has been placed in a situation of serving as telephone answering service for the Carey campaign. To remedy this violation -- and given the strict liability standard set out in the Advisory -- the Election Officer will require Ron Carey to reimburse Local 804 for his use of Local 804's resources in connection with his campaign.

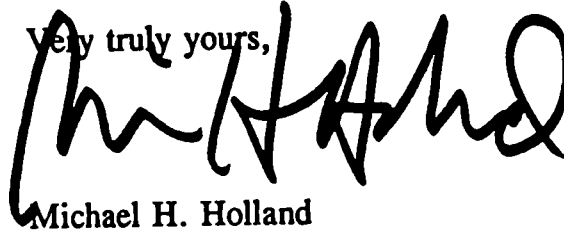
The Election Officer has investigated the cost of telephone answering services in the Long Island, New York area. The rate is \$50.00 per month with a minimum two month commitment. There is a \$50.00 installation fee for establishing service. Accordingly, Ron Carey and/or his campaign are ordered to reimburse Local Union 804 in the amount of \$150.00. This amount best represents the cost of equivalent telephone answering service over the relevant period, i.e., from October 1, 1991, the date the literature was first distributed, and continuing to the end of the campaign period, December 10, 1991. Such reimbursement shall be made within five (5) days of the date of this decision and an affidavit demonstrating such payment shall be filed with the Election Officer within two (2) days thereafter.

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,

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
Suite 300
Washington, D.C. 20006-1002

Walter Shea
c/o Robert Baptiste, Esquire
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20006

MHH/cb

IN RE:

CHRIS SCOTT

and

COMMITTEE TO ELECT
RON CAREY

and

IBT LOCAL UNION NO. 804

91 - Elec. App. - 213 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-972-IBT. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman for the Election Officer; Richard N. Gilberg for the Committee to Elect Ron Carey (the "Carey Committee"); and Hugh J. Beins for the R.V. Durham Unity Team. In addition, the Election Officer submitted his Summary in accordance with Article XI, Section 1.a. (7) of Rules for the IBT International Union Delegate and Officer Election (the "Election Rules").

The facts in this case are not in dispute. Beginning on October 1, 1991, campaign literature soliciting support for the Ron Carey slate of International Union officer candidates was distributed in North Carolina. This literature, which included a

clip-out coupon with an address and telephone number for contacting the Carey Committee, was prepared by a volunteer and was not directly reviewed or approved by Mr. Carey or the members of his slate. However, the coupon listed the office telephone number for IBT Local Union 804 (Carey's Local) instead of the phone number of the Carey Committee. This meant that the Local's receptionist would be answering phone calls from Ron Carey supporters and referring them to his campaign Committee. Thus, the Election Officer concluded that, by using the Local's telephone number in this way, the Carey Committee had inadvertently obtained the telephone answering services of the Local's receptionist.

Article X, Section 1.b.(3) of the Election Rules prohibits use of union equipment, stationary, facilities and personnel in connection with any campaign unless the Union is compensated by the candidate and all candidates have equal access to the services provided. Article VIII, Section 10.c. repeats this proscription. In addition, the Election Officer's August 14, 1991, Advisory on Campaign Contributions and Disclosures ("Advisory"), defines a campaign contribution as "any direct or indirect contribution of any material thing of value" The Advisory also states that "candidates and their campaigns are strictly liable to insure that all campaign contributions received and utilized are campaign contributions permitted under the rules."

Based on the foregoing, it is clear that by using the Local's telephone number in this way, the Carey Committee availed itself of

the Local's answering services without paying for those services and without the Local making the services equally available to other candidates. There is no dispute that this use of the Local's telephone number, however inadvertant, violates the Election Rules. As a remedy the Election Officer ordered the Carey Committee to reimburse the Local for the cost of its answering services for the period between October 1, 1991, until December 10, 1991, when the campaign will end. The Election Officer determined that this cost amounted to \$150, based on Long Island, New York area rates.


In fashioning this remedy the Election Officer considered the fact that the Carey Committee acted quickly to mitigate the effects of its mistake. In particular, the Carey Committee corrected the phone number on the literature in question. Notwithstanding these efforts, it was not disputed that some of the literature bearing the Local's phone number had already been distributed. This meant that the Local's phone number could be used by individuals who had received the literature or by other members who acquired the number from recipients of the literature.

At the hearing before me, the Carey Committee asserted that Local 804 had received only one phone call regarding the Carey campaign from the period beginning October 1, to the week of October 14, 1991, when the matter was investigated by the Election Officer. Thus, it was argued that the Election Officer had failed to demonstrate that any real harm had occurred. In fact, it was argued that the one call may have been prompted simply by an

individual believing that he should call Carey's Local to discuss the Carey campaign and not by the circulation of the literature.

As the Election Officer observed, however, a violation of this nature is impossible to undo. Local 804's phone number has been circulated as the number to call if one wants to contact the Carey Committee. While it is difficult to determine, with any certainty, whether a particular caller to Local 804 learned of the phone number from the literature or from another source, such a finding is not needed to sustain the remedy imposed here. It is not disputed that the Election Rules were violated. The remedy here is drawn narrowly to redress the violation. It is a modest and reasonable measure that need not be disturbed.

For the foregoing reasons, the decision of the Election Officer is affirmed in all respects.



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

Dated: October 30, 1991