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Election Officer

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October 18, 1991

VIA UPS OVERNIGHT

Gary L. Gregory
9601 Bakeway Drive
Indianapolis, IN 46231

John L. Neal
Secretary-Treasurer
IBT Local Union 135
1233 Shelby Street
Indianapolis, IN 46203

Re: Election Office Case No. P-976-LU135-SCE

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Gary L. Gregory, a member of Local Union 135. In his protest, Mr. Gregory contends that the Local Union newspaper, Teamsters Local 135, violates the *Rules* by promoting the candidacy of Local Union President John L. Neal to the office of Vice President at Large on the R. V. Durham Unity Team slate.

Article VIII, §7 of the *Rules* prohibits Union financed publications or communications from being used to "support or attack the candidacy of any person ..." The Election Officer's Advisory on Union Publications, issued December 21, 1990, ("Advisory"), establishes certain criteria by which publications will be evaluated to determine whether or not they violate the *Rules*.

The investigation was conducted by Regional Coordinator Peggy A. Hillman and the Election Officer's Washington, D.C. staff. The investigation shows the following. Local Union 135 has not previously published a newspaper. The first issue of the newspaper was published in October, 1991.

The Election Officer has reviewed the contents of this issue of the newspaper. The newspaper consists of eight (8) pages. The front page consists of a story above the masthead explaining the genesis of the monthly newspaper. There is a reference in this story to a \$133,000 grievance settlement which is also reported on the front page. This

grievance settlement report consists of a picture of the grievant and three Local Union officers including Local Union President John Neal who is pictured handing the grievant his \$133,000 check.

The other articles on the front page deal with a safety training and education seminar and an article discussing proposed federal legislation banning "scabs." The article on the proposed "scab" legislation is continued and covers most of the last page of the publication.

The second page of the newspaper consists of a feature article discussing how deregulation of the trucking industry has affected Teamsters. The second page also reports on the Union's endorsement of a candidate for the Mayor of Indianapolis. This article takes the form of a letter signed by Mr. Neal as President of the Indiana Conference of Teamsters. Page three reports on an open house celebrating the dedication of a new union hall in Bloomington, Indiana and contains a small (2" by 4") picture of Local members. The members in the background of the photograph, upon close inspection, can be discerned to be wearing R. V. Durham tee-shirts.

The centerfold of the newspaper consists of pictures of participants in a Local 135 picnic. One of the pictures is an approximately 2" by 4" picture of Local President Neal greeting Governor Evan Bayh. This picture is one of 37 pictures on the two pages. It is located at the top of the extreme left-hand column of the page, next to type face commenting on the meeting. Included in the photo montage is a picture which includes the complainant, Gary Gregory, in the background.

Page six reports on a special meeting held for Union stewards on July 8. Approximately one-third of the page is typeface, the rest consists of pictures of Local Union officers, members and retirees, including a picture of a successful grievant receiving a back pay check. None of these pictures include Mr. Neal. No reference is made anywhere on this page to Mr. Neal.

Page seven is devoted to the Fourteenth Annual Golf Tournament with a listing of the results of the tournament and three pictures of participants. No reference is made to Mr. Neal. The bottom half of this page is devoted to reproductions of letters from Dan Coats, U. S. Senator, concerning various political subjects including the pending proposed legislation concerning the use of permanent strike replacements. There are three pictures on the back page of the paper. Two portray the Local's two new vans and the third memorializes the retirement of a Local Union member. Mr. Neal does not appear in any of these pictures.

Analysis of the newspaper as a whole and the contents of each of the articles and pictures separately discloses that the newspaper does not carry any explicit descriptions

of International Union candidates, endorsements of candidates or any other comment on the ongoing election campaigns.

The Advisory sets forth the criteria to be applied in evaluating contents of Local Union newspapers as campaign literature. Under these criteria, a Union-financed publication is not allowed to: "(a) use a larger or more attractive picture of someone than had been previously been used if that person is a candidate, unless there are valid journalistic reasons for it; (b) print uncomplimentary pictures of any candidate; (c) print features and accompanying photographs of unnewsworthy events in which the accomplishments or qualities of any candidates are heralded or (d) carry a substantial number of articles or pictures featuring any candidate, unless all candidates for the same position are given equal treatment, equal space and equal prominence."

The most prominent item in the newspaper featuring Mr. Neal is the picture on the front page of him delivering a check for \$133,000 to a successful grievant. The successful conclusion of this grievance is also noted in the article explaining the genesis of the newspaper, albeit without reference to Mr. Neal. The fact that this event occurred in March, 1991 and is featured in an October, 1991 issue might give some reason for concern if this were not the Local Union's first issue. However, it is the first issue and certainly an award of this amount is a newsworthy event.

There is no basis for concluding that other articles carried in the newspaper are contrary to the *Rules*. All reports are of newsworthy events; as indicated above, the report on the \$133,000 grievance award is - under all circumstances - sufficiently newsworthy although the award was rendered in May, 1991. The number of articles and/or pictures featuring Mr. Neal is not substantial. Nowhere does the newspaper "herald" Mr. Neal or his accomplishments. The single background photograph of members wearing R. V. Durham tee-shirts is insufficient to find a violation of the *Rules*.

The protest points to the timing of the publication of the newspaper as evidence that its purpose is to promote the candidacy of Mr. Neal. The publication of a newsletter which includes favorable reports on Union activities and events could indirectly lend support to Mr. Neal's candidacy. The Election Officer recognizes that as a practical matter, Mr. Neal as a candidate, may derive some benefit from the fact that Local 135 decided to publish and published the first issue of its Local Union newspaper during the 1991 IBT International Union election campaign.

However, independent Local Union interests are served by the contents of the newspaper as well as by its establishment as a means of communication with the Local Union members. The Election Officer has previously considered the propriety under the *Rules* of a decision by a Local Union to publish the inaugural issue of its Union newspaper during an election campaign in which a Local officer was a candidate. In Election Office Case No. P-199-LU481-CLA, complainant contended that a new Local

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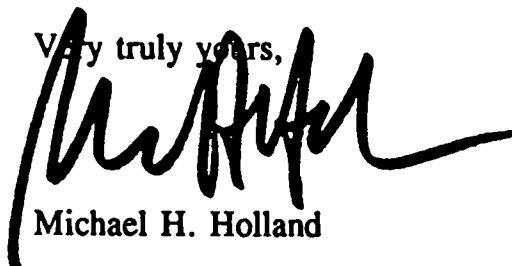
Union newspaper, Teamster Talk, violated the *Rules* by promoting the candidacy of Local Union officers who were seeking election as delegates to the 1991 IBT International Union Convention. The Election Officer denied this protest explaining his decision as follows:

"The *Rules* do stipulate that Union-financed publications must provide equal access to all candidates, if they provide coverage of any candidate's campaign [citations omitted]. The Election Officer will not, however, construe this rule to prohibit the first-time publication of a newspaper by officers of a Local simply because those same officers may also be candidates. The work of a Local Union, processing grievances, publishing information, conducting meetings, need not come to a halt because those members responsible for the work are also candidates for election." [emphasis supplied].

The evidence does not show that the contents of the first issue of Local Union 135's newspaper constitutes improper support for the candidacy of any candidate.¹ Accordingly, the 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) 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

MHH/ca

¹ Since the newspaper did not provide campaign coverage for any candidate, the issue of equal access is not presented in this case.

Gary Gregory
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cc: Frederick B. Lacey, Independent Administrator

Peggy A. Hillman, Regional Coordinator

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IN RE:	:	91 - Elec. App. - 214 (SA)
GARY L. GREGORY	:	:
and	:	:
JOHN L. NEAL	:	DECISION OF THE
and	:	INDEPENDENT ADMINISTRATOR
IBT LOCAL UNION NO. 135	:	:

This matter arises as an appeal from the Election Officer's decision in Case No. P-976-LU135-SCE. 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; Peggy Hillman, a Regional Coordinator; Gary L. Gregory, the Complainant; John L. Neal, President of Local 135; Ed Fillenworth for Local Union 135; and Sophia Davis for the Committee to Elect Ron Carey. The Election Officer also submitted his written 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 issue on this appeal is whether or not the inaugural publication of Teamster Local 135, Local 135's newsletter, was improperly used to advance the candidacy of John Neal, Local 135's incumbent President who is running for International Vice President At-Large on the R.V. Durham Unity Team slate. Mr. Gregory, a Local

135 member who supports Ron Carey for IBT General President, charges that the newsletter improperly advances Mr. Neal's candidacy and therefore violates the Election Rules.

Under Article VII, Section 7 of the Election Rules, a Union financed publication may not be used to support or attack any candidate. As the Election Officer notes in his Summary:

Featuring the activities of a particular candidate without journalistic justification and without publicizing similar or identical activities of other candidates is an example of improper support. Carrying a substantial number of articles or pictures of a particular candidate and displaying larger or more attractive pictures of a particular candidate are further examples if such coverage is not justified on journalist terms.

See Election Rules, Article VIII, Section 7.a.(1)(a), (c) and (d).

The publication at issue was first distributed in October, 1991, and consists of eight pages with articles and photographs on a variety of subjects of general interest to the Local. The paper covers Local events such as a picnic, golf tournament and stewards' meeting, as well as items of general interest such as pending strike legislation, correspondence from a U.S. Senator, and a substantial back pay settlement award won earlier in the year by a Local 135 member. Mr. Neal appears in a front page picture presenting a check for \$133,000 to the Local member who won the back pay settlement award in March of 1991. Elsewhere in the issue, Mr. Neal is shown greeting the Governor of the State at the Local's picnic. This picture is one of 38 small photographs in a two page montage devoted to coverage of the picnic.

Mr. Neal also authored the first article on the second page of the issue. Signed in his capacity as President of the Indiana Conference, the article is an appeal to Marion County Teamsters to support Steve Goldsmith, a candidate for Mayor of Indianapolis. Mr. Neal urges members to support Mr. Goldsmith primarily because Goldsmith's opponent favors deregulation of the trucking industry. The remainder of page two carries a report describing the damage to truckers from deregulation. Finally, Mr. Neal also appears as an editor on the mast head and in a small box listing the officers and directors of the Local.

The Election Officer determined that Mr. Neal's appearance in the above noted pictures and articles was journalistically justified and proportional to the events covered. Thus, the Election Officer found that the coverage did not violate the Election Rules.

At the hearing before me it was argued that the timing of the newsletter along with the inclusion of a six-month old back pay settlement case rendered the publication "suspect." I cannot credit these arguments.

IBT Local 135 is one of the larger Teamster locals (if not the largest), with about 16,000 active members. It grew to this size partially as a result of mergers with two other locals in April and August of 1990. At the hearing before me Mr. Neal described the problems of communication that had arisen as a result of the Local's increase in size and he detailed the efforts of the Local

to establish its own print shop and then subsequently to contract out for typesetting to finally get the publication off the ground. As the Election Officer observed, it is unusual that a Local of this size would not publish a newsletter. Given this, there is no basis for suggesting that the timing of the first issue of publication renders all references to Mr. Neal violative of the Election Rules.

As for the picture that features Mr. Neal presenting the check for \$133,000 to the successful grievant, the case in question had gone on for five or six years, had been appealed twice, and then finally certiorari had been denied by the United States Supreme Court. Clearly, a case of this magnitude is still newsworthy even after six months, especially where, as here, there had not been an opportunity to previously report it to the members of the Local.


In sum, I find nothing in the timing or content of this publication that would support the conclusion that the publication is campaign propaganda. To the contrary, there is evidence that the editors attempted to purge the newsletter of partisan political content. For example, two photographs of members wearing partisan "T" shirts were retouched to block out the candidate's logo. The more plausible conclusion is that the publication here contains nothing more than appropriate and balanced coverage of the Local's newsworthy events.

The Election Officer has previously found that the first time publication of a newsletter during an election campaign in which a

Local officer is a candidate is not -- without more -- a violation of the Election Rules. See Election Office Case No. P-199-LU481-CLA. The position taken here is fully consistent with that decision and the distinction that it makes between genuine news and campaign propoganda.

It is evident that legitimate coverage of newsworthy Local related events and activities will give some publicity to Local Union officials who may be running for office. However, the work of the Local goes on whether there is an election or not and the appropriate coverage of this work cannot be cast as campaign propoganda simply because of its proximity to an election. Absent disproportionate coverage, favorable or unfavorable treatment, or coverage of insignificant events heralding a candidate's accomplishments, or some other form of partisan distortion, newsworthy coverage of officers who are candidates does not violate the Election Rules.

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 31, 1991