

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1 800-828-6496
Fax (202) 624-8792

Michael H. Holland
Election Officer

February 12, 1991

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

VIA UPS OVERNIGHT

Joe E. Smith
225 Pine Street Ext
Campobello, SC 29322-9204

Delegates for a Clean IBT Slate
c/o IBT Local Union 28
Attn: Frank H. Wood
5318 Wade Hampton Boulevard
Taylors, SC 29687

Frank H. Wood
Secretary-Treasurer
IBT Local Union 28
5318 Wade Hampton Boulevard
Taylors, SC 29687

Re: Election Office Case No. Post8-LU28-MID

Gentlemen:

On January 28, 1991, Mr. Joe E. Smith, a member of IBT Local Union 28, filed a post-election protest in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Mr. Smith alleges that Frank Wood, Secretary-Treasurer of Local Union 28 and a candidate for delegate to the 1991 IBT International Convention, circulated campaign literature containing false allegations, and that the allegations caused a low voter turnout. Mr. Smith also alleges that the Union fund and facilities were used to distribute the mailing, and that the Union was not reimbursed in violation of Article XI, § 1 of the *Rules*. Finally, Mr. Smith protests the fact that the literature did not contain a disclaimer as required by Article VIII, § 6 of the *Rules*.

I. Election Results

Local Union 28's election for delegate and alternate delegate candidates was conducted by mail ballot on January 28, 1991. The election was supervised by Election Officer representative Griffin Morgan, assisted by other Election Officer personnel. Local Union 28 was required to elect two (2) delegates and one (1) alternate delegate to the 1991 IBT International Convention. The ballot consisted of two full slates and no independent candidates. Seven hundred and forty-two (742) ballots were cast, and the Election Officer Representative reports the following results:

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Delegates for a Clean IBT Slate:

Delegate:

Frank Wood 474
Morris Stepp 467

Alternate Delegate:

Leon Campbell 459

Teamsters for Ron Carey Slate:

Delegate:

Joe Smith 202
Dean Isreal 204

Alternate Delegate:

William David Seay 202

II. Campaign Mailings and Use of Union Facilities

The investigation conducted by Mr. Morgan revealed the following facts.

On December 21, 1990, Frank Wood, the Local Union's Secretary-Treasurer, mailed, via certified mail, letters to all of the delegate and alternate delegate candidates instructing them of their right to use the Local Union's mailing permit and copying facilities, provided the Local Union was fully reimbursed at the time of the mailing. The letter also advised each candidate of the cost of copying literature.

Pursuant to Article VIII, § 6 of the *Rules*, Frank Wood, a candidate on the "Delegates for a Clean IBT" slate, requested that Local Union 28 distribute campaign literature on behalf of his slate. In response to Mr. Wood's request, the clerical staff at Local Union 28's office produced the mailing labels for Mr. Wood's slate. The folding, addressing, and affixing of the labels to the literature was performed by campaign volunteers, namely Morris Stepp's and Frank Wood's children, and not by the Local Union clerical staff.

Some of the literature was copied on the Local Union's xerox machine, and Morris Stepp, a slate member of the "Delegates for a Clean IBT" slate, reimbursed the Local Union \$72 for copying costs.

The "Delegates for a Clean IBT" slate also used the Local Union's non-profit permit to mail their campaign literature. The Local Union paid \$124.12 to mail the literature, and Morris Stepp reimbursed the Local Union in the amount of \$124.12 for the cost of using the permit.

The literature mailed by the "Delegates for a Clean IBT" slate was printed on 9 x 12 sheets of paper which were tri-folded over to create a mailer. The mailer contained the Local Union's non-profit permit number and the return address of

Delegates for a Clean IBT slate, P. O. Box 624, Greer, SC 29652. Post Office Box 624 belongs to Mr. Wood personally, and is not Local Union 28's Post Office Box.

Article VIII, § 6 of the *Rules* provides that all literature distributed through use of the non-profit organization bulk-rate permit shall clearly state that it is campaign literature, the contents of which are not endorsed by the Local Union. *Rules*, Art VIII, § 6(3), p 53 The reason for this Rule is because the United States Postal Service normally requires that all mail distributed under the non-profit permit include the non-profit organization's return address. The requirement that such literature contain the disclaimer insures that the literature recipient is advised that the mailing contains campaign literature which is not endorsed by the Local Union, despite the fact that the Local Union's address appears on the mailing envelope.

The "Delegates for a Clean IBT" slate's campaign literature did not contain the Local Union's return address. Thus, the harm anticipated by the Rule did not in fact occur. Therefore, although Article VIII, § 6 of the *Rules* requires that all literature distributed through use of the non-profit permit contain the disclosure, I find that Mr. Wood's slate's failure to include the disclaimer only constituted a technical violation of the *Rules*. I base my decision specifically on the fact that the Local Union's return address was not included on the mailer envelope.

Moreover, although Mr. Smith complains about Mr. Wood's use of the mailing permit, the evidence clearly demonstrates that Mr. Smith and the "Teamsters for Ron Carey" slate were informed by the Local Union of their right to use the non-profit permit, but declined to afford themselves of that opportunity. Thus, I find that both slates had an equal opportunity to have their campaign literature distributed by the Union, at the candidates' expense, and that Mr. Wood's slate did not violate Article VIII by its use of the mailing permit or Union facilities.

Accordingly, the protest concerning the mailing of the campaign literature is **DENIED**

III. Allegedly Slanderous Campaign Literature

Mr Smith also alleges that the campaign literature distributed by Mr. Wood's slate contained several distortions about the "Teamsters for Ron Carey" slate. The "Delegates for a Clean IBT" slate distributed two (2) separate pages of campaign literature which criticized the opposing "Teamsters for Ron Carey" slate.

One of the flyers contained a reproduction of various headlines which have appeared in campaign literature entitled "Teamster Election News". The Election Officer has received several protests regarding this publication, and is actively investigating the

distribution of this literature in various IBT Local Unions. In particular, the Election Officer is investigating the source of funding for this publication. Since our investigation of this publication is not yet completed, the Election Officer will defer making a decision on this issue until such time as the investigation is conducted. Both parties will be notified of the decision with respect to this issue shortly after the conclusion of the investigation.

The other flyer which Mr. Smith objects to is a one-page document that compares the two slates. The document in question is being used as campaign literature. The literature in question does not involve the use of Union funds or goods in violation of Article X, § 1(b)(3) of the *Rules*. The fact that the assertions in the questioned literature are allegedly false or even defamatory does not mean that its circulation violates the *Rules*. See, National Assn. of Letter Carriers v. Austin, 418 U.S. 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted). The policy of encouraging robust and uninhibited debate in the selection of delegates and International Union Officers of the IBT is reflected in the *Rules*, Article VIII, § 6(g), which prohibits the censorship of campaign literature.

Since I do not find that the above-described literature violates the *Rules*, the above-described protest, except with respect to the "Teamster Election News", is **DENIED**.

IV. Conclusion

Since I do not find that any of the claims raised by Mr. Smith constitute a violation of the *Rules*, I must deny his post-election protest.¹ Article XI, § 1(b)(2) of the *Rules* provides that. "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." It is clear under Article XI, § 1(b)(2) that events or incidents which individually do not constitute a violation of the *Rules* cannot be the basis for setting aside the results of an election whether viewed singularly or cumulatively.

Accordingly, Mr Smith's post-election protest is **DENIED**.

¹ The Election Officer will retain jurisdiction with respect to the "Teamster Election News". If the literature is found to be violative of the *Rules*, this post-election protest will be reopened to determine whether that violation affected the outcome of the Local Union 28's delegate and alternate delegate election.

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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. 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.

Very truly yours,



Michael H. Holland

MHH/kpm

cc: Frederick B Lacey, Independent Administrator, IBT
Grant Crandall, Election Office Regional Coordinator
Griffin Morgan, Election Officer Representative

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
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May 22, 1991

VIA UPS OVERNIGHT

Joe E. Smith
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Campobello, SC 29322-9204

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Re: Election Office Case No. Post 8-LU28-MID

Gentlemen:

On February 12, 1991 the Election Officer issued his determination in the above post election protest. One of the allegations raised in that protest concerned the distribution, by the "Delegates for a Clean IBT Slate", of a photocopy of portions of a publication entitled "Teamster Election News". In the February 12, 1991 decision, the Election Officer stated that he was retaining jurisdiction of the protest to determine whether the distribution of the "Teamster Election News" was violative of the Election Rules and if so whether such violation may have affected the outcome of the delegate election. For the reasons set forth below, the Election Officer concludes that the Election Rules have not been violated and denies the above referenced protest.

The investigation by the Election Officer of this portion of the post-election protest revealed the following. The Teamster Election News is a four page tabloid published by RL Communications of Detroit Michigan. The publication is critical of Ron Carey and his candidacy for General President of the IBT.

Frank H. Wood, the Secretary-Treasurer of the Local Union and a candidate for delegate on the Delegates for a Clean IBT Slate, purchased copies of the Teamster Election News from RL Communications. No Union funds were used for the purchase. Mr. Wood used a copy of the "Teamster Election News" to prepare another piece of campaign literature consisting of headlines from the "Teamster Election News". Copies of this leaflet were reproduced and mailed to members of the Local Union. All expenses of the duplication and mailing of the literature were paid for by members of Mr. Wood's

Mr. Joe E. Smith
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slate or their supporters.

With respect to the sources for the preparation and printing of "Teamster Election News" by R.L. Communications, which the Election Officer indicated in his February 12, 1991 decision that he was investigating, that investigation remains ongoing. The Election Officer has concluded, however, that if the publication and distribution of the Teamster Election News involved the use of Union or employer contributions in violation of the Election Rules, such violation can and will be remedied by a reimbursement, with interest, of the prohibited contributions. Such remedy and, if appropriate, other remedies directed to RL Communications and the Union and/or employers making improper contributions are sufficient under the *Rules* to eradicate any such violations. See, e.g. Election Office Case No. P-249-LU283-MGN.

Mr Smith objects to the contents of the "Teamster Election News". However, underlying the Election Rules is a firm policy against censorship or the regulation of the content of campaign literature. Article VIII, Section 6 (g) of the Election Rules specifically states that "[t]he Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's literature on the basis of its contents." This policy reflects the right of union members to engage in vigorous internal union debate free from the threat of internal union discipline for their campaign statements. See, eg, Petramale v. Laborers Local 17, 736 F. 2d 13 (2nd Cir. 1984); Semancik v. UMW District 5, 80 LRRM 3475 (3rd Cir. 1972); Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir. 1963). Similarly, the United States Supreme Court has recognized labor disputes ".....are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Old Dominion Branch No. 496 v. Austin, 418 U S. 264, 272 (1974).

The fact that the campaign statements contained in the "Teamsters Election News" were allegedly false or even defamatory does not remove such literature from the protection of the *Rules*. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.

The *Rules* provide that at a protest determined post-election will not be remedied unless the challenged conduct may have affected the outcome of the election. *Rules*, Article XI, § 1(b)(2). For the challenged conduct to be considered to have the required effect, there must be a reasonable probability that the outcome of the election would have been different but for such conduct. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir. 1966). Given the results of this election with the large margin between the winning and losing candidates, a margin of almost 2 to 1, and given that any improprieties in funding will be subject

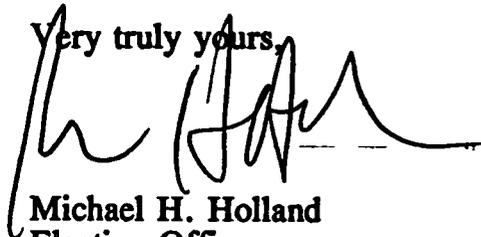
Mr. Joe E. Smith
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to remedies, sufficient to eradicate the effect of any violation, no basis exists sufficient to justify a conclusion that the results of the election were affected. In other words, no basis exists for concluding that there was a causal connection between the alleged violation and the results of the election sufficient to justify setting aside the election. Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M.D. Alabama 1989).

For the forgoing reasons, the above referenced 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
Election Officer

MHH/pjm

cc: Frederick B. Lacey, Independent Administrator, IBT
Grant Crandall, Regional Coordinator
Griff Morgan, Adjunct Regional Coordinator