

December 14, 1995

VIA UPS OVERNIGHT

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**Re: Election Office Case Nos. P-019-LU174-PNW
P-081-LU104-RMT DECISION ON
P-082-LU492-RMT REMAND**

Gentlemen:

I. Procedural History

Related pre-election protests were filed pursuant to Article XIV, Section 2(a) of the

Rules for the 1995-1996 IBT International Union Delegate and Officer Election (“Rules”).¹
These protests were consolidated for decision by the Election Officer because they involve similar facts and legal issues.

Each of the protesters alleged that certain foundations have made unlawful campaign contributions in violation of Article IV, Section 4 of the IBT Constitution, as incorporated into Article XII, Section 1 of the ***Rules***, providing: “No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or similar entity.”

On September 6, 1995, the Election Officer issued a decision denying these protests. Protester Jerry Halberg appealed this decision and requested a hearing before the Election Appeals Master. A hearing upon the appeal was held on September 18, 1995. On October 3, 1995, Election Appeals Master Kenneth Conboy remanded the decision to the Election Officer, with the following instructions:

Mr. Holland’s decision in Sargent [Case No. P-249-LU283-MGN], issued on May 21, 1995, is thoroughly investigated and comprehensive. However, that decision, which addressed the relationship between the TDU and TRF more than four years ago, cannot, standing alone, support the factual findings made by the Election Officer in the instant case concerning the present relationship between TDU and TRF. The Election Officer must make at least a preliminary inquiry into the current relationship between TDU and TRF in order to determine whether both organizations still utilize the “Huddleston System” for allocating campaign expenses.

¹P-019-LU174-PNW is a “reach-back” protest filed within the 30-day period following the final promulgation of the ***Rules*** on April 24, 1995, and alleged violations occurring prior to the issuance of the ***Rules***. The ***Rules***, at Article XIV, Section 2(a), state:

Protests regarding violations of the [Labor-Management Reporting and Disclosure Act, as amended] (including violations of the IBT Constitution) allegedly occurring prior to the date of issuance of the ***Rules*** and protests regarding any conduct allegedly occurring within the first twenty-eight (28) days after issuance of the ***Rules*** must be filed within thirty (30) days of the date of issuance, or such protests shall be waived.

Moreover, the Sargent decision did not involve the relationship and possible sharing of resources between TDU and AUD, an issue specifically raised in Mr. Halberg's protest . . . [A]bsent some type of investigation into Mr. Halberg's allegation concerning "common tie(s) between TRF and AUD," the Election Officer's conclusions cannot be supported.

II. Organizations Alleged to be Financed in Violation of the **Rules**

In the original protest, P-019-LU174-PNW, Mr. Halberg alleged that organizations other than TDU and TRF had violated the election **Rules** based upon their being financed by foundations or employers. In particular, the protester cited the Association for Union Democracy ("AUD"), the Labor Education Research Project ("LERP"), the New Directions Movement of the UAW, the Labor Institute and Bread and Roses. In order to determine whether or not the finances of these organizations should be investigated, the Election Officer requested further information from Mr. Halberg regarding evidence of any campaigning performed by these groups.

In response, Mr. Halberg indicated that over the past two years, AUD's various newsletters had repeatedly endorsed the reelection of General President Ron Carey. In addition, the protester asserts that AUD conferences have provided platforms for pro-Carey TDU spokesmen, while members of AUD's staff have publicly endorsed Mr. Carey at meetings of other organizations.

With respect to AUD's "electioneering" on behalf of Ron Carey, the protester submitted an undated AUD newsletter, *\$50+ Club News*, and cited the following portion as evidence of such electioneering:

The elimination of organized *crime's* influence over the national office of the Teamsters union was one of the great events in modern labor history. We have already mentioned AUD's Teamster Fair Election Project, which played a decisive role in establishing conditions for a fair election of Teamster officers.² Although the racketeer infiltration of the national office was wiped out by Carey's election, the supporters of the old regime remain powerfully entrenched at every other level so that the battle to complete the reform of the Teamsters union continues with renewed intensity as the old guard fights for a comeback. AUD remains deeply involved. We rent space to the New York Chapter of the Teamsters for a Democratic Union and support their battle to clean up the union.

(Emphasis supplied by the protester.)

²The AUD's Fair Election Project provided protest-related representation to IBT members during the 1990-1991 election. The Project ended following that election and no similar project has been instituted by AUD to assist members during the 1995-1996 election process.

The second publication claimed to illustrate AUD's campaign contribution is a portion from an undated issue of AUD's *Union Democracy Review*:

When the company refused to retract [its order that employees lift parcels as heavy as 150 lbs.], Carey called a UPS walkout to protest unsafe working conditions. When UPS obtained an injunction against the stoppage, the old guard teamster officials announced that they would not violate a federal court order and advised their members to report for work or risk being fired. Reformers found it ironical [sic] that these were the same old guard officials who remained unruffled when their colleagues were indicted on charges of embezzling union funds.

For almost two years, after Carey was elected, he held out the olive branch to his opponents in the union, obviously hoping that they would adjust [sic] themselves to his regime, live and let live, while he tried to run a good union. But it was all in vain. Carey had cut into their perquisites [sic]; he ended their profitable custom of double and triple dipping -- taking multiple salaries [sic] from locals, area conferences, joint councils, the international and whatnot. The old guard was obviously not reconciled to coexisting under such conditions; they were determined to cut Carey down, even, it seemed, if it meant weakening the union.

Neither of these excerpts produced by the protester supports his contention of campaigning on the part of AUD. The \$50+ *Club News*, while providing an editorial perspective positively portraying the changes made by Mr. Carey in the national office of the IBT, does not support Mr. Carey as a candidate. Similarly, the cited portions of an article in the *Union Democracy Review* reports favorably on Mr. Carey as a leader of the union. There is nothing in the tone, content or timing of this article that would lead to characterizing it as campaign material.

The protester further points to AUD's invitation to "two top Carey backers--TDU czar Ken Paff, and International Vice-President Diana Kilmury" to speak at the AUD conference in New York City in the summer of 1994. He further cites a visit by AUD staffer Susan Jennik to address a TDU meeting in Chicago in the fall of 1994.

With respect to any partisan pro-Carey remarks allegedly made to the AUD conference in the summer of 1994, Mr. Carey has not been found to be a candidate for election at that time. Thus, any discussion of political forces within the union at that point in time has not been found to be campaigning in any of the decisions issued by the Election Officer to date. See Sullivan, P-062-JC3-EOH (July 28, 1995) aff'd, 95 - Elec. App. - 11 (KC) (September 5, 1995); Ruscigno, P-065-JC37-EOH (July 21, 1995) aff'd, 95 - Elec. App. - 7 (KC) (August 14, 1995). With respect to the report of Ms. Jennik's remarks at the TDU convention indicating that Mr. Carey's defeat in 1996 would be a "tragedy for the Teamsters," such an isolated comment of this type will not be found to show campaigning on the part of AUD. See Sullivan, P-053-LU391-EOH (July 10, 1995) (Isolated comments at the April 1994 rally against

the abolition of the area conferences urging members to defeat Carey in 1996 cannot be used to characterize event as a campaign event).

The protester also alleges an “intimate relationship” between AUD and TDU with respect to resources, a shared director and funding sources. The Election Officer’s investigation confirms that TDU’s New York/New Jersey chapter rents office space from AUD at a commercially reasonable rate. TDU has its own copy machine and shares a fax machine with AUD for which TDU pays its share. There is no sharing of staff between the two organizations. Indeed, TDU does not have any paid staff in New York City at this time. No member of the AUD board serves on the TDU Board. Herman Benson, AUD’s Executive Director, does sit as a co-chair of TRF. Neither this fact nor the rental of office space and sharing of equipment would define AUD as having made a campaign contribution under the **Rules**. Moreover, there is no indication that TDU has received any discount or favorable treatment as a result of this shared rental arrangement; nor does Mr. Benson’s serving on the TRF board make AUD a prohibited campaign contributor. See Sargent, *supra* at 29. (No violation of the **Rules**, even though AUD and TRF share employees and resources, and a number of IBT members sit on the governing bodies of both organizations.)

Finally, Mr. Halberg asserted that AUD and TRF also share funding sources, identifying the Charles Lawrence Keith Foundation and Clara Miller Foundation as having given money to both organizations on the same day in 1990. Absent impermissible campaign activities on the part of either AUD or TRF, the fact that both organizations received funding from the same foundations does not violate the **Rules**.³

Based on the Election Officer’s further investigation of AUD’s involvement in the 1995-1996 election campaign, there is no evidence of impermissible contributions on the part of AUD.

³The only information connecting the New Directions Fund of the UAW and Bread and Roses to TRF, LERP, and AUD, are attachments to 1989 and 1990 Federal tax returns of the Charles Lawrence and Clara Miller Foundation which indicate the grants paid by the foundation in 1989 and 1990. For fiscal year ending January 31, 1990, the foundation made grants to TRF and AUD on August 1, 1989 and to New Directions Fund, TRF and LERP on January 23, 1990. For the fiscal year ending January 31, 1990, the foundation made grants to TRF, New Directions Movement and AUD on August 1, 1989 and grants to New Directions Fund, LERP and Bread and Roses on January 23, 1990. This evidence is insufficient to state a violation of the **Rules**.

With respect to the LERP, the protester presents evidence of TDU officers Ken Paff and Dan Campbell as being endorsers of LERP's publication, *Labor Notes*. Further, the protester states that *Labor Notes* articles "routinely include warm praise of Mr. Carey." Only the October 1990 issue of *Labor Notes* was submitted by the protester as an example. The cited article in that issue does not contain any specific reference to Mr. Carey, but rather praises the grass roots election campaign in the Teamsters as a model in the fight for union democracy. The protester also notes his belief that LERP is a "tenant" of TRF in the TRF Detroit office building.

Neither the listing of TDU officers as endorser of *Labor Notes* nor LERP's tenancy in a TRF building constitutes evidence of "pro-Carey electioneering" or a financial relationship that is prohibited by the **Rules**. No evidence has been submitted to indicate that the LERP has conducted campaigning or made a campaign contribution and hence there is no basis for a finding of a violation of the **Rules** with respect to LERP.⁴

III. Further Investigation of the TDU/TRF Financial Relations with Respect to the 1995-1996 Election

Pursuant to the remand, the Election Officer further investigated the financial relationship between TDU and TRF subsequent to the 1991 election period. Based on this investigation, the Election Officer concludes that TDU began engaging in campaign activity related to the 1996 election in December 1994 with the publication of a flyer critical of James P. Hoffa, a candidate for general president. See Halberg, P-089-LU174-PNW (September 7, 1995). Furthermore, an endorsement of Mr. Carey's reelection was made at the April 1995 meeting of the TDU steering committee. Based upon this campaign activity, the Election Officer further investigated the funding and fundraising activity of TDU, and the allocation of expenses between TDU and TRF.

A. FUNDING AND FUNDRAISING ACTIVITY OF TDU

In Sargent, *aff'd*, In Re: Gully, 91 - Elec. App.-158 (SA) (June 12, 1991), the Election Officer undertook a complete audit of TDU's funding and fundraising efforts as well as the sharing of resources between TDU and TRF. The Election Officer found that there was inadequate verification that membership dues, contributions and donations came from nonemployers and therefore required TDU to disgorge certain funds. The Election Officer noted the lack of membership verification as a reason for not approving the contributions.

TDU currently requires that a new member provide a local union number on the application form. In this manner, TDU is able to monitor its funding from membership dues, ensuring that it comes only from verified union members. TDU takes very little money from nonmembers. The only nonmembers from whom it accepts contributions and donations are former staff members or members who are known by the TDU staff to be nonemployers. TDU provided the Election Officer with examples of situations in which it had returned membership dues or contributions from individuals who could not be confirmed as either members or

⁴The same protester filed a separate protest, P-111, with respect to the June 1995 issue of *Labor Notes*. This issue will be addressed in a separate decision.

nonemployers.

The Election Officer finds that TDU's current practices with respect to identifying potential employer donations is consistent with the **Rules**. However, the election **Rules** provide for strict liability. Article XII, Section 1(b)(9) ("Candidates are strictly liable to insure that each contribution received is permitted under the **Rules**.") Should TDU be found to have taken donations or contributions from employers, it would be found to violate the **Rules** regardless of any system utilized. Other than the questions raised by the protester with respect to the relationship between TRF, AUD and LERP, this protest does not cite any instance by which TDU improperly accepted contributions or donations from employers.

The Election Officer also found in Sargent that TDU's fundraising efforts were deficient because two raffles held where the proceeds were used, in part, for campaign purposes did not contain any disclaimer warning that no employer or union contribution be made or accepted.

In the investigation performed on remand, the Election Officer reviewed copies of fundraising materials utilized since December 1994. On each of the fund raising solicitations, the disclaimer language prohibiting employer or union contributions appeared. In addition, the solicitation made for funds at the annual convention banquet included envelopes with the written disclaimer, as well as an oral explanation preceding the solicitation.

The evidence produced in the investigation of TDU's fundraising activities during the time TDU has been engaged in campaign-related activities did not disclose any violation of the **Rules**.

B. SHARING OF RESOURCES BETWEEN TDU AND TRF

The investigation on remand also considered the sharing of resources between TDU and TRF as to whether the Huddleston system was being used to allocate campaign and noncampaign activities. This allocation is necessary since TDU and TRF share personnel and resources, including staff. In Sargent, the Election Officer had found several flaws with respect to the implementation of the Huddleston system. These include failure to pay interest to TRF for certain asset transfers, delayed payment for reimbursable expenses, as well as deficiencies in the record-keeping system utilized by the organizations. Thus, the Election Officer required TDU to review with her the current means by which allocation of expenses occurs in order to determine if the system being utilized in this election period comports with the requirements set forth in the Sargent decision.

The investigation revealed that in the immediate aftermath of the 1991 election, TDU and TRF institutionalized the allocation system that had been in effect during the 1991 election campaign. Allocation through December of 1994 was based upon the percentages between campaign and noncampaign categories from the 1991 election. In January 1995, TDU implemented a refinement of the allocation system to utilize for the upcoming election period.

Under the current allocation system, each staff member must maintain and submit daily time sheets which are then tabulated to determine total time spent in various categories. Weekly summaries are prepared and compiled. Each month these reports are closed out and allocation figures are determined. TDU-related time is percentaged against total time to establish a "TDU percentage" for each staff person. Salaries, benefits, and overhead are paid

by the respective organizations on the basis of this percentage.

During the course of this investigation, the Election Officer reviewed samples of current activity reports of the TDU/TRF staff. The reporting forms are accompanied by a narrative instruction sheet that clearly defines the activities to which staff must allocate their time. The classification of activity properly distinguishes between campaign and non-campaign activity. The instructions also state, "any time spent planning or executing a meeting with campaign content shall be apportioned according to the amount of campaign content." This instruction corrects a flaw found in the allocation system in Sargent, p. 39. The Election Officer's investigation also revealed that the staff time charged to TDU is more inclusive than that used an approved in 1991. All membership meetings and organizing activities are paid for by TDU, even though many of these would not involved electoral activity.

The Election Officer reviewed examples of staff activity reports indicating that each member of the TDU/TRF staff is keeping such reports. The organization's bookkeeper reviews these reports on a monthly basis to ensure accuracy and correct any entries which he believes are in error. He then calculates the allocation fraction and the portion of staff time associated with campaign activities. Paul Alan Levy of Public Citizen Litigation Group performs an audit of these reports on a quarterly basis. The Election Officer reviewed this auditing procedure with Mr. Levy.

In Sargent, the Election Officer found a violation of the **Rules**, based upon TDU's allocation payment to TRF of overhead costs the month after these expenses were incurred. The Election Officer described this arrangement as akin to TRF supplying TDU with a line of credit without the payment of interest. The Election Officer further noted that TDU can avoid these interest charges by making advance payments to TRF for monthly reimbursable expenses. See Sargent, p. 34.

TDU has made an arrangement with TRF that accomplishes this result. To avoid being the beneficiary of a no-interest line of credit, TDU has advanced sufficient funds to TRF to allow TRF to deduct any accrued interest charges that would be incurred due any delay in TDU's making its allocation payment. The Election Officer finds the provision for such interest payment appropriately implements the allocation system.

Based upon the Election Officer's review of the allocation system, including the classification of activity, reports of staff activities, the auditing system currently in place, and the advances made to TRF to address any interest accrual, the Election Officer finds that the current method of allocation between TDU and TRF complies with the requirements found in Sargent. This does not relieve TDU or TRF from a funding of a violation in any specific instance where a deviation in practice from this overall method is found. It does, however, respond to the concern of the protester that TRF funds are impermissibly supporting TDU's campaign-related activity. Based upon the further investigation undertaken by the Election Officer pursuant to the remand, no such impermissible funding has been found to exist.

Based upon the foregoing, the protest is DENIED.

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Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham and Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Christine M. Mrak, Regional Coordinator
Jonathan Wilderman, Regional Coordinator