



OFFICE OF THE ELECTION OFFICER
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July 18 1991

VIA UPS OVERNIGHT

Gary L Gregory
9601 Bakeway Dr
Indianapolis IN 46231

David L Smith
Vice President
IBT Local Union 135
1233 Shelby St
Indianapolis IN 46203

Re Election Office Case No Conv 17 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*) The protest was filed by Gary L Gregory a member of Local Union 135 and an unsuccessful candidate for delegate to the 1991 IBT International Union Convention from Local 135 who had sought election as a delegate as a member of the Indiana Teamsters for Carey Slate In his protest which was filed during the period of the 1991 IBT International Union Convention Mr Gregory claims that Local Union Vice President Dave Smith and another Local 135 member both of whom were delegates to the 1991 Convention and had sought election as delegates on the slate opposed to Mr Gregory s slate purposely and maliciously destroyed an Indiana Teamsters for Carey poster which Mr Gregory had posted at the Convention site

The protest was investigated by Regional Coordinators Peggy A Hillman Donald A Twohey and by other Election Officer staff during the period the Convention was in session The results of the investigation are as set forth below

Local 135 was represented at the 1991 IBT International Union Convention by 21 delegates All members of the delegation had been elected in a contested election and had run as members of the slate headed by Local 135 President John Neal The delegates included John Neal the President of Local 135 Danny L Barton Secretary Treasurer of Local 135 and David L Smith the Local s Vice President The delegates at the Convention wore at times black knut shirts with the Local Union number

Mr Gregory and other Local 135 members who had been unsuccessful candidates for election from Local 135 and had run as the Indiana Teamsters for Carey Slate also attended the 1991 IBT International Union Convention as guests They participated in the campaign activities which occurred at the Convention and campaigned in support of General President candidate Ron Carey and other International Union officer candidates aligned with him

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Mr Gregory had a poster which read "Indiana Teamsters for Carey " He displayed the poster prominently in the hallway leading in to delegate entrances to the Convention floor At times, the poster was situated behind the Carey Slate campaign table

It is undisputed that the elected Local 135 delegates were offended by the poster Local 135 President and delegate John Neal stated that he felt the statement was untrue, since all of Local 135's delegates were opposed to Carey, Mr Neal felt the poster should have indicated that only certain Teamsters in Indiana were supporting Mr Carey Local 135 Vice President and delegate David Smith also questioned the propriety of the sign, he discussed this matter with Mr Neal

On the morning of Thursday, June 27, 1991, James Hession, a Local 135 member, unsuccessful delegate candidate and a guest at the Convention, Mr Hession's spouse, Calvin K Davis, a member of Local Union 667, Mr Davis' spouse, and Willie Smith, an alternate delegate from Local Union 667, were "manning" the Carey Slate campaign table Mr Gregory's sign was posted behind the table at that time Local 135 Vice President David Smith, along with at least one other Local 135 delegate identified by his black knit shirt, came over to the campaign table and said the poster was to be taken down The poster was taken down and brought by Mr Hession, his wife, and Mr Davis to the Office of the Election Officer at the Convention center They were accompanied by Local Union Vice President Smith and the other Local Union 135 delegate At the Office of the Election Officer, Regional Coordinator Donald Twohey examined the sign and, in accordance with the position of the Election Officer prohibiting the censorship of campaign material, explained to those present that the contents of the poster and its display were not contrary to the *Rules* See, e g *Rules*, Article VIII, § 6(g) Local 667 member Davis took the sign and reposted it behind the Carey Slate campaign table

Later that day, Local Union 135 Vice President Smith and the other Local Union 135 delegate who had spoken to Mr Twohey earlier returned to the Carey Slate campaign table Local 667 member Davis, his spouse, and Local 667 alternate delegate Smith were all present at the campaign table at that time Mr Davis identified the two men who came to the table at this time as the same two persons who had been there earlier in the morning Mr Hession, a Local 135 member, had been at the table in the morning and had identified Mr Smith as one of the Local 135 delegates who had been there in the morning and had gone with him and the other Carey supporters to the Office of the Election Officer While Mr Davis could not identify Local Union 135 Vice

President by name, his description of him matches Mr Smith's description of himself¹ Local Union 135 Vice President Smith and the other Local 135 delegate asked Mr Davis, "What are you going to do about the sign?" Mr Davis reminded them that the Election Officer had approved it Mr Smith and the other Local 135 delegates then removed the sign Mr Davis states that he was unable to stop them because he was engaged at the moment in selling tee-shirts Shortly thereafter, the sign was found cut up in multiple pieces in a trash can

Local Union 135 Vice President Smith denies he destroyed the poster He admits that he did see "someone do something with the sign" but refused to identify the individual or what was done except to say that the individual was not a member of Local Union 135 Mr Smith claims that while he was unhappy with the sign, and did discuss it with Mr Neal, he had no other connection with Mr Gregory's poster

Based on the evidence presented, the Election Officer credits Mr Davis Mr Davis' identification was positive The same Local 135 delegate who had gone to the office of the Election Officer was the delegate who had removed the sign later Mr Hession, a Local 135 member, was positive that Mr Smith had been present at the Carey campaign table at the time the sign was removed and taken to the Office of the Election Officer While neither Mr Davis' wife nor Local 667 alternate delegate Smith were able to identify Local Union 135 Vice President Smith, their descriptions of the delegate who came to the campaign table later on the day of June 27, 1991 do not contradict Mr Davis' identification

The *Rules* provide at Article VIII, § 10 that all Local Union members are free to engage in campaign activities It is inappropriate, and a violation of the *Rules*, for any other Local Union member to interfere with this right Thus, Local Union Vice President David Smith, by removing Mr Gregory's campaign poster and later destroying it, violated the *Rules* While the Election Officer has no direct eyewitness evidence identifying the person who actually cut the campaign poster, it was Mr Smith's actions which facilitated its destruction even if Mr Smith himself did not participate in the actual cutting² Mr Smith violated the *Rules* and the protest is GRANTED

The intrinsic value of the poster is, obviously, not great Further, Mr Gregory had another poster with which he replaced the destroyed poster almost immediately after its removal and destruction However, by his actions, Local Union Vice President Smith forced Mr Gregory to expend time and effort in filing a protest and required the Election Officer to expend resources in investigating and resolving the protest Mr

¹Mr Davis' wife, Teresa Davis, could not identify the two men who came to the table as other than wearing black knit shirts with Local 135 on them Local 667 alternate delegate Smith could only identify them as being Caucasian

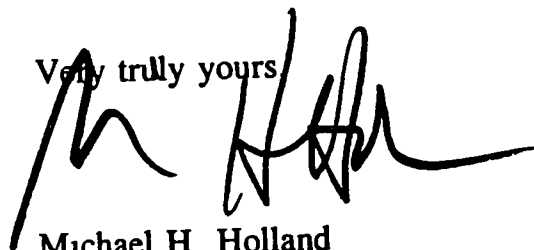
²Perhaps this is the import of Mr Smith's testimony that he did see "someone do something with the sign but that it was not a Local 135 member " Mr Smith, assuming he gave the poster to someone else to destroy, is not thereby exculpated.

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Smith violated the *Rules* and thus can be properly required to pay for the costs that both Mr. Gregory and the Election Officer were required to bear in resolving this protest. Mr. Smith shall compensate Mr. Gregory in the amount of \$50.00 for his time in filing the protest and participating in the Election Officer's investigation of it. Mr. Smith shall compensate the Election Officer in the amount of \$75.00 to partly cover the costs expended by the Election Officer in investigating and resolving this protest. Such monies shall be paid within ten days of the date of this decision, and Mr. Smith shall file an affidavit within such ten-day period with appropriate documentation demonstrating that such payments have been made.

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/mjv

cc Frederick B. Lacey, Independent Administrator
Peggy A. Hillman, Regional Coordinator