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November 14, 1991

VIA UPS OVERNIGHT

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

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

Mitchel Ledet
President
IBT Local Union 270
2207 Royal Street
New Orleans, LA 70177

Re: Election Office Case No. P-1064-IBT

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Richard N. Gilberg, acting on behalf of the Ron Carey Slate, concerning a mailing sent to the members of IBT Local 270, headquartered in New Orleans, endorsing the R. V. Durham Unity Team Slate. Mr. Gilberg alleges that the endorsement was made by IBT Local 270, not by individual officers or members of IBT Local 270, and thus violates Article VIII, § 10(b) of the *Rules*. He also alleges that because the mailing used Local 270's non-profit mailing permit, the mailing constitutes an improper use of Union resources; and because other candidates were not given equal access to the use of this non-profit permit, the *Rules* again were violated.

The mailing sent to all members of IBT Local 270 may well have been prompted by the campaign memorandum sent to all principal officers of IBT Local Unions by R. V. Durham on October 30, 1991, which, under the heading "Here's what you can do," suggests "Do a mailing to your members." However, as the Election Officer concluded in Election Office Case No. P-1041-IBT, this request did not violate the *Rules* since Union officers have the same right to engage in campaign activities as any other IBT member. The Election Officer cautioned, however, that "the endorsement of an International Union officer candidate or slate of candidates by any IBT entity, including

Ron Carey
November 14, 1991
Page 2

a Local Union, constitutes a campaign contribution in violation of the *Rules*¹ and further notes that the *Rules* prohibit the use of Union funds to promote the candidacy of any individual (Decision, page 2).¹ The pending protest focuses on the issues highlighted by this cautionary note.

The letter sent to all members of IBT Local 270 on November 4, 1991, states, in paragraph four:

After thorough consideration and determination of what would be in the best interest of the membership of Local 270 and the International Union as a whole, your entire Executive Board and all Business Agents of the Local Union unanimously and wholeheartedly urge you to vote for and actively support the R. V. DURHAM UNITY TEAM SLATE of candidates.

The letter is signed by Mitchel Ledet, President of Local 270, and Nolen J. LeBlanc, Secretary-Treasurer of Local 270.

The letter was mailed with the use of Local 270's non-profit postage permit (see Article VIII, § 6(a)(3) of the *Rules*). However, the envelope in which the letter was mailed did not contain any disclaimer notifying that the contents consisted of campaign literature not endorsed by the Union.

After receiving a copy of the protest, and prior to being contacted by representatives of the Election Officer, Mr. Ledet and Mr. LeBlanc decided to mail another letter to the members of Local 270 on November 13. The terms of the second letter state:

In our letter to you dated November 4, 1991, there was an inadvertence.

In paragraph four of our letter, we meant to say that individual members of the Executive Board and the individual Business Agents of the Local Union have endorsed the R. V. Durham Unity Team Slate.

¹ Because of the potential for confusion on this critical campaign issue, and the imminent mailing of the ballots to all members (during the week of November 11, 1991), the Election Officer took the unusual step of sending copies of his decision to all IBT Local Unions, both by United States mail and by same day TITAN electronic mail.

Ron Carey
November 14, 1991
Page 3

Please be advised that the Local Union and its Executive Board may not and have not endorsed any particular candidate or slate of candidates. To the extent that our prior letter may have been confusing, this is written to inform you that no candidate endorsement has been made by Local 270's Executive Board.

The envelope for this second letter, mailed with the use of Local 270's non-profit permit, contains the following sentence, "The enclosed is campaign literature, the contents of which is not endorsed by Local Union 270."

The question whether the language used in the initial letter constitutes an endorsement by the Local Union as opposed to individual officers of the Local Union is a close question. The letter states:

. . . your entire Executive Board and all Business Agents of the Local Union unanimously and wholeheartedly urge you to vote for and actively support the R. V. Durham Unity Team slate of candidates.

The import of such language to the average IBT member is not clear. Some members might regard the original letter as an endorsement by the Local Union. Members might not stop to parse the sentence; they might automatically conclude that "your entire Executive Board and all Business Agents" means the Local Union.

The second letter, however, clarified any confusion that might have been wrought by the first. While the difference between the language used in the first letter ("your entire Executive Board and all Business Agents of the Local Union") and the clarification letter ("individual members of the Executive Board and the individual Business Agents of the Local Union") might not be viewed as great, the second letter also contains the additional sentence, "Please be advised that the Local Union and its Executive Board may not and have not endorsed any particular candidate." All Local 270 members will be notified that no endorsement has been made by their Local or its Executive Board.

Because the endorsement language used in the November 4, 1991 letter is confusing and arguably improper, the Election Officer concludes that this aspect of Mr. Gilberg's protest has merit. The clarification letter sent to all members on November 13 adequately remedies this violation of the *Rules*. The clarification letter was sent within one week of the first letter and will be received by Local 270's members at

Ron Carey
November 14, 1991
Page 4

approximately the same time they receive their ballots. Any confusion generated by the first letter should be dispelled by the second.²

Mr. Gilberg also suggests that the mailing including the preparation of the letter may have involved Local Union funds. The Election Officer's investigation determined that all preparation, duplication, envelope and mailing costs associated with both the November 4 and November 13 letters was funded by individual Local Union officers and business agents. No Local Union monies were used.

Mr. Gilberg further contends that the use of Local 270's non-profit mailing permit was improper because it constitutes a use of Union resources and other candidates were not provided "equal access." Article VIII, § 6(a)(3) of the *Rules* requires all Local Unions to honor requests for the use of any non-profit organization postal permit. The *Rules* themselves afford "equal access" to this opportunity. Mr. Gilberg does not allege that Local 270 refused to allow its non-profit permit to be used by any International Union officer candidate or any representative of a candidate. Since the use of Local 270's non-profit postal permit to mail the endorsement letter was in compliance with the *Rules*,³ this aspect of Mr. Gilberg's 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,

² In considering the question of remedy, the Election Officer notes that there is no evidence that the officers of Local 270 acted intentionally or intentionally sought to convey a Union endorsement as opposed to individual members' endorsement.

³ Although the original letter does not contain the disclaimer required by the Rules (Article VIII, § 6(a)(3) states, "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 Union"), the letter does state "No union funds have been used for the preparation and mailing of this material" and the second letter does contain the disclaimer. This issue, while not raised by Mr. Gilberg, has been considered by the Election Officer; the Election Officer concludes that the absence of the disclaimer in the first letter was, at best, a de minimus violation of the *Rules*.

Ron Carey
November 14, 1991
Page 5

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 "MHH", with a long horizontal flourish extending to the right.

Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

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

Don Williams, Regional Coordinator