

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

January 8, 1992

VIA UPS OVERNIGHT

Richard Kraft
4432 176th S.W. #4
Lynnwood, WA 98037

Allyn Furiak, Secretary-Treasurer
Ed Bozell, Business Agent
IBT Local Union 38
2601 Everett Ave.
Everett, WA 98109

Robert A. Nyberg
2709 164th Pl., S.E.
Bothell, WA 98012

Douglas Frechin
7515 181st Place
Edwards, WA 98020

Bill Brown
15700 Bothell Way
Space #11
Bothell, WA 98012

Re: Election Office Case No. P-1106-LU38-PNW

Gentlemen:

Protests were pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Robert A. Nyberg and Richard Kraft. The protests contend that Mr. Nyberg was threatened with physical harm because of his support of Ron Carey and the members of the Ron Carey Slate for International Union office. The protests were investigated by Adjunct Regional Coordinator Patricia A. Warren.

Mr. Nyberg is a member of Local Union 38. On November 18, 1991, he along with Richard Kraft and Douglas Frechin, both members of Local Union 174, were at the site of the Local 38 Union hall to distribute campaign materials on behalf of Ron Carey and the Ron Carey Slate to Local 38 members attending a Local 38 membership meeting being held at the Union hall on the evening of November 18, 1991. At the same place and time, literature on behalf of R. V. Durham and the R. V. Durham Unity Team was being distributed by Ed Bozell, a business agent for Local Union 38, and Bill Brown, a member of the Local.

At approximately 7:30 p.m., Mr. Nyberg began walking toward the steps at the Local Union hall to attend the Local's membership meeting. Messrs. Brown and Bozell were at that time sitting in Mr. Bozell's car, parked near the entrance to the Local Union hall. To obtain access to the Union hall, Mr. Nyberg had to pass Mr. Bozell's vehicle. As he was passing, Mr. Brown handed him a copy of the literature that Mr. Brown had been distributing to the Local's membership. In return, Mr. Nyberg gave Mr. Brown some of the literature on behalf of Ron Carey and the Ron Carey Slate that he, Mr. Brown, was distributing.

Although Mr. Brown had previously refused to accept literature on behalf of Ron Carey and the Ron Carey Slate from Mr. Nyberg, he accepted the proffer of literature on this occasion.¹ Not content to just hand Mr. Brown the literature, Mr. Nyberg accompanied his distribution with commentary. According to Mr. Nyberg, he stated, "It's a newspaper article about Carey. It probably won't do you much good because I don't think you know how to read." Mr. Brown claims that Mr. Nyberg told him, "I doubt you have enough brains to know what you're reading anyway." Mr. Bozell says he heard Mr. Nyberg tell Mr. Brown, "You probably can't read anyway."²

Regardless of which version of Mr. Nyberg's statements is fully accurate, it is clear that the words said were snide and provocative. Although Mr. Nyberg states that the comment was a joke, he was well aware that Mr. Brown was not a supporter of Mr. Carey's candidacy and had always refused campaign literature on behalf of Mr. Carey and his slate in the past. While Mr. Brown is not alleged to have threatened any IBT members supporting Mr. Carey prior to the incident in question, and the Election Officer has found no evidence of any such prior harassment on the part of Mr. Brown, Mr. Brown had previously made it very clear to those members who supported Mr. Carey, including Mr. Nyberg, that he did not agree with their political message. Mr. Brown and Mr. Nyberg were not friends.

Regardless of the provocation, however, Mr. Brown's reaction was excessive. Mr. Brown lost his temper, jumped out of the car and admittedly threatened Mr. Nyberg. Mr. Brown admitted stating, "I have had enough of your shit. I will break both of your fucking legs." Mr. Nyberg's version of the statement is not markedly different; Mr. Nyberg claims Mr. Brown stated, "I'm going to spread your ass all over the parking lot. You shouldn't make those kinds of cracks. I think I'll break both your legs." Mr. Bozell also agrees that Mr. Brown threatened to break Mr. Nyberg's legs.

¹ Mr. Brown stated he thought acceptance of the literature was only fair, since Mr. Nyberg had taken the R. V. Durham Unity Team literature given him by Mr. Brown.

² Neither Mr. Frechin nor Mr. Kraft overheard the comment made by Mr. Nyberg to Mr. Brown.

Again, Messrs. Frechin and Kraft did not overhear the statements. Mr. Kraft claims he heard a slap, like a palm slapping on a car; Mr. Kraft claims it was that noise which attracted his attention. By the time he walked over to the situs of Mr. Bozell's car, the incident was over.

After the threatening statement, Mr. Nyberg moved away from Mr. Brown, which ended the incident. There was no physical altercation of any type. While Mr. Bozell did not intervene, the incident was over quickly; as Mr. Kraft states, by the time he walked to Mr. Bozell's car, the matter had concluded. There was no need for Mr. Bozell to intervene, since Mr. Nyberg's backing away from Mr. Brown was sufficient to end the confrontation.

Mr. Brown admits that he lost his temper and acted inappropriately. He claims, however, that his anger was directed at Mr. Nyberg's remark to him, not to the campaign activities in which Mr. Nyberg was engaging. That Mr. Brown has previously been the target of campaign activities by members supporting Mr. Carey and the Ron Carey Slate, including Mr. Nyberg, without harassing or threatening the Ron Carey campaigners, supports Mr. Brown's claim that his anger was aroused by the content of Mr. Nyberg's statement, as opposed to his campaign activities. However, Mr. Brown's anger--whatever the cause--was clearly disproportionate to the provocation.

It is also beyond cavil that Mr. Nyberg's statement was provocative. Mr. Nyberg was well acquainted with Mr. Brown; they have come in frequent contact particularly during the past year when Mr. Nyberg has been actively campaigning for Mr. Carey and the Ron Carey Slate. Mr. Nyberg was aware that Mr. Brown did not support Mr. Carey or his slate. Mr. Nyberg knew that Mr. Brown had a quick temper. Mr. Nyberg and Mr. Brown were not friends. Under all these circumstances, the only possible purpose for Mr. Nyberg's remarks was to provoke a retaliatory response; and provoke such a response they did.

The 1991 IBT International Union officer election has now concluded. Mr. Carey and his slate were the successful candidates. Mr. Nyberg was not harmed in any way by the events of November 18, 1991. Indeed, those events did not interfere on that date or thereafter with his campaign activities on behalf of Mr. Carey and the Ron Carey Slate.

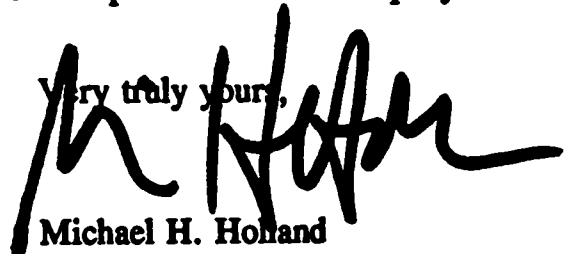
However, the words spoken by both men on November 18, 1991 were inappropriate and untoward. Since the confrontation occurred in the midst of campaign activity, the Election Officer has jurisdiction to prevent such reoccurrence in the future. Accordingly, the Election Officer orders both Mr. Nyberg and Mr. Brown to cease and desist from making comments such as the ones they made on November 18, 1991, or

Richard Kraft
January 6, 1992
Page 4

any similar comments, to each other or to other IBT members when such remarks are based in whole or in part upon members' political activities or positions with respect to the 1991 IBT International Union officer election.

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

Christine M. Mrak, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esquire

R. V. Durham
c/o Hugh J. Beins, Esquire

Walter Shea
c/o Robert Baptiste, Esquire