



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

May 21, 1991

VIA UPS OVERNIGHT

Danny Peterson
417 Krueger Street
Orlando, FL 32809

Larry D. Parker
President
IBT Local Union 385
122 N Kirkman Road
Orlando, FL 32811

Re: Election Office Case No. P-243-LU385-SEC

Gentlemen

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Danny Peterson alleges that the *Rules* were violated as a result of the distribution of the "Teamster Election News " The Election Officer's investigation of this 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

Mr Peterson alleges that the "Teamster Election News" was handed out by Local Union officials at a "Meet the Candidates" meeting sponsored by Local Union 385 for candidates for delegate and alternate delegate to the 1991 IBT International Convention Mr Peterson also alleges that the tabloid was passed out by Local Union officers and stewards at the gate of a Consolidated Freightways facility Mr Peterson contends that the literature was passed out on work time and that it was paid for by Local Union funds

The *Rules* protect the right of all IBT members, including incumbent Union officers, to engage in campaign activities Such campaign activities include the distribution of campaign literature, even literature that may not solicit support for a particular candidate and which may be negative in tone 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,

May 21, 1991
Page 2

allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.

Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the **Rules**. National Association of Letter Carriers v. Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected). The policy of encouraging robust debate in the selection of delegates and International Officers of the IBT is reflected in the **Rules'** prohibition of censorship of campaign literature. See **Rules**, Article VII, § 6(g)

The distribution of the "Teamster Election News" outside of the Local Union 385 candidate's forum is not violative of the **Rules**. There is no allegation that other candidates were denied a similar opportunity to distribute literature and the Election Officer has discovered no evidence of such discrimination

The **Rules** prohibit non-incidentally campaigning by IBT members on work time. This prohibition includes campaigning by Union officials. Mr. Peterson alleges that three officers of the Local Union were handing out copies of the Teamster Election News at a Consolidated Freightways facility on January 7, 1991 on their work time. Two of the officers, President Larry D. Parker and Secretary-Treasurer Gary Thorton, are full time employees of the Local Union. Both Parker and Thorton had taken a half day off from work in order to campaign. The third Union official, Local Union Trustee Michael Grant, is an employee of Consolidated Freightways and was campaigning after the end of his shift.

The **Rules** prohibit the use of unreimbursed Union or employer resources for campaign purposes. Mr. Parker alleges that the copies of the Teamster Election News which were distributed by Parker, Thorton and Grant were paid for with Union funds. The Election Officer's investigation revealed the 2100 copies of the "Teamster Election News" were purchased from RL Communications in Detroit, Michigan for \$728.00, including shipping. The invoice was paid by an American Express Money Order purchased by Larry Thorton. There is no evidence that Union funds were used for this purpose.

The Election Officer is continuing to investigate whether any Union resources were utilized with respect to the initial publication and distribution of "Teamster Election News". In this regard, the Election Officer is examining

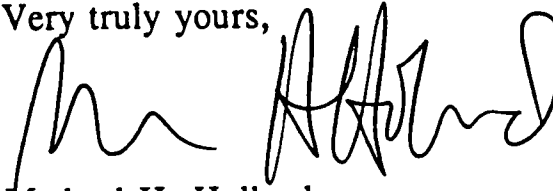
May 21, 1991
Page 3

the sources of funding of the publication and distribution of "Teamster Election News" by RL Communications. The Election Officer has concluded that if the publication and distribution of the "Teamster Election News" involved the use of union or employer contributions in violation of the *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 the effect of any such violation. See, e.g., Election Office Case No P-249-LU283-MGN

However, based on the foregoing, and based on the remedy that will be imposed if employer or Union funds have been used in the publication or distribution of the "Teamster Election News", the Election Officer hereby denies the instant protest

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/pjm

cc Frederick B. Lacey, Independent Administrator, IBT
Donald Williams, Election Office Regional Coordinator
Ron Carey Campaign, c/o Richard Gilberg, Esquire