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VIA UPS OVERNIGHT

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Re: Election Office Case No. P-471-LU722-SCE

Gentlemen

Complainant, Mark Serafinn, filed this pre-election protest pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Complainant alleges in his protest that in the January 21, 1991 issue of "Transport Topics", the official newspaper of the American Trucking Association, there appears what he describes as "a puff-piece" in the form of an interview with R V Durham The article contains two pictures of Mr Durham, one on the front page in color It is alleged that this constitutes campaign literature and was done by the American Trucking Association, admittedly an association of trucking employers, to favor the candidacy of Mr Durham It is alleged further, that no such articles appeared prior to the 1985 or 1988 National Master Freight Association (NMFA) negotiations with the IBT

Investigation reveals that "Transport Topics" is a publication of the American Trucking Association. It is distributed via mail, at the newspaper postal rate, and is wholly self-supporting. It has about 30,000 paid subscribers, who pay \$69.00 a year to receive this weekly newspaper. The newspaper also carries paid advertising.

The issue in question carried articles on such topics as the position of the Interstate Commerce Commission Chairman on the deregulation of the trucking industry, changes of name of various trucking companies, a feature article on J B Hunt, the request of the Jones Truck lines to its Teamster employees to accept a wage reduction, an article on the rate of sales of heavy duty trucks in the United States and an editorial and classified pages. On the front page of the January 21, 1991 edition, appears a picture of Mr Durham, approximately 2½" by 5" on a page approximately 8½" by 11". The caption to the picture is entitled, "Talking with the Teamsters". The article found on pages 6-9 of the newspaper refers to Mr Durham's candidacy for General President of the IBT and his opinion as to the effect of the Consent Decree on the operation of the Union. Other articles appearing on the front page relate to the price of oil and to an Arkansas tax on trucking operations.

The editor of "Transport Topics", Mr Oliver Patton, was interviewed by the Election Officer. He stated that Mr Durham was interviewed because he was seen as a significant figure in the upcoming trucking industry negotiations between the NMFA and the Teamsters, and it was thought that this would be an article of topical interest to the readership. He acknowledged that this was the first article to appear in the newspaper on the NMFA process featuring a Teamster official. In part that was because Mr Durham agreed to make himself available for an interview, whereas earlier Teamster leaders had not. Articles concerning the NMFA process have regularly appeared in various issues.

Both the American Trucking Association and Transport Topics are clearly employers within the meaning of the *Rules*. Article X, Section 1(b)(1)(n) of the *Rules* provides that "no employer shall be permitted to contribute anything to any campaign. This prohibition is not limited to employers that have contracts with the Union, it extends to every employer, regardless of the nature of the business. Further this prohibition extends beyond strictly monetary contributions made by an employer, to include a ban on contribution and use of employer stationery, equipment, facilities and personnel."

However, Transport Topics is independent of the American Trucking Association. Its operations are supported by subscription sales and advertising revenues. Further, it is a particular type of employer, it is a newspaper. Thus, it is central to its business to present articles and interviews that would be of interest to its subscribers. The article in question is similar in format and type, other than it being an interview, to the other articles and items in the newspaper. The content of the interview itself does not relate primarily to Durham's candidacy or the election process, and it appears that those items are mentioned only to add some color and background to the interview, which is

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primarily about Durham's views on the upcoming negotiations and his view on the state of the trucking industry. Further, issues of free speech would arise were the Election Officer to regulate or censor an independent newspaper providing information to the general public

Though not directly on point, but nonetheless, instructive are the guidelines appearing in the "Advisory On Union Publications" issued by the Election Office on December 21, 1990. In discussing appropriate, as opposed to inappropriate, articles and/or pictures of Union Officials who are also candidates, the Advisory, in pertinent part, states that such a publication shall not

- (a) use a larger or more attractive picture of someone than had been previously used of that person as a candidate, unless there is a valid journalistic reason for it,
- (b) print features and accompanying photographs of insignificant or unnewsworthy events in which the accomplishments or qualities of any candidate are heralded,
- (c) carry a substantial number of articles or pictures featuring a particular candidate, unless all candidates for the same position are given equal treatment, equal space and equal prominence,

Also forbidden are pictures or articles stating or indicating support of the candidacy of a particular candidate, prominent, particularly cover photographs of a candidate, numerous photographs of the same candidate accompanying a single article, numerous articles in the same edition about a particular candidate, pictures or articles reporting on the activities of a particular candidate where the same or similar activities of other candidates for the same office have not been similarly reported.

The article in question was accompanied by two pictures of Mr. Durham, one of those pictures on the front page. However, a number of the articles that appeared in that edition of the newspaper has had related pictures of individuals, those pictures were of the same general type as those of Mr. Durham. While the text stated that Mr. Durham was a candidate for General President, it did not explicitly indicate support for his candidacy. There would appear to be a valid journalistic reason for publishing the article. It was newsworthy in light of the upcoming National Freight negotiations, particularly given the purpose of the newspaper, which is to cover the trucking industry. There was no attempt to denigrate the candidacy or campaigns of other candidates. Thus, even if the publication in question were a Union publication, but for the heralding of Mr. Durham's candidacy, it might not violate the *Rules*.

In accordance with the foregoing, this 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

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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/mca

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