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Election Officer

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February 22, 1991

VIA UPS OVERNIGHT

Roosevelt A Via
1604 Lonna Drive
Roanoke, Virginia 24019

R Steven Smith
8305 Deer Run Drive
Copper Hill, Virginia 24079

Jim H Guynn
President
Teamsters Local 171
2015 Melrose Avenue , N W
Roanoke, Virginia 25017

Re: Election Office Case No. P-489-LU171-MID

Gentlemen

Pre-election protests were filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In their protests, Roosevelt A Via and R Stephen Smith allege that Jim H Guynn, president of Local Union 171 and a candidate for delegate to the 1991 IBT International Convention on an opposing slate with Jim Sherwood, Local Union 171 Secretary-Treasurer, improperly utilized Local Union resources to promote their candidacy for delegate. Specifically, complainants protest a letter dated February 8, 1991 that was mailed to the homes of all United Parcel Service ("UPS") Local 171 members.

The Election Officer conducted an investigation that revealed the following. The letter dated February 8, 1991 was signed by Jim Guynn and mailed out on the same day that campaign literature for Guynn/Sherwood was mailed to members of UPS. UPS members received the campaign literature and the February 8, 1991 letter at the same time. The campaign literature emphasizes the experience and skill of Messrs Guynn and Sherwood in conducting negotiations and handling grievance matters. The letter discusses difficulties experienced by the Local Union related to the Company's efforts to present "production cases" before the grievance committee panel and emphasizes the Local Union officials' determined resistance to this effort.

The letter also discusses a grievance matter involving a discharge of a part-time employee held in November and December, as to which a final ruling was apparently delayed due to a Union/Company dispute over the "production cases". The letter also

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reports that the Union/Company's arbitrator resigned on January 17, 1991, apparently because of the Union and Company's dispute over the scope of his authority to hear evidence relating to the production standards in discharge and discipline cases

Mr Guynn states that simultaneous mailing of the Union letter and his campaign literature was merely coincidental and not intended to promote his candidacy for delegate. The complainants claim that they had never received a mailing of this type concerning this type of issue from the Local Union. They allege that the mailing of the letter at the same time as the campaign literature was an effort to promote the Local Union officers' candidacy for delegate to the 1991 IBT International Convention and to intimidate members who may have to rely on Mr Guynn's advocacy in future disciplinary cases

The *Rules* endeavor to protect the right of all members of the Union to participate in campaign activities, whether they be incumbent Union officers or rank and file Union members. *Rules*, Article VIII, Section 10. The *Rules* are also clear in prohibiting candidates from attempting to utilize Union-financed publications and communications to advance their candidacies. Article VIII, Section 7 of the *Rules* provides that "[n]o Union-financed publication or communication may be used to support or attack the candidacy of a person."

The instant case turns upon the characterization of Mr Guynn's February 8, 1991 letter. If it was campaign literature designed to promote his candidacy, it was violative of the *Rules*. Conversely, if it was a communication carried out in the regular course of Union business, there is no violation of the *Rules*.

After investigating this matter, the Election Officer concludes that the February 8, letter mailed by Mr Guynn to all UPS members was campaign literature. The conclusion is based upon the following considerations. The letter concerns disputes with the Company over an extended period of time, most of which occurred in November and December. Mr Guynn attributed the triggering event to his decision to issue the mailing to a letter he received on February 4, 1991 from Al Barlow, Teamsters Eastern Conference Representative. Inspection of this memo indicates that it relates to the meeting scheduled February 13 and 14, 1991 "to discuss the open issues remaining in the new contract." There is no reference to the "productions standard", disciplinary or arbitrator resignation issues. Complainants further stated that the Union's usual practice for communicating issues of the nature contained in the February 8, 1991 letter was by mailings to stewards for posting on Union bulletin boards.

The February 8, 1991 letter was mailed to all full-time and part-time UPS members, over five hundred members. Mr Guynn's office supplied the Election Officer with documentation offered in support of his contention that mailings similar to the February 8 mailing were a regular practice of the Local Union. The documentation submitted consists of nine separate items. Two of the items were issued by Walter B Thacker (the former Secretary-Treasurer of the Local Union, now deceased) on July 4, 1981. These items indicate under the "cc" notation "all UPS members of Local 171."

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Three of the items submitted, dated respectively February 2, 1983, August 21, 1986 and November 2, 1989 were authored by Mr Guynn. However, the "cc" notation lists individual members, and not all members of Local 171 or all members employed by a particular employer. The only two items authored by Mr Guynn which indicate mailings to members of a particular employer are a February 2, 1984 letter sent to "all KEAL members" and an April 24, 1989 letter sent to "all ADF employees."

Mr Guynn also submitted two documents entitled "UNION NOTICE" in bold lettering, dated July 9, 1990 and August 13, 1990. These documents are addressed to "all UPS Service Members of Local 171" and relate to the settlement and ratification of the national UPS/IBT contract. The complainants state that they do not recall receiving these notices by mail. The best belief of the staff at the Local Union Offices is that because of their "great importance" they probably were mailed to all UPS members of Local 171.

The submitted documentation does not establish a regular Union practice of mailings to all UPS members dealing with the type of issues discussed in the February 8, 1991 letter authored by Jim Guynn.

The importance of the issues discussed in the February 8, 1991 letter is belied by their treatment at the regular Local Union meeting held on February 9, 1991, a date prior to the date that the Local Union members would have received the February 8 letter. Complainants state that the issues discussed in the letter were not discussed during the Local Union meeting. Mr Guynn states that they were discussed, but concedes that the discussion was "very brief" and that most of the discussion during the meeting related to the health and welfare matters resulting from changes made in the new national UPS/IBT contract.

The Election Officer questioned Mr Guynn closely as to why the topics were only "briefly" discussed at the Local Union meeting if they were important enough to warrant a mass mailing to all members on the preceding day. Mr Guynn's answer was that he was concerned that if the content of the letter were read to the members at the meeting or commented on extensively, the members might think that he was campaigning at the Local Union meeting. The Election Officer concludes from this comment that Mr Guynn himself was uncertain that the subject matter of the February 8, 1991 letter was regular Union business and not campaign material.

Complainants protest that the February 8, letter was intimidating. They claim that the letter heightened fears, particularly among part-time employees, as to their job security because of the discussion of difficulties in disciplinary procedures and the potential for the introduction of production standards. However, the complainants candidly acknowledged that although the letter caused some initial consternation and confusion among the members, it is their belief that the ultimate effect was to make members more angry and that the letter "backfired" as a campaign tactic.

Accordingly, the Election Officer finds that the February 8, 1991 letter was not

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intimidating and does not constitute a violation of the *Rules* that could affect the outcome of the election. However, the letter was prepared by Union staff and with Union funds. The *Rules*, Article VIII, Section 10(c) state as follows "Union funds, facilities, equipment, stationery, etc shall not be used to assist in campaigning unless the candidate reimburses the Union for such costs and such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services."

The Election Officer sustains the protest in this aspect as to Mr. Guynn and finds that the *Rules* have been violated. Mr. Guynn is ordered to reimburse the Union for the expenses related to the mailing of the February 8, 1991 letter. The reimbursement shall cover the cost of postage, paper and staff time.

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/ads

cc Frederick B. Lacey, Independent Administrator
Grant C. Crandall, Regional Coordinator

IN RE:

ROOSEVELT A. VIA
R. STEVEN SMITH,

Complainants,

and

JIM H. GUYNN,
IBT LOCAL UNION NO. 171,

Respondents.

91 - Elec. App. - 82 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a February 22, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of teleconference on February 28, 1991, at which the following persons were heard: Jim H. Guynn, President of Local 171 and the appellant herein; the complainants, Roosevelt A. Via and R. Steven Smith; and John J. Sullivan and Dale Berry, on behalf of the Election Officer.

Messrs. Via and Smith, members of Local 171 and candidates for delegates to the 1991 IBT International Convention, challenge a letter dated February 8, 1991 (the "challenged letter"), sent by Mr. Guynn to all members of the Local who work United Parcel Service ("UPS"). This totals approximately 500 members. A copy of Mr. Guynn's February 8 letter is attached hereto as Exhibit A.

Mr. Guynn is himself a candidate for a delegate position as is the Secretary-Treasurer of Local 171. Mr. Guynn and the Secretary-Treasurer are aligned on a campaign slate. On February 8, 1991, Mr. Guynn also mailed his delegate campaign literature to the UPS

membership. A copy of this literature is attached hereto as Exhibit B.

Messrs. Via and Smith alleged that the purpose of the challenged letter was to promote the candidacies of Mr. Guynn and his fellow slate member, the Secretary-Treasurer. Mr. Guynn contends that the challenged letter concerned Union business that was properly communicated to affected members in accordance with past practice, that it was mailed separately from the campaign literature, that the letters were physically mailed nearly eight hours apart, and that the timing of the two mailings was coincidental.

The challenged letter concerned an on-going dispute with UPS in which the Local sought to prevent issues concerning "production" quotas from infecting grievance and arbitration proceedings in disciplinary cases. The challenged letter discussed in particular an arbitration of the discharge of a part-time employee that occurred in December 1990, and the eventual resignation of the arbitrator over his disputed authority on January 17, 1991. The challenged letter also advised that a special meeting had been scheduled for February 13 and 14 by Al Barlow, the Teamsters Eastern Conference Representative, for the purpose of discussing "unresolved issues." This meeting was canceled by TITAN message dated February 8, 1991, the date of the challenged letter.

The February 8 campaign literature consisted of a one-page flier that extolled the experience of Mr. Guynn and the Secretary-Treasurer in contract negotiation and grievance handling.

The protestors claim that the challenged letter was irregular and issued for the purpose of promoting the candidacies of the incumbent officers, particularly by implying that their vigorous representation in such disputes may be needed by members in the future. They note in particular that Mr. Guynn did not tend to write such letters to the membership before he became a candidate for delegate. Mr. Guynn claims, to the contrary, that such letters were fully in accordance with past practice.

Mr. Guynn submitted seven examples of mailings he had sent to UPS members since 1981 that were purportedly similar in kind to the challenged letter.¹ Examination of these seven letters suggest that in at least two instances the magnitude of the issues involved were much greater in importance than the grievance items discussed in the February 8 letter. For example, in July 1990, one mailing to UPS members advised them that the Teamsters National Negotiating Committee recommended against ratification of the UPS's final proposal for a national contract. A second direct mailing the next

¹ Mr. Guynn also submitted two items issued by a previous Secretary-Treasurer in 1981 that also concern, in some part, the issue of production standards. Because these items were issued ten years ago, and by an officer other than the current officers, they were accorded consideration, but not great weight, by the Election Officer. I accord these letters similar weight.

month notified the membership of the results of the ratification vote in favor of the proposed contract.

Of the remaining five letters submitted by Mr. Guynn, three involved issues of less magnitude than the national contract, but do not appear to have been conveyed by direct mailing to all affected members, but only show copies to a limited number of affected individuals. Thus, no consideration is given to these letters and I question why Mr. Guynn produced them in support of his past practice argument.

The remaining two letters, one dated February 2, 1984, and one dated April 24, 1989, do appear to have been sent by Mr. Guynn to all members employed by two particular employers other than UPS. It is suggested that the number of employees at these two employers do not approach the 500 employed by UPS. In any event, the Election Officer declined to find a past practice based on the mailing of two letters over a span of nine years. I would also decline to reach such a conclusion.

Accordingly, I concur with the Election Officer's finding that the documentation submitted by Mr. Guynn fails to establish a regular practice of mailings to all 500 UPS employees on issues similar to that raised in the February 8 letter.

Moreover, the issue of "production standards" UPS appears to have been on-going for at least a decade. Further, the particular grievance and arbitration discussed in the challenged letter were not particularly newsworthy insofar as they occurred in November

and December of the past year. The only reference to a current event in the challenged letter is the sentence concerning the meeting called for February 13 and 14 to discuss "unresolved issues." Although the letter may imply that the "unresolved issues" concern the production standards dispute, the TITAN message which was sent as notification of that meeting reflects that the meeting was for the purpose of discussing "the open issues remaining in the [negotiation] of the new contract." There is no indication in the message that the meeting would be concerned with production standards or their use in disciplinary proceedings. Moreover, as already noted, the meeting was canceled the same day the challenged letter was mailed.

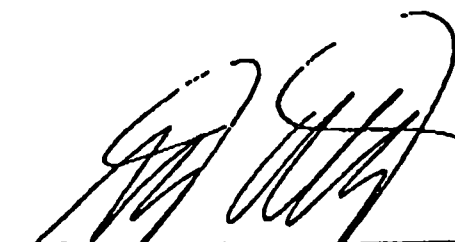
Finally, at a meeting of the Local held on February 9, 1991, the day after the challenged letter was mailed, Mr. Guynn only made "very brief" mention of the issues raised in his letter. If the issue was sufficiently important to warrant a mailing to 500 employees, it would appear that greater attention would have been accorded it at the February 9 meeting. Moreover, written information could have been conveyed to the job stewards and business agents present at the meeting for posting on Union bulletin boards, but it was not.

Accordingly, the Election Officer concluded on the basis of the timing of the two mailings; the nature of the topic discussed in the challenged letter; its virtual omission from the agenda of the Local meeting held the next day; and the relationship of the

topic to the experience of the incumbent officers which was the subject of the campaign literature, that the challenged letter must be deemed campaign literature sent to promote the candidacies of the incumbent officers. The Election Officer further found the mailing to be in violation of the Rules For The IBT International Union Delegate And Office Election (the "Election Rules"). See Election Rules Article VIII, Section 7 ("No Union-financed publication or communication may be used to support or attack the candidacy of any person . . ."); Article VIII, Section 10(c) ("Union funds, facilities, equipment, stationery, etc., may not be used to assist in campaigning unless the candidate reimburses the Union for such costs and such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services.").

As a remedy, the Election Officer ordered Mr. Guynn to reimburse the Local for the expenses related to the mailing of challenged letter including the cost of postage, paper supply and staff time to accomplish the mailing.

For the reasons expressed herein, the Election Officer's ruling is affirmed in all respects.

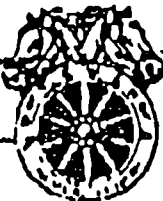


Frédéric B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: March 1, 1991.

EXHIBIT A

Chauffeurs, Teamsters and Helpers
Local Union No. 171



INTERNATIONAL BROTHERHOOD OF TEAMSTERS
HAND TRUCKMEN AND HELPERS OF AMERICA AFL-CIO

EASTERN CONFERENCE OF TEAMSTERS • JOINT COUNCIL NO. 83 OF VIRGINIA
2018 MELROSE AVENUE N.W. • ROANOKE, VIRGINIA 24019 • PHONE (703) 442-9908
1 800 461 2418

James V. Sherwood, Jr.
Secretary-Treasurer

Michael J. Addison
Vice President

Carlton H. Hodges
Recording Secretary

Jim M. Gurne
President
Principal Officer

Trustees
Billy R. Ogle
Frank C. Walker
Ethan Manuel, Jr.

February 8, 1991

TO: All United Parcel Service Members

Dear Brothers and Sisters:

United Parcel Service Management has attempted to present production and bonus disciplinary cases at the Atlantic Area Parcel Grievance Committee panel for the past several years. Our Union has always refused to hear them because our contract does not contain language to cover these issues.

The Company would like us to hear production cases about part timers who are not meeting their expected numbers, or package drivers who the Company claims do not meet their standards. The bonus cases are usually about package drivers who have padded their stops in order to collect more money. As you know, Local 171 has no bonus plan.

All Union Officials in the Atlantic Area refuse to proceed with these cases. The arbitrator has exceeded his authority in other cases recently. Based on this we had reason to believe he may rule with the Company on production and bonus cases. We want to make sure he does not get the opportunity.

On November 6, 1990, the arbitrator attempted to open the work record of a discharged employee. The Union objected. The Company agreed with the arbitrator and the issue was deadlocked. The two sides argued for a day and one-half and no other cases were heard. I was present with a Roanoke part timer who had been discharged on October 12, 1990. Because of this deadlock his discharge grievance was not heard.

On December 4, 1990, we finally heard the case. The arbitrator awarded only 19 days back pay. I am told that the arbitrator claimed it was not the Company's fault that the committee was delayed. In my opinion, this was a full back pay case and the arbitrator overstepped his authority. The grievant had been off over two months. It had to be the Company's fault. It was the Company who unjustly fired him.

UNION DRIVERS ARE SAFE DRIVERS - PATRONIZE UNION CARRIERS

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February 8, 1991
All UPS Employee Members

On December 12, 1990, George Devakos, Company Chairman wrote a letter, which I feel indicates that he expects the panel to hear production and bonus cases. On December 21, 1990, Mr. Barlow, Union Chairman, responded by letter stating that Mr. Devakos was trying to change the rules, giving the arbitrator more authority than he is entitled. The arbitrator claimed he could not continue under the existing conditions and resigned on January 17, 1991.

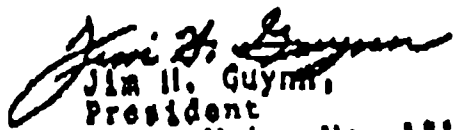
The sad part of it is that we have a tremendous backlog of cases on the agenda. Further, the Company has not given us an answer on hiring another arbitrator. The contract requires an arbitrator for at least one year from date of ratification on discharges and suspensions.

Mr. Barlow has called a special meeting for all Local Unions on February 13 and 14, 1991, to discuss unresolved issues.

However, it is the position of Local 171 that an arbitrator must continue to set as a seventh panel member on discharge and suspension cases. Further, we will never agree to hear cases that the Company would like to force upon us in order to gain what they could not obtain in contract negotiations.

We will keep you further informed and if you have question don't hesitate to call.

Fraternally yours,


Jim H. Guynn,
President
Local Union No. 171

JHG:elg
Cc: All UPS members

EXHIBIT B



Jim Guynn



Jim Sherwood

Dear Member,

We are candidates for delegate and alternate delegate to the International Convention to be held in June. Our qualifications to serve the membership are well documented. We are, however, opposed by two U.P.S./T.D.U. members who are working for Ron Carey, and one Kroger warehouseman whose objectives and qualifications are unknown as of this writing. So that you may better understand, set forth below are some of our qualifications and experience.

Guynn, a Teamster for 31 years has served the local membership for the past 18 years as President and Business Agent. He has been involved in negotiating national and supplemental contracts. Sherwood, a Teamster for 18 years has served Local 171 as Secretary/Treasurer and Business Agent for six years. He has been involved in negotiating contracts on multi local union committees. We both negotiate contracts on the local level. We participate and serve as chairman on many of these grievance panels. As a result of this, we know who negotiates the best contracts and who upholds claims at Grievance Panels. In other words, we know all the players in the upcoming national election. We have both participated in negotiations with R. V. Durham and have seen no leader more honest, skillful, or qualified to serve as President of the International Brotherhood of Teamsters. He has our support. Our TDU opponents know only about TDU and Ron Carey.

We have always been open and honest with our membership. We are responsible to you only, the members of Local 171. We have no obligation to Ron Carey, TDU, or any other candidate. When you send us to the 1981 International Convention we will not owe a debt to Ron Carey or TDU. Our only obligation will be to assure that the most qualified candidates are nominated and that changes in our Constitution will be beneficial to all Teamster members and their families.

For the record, we have always believed that each rank and file member should have a direct vote in electing the International Executive Board. We believe that the agreed to consent order should have been complied with and that corruption must be eliminated. Therefore, some of our objectives are the same as our U.P.S./T.D.U. sponsored opponents. However, there are some very important exceptions. We know Ron Carey, and we do not feel he is the "Mr. Clean Leader" that TDU portrays him to be. In fact, government records support allegations of corruption and mismanagement in Ron Carey's Local 804. Please read the enclosure very carefully.

Ordinarily we would be visiting with you at this time, but we are unable to because of the ongoing contract negotiations that we have been involved in for the past several months. We have freight terminals in 22 locations, UPS in 4 locations, and 10 other companies which makes a total of 36 different locations within a radius of 130 miles to contact. With time so limited, visiting is very difficult. We will still be coming to your facility when needed to settle disputes or grievances as our primary concern is to serve your needs.

The very survival of our Teamster's Union could be decided at this Convention. Guynn and Sherwood will do what is right for you and your family's interest. The TDU candidates will do what Ron Carey wants. We want to be your delegates and ask for your support and vote.

Praternally yours,

Jim H. Guynn, 81
President

Jim Sherwood
Secretary/Treasurer