

***PRE-ELECTION
PROTEST
DECISIONS***

ELECTION OFFICE CASE NOS.

P-651-IBT to P-700-LU996-RMT

VOLUME XIV

***Michael H. Holland
Election Officer
June, 1992***

OFFICE OF THE ELECTION OFFICER
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August 14, 1991

VIA UPS OVERNIGHT

The Committee to Elect Ron Carey
c/o Susan Davis, Esq
Cohen, Weiss and Simon
330 West 42nd Street
New York, NY 10036-6901

R V Durham
c/o Hugh J Beins, Esq
Beins, Axelrod, Osborne
& Mooney
2033 K Street, N W
Washington, DC 20006-1002

Re: Election Office Case No. P-651-IBT

Dear Ms Davis and Mr Beins

A protest was filed with the Election Officer in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In that protest the then-Durham-Mathis Unity Team ("Durham") alleges that the *Rules* were violated by the Committee to Elect Ron Carey ("Carey") as a result of a fundraising event that was conducted in Los Angeles, California on September 15, 1990 The Election Officer's investigation revealed the following

"A Committee of the Friends of Ron Carey" ("Committee of Friends") is an ad hoc group of three individuals who joined together to engage in fundraising activities in support of the candidacy of Ron Carey The three members of the Committee of Friends are not members of the IBT nor are they employers as defined in the *Rules* In 1990 the Committee of Friends met several times to plan a fundraiser for the Carey campaign to be held in the fall of 1990

As part of their planning for the fundraiser, the Committee of Friends contacted several well-known Southern California political and cultural figures The Committee of Friends requested support from these individuals for its fundraising efforts and the ability to use their names in a fundraising solicitation At least two of the individuals who agreed to let their names be used in the Committee of Friend's fundraising efforts

are employers as defined by the *Rules*, namely, Aris Anagnos and Oliver Stone ¹

Two of the individuals contacted by the Committee agreed to permit the Committee of Friends to use their home for the fundraiser. One of these individuals, Stanley Sheinbaum, is alleged to be an employer as defined by the *Rules*. The Election Officer's investigation revealed that Mr. Sheinbaum is retired from full-time employment and serves in the capacity as "publisher" of a periodical and as a Regent of the University of California. Both of these positions are honorary positions and do not confer upon Mr. Sheinbaum control over any employees or otherwise make him an employer as defined by the *Rules*.

It was also determined that Mr. Sheinbaum employs two personal secretaries for the conduct of his affairs. These individuals provide a personal service to Mr. Sheinbaum and are not involved in any profit-making activities. The Election Officer does not consider the payment of an individual to perform a non-income producing personal service, such as child care person, housekeeper, nurse or secretary, to render the person who pays for such service an employer as defined by the *Rules*. Therefore, the Election Officer does not consider the uncompensated use of the Sheinbaum home, clearly the contribution of something of value, an employer contribution as defined by the *Rules*. ²

The fundraiser was publicized by an invitation listing the individuals who had authorized the Committee of Friends to use their names. The solicitation/invitation stated, inter alia, that the endorsers "invite you to a reception for Ron Carey." The fundraiser was held on the evening of September 15, 1990 at the Sheinbaum residence. Among those present were Ron Carey and his campaign manager Ed Burke. During the reception Mr. Burke informed those present that the Committee to Elect Ron Carey could not accept contributions from any employers, regardless of whether they employed

¹Moreover, Oliver Stone may be an interested employer, as defined by the *Rules*, see also United States of America v. IBT, 931 F.2d 177 (2d Cir., 1991) ("Election Rules Decision")

²The Election Officer's investigation revealed that the members of the Committee of Friends paid for other expenses associated with the September 15, 1990 fundraiser, including the cost of the printing and distribution of the solicitation/invitation. The Election Officer concludes that these contributions, coming from non-employers, are not violative of the *Rules*.

IBT members³

The Consent Order and the *Rules* prohibit candidates from accepting or using "any contribution or other things of value received from any employers, representative of an employer, foundation, trust or similar entity" Consent Order, paragraph 8, *Rules*, Article X, § 1(a) The *Rules* make clear that this prohibition "extends beyond strictly monetary contributions made by an employer to include a ban on the contributions and use of employer stationary, equipment, facilities and personnel" *Rules*, Article X, § 1(b)(1) Similarly, the *Rules* define "campaign contribution" to include "[c]ontributions of money, securities or any material thing of value" *Rules*, Definitions, ¶ 6 at A2-3

The *Rules* define "employer" broadly to include any person or entity who employs another as an employee, whether or not the employer has a collective bargaining or other relationship with the IBT or a subordinate body of the IBT *Rules*, Definitions, ¶ 17 at A4-5⁴ Mr Anagnos is the President of Real Estate Dynamics and employs clerical staff in that business Mr Oliver Stone owns Ixtlan Production Co , a motion picture production company located in Venice, California, which has employees

The first issue that needs to be addressed is whether an individual's agreement to permit their name to be used in a fundraising solicitation constitutes a campaign contribution within the meaning of the *Rules* The Election Officer concludes that the use of an individual's name in a fundraising solicitation is something of value For example, individuals may be more willing to contribute to a candidate that has received the endorsement of a prominent personality Similarly, potential contributors may decide to contribute because they wish to gain favor with an endorser of the candidate, and are therefore willing to make a contribution at the behest of such endorser

The Committee of Friends clearly intended that the use of the names of endorsers would facilitate their fundraising efforts Given the prominence given to these endorsements in the Committee of Friends' fundraising solicitation, these endorsements were clearly a "material thing of value" within the meaning of the *Rules* Moreover, given the fact that at least two of the endorsers were employers, these contributions were violative of the *Rules*

³ Despite Burke's statement during the fundraiser, at least one monetary contribution was made to the Committee of Friends by an employer This contribution, after being forwarded to the Carey Campaign, was placed in a separate segregated account reserved for the payment of fees for legal and accounting services for the Carey Campaign

⁴ An interested employer includes all employers with whom the IBT or any subordinate body of the IBT has a collective bargaining relationship or any employer which is the target of an organizing drive being conducted by the IBT or any subordinate body of the IBT United States v. IBT, *supra* at 189

Having found a violation of the *Rules*, the Election Officer is obligated to impose an appropriate remedy. The nature of such remedy depends not only upon the violation of the *Rules* but upon a consideration of the facts surrounding such violation. In this case the Committee of Friends used contributions of at least two employers in its solicitation/invitation for the September 15, 1990 fundraising event. The solicitation was the basic invitation for the fundraising event. The contributions received were solicited at the event which occurred at the Sheinbaum home which was attended as a result of the invitation. Because this solicitation included endorsements of employers, the Carey Campaign must disgorge all proceeds of such solicitation by returning all contributions directly to the contributors.

Neither the invitation nor the solicitation sought contributions earmarked for legal and accounting services under Article X, §1(b)(2) of the *Rules*. Further, none of the contributions received were so earmarked. Accordingly, it is inappropriate to permit the candidate and/or his campaign to utilize the contributions received in any way. Only contributions received in response to solicitations for legal or accounting funds or so earmarked by the contributor at the time of the contribution is made may be deposited in any candidate's segregated legal and accounting fund.⁵

To remedy the violation of the *Rules* discussed above the Committee to Elect Ron Carey shall take the following actions:

1. The Committee to Elect Ron Carey shall, within 15 days of the date of this decision, return to the individual donors, all contributions received in response to the solicitation prepared by the Committee of Friends regarding the September 15, 1990 fundraising event.⁶

2. The Committee to Elect Ron Carey shall file with the Election Officer, within 20 days of the date of this decision, an affidavit setting forth, in detail, its compliance with this order. Such affidavit shall include a list of all contributions returned, including the amounts so returned and the individuals to whom they were returned.

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

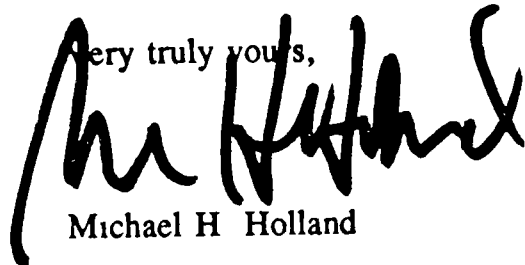
⁵ To the extent that Mr. Stone is an interested employer, even if the contributions had been received in response to a solicitation for legal or accounting funds - or had been so earmarked by the contributors - the monies could not be used for any purposes but would have to be returned.

⁶ The Carey Campaign cannot offset any expenses incurred against the contributions, all contributions must be returned.

The Committee to Elect Ron Carey
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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive.

Michael H. Holland

MHH/mjv

c Frederick B. Lacey, Independent Administrator, IBT

IN RE·

91 - Elec App - 183 (SA)

DURHAM UNITY TEAM

and

COMMITTEE TO ELECT RON CAREY

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No P-651-IBT. A hearing was held before me by way of telephone conference at which the following persons were heard Hugh Beins, Esq , on behalf of R V Durham; Susan Davis, Esq , on behalf of the Committee To Elect Ron Carey, Paul Levy, on behalf of the Teamsters For A Democratic Union ("TDU") and the Teamster Rank-and-File Education And Legal Defense Foundation ("TRF"), and John J Sullivan, Esq , and Barbara Hillman, Esq , on behalf of the Election Officer

R V. Durham is a candidate for General President of the International Brotherhood of Teamsters Ron Carey is also a candidate for General President This matter involves the propriety of certain campaign contributions received by the Committee To Elect Ron Carey

BACKGROUND

Three individuals, calling themselves "A Committee Of The Friends Of Ron Carey" ("Committee Of Friends"), joined together to

engage in fund-raising activities in support of Carey's candidacy. The three individuals comprising the Committee of Friends are not members of the IBT and are not employers as defined in the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). See Election Rules, Definition (17) at p A-4

The Committee of Friends organized a Carey fund-raiser. The fund-raiser was publicized by an invitation listing several individuals who had authorized the Committee of Friends to use their names. Two of those individuals -- Aris Anagnos and Oliver Stone -- are "employees" as defined in the Election Rules. The invitation stated that the endorsers, including Anagnos and Stone, "invite you to a reception for Ron Carey "

Ron Carey, along with his campaign manager, Ed Burke, attended the fund-raiser. During the reception, Mr Burke informed those present that the Committee to Elect Ron Carey could not accept contributions from any employers, regardless of whether they employed IBT members.

The expenses associated with the fund-raiser, such as the printing and distribution of the invitations, were paid for by the Committee of Friends. The individual in whose home the fund-raiser was held was not an "employee "

The fund-raiser made a modest amount of money for the Ron Carey campaign. The event grossed approximately \$2,300, out of which \$1,100 went to expenses. Thus, the fund-raiser netted approximately \$1,200.

Despite Mr Burke's admonition at the fund-raiser, several months later, the Committee of Friends forwarded to the Committee to Elect Ron Carey a check it had received from James Garner "care of Jess and Morgan & Company, Inc " Uncertain as to whether this check was from an employer, someone deposited it into the Committee to Elect Ron Carey's "legal" account The proceeds of this account were earmarked solely for the purposes outlined in Article X, Section 1 b (2) of the Election Rules That section permits employers to aid candidates in obtaining accounting and legal services.¹

THE ELECTION RULES' RESTRICTIONS ON CAMPAIGN CONTRIBUTIONS

The Election Rules, consistent with the Consent Order, prohibit candidates from accepting or using "any contribution or other thing of value received from any employers, representative of an employer, foundation, trust or similar entity " Consent Order, ¶ D 8 , at p 5, Election Rules, Article X, Section 1 a.

The Election Rules define a campaign contribution as:

Any direct or indirect contribution where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate [Election Rules, Definition (6) at p A-2]

The Election Rules exclude from this definition

The performance of services by a volunteer rendered on the volunteer's personal free time without compensation in any form by an employer and without

¹ "Interested" employers, however, are precluded from making any type of contribution See United States v IBT, 931 F 2d 177, 189 (2d Cir 1991)

accompanying contributions of supplies or services by an employer.
[Ibid]

THE ELECTION OFFICER'S RULING

The Election Officer described the invitations to the fund-raising event as a "fund-raising solicitation " I agree with this characterization While the invitation, in and of itself, did not expressly request contributions, it is clear that the purpose of the "reception for Ron Carey" was to raise funds for his campaign

The Election Officer further concluded that the lending of one's name to a fund-raising solicitation is the contribution of something of value Accordingly, the Election Officer concluded that Stone and Anagnos had contributions to the Carey campaign by lending their names to the fund-raiser I agree

Stone and Anagnos are both prominent in the Los Angeles community and their names carry weight Individuals may be more willing to contribute to a candidate when solicited to do so by a prominent personality The Committee of Friends clearly intended that the use of Stone's and Anagnos' names would facilitate their fund-raising efforts Stated another way, Stone's and Anagnos' lending of their names was intended "to influence the election of" Ron Carey Given that Stone and Anagnos are employers, their contributions, i.e., the lending of their names, violated the Election Rules

In the pre-hearing submissions, and at the argument at the hearing, much was made of the fact that Election Rules exclude from

the definition of the term "campaign contribution" the "performance of services by a volunteer " Thus, it is suggested that "it would have been entirely lawful for Anagnos and Stone, on their own free time, to have telephoned hundreds of persons to invite them to the [fund-raiser] to have walked door-to-door inviting persons to the event or to have stood in front of Teamster barns inviting thousands of Teamsters, and others, to the event " September 12, 1991, Letter Memorandum on behalf of the Committee to Elect Ron Carey, at p 11.

Whether such volunteer activity "would have been entirely lawful" is not certain As that is not the issue presented here on this appeal, we need not reach that question.

What the Election Officer's ruling makes clear is that the lending of one's name, under these circumstances, is the contribution of something of value designed to influence the election It is something more than the volunteering of one's time and physical energies, such as stuffing envelopes, or making generic and anonymous phone calls out of a phone bank It is the contribution of the name, and the notoriety and reputation that go along with the name, that are the things of value being contributed here.

When viewed in this light, it is clear that Anagnos' and Stone's lending of their names constituted campaign contributions in this instance ²

² TRF/TDU makes much of the fact that the Election Officer's ruling infringes upon the First Amendment rights of individuals to
(continued)

ELECTION OFFICER'S REMEDY

The Election Officer found that because the fund-raising event included the endorsement of employers Anagnos and Stone, the Committee to Election Ron Carey must disgorge all proceeds from the fund-raiser by returning all contributions directly to the contributors. The Election Officer emphasized that the disgorgement must be all-inclusive, including the one contribution received from James Garner, the suspected employer, which was segregated into the fund earmarked for legal services. The Election Officer found that only contributions received in response to solicitations for legal or accounting funds, and so earmarked by the contributor at the time the contribution is made, may be deposited into a candidate's segregated legal and accounting fund pursuant to Article X, Section 1 b (2) of the Election Rules.

R V Durham argues that the remedy is inadequate and constitutes a mere "slap on the wrist." The Committee to Elect Ron Carey and the TDU/TRF argue that the remedy is draconian.

The remedy imposed by the Election Officer is fair and equitable under the circumstances and designed to cure the

²(continued)

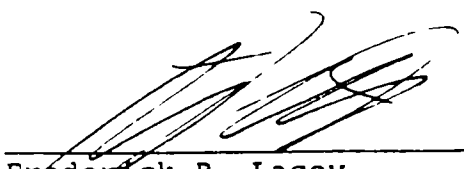
express their support for particular candidates. TRF/TDU overstates the Election Officer's position. The limitations the Election Officer may place upon individuals who wish to endorse a particular candidate is not in issue. The Election Officer's ruling simply makes clear that the taking of improper contributions will result in sanctions being imposed upon the candidate. In making this argument, TRF/TDU also suggests that both the Election Officer and the Independent Administrator act as agents of the United States Government when enforcing the Election Rules. This issue is also beyond the scope of this appeal. But cf. United States v. IBT, slip op., Docket No. 91-6052 at pp 5-6 (2d Cir. August 6, 1991).

violation found It is neither inadequate nor draconian It reflects a studied balance between the violation and the mitigating factors Thus, it will not be disturbed.

The Committee to Elect Ron Carey and the TDU/TRF raise specific objection to the Election Officer's finding that only contributions received in response to solicitations for legal or accounting funds, and so earmarked by the contributor, may be deposited into a candidate's segregated legal and accounting fund. The Committee to Elect Ron Carey and TDU/TRF suggests that if a candidate receives a contribution from an employer, or one whom the candidate suspects to be an employer, the candidate may simply deposit that contribution in his segregated fund, and thus escape the Election Rules' prohibition on employer contributions. Such an argument is not supported by a reasonable interpretation of the Election Rules

To adopt the argument advanced by the Committee to Elect Ron Carey and TDU/TRF would invite abuse of the limitations on campaign contributions set forth in the Election Rules A candidate could generally solicit campaign contributions without concern as to whether employers were making those contributions Once the contributions were received, the candidate could simply segregate out those contributions that he believes were received from employers Such a practice does not comport with either the letter or spirit of the Election Rules The Election Rules clearly contemplate that certain contributions will be solicited and specifically earmarked for legal and accounting services It is

only those contributions which fall into the Election Rules
exception found in Article X, Section 1 b (2) and Definition (6) at
p A-2



Frederick B. Lacey
Independent Administrator
By Stuart Alderoty, Designee

Dated September 17, 1991