

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

Michael H. Holland
Election Officer

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May 20, 1991

VIA UPS OVERNIGHT

Ray Nickum
c/o Local 63
c/o The Informed Teamsters
for the Good of All Slate
1616 W. Ninth St.
Room 205
Los Angeles, CA 90015

Robert Marciel
Secretary-Treasurer
IBT Local 63
1616 W. Ninth St.
Room 205
Los Angeles, CA 90015

Scott T. Askey
c/o The Delegates
for Carey Slate
434 S. 2nd St. 1-A
Barstow, CA 92311

Re: Election Office Case No. P-769-LU63-CLA

Gentlemen:

This protest was filed pursuant to Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Ray Nickum, a candidate for alternate delegate from Local 63, alleges that the Delegates For Carey have improperly reprinted the Union's logo on campaign material and have misrepresented other facts about the Local 63 rerun election in such slate's campaign literature.

Inspection of the material attached to the protest discloses that the IBT logo is in fact reprinted in the lower left hand corner of the front of a trifold campaign mailer. The front also contains the address of the IBT member to whom the literature is sent, and the return address of the Delegates For Carey, the sponsor of the literature. Thus, the material, even from its "front" cover, is clearly identified as campaign material.

Article X, §1 (b) (3) of the *Rules* while prohibiting utilization by any candidate

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of the official stationary of the Local, with the IBT logo, does not prohibit the use of the insignia per se on campaign literature. The Election Officer has previously held that the use of Union insignia on materials which are obviously campaign materials is permissible. Election Office Case No. P-226-LU182-PGH, affirmed 91-Elec. App.-40. Election Office Case No. P-541-LU420-CLA, affirmed 91-Elec. App.-87.

The literature which contains the logo in this case, is clearly identified as campaign literature. The readers of the material have no basis for assuming that the literature or the Delegates for Carey Slate is endorsed by the Local or the Union by reason of the use of the IBT logo. This aspect of the protest is DENIED.

Nickum also complains that an item in the campaign literature concerning the re-run election in Local 63 is false and misleading. The item states that... "Local 63 Secretary-Treasurer directed Robert Vogel, the Union's attorney to demand a new election." Nickum states that he, rather than the Local, filed the post-election protest that lead to the Election Officer's decision to re-run the delegate election in Local 63. He contends that the literature takes credit away from him and might negatively impact on the rerun election.

The Election Officer has consistently held that the fact that campaign literature contains misleading or even false statements, does not constitute a violation of the Rules. 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, 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).

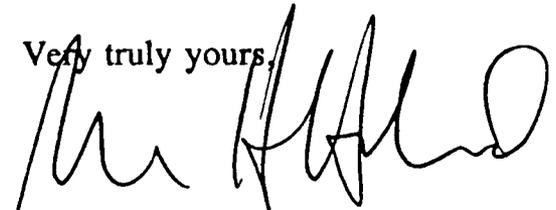
Under these circumstances, this aspect of the protest is also DENIED.

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 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)

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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
Election Officer

MHH/cdk

cc: Frederick B. Lacey, Independent Administrator, IBT