

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

October 11, 1991

VIA UPS OVERNIGHT

e/o Shea-Liguoris Action Team
Robert M. Baptiste
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20005

c/o Durham Unity Team
Hugh J. Beins, Esquire
Beins, Axelrod, Osborne & Mooney
2033 K Street, N.W.
Suite 300
Washington, D.C. 20006-1002

R. Jerry Cook
President
Teamsters Local 528
2540 Lakewood Ave., SW
Atlanta, GA 30315

Harold D. Leu
c/o IBT Local Union 20
435 South Hawley Street
Toledo, Ohio 43609

Leroy Ellis
18807 Oakwook Drive
Country Club Hills, Illinois 60477

Robert Simpson
President, IBT Local Union 743
300 South Ashland Avenue
Chicago, Illinois 60609

Central States Pension and
Health and Welfare Funds
9377 West Higgins Road
Rosemont, Illinois 60018

Marion M. Winstead
Trustee
Central States Pension and
Health and Welfare Fund
9377 West Higgins Road
Rosemont, Illinois 60018

Robert C. Sansone
c/o IBT Joint Council 13
7530 Elizabeth Avenue
St. Louis, Missouri 63110

Patricia McIntosh
7857 South Shore Drive
Chicago, Illinois 60649

Vicki Saporta
IBT, Organizing Department
25 Louisiana Avenue
Washington, D.C. 20001

Re: Election Office Case No. P-895-IBT

Shea-Ligurotis Action Team
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Ms. McIntosh and Saporta and Gentlemen:

Protests were filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by (1) Patricia McIntosh, a member of IBT Local Union 743, (2) Robert Baptiste as a representative of the Shea-Ligurotis Action Team slate on behalf of nominated IBT International Union Vice President at Large candidate Vicki Saporta and (3) Leroy Ellis, a nominated candidate for IBT International Union Vice President from the Central Conference affiliated with the Ron Carey slate. Generally, these protests concern access for the purpose of campaigning at and in the premises of the Central States Southeast and Southwest Areas Health and Welfare and Pension Funds ("Funds"), an employer of IBT members, whose employees are represented by Local 743.

Ms. McIntosh's initial protest contends that Ms. Saporta was granted greater rights to the Funds' property for campaign purposes than Ms. McIntosh; Ms. McIntosh requests that Diana Kilmury, a candidate for International Union Vice President at Large on the Ron Carey Slate be given the same rights as those granted to Ms. Saporta. Ms. McIntosh then supplemented her protest contending that Durham Unity Team Members R. V. Durham, Robert Sansone and Harold Leu were given access to campaign among Funds employees during such employees' work time for approximately three (3) hours on September 11, 1991. She asks for similar access for candidates on the Ron Carey slate.

The protest filed by Leroy Ellis contends that Vicki Saporta was allowed access for the purpose of campaigning to the Funds office when a Carey supporter, Ms. McIntosh, was told to leave the front of the premises. Mr. Ellis also contends that Ms. Saporta was being paid by the Union while campaigning.

The protest filed on Ms. Saporta's behalf contends that she was prohibited from engaging in campaign activities at the Funds' offices, or contacting Funds' employees who are IBT members, because she is a member of the Shea-Ligurotis Unity Team Slate, whose candidates are opposed by the President of Local Union 743, the Local representing Funds' employees. She contends that General President Candidate R.V. Durham and the members of his slate, whose candidacies are supported by the Local 743 President, are being granted greater access rights; specifically she contends that Mr. Durham and others associated with his slate were, on September 11, 1991, permitted access to both working and non-working areas of the Funds' facilities and permitted to engage in campaign activity among Funds employees during work and non-work times. Ms. Saporta finally claims that calling police officers constitutes further discrimination against her because of her candidacy and the slate with whom she is associated, claiming that the police treatment of her resulted from the fact that Local 743 represents the Rosemont

Police.

The protest was investigated by the Chicago Election Office staff. The events which gave rise to the protests occurred on September 11, 1991. At approximately 6:00am on that date, Ms. McIntosh was at the Funds' offices located in Rosemont, Illinois distributing campaign literature to IBT members employed by the Funds. Ms. McIntosh supports General President candidate Ron Carey and his slate. While a member of Local Union 743, Ms. McIntosh is not employed by the Funds.

Ms. McIntosh stood on a small sidewalk between two driveways leading to and exiting from the building's parking garage. At approximately 6:20am two security guards approached her, took her name and requested that she leave the premises because it was private property. The security guards also asked her to remove her car from the Funds' garage. They asked that she discontinue her leafletting until about 7:15am to enable day shift security personnel to contact the Funds' management to determine if leafletting would be permitted. Ms. McIntosh agreed to all the above and moved her car to a different location with the intention of remaining in the car until 7:15am.

At approximately 7:00am, while waiting in her car, Ms. McIntosh saw a woman, whom she later identified as Vicki Saporta, passing out fliers in front of the Funds offices. Ms. Saporta was accompanied by a man carrying a box of literature who was introduced as Nick from Local 705. Ms. McIntosh approached Ms. Saporta; Ms. Saporta informed her that she had been campaigning inside the building since approximately 6:00am but had been asked to leave.¹ Ms. McIntosh then advised the security personnel that since Ms. Saporta was distributing literature, she should be able to do so as well. She was told she could do so. Ms. McIntosh began campaigning again at approximately 7:30am.

Ms. Saporta in the protest filed on her behalf states that she was not allowed access for the purpose of campaigning to the offices of the Funds. Specifically, Ms. Saporta contends that on September 11, 1991 while she was attempting to campaign by passing out literature in the lobby of the Funds' office, she was approached by security guards requesting that she leave the premises.² Ms. Saporta states that she advised the security guard that she had a right to campaign in the lobby. The security guards indicated that they would contact the Funds' management. Shortly thereafter, however, the security

¹ Ms. McIntosh states that the car belonging to "Nick" had not been present earlier when Ms. McIntosh was distributing campaign literature nor had she seen Ms. Saporta in the lobby campaigning.

² The Election Officer has verified that Ms. Saporta was on vacation from her regular position with the IBT at this time. Accordingly, that portion of Mr. Ellis' protest is denied. *Rules*, Article VIII § 10 (b).

guards attempted to eject her from the building. When she refused to leave the security guards called the Rosemont police.

Ms. Saporta then stood in front of the building and distributed campaign leaflets. She was requested to leave that location. Initially, the police advised Ms. Saporta that she could not distribute campaign literature in front of the building but had to stand in the access road. Subsequently the police permitted Ms. Saporta to leaflet at the driveway leading to the building and she did so.

On September 11, 1991 four (4) members of the R. V. Durham Unity Team Slate -- R. V. Durham, candidate for General President, Harold Leu, candidate for General Secretary-Treasurer and William Hogan, Jr. and Robert Sansone, candidates for Vice President from the Central Conference -- toured the facilities of the Funds. They spend approximately ninety (90) minutes in the Funds' offices and traveled to all areas where IBT members employed at the Funds work. They shook hands with these members and passed out campaign literature in work areas and while the IBT members employed by the Funds were on work time. They were accompanied by stewards of Local 743 employed by the Funds; the stewards were on work time. Robert Simpson, President of Local Union 743, also joined them for a short time.

The Funds contend that the visit by Mr. Durham and other members of his slate was pre-arranged and in accordance with the campaign rights policy issued by the Funds. The Funds contend that if Ms. Saporta had made prior arrangements with the Funds, she would have been afforded the access permitted by that policy. Similarly, the Funds contend that if Ms. McIntosh had conformed her behavior to the terms of the policy, she would also have been permitted to engage in campaign activities at the Funds offices on September 11, 1991. ✓

The Funds statement of policy with respect to campaign activities, copies of which have heretofore provided to all parties to this protest and to all nominated candidates for IBT International office for whom such policy is relevant, provide that all IBT members have a right to engage in campaign activities in the lobby of the Funds building at any time during business hours of the Funds, provided only that such members are not destructive of the rights of Funds employees and properly identify themselves if requested. In addition, the policy permits IBT International Union candidates for whom IBT members who are employees of the Funds are eligible to vote, i.e. candidates for General President, General Secretary-Treasurer, Vice President at Large and Vice President from the Central Conference, to have access to "cafeteria and other parts of the Funds' Building" provided that the candidates are not disruptive, identify themselves if requested and provide at least twentyfour (24) hours advance notice to one of the Funds' Human Resources Managers.

The Election Officer investigation determined that this policy, while commendable, was neither established, promulgated or communicated to managerial or security personnel of the Funds prior to September 11, 1991, for the policy bears a date of "September, 1991." No candidate for International office not associated with the Durham Unity Team slate had knowledge of this policy until the contents of the policy were communicated to them by the Election Officer. Neither Ms. Saporta nor Ms. McIntosh could conform their behavior to the contents of the policy when the policy had neither been promulgated nor communicated to them on the date when they sought to campaign at the Funds' office. That date, September 11, 1991, was the date when Mr. Durham and other members of his slate were granted campaign access in accordance with the policy. The fact that the policy was neither formulated or promulgated by September 11, 1991 also explains the conduct of the security guards with respect to Ms. Saporta and Ms. McIntosh on that date.³

The Election Officer finds that the campaign rights policy promulgated by the Funds, with the single exception noted below, is commendable, conforms with the requirements of the *Rules* and adequately protects the rights of IBT members and the rights of IBT International Union officer candidates to fully and completely participate in the 1991 IBT International Union officer election. The policy, however, on its face limits campaign access to the regular business hours of the Funds. The regular business hours of the Funds are from 7:30am to 5:00pm.

The Election Officer in his investigation of this protest has determined that many IBT members employed by the Funds come to work prior to 7:30am and/or leave work after 5:00pm. The Election Officer investigation has determined that access to the property of the Funds, exterior to the Funds building itself, prior to and after the regular business hours of the Funds is necessary to permit IBT members not employed by the Funds to have campaign contact with IBT members so employed. Prohibiting such access would therefore violate Article VIII, §10(d) of the *Rules*. See National Maritime Union v NLRB, 867 F.2d 767 (2nd Cir 1989), Lechmere v. NLRB, 914 F.2d 313 (1st Cir 1990), cert granted. Thus to the extent that the Funds' campaign rights policy prevents IBT members not employed by it from being able to campaign on the Funds' property exterior to the Funds' building prior to and after the regular business hours of the Funds, that policy must be modified. The Funds shall, by affidavit to the Election Officer within three (3) days of the date of this decision, demonstrating that this policy has been so modified and such modification has been communicated to all managerial and security personnel of the Funds.

³ The Election Officer's investigation determined that the policy has now formally promulgated and made known to all managerial and security personnel of the Funds. A copy of the policy is posted in the security guards room and is maintained in the book of regulations utilized by security personnel.

A more significant violation of the *Rules* has occurred here, however, with respect to the formulation and promulgation of the campaign rights policy. A policy, no matter how commendable, is not effective unless communicated to all candidates and members who are governed by such policy. The *Rules* require that resources available to any candidate or member must be made available to all candidates and members and all candidates and members notified in advance of such availability. See e.g. *Rules*, Article VIII, §10(c). The granting of a benefit to one candidate or slate of candidates while denying the same benefit to the two opposing candidates or slates violates not only the *Rules* but also the Labor Management Reporting and Disclosure Act.

In this case the Funds permitted R. V. Durham and other candidates with whom he is associated to gain access to its facilities for campaign purposes, but to do so before other candidates were notified of the access to which they were entitled. All candidates are entitled to obtain the same access as did Mr. Durham and the other members of his slate; such candidates are apparently able to do so under the Funds' policy.

The Funds' policy must, of course, be interpreted in accordance with the access the Funds provided to Mr. Durham and other members of his slate. Mr. Durham and other members of his slate were permitted to campaign in both work and non-work areas and among Funds employees who were working as well on non-work time. All candidates must be afforded similar access.

Further, it should be noted that Mr. Durham was escorted during his tour of the Funds' offices by stewards, employees of the Funds, who were paid by the Funds for the time they spent with the members of the Durham Unity Team Slate. All nominated candidates for International General President, General Secretary-Treasurer, Vice President at Large and Vice President from the Central Conference must be afforded the same benefit. Thus each such candidates may on his/her campaign visit(s) select up to five employees of the Fund to accompany such candidate while at the Funds. The employees so selected shall be paid during such time by the Funds. However, the Funds shall have no obligation to pay wages to its employees for campaigning with candidates on the premises of the Funds for more than seven and a half hours, equivalent to five employees for one-and-one-half hours each which was the amount paid by the Funds to all the stewards who accompanied the members of the R. V. Durham Unity Team slate during the September 11, 1991 visit.

By not notifying all IBT members and the appropriate International Union officer candidates of the contents of its campaign policy by the date that the R. V. Durham Unity Team slate made arrangements to take advantage of such policy, the Funds' violation of the *Rules* negatively impacted upon such other candidates' candidacies and/or on the candidacies of the candidates supported by other IBT members. Ms. Saporta is

a resident of Washington, D.C. She had made prior arrangements to visit the Chicago area for campaigning purposes during the second week of September; she used vacation time for such trip. By being unaware of the Funds' policy prior to that time, she was unable to gain campaigning access to IBT members employed by the Funds during the period of this visit. She would now have to expend additional funds to revisit Chicago to gain the same type of access that the R. V. Durham Unity Team slate had obtained on September 11, 1991, the day of Ms. Saporta's Chicago campaign visit. Similarly Ms. McIntosh will be forced to expend additional resources in order to revisit the Funds' offices to be able to campaign for her candidates among the IBT members employed by the Funds. But for the Funds' failure to notify her of her campaign access rights prior to September 11, 1991, she would have had the time she will now have to utilize to revisit the Funds' offices to campaign at the premises of other IBT employers.

To make Ms. Saporta and Ms. McIntosh whole for the harm caused to them by the Funds violation of the *Rules*, the Election Officer directs the Funds to distribute to all IBT members employed by it any campaign material that Ms. Saporta and Ms. McIntosh each wish such IBT members to receive. Both Ms. Saporta and Ms. McIntosh will each be entitled to provide campaign material for the Funds to distribute to the IBT members employed by it. The literature shall be prepared and duplicated by each of them and given by each to the Funds for such distribution. The material shall be no longer than one page, 8½ by 11 inches in size, but may be printed on both sides. The literature shall contain a prominent, legible disclaimer, printed in at least 20 point type, stating "CAMPAIGN LITERATURE, THE CONTENTS OF WHICH ARE NOT ENDORSED BY THE IBT, LOCAL UNION 743, OR THE CENTRAL STATES PENSION AND HEALTH AND WELFARE FUND." A copy of the literature, when submitted by Ms. Saporta to the Funds and when submitted by Ms. McIntosh to the Funds, shall be simultaneously provided to the Election Officer.

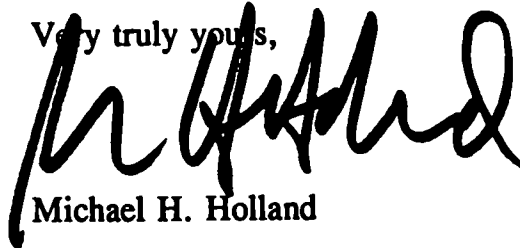
The Funds shall distribute such literature, with the paycheck first issued to the IBT members employed by it, after its receipt of the literature from Ms. Saporta and/or Ms. McIntosh, unless the literature is received within seven (7) days of the date of paycheck distribution in which case the literature shall be distributed with the following paycheck. Within three (3) days after the literature of Ms. Saporta is distributed, in accordance with this decision, the Funds shall submit an affidavit to the Election Office demonstrating its compliance with the requirements of this decision and indicating the date on which the campaign material was distributed. By the terms of this decision, the literature to be provided by Ms. Saporta and Ms. McIntosh may be provided by them at different times; the Funds to comply with this decision may thus be required to distribute campaign literature with two paychecks it issues to the IBT members employed by it.

If any interested party is not satisfied with this determination, they may request a hearing

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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/ca

cc: Frederick B. Lacey, Independent Administrator

Julie E. Hamos, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esq.
330 West 42nd Street
New York, NY 10036

Diana Kilmury
c/o Eddie Burke
Ron Carey Campaign
26 Bradford Street
Main Front Door
Charleston, West Virginia 25301

William J. Nellis
Secretary to the Board
Central States Funds

IN RE:

SHEA-LIGUROTIS ACTION
TEAM SLATE, VICKI
SAPORTA

and

CENTRAL STATES HEALTH
AND WELFARE AND PENSION
FUNDS

and

IBT LOCAL UNION NO. 743

91 - Elec. App. - 202 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's Decision in Case No. P-895-IBT. A hearing was held before me by way of teleconference at which the following persons were heard: John Sullivan and Barbara Hillman on behalf of the Election Officer; Robert Baptiste on behalf of Vicki Saporta and the Shea-Ligurotis Action Team Slate; Sophia Davis for Ron Carey and his Slate; and Hugh Beins on behalf of R.V. Durham and his Slate. The Election Officer also submitted a written summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

In this matter Vicki Saporta, a candidate for IBT International Vice-President on the Slate headed by Walter Shea, appeals from the Election Officer's decision, arguing that the remedy imposed by the Election Officer is not broad enough.

I. FACTS

The following facts as set forth in the Election Officer's Summary are undisputed:

The IBT Central States Southeast and Southwest Areas Health and Welfare and Pensions Funds [the "Funds"], an employer of IBT members, maintains offices in Rosemont, Illinois. The regular business hours of the Funds are from 7:30 a.m. to 5:00 p.m. Many IBT members employed by the Funds arrive at work prior to 7:30 a.m. or leave work after 5:00 p.m.

* * *

On September 11, Vicki Saporta, a candidate for International Union Vice-President-At Large affiliated with the Shea-Ligurotis Action Team Slate, arrived at the . . . offices of the Funds to campaign. Ms. Saporta, who holds a regular position with the IBT, was on vacation at this time. Ms. Saporta attempted to distribute literature in the lobby of the Funds' office, but was directed by security guards to leave the premises. She insisted that she had a right to remain inside the building and did so until the guard called the Rosemont police to assist in ejecting her from the building. Ms. Saporta then moved to the front of the building and resumed passing out literature.

Officers from the Rosemont police department then advised Ms. Saporta that she could not distribute literature in front of the building but could stand in the access road. Subsequently, the police permitted Ms. Saporta to leaflet on the driveway leading to the offices.

* * *

On that same date, four members of the R.V. Durham Unity Team Slate arrived at the offices of the Funds for a tour of the building. These candidates were R.V. Durham, candidate for General President; Harold Leu, candidate for General Secretary-Treasurer; and William Hogan, Jr. and Robert Sansone, candidates for Vice-President from the Central Conference. While they toured for approximately 90 minutes, they met and greeted IBT members on work time and in work areas. They also distributed campaign literature in work and non-work areas. In addition, they were accompanied by stewards of Local 743 who were employed by the Funds and who were on work time while they participated in the tour. Robert Simpson, President of Local 743, joined this group briefly.¹

II. DISCUSSION

During the Election Officer's investigation the Funds provided to him a copy of its policy concerning campaign rights. That policy provides that all IBT members may engage in campaign activities in the lobby of the offices of the Funds at any time during business hours, provided only that individuals wishing to campaign properly identify themselves if requested and refrain from conduct disruptive of the rights of the employees of the Funds. The policy also allows International Union candidates access to "cafeteria and other parts of the Funds' Building" provided that the candidates provide at least 24 hours advance notice to the Funds, identify themselves if requested, and refrain from

¹ Although the complainants do not contest these facts, they assert that the conduct of the Funds guards and of the Rosemont Police were politically motivated. At the hearing, the complainants highlighted that three of the four Trustees of the Funds are members of Durham's Slate. In addition, it was noted that the Rosemont police are represented by an IBT Local whose principal officer is also a member of the Durham team.

disruptive conduct. The Election Officer has since distributed copies of the Funds' policy to all nominated candidates for IBT International office.

The Fund's policy, which is dated "September 1991," does not appear to have been established, promulgated or disseminated to the Fund's personnel prior to September 11, 1991. No candidate for International office other than the Durham Unity Team members had knowledge of this policy before they learned of it from the Election Officer. Perhaps more telling, the security personnel who confronted Ms. Saporta on the day in question did not tell her about the existence of the policy.

There is also no question, that the Durham candidates were granted a greater right of access on September 11 than was Ms. Saporta. This constituted a violation of the Election Rules. See Article VIII, Section 10.c. ("Union facilities . . . may not be used to assist in campaigning unless [they] are equally available to all candidates . . .") Moreover, the Election Officer found that Ms. Saporta was improperly restricted in her efforts to distribute literature.

The Election Officer imposed the following remedy to redress these violations:

First, the benefit accorded the four candidates on the Durham Unity Team Slate on September 11, 1991, must be extended to all candidates for whom employees of the Funds are entitled to vote, i.e., General President, General Secretary-Treasurer, International Vice-President from the Central Conference, and International Vice-President-At Large. Accordingly, all such candidates must be given access to the Funds' employees on the same

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terms offered on September 11, 1991: access to employees during work and non-work time and in work and non-work areas; right to distribute campaign material in work and non-work areas; and escort by up to five paid Fund employees, provided that the total paid time does not extend beyond that enjoyed by the Durham candidates, or seven and a half hours.

In addition, even with the benefit of that prospective relief, the candidate . . . who [was] improperly restricted from campaigning on terms commensurate with the Durham candidates on September 11, 1991, i.e., Ms. Saporta . . . [has] not been made whole for the improper restrictions that made [her] campaign visit to the Funds offices on September 11 less effective than it could have been under this policy. Re-visiting the offices on the terms described herein in the future will of necessity involve further expenditure of valuable campaign resources. Accordingly, the Election Officer directed the Funds to receive from Ms. Saporta a single-page piece of campaign literature, and to distribute that literature to the employees of the Funds along with their paychecks. In that way, the distribution of literature that [Ms. Saporta] attempted less successfully on September 11 will be remedied.

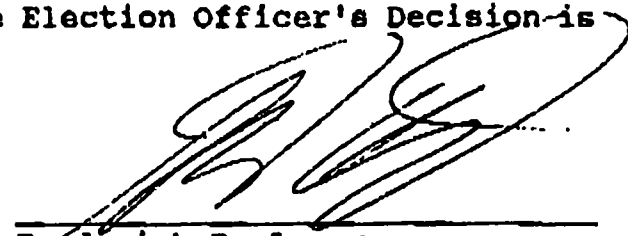
Ms. Saporta, contends that the relief provided is insufficient. She claims that the only appropriate remedy is for the Funds to pay for all of her expenses to return to Chicago to campaign at its offices. The remedy requested by Ms. Saporta is disproportionate to the violation found. The only campaigning sought by Ms. Saporta on September 11 was literature distribution. The disruption of that activity is remedied by requiring the Funds to distribute her literature to all its employees.

Ms. Saporta also contends that because she was treated harshly in front of potential voters by the Funds' guards and the Rosemont police a notice should be distributed to all of the Funds' employees to cure the "chilling effect" of the conduct of the

guards and of the police. Here Ms. Saporta misses the point. The only political rights that may have been chilled by the conduct of guards and of the police are those belonging to International officer candidates. The Election Officer's remedy here settles any confusion that may have existed regarding those candidates' rights to campaign at the Fund's office. Accordingly, there is no need to distribute a notice.

III. CONCLUSION

For the foregoing reasons, the Election Officer's Decision is affirmed in all respects.²



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

Dated: October 22, 1991

² The Election Officer's modification of the Funds' policy to allow non-employees to campaign at the exterior of the Funds' building outside of normal business hours is also affirmed. This change is necessary because many IBT members employed by the Funds arrive at or leave work outside of the "normal business hours."