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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

September 23, 1991

VIA UPS OVERNIGHT

Gary L. Gregory
9601 Bakeway
Indianapolis, Indiana 46231

John L. Neal
Secretary-Treasurer
IBT Local Union 135
1233 Shelby Street
Indianapolis, Indiana 46203

Re: Election Office Case No. P-909-LU135-SCE

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Gary L. Gregory, a member of Local Union 135. In his protest, Mr. Gregory complains about the Sunday, September 15, 1991 meeting of Local Union 135 contending that statements made in that meeting violated his rights under the *Rules*.

Mr. Gregory is an active supporter of the candidacy of Ron Carey for General President of the IBT and the candidacies of the other members of Mr. Carey's slate. John Neal, the President of Local Union 135 and the chair of the September 15, 1991 Local Union meeting, is a candidate for International Union Vice President from the Central Conference and a member of the R.V. Durham Unity Team Slate.

At the September 15, 1991 meeting, Mr. Gregory read to the membership there in attendance a document extremely critical of George Vitale, a former IBT International Union Vice President. The document stated and/or the remarks Mr. Gregory made contended that Mr. Vitale and R. V. Durham, the head of the slate on which Mr. Neal is seeking election, were aligned. At the end of his comments, Mr. Gregory asked the assembled membership if they were interested in electing someone, e.g. Mr. Neal, associated with someone as "reprehensible" as Mr. Vitale.

In response to Mr. Gregory's comments, Mr. Neal described an alleged strike

Gary L. Gregory
Page 2

conducted by an IBT Local Union and contended that Mr. Carey, Mr. Gregory's candidate, "scabbed" on his fellow Union members. In response to those comments, Mr. Gregory related to the membership the events of a strike conducted by Local Union 135 contending that Mr. Neal "scabbed" during that strike.

Following these various remarks, and after the conclusion of Mr. Gregory's remarks contending that Mr. Neal was a "scab," one or two of the members yelled out to Mr. Neal who was chairing the meeting words suggesting that Mr. Neal "should do something about" Mr. Gregory. Mr. Neal responded saying that he would like to and indicating that he was thinking about bring internal Union charges against Mr. Gregory.

The Election Officer has repeatedly held that he will not censor the content of written or oral campaign communications. Underlying the *Rules* is a firm policy against censorship or regulation of the content of campaign literature, regardless of whether the statements are allegedly false, scandalous, or defamatory. See, e.g. *Rules*, Article VIII, § 6(g). The United States Supreme Court has recognized that internal union affairs ". . . are frequently characterized by the pattern of extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions." Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 272 (1974). See also Petramale v. Laborers Local 17, 736 F. 2d 13 (2nd Cir., 1984); Semancik v. UMW District 5, 80 LRRM 3475 (3rd Cir., 1972); Salzhandler v. Caputo, 316 F. 2d 445 (2nd Cir., 1963).

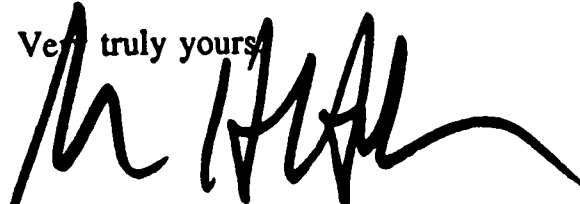
In accordance with the foregoing, the fact that the election-related remarks made during the Local 135 meeting by Mr. Gregory, Mr. Neal as well as other members of the Local were bitter and contained charges, countercharges and indeed even rumors does not constitute a violation of the *Rules*. Despite Mr. Neal's comments at the meeting, no internal Union charges have been brought against Mr. Gregory with respect to the remarks he made at the September 15, 1991 meeting or for any other reason. The Election Officer would note, however, that IBT members are entitled under the *Rules* and substantive federal law to engage in internal Union debate - even debate containing false, scandalous or defamatory comments - free from internal Union discipline for such campaign statements. See Salzhandler v. Caputo, *supra*. The Election Officer would have no hesitation in enjoining the processing of any internal Union charges brought against any IBT member because of such member's campaign activities. However, in the context of the September 15, 1991 meeting and given that no charges have been brought against Mr. Gregory, the Election Officer finds that the *Rules* have not been violated and the 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 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)

Gary L. Gregory
Page 3

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/mjv

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

IN RE:	:	
	:	
GARY L. GREGORY	:	91 - Elec. App. - 209 (SA)
and	:	
R.V. DURHAM	:	DECISION OF THE
	:	INDEPENDENT ADMINISTRATOR
and	:	
IBT LOCAL UNION NO. 135	:	

This matter arises as an appeal from a decision of the Election Officer in Case No. P-909-L135-SCE. A hearing was held before me by way of teleconference at which the following persons were heard: the Complainant, Gary Gregory; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; Peggy Hillman, a Regional Coordinator; Hugh Beins, on behalf of R.V. Durham; and Ed Fillenworth on behalf of Local 135. The Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules for the IBT International Union Delegation and Officer Election ("Election Rules").

The Complainant, a member of Local 135 and a supporter of Ron Carey's candidacy for General President, claims that the R.V. Durham Unity Team Slate (the "Durham Unity Team") has used the resources of Local 135, specifically information regarding members' phone numbers, in establishing a phone bank for use in its campaign. It is also alleged that similar phone number information was not made available to Mr. Carey. See Election Rules, Article

X, Section 1.b.(3) (Use of Union resources in campaign is prohibited unless, inter alia, "all candidates are provided equal access to such goods and services.").

The Election Officer's investigation revealed that the Durham Unity Team periodically establishes phone banks to solicit support and financial contributions, and to poll the IBT membership. One of these phone banks resulted in calls to members of Local 135. Both the Durham Unity Team and the Local deny that the Local provided any phone numbers for use in the phone bank at issue. The Durham Unity Team explained that it gets phone numbers for use in all of its phone banks from outside commercial services that it retains. The Election Officer confirmed the Durham Unity Team's representations.

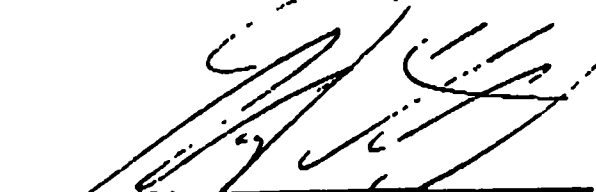
The Complainant maintains, however, that the Durham Unity Team must have had access to phone numbers other than those provided by the outside commercial services because five members of Local 135, including the Complainant himself, received phone calls from the Durham campaign even though their phone numbers are unlisted. The Complainant concludes, therefore, that the phone numbers could only have been obtained through the Local. As the Election Officer indicated in his Summary, however:

There are a number of ways in which unlisted numbers could have been obtained. [A commercial service's] data base of numbers includes outdated phone number information as well as current information, and thus could have included numbers that were available before they were removed from listing by their owners. Similarly, if any spouse or relative at the same address retained the phone number as a listed number, use of the

same surname and address would have been sufficient to generate the number.

In filing his protest and appeal, the Complainant relies on an earlier decision of the Independent Administrator in the matter of In Re: Gregory, 91 - Elec. App. - 135 (SA) (April 29, 1991). In In Re: Gregory, the Independent Administrator affirmed the Election Officer's finding that business agents of Local 135 aided in establishing a phone bank to assist a slate of candidates who were then involved in the Local Union election of delegates to the 1991 IBT Convention. The Election Officer's investigation did not find that the matter currently under consideration was in any way connected with the earlier In Re: Gregory case. As noted here, there was no evidence to suggest that the Local or any of its officers assisted the Durham Unity Team in any fashion in establishing its phone bank.

Accordingly, the Election Officer's denial of this protest is affirmed.



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

Dated: October 24, 1991