

***PRE-ELECTION  
PROTEST  
DECISIONS***

***ELECTION OFFICE CASE NOS.***

***P-971-IBT to P-1000-LU63-CLA***

***VOLUME XXIII***

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

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October 16, 1991

**VIA UPS OVERNIGHT**

Larry Brennan  
President  
IBT Local Union 337  
2801 Trumbull Ave.

Detroit Free Press  
Attn: Tom Walsh  
321 W. Lafayette  
Detroit, MI 48221

Re: Election Office Case No. P-971-IBT

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Larry Brennan alleges that the *Rules* were violated by the Detroit Free Press as a result of that newspaper's reproduction of a portion of the campaign literature prepared on behalf of the Ron Carey Slate in a news story about the IBT International Officer election campaign. The Election Officer's investigation of this protest revealed the following.

The Detroit Free Press is a daily newspaper published in Detroit, Michigan with a circulation of approximately 631,000. The Free Press is a subsidiary of Knight Ridder, Inc. and is a party to a Joint Operating Agreement with the Detroit News which is part of the Gannett newspaper chain. Under that agreements the editorial operations of each newspaper remains separate. The Free Press is an employer as defined by, *inter alia*, the *Rules*.

The Detroit Free Press has regularly reported on the IBT, the Consent Order, the implementation of that Order by the court appointed officers and the campaigns of IBT members in the delegate and International Officer elections. In its October 8, 1991 edition, the Free Press ran an article about the International Officer campaign on the front page of its business section. That article, written by labor writer John Lippert, ran under the headline "Teamsters Sling Mud in Ads". The article reported on the campaign

literature that appeared in the October edition of the International Teamster magazine. The article discussed the "negative campaigning" of Carey and the Durham campaigns. As an example of this "negative campaigning" the article reproduced a picture from the Carey campaign literature which reflected negatively upon the Durham Unity Team.

There has been no allegation that the Free Press or its editorial policy is controlled by the Carey campaign and the Election Officer's investigation revealed no evidence of such control. Similarly, the investigation determined that the use of a portion of Carey's literature to illustrate the negative campaigning described in the article, rather than utilizing the picture in the Durham literature which identifies Carey as a "scab" -- the content of the Durham literature, including the allegation that Carey was a scab, was also discussed in the article -- was an editorial judgement by the Free Press and not done at the direction or behest of the Carey campaign.

Brennan argues that the reproduction of that portion of the Carey campaign literature in the article on the International Officer campaign constitutes an employer campaign contribution in violation of the *Rules*.<sup>1</sup> The *Rules* define "campaign contribution" to include:

any direct or indirect contribution where the purpose, object or foreseeable effect of that contribution is to influence the election of a candidate

The definition of the term "campaign contribution" in the *Rules* is intended to be broad to further the propose of the Consent Order and the *Rules*. However, the Election Officer does not believe the term campaign contribution should be construed to include newspaper articles published by entities which are not owed by or whose editorial policies are not controlled by candidates or committees acting on behalf of candidates.

In an analogous situation the Federal Election Campaign Act contains an exemption from the definition of campaign expenditure for "any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate" 2 U.S.C. §431(9)(B)(i).<sup>2</sup> Under this exception the Federal Election Commission and the Federal Courts have refused to find an impermissible federal campaign contribution in news

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<sup>1</sup> The Detroit Free Press is not a Union publication. Accordingly, the provisions of the *Rules* dealing with Union publications, *Rules*, Article VIII, § 7, are inapplicable.

<sup>2</sup> The exemption of the press and other news media from content regulation under the Federal Election Campaign Act was presumably inserted into the act to avoid First Amendment concerns. To the extent that such concerns are applicable here, which the Election Officer does not concede, the interpretation of the Election Rules applied in this case would also avoid such concerns.

reports or favorable comment regarding a candidate in news papers, magazines or broadcasts. Similar media exemptions are found in state laws governing the financing of state and local election campaigns. See, e.g., Michigan Campaign Finance Act, Mich. Comp. Laws §169.254(1)(1979).

The protestor may argue that it is arbitrary to distinguish between "media employers" and other employers when applying the prohibition on employer campaign contributions contained in the *Rules*. The United States Supreme Court addressed a similar objection, founded on the equal protection clause of the Fourteenth Amendment to the United States Constitution,<sup>3</sup> to the Michigan Campaign Finance Act, in Austin v. Michigan Chamber of Commerce, -U.S.-, 110 S. Ct. 1391 (1990). In Austin the Supreme Court held that it was not a violation of equal protection to exempt "media corporations" from the ban on campaign contributions imposed on other corporations. The Court based this holding on its recognition that:

Although the press' unique societal role may not entitle the press to greater protection under the Constitution . . . it does provide a compelling reason for the State to exempt media corporations from the scope of political expenditure limitations.

110 S. Ct. at 1402 (citations omitted).

The main article to which Mr. Brennan objects was newsworthy and printed by an entity not controlled by any candidate or campaign. The article is part of the ongoing coverage by this publication of the 1991 IBT International Union officer election and was printed neither at the direction or behest of any candidate or campaign nor at the direction or behest of any supporter of any candidate or campaign.

For the forgoing reasons the instant protest is DENIED.<sup>4</sup>

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

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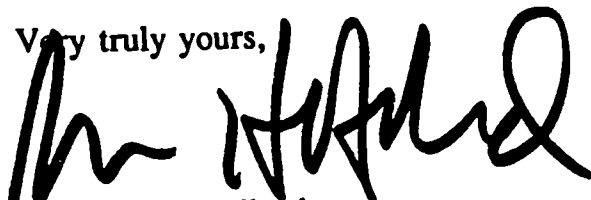
<sup>3</sup> Presumably the protestor would base a similar challenge in this case on the Fifth Amendment.

<sup>4</sup> The *Rules* would, of course, prohibit direct contributions, either monetary or in kind, by the Detroit Free Press, Inc. or by its corporate parent to a candidate for International Office in the IBT. The protest does not allege, nor has the Election Officer uncovered, such a contribution.

Larry Brennan  
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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  
Election Officer

cc: Frederick B. Lacey, Independent Administrator  
James De Haan, Regional Coordinator

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