

OFFICE OF THE ELECTION OFFICER
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January 10, 1992

VIA UPS OVERNIGHT (SATURDAY DELIVERY) & BY HAND WHERE NOTED

R. V. Durham
R. V. Durham Unity Team
c/o IBT Local 391
3100 Sandy Ridge Road
Colfax, NC 27235

Ron Carey
Ron Carey Slate
c/o Eddie Burke
26 Bradford Street
Main Front Door
Charleston, WV 25301
(By Hand)

Walter Shea
Shea Ligurotis Action Team
c/o James Smith
IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149

William J. McCarthy
General President
International Brotherhood
of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
(By Hand)

Barry Feinstein
c/o IBT Local Union 237
216 West 14th Street
New York, NY 10011

Mario Perrucci
c/o IBT Local Union 177
282 Hillside Avenue
Hillside, NJ 07205

John P. Morris
c/o IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149

Re: Election Office Case No. Post75-IBT

Gentlemen:

A post-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by

R. V. Durham on behalf of himself and the R. V. Durham Unity Team (hereinafter, sometimes referred to collectively as "Durham"). The protest, filed after close of business on December 27, 1991, was filed within 15 days of the December 13, 1991 announcement of the election results¹ and was thus timely filed under the terms of the *Rules*.² See *Rules*, Article XI, § 1(b)(1)(b).

The post-election protest sets forth in five separately numbered paragraphs the following allegations.

1. Ron Carey and the Ron Carey Slate and/or their respective campaign organizations (hereinafter sometimes referred to collectively as "Carey") failed to report campaign contributions and expenditures, specifically naming Teamsters for a Democratic Union ("TDU"), Teamster Rank and File Education and Legal Defense Fund ("TRF") and the Association for Union Democracy ("AUD") as Carey campaign organizations which failed to provide such reports;

¹ The results of the election for all International Union officer positions, save one, were announced by the Election Officer at or about 6.00 p.m. on December 13, 1991; after resolution of challenges which affected the outcome of the election of one Eastern Conference Vice President, the Election Officer announced the results for this position at or about 5 00 p m. on December 16, 1991.

² Responses to Durham's post-election protest argue that certain of the allegations of the protest involve conduct or events which occurred prior to the 1991 IBT International Union officer election, were known to Durham prior to that date and, given that Durham elected not to protest such conduct or events pre-election, should therefore not be considered by the Election Officer as part of a post-election protest. Those arguments will be discussed *infra*.

2. Carey received campaign contributions from employers, specifically alleging that financial support was received from Tides, Inc. [sic] ("Tides")³, an employer foundation, and further, that the publications and distribution of the TDU newspaper, Convoy Dispatch, demonstrated employer financial support;

3. Carey failed to properly and timely pay the full cost of using the International Union's bulk-rate non-profit postage permit;

4. Mr. Carey personally and Mario Perrucci, a candidate for International Union Vice President At-Large on the Ron Carey Slate, utilized Union resources in their campaign activities; and

5. International Union officer candidates seeking election on the Shea-Ligurotis Action Team received campaign contributions from employers.

Durham's protest posits two types of violations of the *Rules*, the purported failure to make financial disclosure as required by Article X, § 2 of the *Rules* and the Advisory on Campaign Contributions and Disclosure, issued August 14, 1991 ("Advisory"), and the alleged receipt of improper campaign contributions from either employers, employer representatives, foundations, trusts or similar entities in violation of Article X, §§ 1(a) and 1(b)(1) of the *Rules* or from the IBT or subordinate bodies of the IBT in violation of Article X, §§ 1(b)(1), 1(b)(3) and 1(b)(4) and Article VIII, § 10(c) of the *Rules*.

³ The actual name of the foundation in question is "The Tides Foundation."

I. Investigation of Mr. Durham's Protest Conducted by the Election Officer

The Election Officer and the Election Office staff fully investigated each and every aspect of the Durham post-election protest. The Election Officer has re-reviewed the full TDU, TRF and AUD campaign contribution files and records, including all correspondence and court files. Additionally, the Election Officer has reviewed contributions made to and expenditures made by TDU and TRF for the period from April 27, 1990 (the effective date of the *Rules*) to the present date. His investigation has identified all foundation, trust or organization-contributors to AUD for the same period, and the dates and amounts of such contributions.

Additionally, the Election Officer has re-reviewed and reevaluated the several compliance reports filed by TDU and TRF as required by his decision in In Re Gully, Election Office Case No. P-249-LU283-MGN, affirmed 91-Elec. App.-158 (SA). The Election Officer's investigation, accordingly, included a review of the production and distribution of TDU's newspaper, Convoy Dispatch, identifying the source of all monies used in that paper's production and distribution.

The Election Officer has obtained and reviewed all documents generated or received by Koppelman and Associates, the Tides Foundation, TDU, TRF, AUD, and Carey concerning the production, distribution and sale of the video denoted in the protest, which was produced by Koppelman and Associates for the Tides Foundation and

entitled "Teamster Democracy." Additionally, the Election Officer has conducted extensive interviews of Charles Koppelman, the sole proprietor of Koppelman and Associates, and James Browne, the Tides project director with responsibility for the video production. The Election Officer has determined by such investigation the identity of the monetary resources utilized in the production and distribution of the video and the total dollar amounts expended in such production and distribution.

The Election Officer has reviewed the Carey campaign records and the records of Local 804 concerning Mr. Carey's work schedule and salary payments for calendar years 1990 and 1991. The Election Officer has also reviewed the records and policies of Local 804 with respect to the cumulation and utilization of vacation time. An extensive examination was conducted of Mario Perrucci's campaign expenses as well as the related portions of his Local's financial records. Additionally, the Election Officer re-reviewed the investigation files compiled by him in Election Office Case Nos. P-1107-IBT and P-1108-IBT, concerning campaign contributions and disbursements made by the Shea-Ligurotis Action Team and John P. Morris and Barry Feinstein.

Finally, as requested by representatives of Mr. Durham, the Election Officer has re-reviewed the totality of the investigatory and other files obtained and maintained by him in connection with Election Office Case No. P-249-LU283-MGN and Election Office Case No. P-822-IBT. The Election Officer has reviewed all issues of Convoy

Dispatch through the January, 1992 issue and all materials submitted in support of or opposition to the instant protest.

II. Failure to Disclose

Article X, § 2 of the *Rules* requires the reporting of contributions received and expenditures made in connection with the 1991 IBT International Union officer election by all nominated candidates for International Union office. Subsequent to the promulgation of the *Rules*, and their approval by the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit⁴, the Election Officer—during the course of his supervision of the delegate and alternate delegate elections and his investigation and determination of protests concerning those elections and the International Union officer nomination campaigns—determined that campaign activities were often financed by persons eligible to make contributions under the *Rules*, consolidating their resources and utilizing those concentrated resources to influence the election process. It became clear that these independent committees, like political committees in the federal election context, see, e.g., 2 U.S.C. § 431(d), had the potential to effectively accumulate and expend large amounts of money, or other resources, and thus potentially affect the outcome of the election process. Accordingly,

⁴ United States v. International Brotherhood of Teamsters et al, 742 F.Supp. 94 (S D.N.Y., 1990), modified and affirmed 931 F.2d 177 (2nd Cir., 1991).

the Election Officer, pursuant to his authority under the *Rules*⁵, issued his August 14, 1991 Advisory, which required financial disclosure not only by the nominated International Union officer candidates, but also by independent committees participating in the election process. See Advisory at pp. 25-27. The Advisory required all independent committees—including those whose sole participation in the election process was to provide legal or accounting services—to file disclosure reports.

The Advisory further noted that the obligation of an independent committee to report was an obligation, solely, of the committee. To the extent that committee was controlled by an International Union officer candidate or a slate of candidates, the committee is not an independent committee but part of the candidate's or slate's campaign. Under such circumstances, the committee is not obligated to file any reports. Advisory, p. 26, footnote 8.

⁵ The Preamble to the *Rules* provides that the Election Officer "reserves the authority to take all necessary actions in supervising the election process in order to insure fair, honest and open elections". Article I of the *Rules*, which defines the role and the authority of the Election Officer, provides, in pertinent part, that "[t]he Election Officer retains the right to interpret, enforce and amend these *Rules* when necessary." Finally, in the section of the *Rules* describing the Election Officer's remedial power, the *Rules* provide that if the Election Officer determines "that any other conduct has occurred which may prevent or has prevented a fair, honest and open election, the Election Officer may take whatever remedial action is appropriate." *Rules*, Article XI, § 2.

The Advisory specifically names TDU, TRF and AUD as three independent committees obligated to file disclosure reports with the Election Officer. That conclusion was driven by the Election Officer's decision in In Re Gully, Election Office Case No. P-249-LU283-MGN, affirmed by the Independent Administrator 91-Elec. App.-158 (SA). The Election Officer and Independent Administrator determined that both TDU and TRF had participated in the International Union delegate and officer election process—TRF solely by providing legal or accounting services—with the purpose, object and effect of influencing the election of Ron Carey and International officer candidates and delegate and alternate delegate candidates allied with him. In so finding, however, the Election Officer and Independent Administrator determined that such election participation was not at the direction, behest, or under the control of Mr. Carey or his campaign. Similarly, the Election Officer had concluded that AUD had provided legal services advancing the political interests of particularly delegate and alternate delegate candidates aligned with Carey; its legal representation accordingly had the effect of influencing the International Union officer election. See, e.g., Election Office Case No. Post61-LU63-CLA, affirmed 91-Elec. App.-137 and Election Office Case No. Post73-LU63-CLA, affirmed 91-Elec. App.-167.

TDU, TRF and AUD all objected to the requirement that they file disclosure reports with the Election Officer, contending, *inter alia*, that they had no obligation to do so and that the Election Officer's requirements were beyond his authority under the

March 14, 1989 Consent Order. Nonetheless, TDU and TRF filed Pre-Election Report No. 1⁶—while simultaneously contesting their reporting obligation before the United States District Court for the Southern District of New York and then the United States Court of Appeals for the Second Circuit. TDU and TRF moved the District Court for a preliminary injunction prohibiting the Election Officer from requiring them to file disclosure reports. The District Court denied the motion. TDU and TRF appealed to the Second Circuit Court of Appeals.

On November 20, 1991, the Court of Appeals stayed the District Court's order denying injunctive relief pending appeal, and further stayed the District Court's order during oral arguments on TDU and TRF's appeal. Then—on November 22, 1991—the Court of Appeals issued a written order staying, pending final disposition of TDU and TRF's appeal, "any further obligation on the part of [TDU and TRF] to file the reports as directed by the Election Officer and the District Court." Moreover, the Election Officer was ordered "... not to make any further disclosures of information contained

⁶ Representatives of, the R. V. Durham Unity Team inspected the initial reports filed by TDU and TRF under and in accordance with Article X, § 2(e) of the *Rules*. After such inspection, the R. V. Durham Unity Team filed but one protest, contending that TDU had received funds from two employers or employer representatives, Election Office Case. No. P-961-IBT. No appeal was taken from the Election Officer's denial of that protest. No other protests were filed pre-election alleging that either TDU or TRF had received contributions or made expenditures in contravention of the *Rules*. Mr. Durham and/or his campaign did, however, utilize the information gleaned from their inspection of the reports in campaign material.

in the reports previously filed with him." This order of the United States Court of Appeals for the Second Circuit remains in effect to the present date.

AUD filed Pre-Election Reports Nos. 1 and 2, out of time and in incomplete form. While the reports disclosed all election-related expenditures and all foundation, trust or institutional contributions, the reports failed to disclose the identity of individual contributors of greater than \$100 00. AUD, while not formally a party to the proceeding before the United States Court of Appeals for the Second Circuit, had taken the same legal position as that taken by TDU and TRF with respect to AUD's obligation to file disclosure reports. AUD had also submitted an amicus brief in support of TDU and TRF's position in the Court of Appeals. Given the basis for, and nature of the Court of Appeals' November order, the Election Officer determined that the purposes and intent of that order applied to AUD, as well as TDU and TRF.

It is not a violation of the *Rules* for persons or entities governed by the *Rules* to abide by Court orders interpreting such *Rules*. Indeed, and clearly, the Election Officer—as a Court appointed officer—is bound by the decisions of the District Court, as affirmed, reversed or modified by the Court of Appeals. It would violate his oath of appointment for the Election Officer to overturn the 1991 IBT International Union officer election—or to even find a violation of the *Rules*—where that decision would effectively constitute a reversal of an extant Court of Appeals order.

Accordingly, the *Rules* were not violated by the failure of TDU, TRF or AUD to file disclosure reports. Nor were the *Rules* violated by the concomitant inability of the R. V. Durham Unity Team to obtain and utilize information which might have been reported, when the failure to report and the failure to obtain information was in accord with the order of the Court of Appeals. Obviously, Carey did not fail or refuse to do anything. But for the fact that TDU, TRF and AUD were independent committees, not controlled, directed or acting at the behest of Carey, their obligation to file reports would not exist. See Advisory, p. 26, footnote 8. Definitionally, reporting and disclosing on behalf of independent committees, TDU, TRF or AUD was beyond the capability, and obligation, of Carey.

As noted above, see footnote 6, *supra*, and accompanying text, Durham was able to inspect and did inspect reports filed by TDU and TRF detailing--in accordance with the requirements of the *Rules* and the Advisory--all contributions received and expenditures made by them for the period from April 27, 1990 through and including September 1, 1991. The R. V. Durham Unity Team also had available to it for inspection two partial reports filed by AUD detailing contributions and expenditures for the period from April 27, 1990 through and including October 31, 1991. Accordingly, Durham did review, or had available to it, the relevant contribution and expenditure

information for the vast bulk of the 1991 IBT International Union officer election campaign.

Additionally, in connection with the investigation of this protest, the Election Officer has reviewed the TDU, TRF and AUD financial records, i.e., the information that would have been disclosed but for the order of the United States Court of Appeals for the Second Circuit. In its initial disclosure report--inspected by representatives of the R. V. Durham Unity Team--TDU disclosed the names of 193 persons or entities who had contributed more than \$100.00 to it. From the closing date for that first report, September 1, 1991, through December 31, 1991 (a date beyond the closing date for all presently filed contribution and expenditure reports), 22 individuals, whose identities were not previously disclosed, made contributions or additional contributions to TDU which cumulatively exceeded \$100.00. Accordingly, nearly 90 percent of all individuals whose names and identities would have had to be disclosed by TDU had it filed all disclosure reports with the Election Officer were disclosed on the first report that TDU, in fact, filed and which was inspected by Durham. The Election Officer's investigation has also determined that these 22 individuals are all Union members entitled to make campaign contributions pursuant to Article X, § 1(a)(5) of the *Rules*.

With respect to TRF, three foundations whose names were not disclosed on the report filed by TRF, and inspected by Durham, made contributions subsequent to the

closing date of the first report Together, those three foundations contributed \$25,000, less than 6% of the total foundation support received by TRF during the twenty-month IBT International Union officer election campaign period. Individual contributors whose identity was not revealed on the report filed by TRF provided under \$10,000, less than 3% of the approximately \$350,000 in contributions received by TRF during the campaign period Only one individual contribution was in excess of \$500 00

The identity of all foundations, trusts or similar entities which provided support to AUD during the International Union officer election campaign period was revealed on either the initial or second report filed by AUD The initial report also identified the entities which contributed to AUD's "Teamster Fair Election Project," no other person or entity not noted on AUD's initial report as contributing to the "Teamster Fair Election Project" made such a contribution

While the identity of individual contributors to AUD was not disclosed on any reports filed by AUD, the Election Officer's investigation reveals that the total amount provided by individuals who contributed more than \$100 00 during the period from April 1990 through December, 1991 constituted less than ten percent of the total contributions (approximately \$240,000) received by AUD during that period

Based on our investigation, Mr. Durham and the R. V. Durham Unity Team had access to and was informed of nearly all the information that would have been disclosed, had TDU, TRF and AUD each filed the contributions and expenditure reports required to date. The information that would have been obtained from the reports not filed reveals few new contributors whose identities were not previously known or available to Durham by his inspection of the reports actually filed by TDU, TRF and AUD.

Moreover, assuming, contrary to these findings, that the failure of TDU, TRF and/or AUD to file all disclosure reports as required by the Advisory constituted a violation of the *Rules*, such violation would have no effect on the outcome of the 1991 IBT International Union officer election. The obligation to disclose campaign contributions and expenditures is an obligation not imposed by substantive federal labor law, nor by the Consent Order itself. It is a requirement imposed by the Election Officer through the *Rules* for the purposes permitting him to monitor compliance with ¶ 8 of the March 14, 1989 Consent Order prohibiting campaign contributions from employers, representatives of employers, foundations, trusts and similar entities, and as a device for helping to ensure that the 1991 IBT International Union officer election would be open. Candidates are permitted to publicize and comment upon the nature and amount of campaign contributions received by their opponents and the identity of such contributors, the matter becomes "grist for the political mill." Indeed, the gravamen of

this portion of Durham's post-election protest is that he was deprived of the ability to make a political issue of the amount and source of campaign contributions to independent committees supporting Carey. However, the R. V. Durham Unity Team had available to it nearly all of the information usable for political propaganda purposes. Moreover, the very failure of TDU, TRF and AUD to file all required disclosure reports was itself utilized by the R. V. Durham Unity Team for similar political purposes. For example, by memorandum to Local Union officers and supporters dated November 25, 1991, exhorting such officers to continue "getting out" the Durham vote, Mr. Durham suggests that the failure of TDU and TRF to file the appropriate disclosure reports demonstrates that these organizations received and were receiving a multitude of illegal campaign contributions.

The vote totals for the 1991 IBT International Union officer election reveal winning margins of between nearly 60,000 votes between Messrs. Carey and Durham for IBT General President, to nearly 4,300 votes between John P. Morris and Frank Carracino, both candidates on the Shea-Liguorotis Action Team for International Union Vice President for the Eastern Conference. The lowest margin of victory for any candidate on the Carey Slate was over 10,400 votes between Dennis "J. B." Skelton and William Hogan, Jr. (a Durham Slate candidate) for International Union Vice President from the Central Conference. Under these circumstances and given the vote totals, that TDU and TRF did not file the second pre-election contribution and

expenditure report or the post-election contribution and expenditure report and the fact that AUD filed incomplete pre-election reports and no post-election report did not affect the outcome of the election. *Rules, Article XI, § 1(b)(2).*

To the extent that the Durham post-election protest again challenges the propriety of TDU, TRF and/or AUD participating in the election process, their right to so participate was decided affirmatively by the Election Officer in In Re Gully, Election Office Case No. P-249-LU283-MGN, affirmed 91-Elec. App.-158. Mr. Durham did not seek review of that decision in the United States District Court for the Southern District of New York. The matter is concluded and is *res judicata* as to similar issues raised in this post-election protest. Further, the Election Officer continues to monitor the contributions and expenditures of TDU and TRF in accord with his decision in In Re Gully, supra. His continued review and monitoring demonstrates that TDU and TRF are complying with the parameters of his decision as affirmed by the Independent Administrator and that only monies contributed by IBT members or other individuals who are not themselves employers have been utilized for general campaign purposes. See p. 5, *supra* and p. 22. footnote 8, *infra*.

Among the evidentiary materials presented by Durham in support of his protest was a pamphlet entitled, "The Impact of the Racketeering Consent Order on the Lifestyles of Teamster Officials," ("Lifestyles") published by TRF. While Durham

raises no specific allegations in connection with that document, the Election Officer has reviewed the pamphlet to determine whether its publication and distribution by TRF violated the *Rules*. TRF, itself a foundation and financially supported by contributions from other foundations, trusts and similar entities, is prohibited from making campaign contributions under the *Rules*. *Rules*, Article X, § 1(a). TRF may, however, provide financial support for legal or accounting services performed in ensuring compliance with applicable election laws, rules or other requirements or in securing, defending or clarifying the legal rights of candidates. *Rules*, Article X, § 1(b)(2). Further, TRF may continue to engage in other activities, including the educational and related activities in which it has historically engaged, provided only that such activities do not constitute campaign contributions under the *Rules*. See, e.g., *In Re Gully*, *supra*.

"Lifestyles" is but an expanded version of previous publications produced and distributed by TRF, on at least an annual basis. The expansion is a result of the March 14, 1989 Consent Order and, in particular, the activities taken by the Court-appointed officers, particularly the Independent Administrator, pursuant to that Consent Order. "Lifestyles" reflects much of the activity undertaken by the Independent Administrator during the calendar year 1991 to enforce the provisions of the Consent Order. Given such heightened activity, all of which activity is newsworthy, the expansion by TRF of its annual pamphlet does not, without more, demonstrate that the pamphlet constitutes a campaign contribution in violation of the *Rules*. See, e.g., *Rules*, Article VIII, § 7.

The content of "Lifestyles," while political in tone, consist of factual reporting of newsworthy activities undertaken by the Court-appointed officers or the United States District Court itself in conjunction with the enforcement and application of the Consent Order, as well as other factual information obtained from publicly available reports. While the report contains the names of Union officials who were also non-Carey Slate candidates for IBT International Union office, none are mentioned or discussed in their capacity as candidates. The 1991 IBT International Union officer election is not discussed, the names, identities or political positions of the various contenders is not mentioned. Accordingly, the publication and distribution of "Lifestyles" by TRF does not constitute a campaign contribution by TRF in violation of the *Rules*.

III. Allegations of Improper Campaign Contributions

The remaining allegations of Durham's post-election protest concern campaign contributions made to International Union officer candidates or a slate of candidates (other than for providing legal and accounting services) by persons or entities not permitted to make such contributions under the *Rules*. Mr. Durham contends that candidates for International officer positions on both the Ron Carey Slate and the Shea-Ligurotis Action Team received campaign contributions from employers and/or foundations. Durham also claims that Carey and other members of his slate utilized

Union resources and/or obtained—at least indirectly—contributions of Union funds purportedly in violation of the *Rules*. Each of these allegations will be dealt with separately below.

A. Campaign Contributions from Employers and Foundations

1. Ron Carey and the Ron Carey Slate

Durham alleges that Carey received "massive financial support" from employers and foundations, both directly and through TDU and TRF. Review of the campaign contribution and expenditure reports filed by Mr. Carey, the other candidates for International office on the Ron Carey Slate and the Ron Carey Slate as an entity reveals no contributions from employers or employer representatives, foundations, trusts or similar entities. None of the Carey reports reflects any campaign contributions from TDU or TRF. Other than pre-election protests previously resolved by the Election Officer, see, e g., Election Office Case No. P-972-IBT, affirmed 91-Elec. App.-213, the Election Officer investigation found no evidence that any Carey entity received campaign contributions from employers, employer representatives, foundations, trusts or similar

entities; the investigation failed to reveal any such campaign contributions from TDU or TRF.⁷

TDU has, however, clearly participated in the 1991 IBT International Union officer election, has made campaign contributions with the purpose, object or foreseeable effect of influencing the outcome of the 1991 IBT International Union officer elections, but as an independent campaign committee. To the extent that Durham seeks to resurrect the issue previously raised by him concerning TDU's right to make such campaign contributions and to participate in the 1991 IBT International Union officer election campaign, that matter has been decided, is *res judicata* and is not subject to further protest or appeal litigation. See p. 16, *supra*. In *In Re Gully, supra*, in which Durham participated, the issue of TDU's right to participate and make campaign contributions with respect to the 1991 IBT International Union officer election was raised and decided. Durham's counsel, on behalf of the then-Durham Unity Team, argued that TDU was an employer and a labor organization, and, as either, was prohibited under the *Rules* from making contributions. They also argued that TDU and TRF were "alter egos," since TRF was admittedly a trust or similar entity and received foundation and trust contributions, TDU--as its alter ego--was prohibited from participating in the 1991

⁷ The compliance by Carey with the remedies ordered by the Election Officer in those cases where *Rules* violations were uncovered fully remedies those violations and eradicated their impact, if any, on the 1991 IBT International Union officer election results *In Re R. L. Communications*, Election Office case No. P-284-IBT, reversed on other grounds, 91-Elec. App.-194.

IBT International Union officer election. Durham also argued, by his representatives, in that case that TRF financed TDU and accordingly--whether or not the two entities were alter egos--TDU could not participate in the election process by making campaign contributions.

The Election Officer rejected all such arguments; his decision was upheld in all respects by the Independent Administrator. First, the Election Officer determined that TDU was not a labor organization, but was a caucus of Teamster members permitted to make campaign contributions under the *Rules*. The Election Officer found that TDU was not the alter ego of TRF and thus TRF's status as a trust or similar entity and/or its receipt of foundation and trust monies did not prevent TDU from making 1991 IBT International Union officer election campaign contributions. Finally, the Election Officer found that TDU and TRF had established a contribution and expenditure allocation system which, if properly applied, would ensure that TDU received contributions only from persons or entities entitled to make campaign contributions under the *Rules* and that all expenses incurred by TDU--including all campaign contributions made by it--were financed exclusively from such permitted contributions. While the Election Officer found that the system had not been appropriately applied in all instances and ordered TDU to disgorge certain contributions it had received and to repay TRF for certain expenses paid by TRF on its behalf, the Election Officer further found that such repayment with interest was sufficient to eradicate the *Rules* violations he found and

sufficient to prevent such violations from affecting any delegate, alternate delegate or International Union officer election. See also In Re R. L. Communications, *supra*.⁹

Durham elected not to appeal the Independent Administrator's affirmance of the Election Officer's decision. No appeal was taken to the United States District Court from the Southern District of New York although the *Rules* permit such appeal, and several other persons or entities affected by the Election Officer decisions have so appealed.

Accordingly, Durham has waived his right to further protest the participation of TDU or TRF in the 1991 IBT International Union officer election campaign. Provided TDU and TRF adhere to the requirements of the Election Officer's decision in In Re Gully, *supra*--as the Election Officer has determined they have done and about which Durham has presented no evidence--their right to so participate and the right of TDU to make campaign contributions has been conclusively determined and is *res judicata*.

⁹ In addition, in his decision, the Election Officer determined that he would continue to review and monitor the financing and expenditures of TDU to ensure that it was not being funded in whole or in part by monies from persons or entities prohibited from making campaign contributions under the *Rules*. The Election Officer continues to receive periodic audits from TDU and has determined that TDU is being financed exclusively by contributions from persons or entities entitled to make campaign contributions under the *Rules* and that all its expenses, and particularly all campaign-related expenses, are paid exclusively through such contributions. See also p. 16, *supra*.

Similarly, Durham's contention that the publications and distribution of Convoy Dispatch by TDU constitutes an improper campaign contribution to Carey has been conclusively resolved by the decision in In Re Gully, supra. The Election Officer recognizes that Convoy Dispatch does and has constituted campaign material on behalf of Carey. However, as the Election Officer found, and the Independent Administrator affirmed, in In Re Gully, supra, all costs of production and distribution of Convoy Dispatch are paid for exclusively by TDU. The only costs associated with the writing, typesetting, printing and mailing of Convoy Dispatch—including the costs of all supplies utilized in these processes—not borne by TDU is the editorial or salary costs associated with the writing of articles which have no campaign content. The salary and employee benefit costs incurred in writing non-campaign articles are borne by TRF, a division and distribution of costs approved by the Election Officer and endorsed by the Independent Administrator in In Re Gully, supra. The Election Officer's monitoring of the finances of TDU in the period since he issued his decision in In Re Gully has ensured that TDU continues to pay all Convoy Dispatch costs as described above.

Since, with TDU's compliance with the disgorgements and repayments ordered in In Re Gully, TDU is itself financed exclusively from contributions made by persons or entities entitled to make campaign contributions under the *Rules*, its utilization of Convoy Dispatch as a campaign vehicle for Carey does not violate the *Rules*.

2. **The Production and Distribution of the Video Program, "Teamster Democracy"**

Durham further claims that The Tides Foundation ("Tides"), a foundation within the meaning of the *Rules*, contributed to the Carey campaign by financing the production by Koppelman and Associates of a video concerning the 1991 IBT International Union Convention and the International Union officer election. Koppelman and Associates is an independent production company; Charles Koppelman is its sole proprietor (hereinafter, Koppelman and Associates and Mr. Koppelman are sometime collectively referred to as "Koppelman"). Its existence predates the March 14, 1989 Consent Order. Among the films it has previously produced are included documentaries on grass-roots democracy, the homeless and drug abuse. Certain of its productions have been financed by foundation grants, including a 1986 grant from Tides permitting it to commence production of a planned five-part series provisionally titled, "The Promise of Democracy." "The Promise of Democracy" is to consist of five one half-hour programs dealing with grass-roots democratic movements evolving around land use, work, neighborhood and immigrant issues, with the last half-hour devoted to the effect of participation in grass-roots methods of governance.

Koppelman's interest in the 1991 IBT International Union officer election stems, in part, from his work on "The Promise of Democracy" and particularly the segment

which is to be devoted to grass-roots democracy and work issues. All preliminary planning for a program devoted to the 1991 IBT International Union officer election was undertaken solely by Mr. Koppelman and the other employees of Koppelman and Associates.

In late May or early June, 1991, Mr Koppelman contacted Tides in an effort to obtain funding to enable him to produce such a program.⁹ Tides is an independent public charity within the meaning of 501(c)(3) and 509(a)(1) of the Internal Revenue Code, its staff and board are independent and their decisions and judgements are not controlled by the IBT, TDU, TRF, Ron Carey or anyone associated with Carey. Simultaneously, Mr. Koppelman contacted TRF, first orally through Ken Paff and then by letter dated June 8, 1991, also in an effort to obtain funding for producing a program on the 1991 IBT International Union officer election. TRF rejected his proposal.

Other than an oral communication between an associate director of Koppelman and Associates and a representative of the Carey campaign concerning the filming of Mr. Carey and Carey delegates at the 1991 IBT International Union Convention—a communication identical to the contacts between that same associate producer and representatives of the Durham Unity Team and the Shea-Ligurotis Action Team—neither

⁹ As noted above, Koppelman and Associates had previously received a grant from Tides. Additionally, the Executive Director of Tides, is a college friend and former employer of Mr. Koppelman.

Mr. Koppelman nor any employer or agent of Koppelman and Associates had any contact with Carey. Other than its unsuccessful communications with TRF regarding financing the production as described above and a subsequent conversation regarding the purchase of the produced video, see *infra*, neither Mr. Koppelman or any employee or agent of Koppelman and Associates had any contact with TDU or TRF.

Tides responded affirmatively to the Koppelman request for a grant to finance its production on the 1991 IBT International Union officer election. Tides has expended \$44,445.00 for the entirety of the costs associated with producing the video—including salaries, filming costs and editing. Other than Tides, there was no other funding source for the production.

Tides' interest in financing the program develops from its continuing interest and involvement in efforts to promote citizen participation in both public and quasi-public endeavors, for instance, People for a Democratic Way was initially funded by Tides. Other than its funding of the program eventually produced for it by Koppelman and Associates, "Teamster Democracy," Tides had no other involvement with the 1991 IBT International Union officer election. It had at no time any contact with Ron Carey, the other candidates on the Ron Carey Slate or their respective campaign organizations. On October 2, 1991, Tides received a letter dated September 25, 1991 from Ken Paff, which indicated that Mr. Paff understood that Tides was producing or funding the production

of a video or videos concerning the 1991 IBT International Union officer election, and evincing TDU's interest in obtaining and purchasing copies of any such videos. By letter dated October 4, 1991, Tides responded, indicating that it had no present information concerning the completion date for the video but would notify Mr. Paff when the project was completed. Tides had no other contact with TDU or TRF concerning the production, distribution or sale of "Teamster Democracy."¹⁰

A letter of agreement was entered into on June 21, 1991 by Tides and Koppelman and Associates providing for the production by Koppelman for Tides of "a video documentary program on the rank-and-file movement in the International Brotherhood of Teamsters." The letter of agreement noted that the program would focus on the ways "representative democracy gets replicated within labor unions" and was to include five full days of shooting at locations in Orlando, Florida, including the Dolphin Hotel, during the period of the 1991 IBT International Union Convention. Tides obtained ownership rights of the final product. Tides delegated artistic decisions to Koppelman but retained final editorial authority over the contents of the video. In retaining such editorial authority, Tides, in a supplement to the original letter of agreement, stated that "it is imperative to present a totally objective depiction of events leading to and culminating in this election."

¹⁰ Tides has received from time to time requests for funding from TRF; no grants have been awarded by Tides to TRF. Neither has Tides provided any funding for AUD.

Efforts were, and continue to be, made by Tides and Koppelman to market the video, "Teamster Democracy." There have been oral and written communications with the producer of the PBS program entitled "Frontline" and the Committee for Investigative Reporting, a "Frontline" subcontractor, concerning the sale of the program to "Frontline" for release on PBS. These communications predated the filming and editing of the final product and have continued to the present date; the last letter to the executive producer of "Frontline" urging his purchase and utilization of the program is dated December 14, 1991. Courtesy copies of the video were distributed to representatives of the various news media and labor education programs and institutes. The video has been shown on several cable public access stations in the United States.

With respect to the replication and distribution of the video, Cal-Image, a "fulfillment" house, was engaged by Tides to to replicate and ship copies of the video purchased by third parties. A flyer was prepared by Koppelman and Tides indicating that the video was for sale at the price of \$10 00 for one to nine copies, \$8.50 for 10 to 20 copies and \$7.50 for 20 to 50 copies, for over 100 copies, "call for quote."

TDU, by utilizing funds provided it by persons or entities otherwise entitled to make campaign contributions under the *Rules*, purchased 400 copies of the video, purchasing 200 copies on each of two occasions, on or about October 4 and October 20,

1991. TDU paid for each copy of the video at the rate of \$1.00 over cost; Cal-Image's cost for replicating and mailing the video is \$5.50 plus the cost of shipment. TDU communicated directly with Mr. Koppelman concerning its purchases; the order was filled and shipped by Cal-Image. Other than TDU's order, approximately only another dozen copies of the video have been sold.

Of the 400 copies of the video purchased by TDU, the majority were distributed by it without charge. A very small number of copies were sold by TDU at \$10.00 per copy. Approximately 80 copies of the video remain undistributed. TDU distributed copies of the video to its board members; copies were shown and provided to TDU members attending the 1991 TDU Convention; additional copies were mailed by TDU to various of its members, primarily its most politically active ones. The recipients utilized the video in a variety of ways; it was clearly viewed by a larger number of IBT members than the number who actually received a copy.

Despite the protestations of counsel for Carey and TDU to the contrary, the Election Officer views the video as material supportive of Carey's candidacy for IBT General President. However, the Election Officer does not find that either the production or distribution of "Teamster Democracy" violated the *Rules*.¹¹ While Article

¹¹ Although Durham did not complain about the production or distribution of "Teamsters Democracy" until his post-election protest, he obviously had knowledge of its production, the source of its funding utilizing foundation money and its purchase and distribution by TDU prior to the 1991 IBT International Union officer election date.

X of the *Rules* prohibits employers, foundations, trusts and similar entities from making campaign contributions to International Union officer candidates, the production of goods or services by such an entity in the normal course of its operations—even goods or services favorable to a particular candidate or slate of candidates—does not constitute a campaign contribution. *Rules, Definitions (6)* at p. A-2.

The sale by the producer of such goods and services and the purchase of the goods and services from such vendor does not constitute a campaign contribution by the vendor if the terms of the purchase are commercially reasonable. See In Re R. L. Communications, *supra*. In this case, the purchase price paid by TDU was set at a rate sufficient to generate a profit to the vendor for each videotape sold. Further, the purchase price was in accord with the prices set by the vendor for purchases of the magnitude made by TDU, i.e., for over 100, "call for quote." The price paid by TDU for its 400 copies and the set price for purchase of 50 or fewer copies is insufficiently disparate to demonstrate a campaign contribution.

That all costs of production and distribution, without respect to a profit, were not covered by the sale of videos to date and assuming—as appears likely—that such costs

A memorandum dated November 25, 1991 from Mr. Durham addressed to Local officers supporting the Durham Unity Team so states. Given the fundamental importance of campaign financing, the Election Officer declines to determine this protest on the basis of timeliness. See In Re Gully, Election Office Case No. P-249-LU283-MGN, affirmed 91-Elec. App.-158.

will not be covered unless, perhaps, "Frontline" determines to air the program, does not demonstrate that the production of "Teamster Democracy" constituted a contribution to Carey. Tides, whose money was utilized to produce the video, is not a profit-making institution. It is a public charity which makes grants; it does not expect grant monies to be returned. The production of specialized video programs, like "Teamster Democracy," are often funded by grants and do not purport to be money-making enterprises. For instance, prior Koppelman productions have been funded by grants. The production and distribution of "Teamster Democracy" does not constitute an employer or foundation contribution in violation of the *Rules*. In Re R. L. Communications, supra.

Mr. Koppelman, independently, made the decision to produce a video on the 1991 IBT International Union officer election. Tides, by its board, made the independent decision to fund the program and retained final editorial control over its contents. Neither decision was controlled in any way by Carey, by TDU or by TRF, or by any person or entity supporting the Carey campaign, lending further support to the conclusion that the financing, production and distribution of "Teamster Democracy" did not constitute a campaign contribution. See, e g., Election Office Case No. P-971-IBT. (publication by an employer of an article purportedly promoting a particular slate of International Union officer candidates when done in the ordinary course of business and

not under the direction, control or behest of such International Union officer candidates not a violation of the *Rules*).

3. The Shea-Ligurotis Action Team

The final Durham charge concerns alleged receipt of improper employer contributions by members of the Shea-Ligurotis Action Team. Durham, referencing the protest previously filed by his representative in Election Office Case No. P-1108-IBT, contends that Barry Feinstein, an unsuccessful candidate for International Union Vice President At-Large, received campaign contributions from employers or employer representatives in violation of the *Rules*. Other than the listing of their names and employers in Mr. Feinstein's disclosure form, neither Durham nor his campaign manager, Chris Scott, who filed the protest in Election Office Case No. P-1108-IBT, had any information about the individuals whose campaign contributions they claim are improper. The Election Officer's decision, issued January 10, 1992, found that four of the 24 individuals whose contributions were claimed to be improper were employers or employer representatives within the meaning of the *Rules* and thus prohibited from contributing to Mr. Feinstein's campaign. Mr. Feinstein was directed to return the contributions made by such individuals, a total of \$3,250.00.¹²

¹² Subsequent to the filing of the protest in Election Office Case No. P-1108-IBT, on or before December 3, 1991, Mr. Feinstein voluntarily returned the \$3,250.00 found by the Election Officer in his decision issued this date to constitute contributions from employers or employer representatives in violation of the *Rules*.

Similarly, Mr. Durham, relying on the protest previously filed by his campaign manager, Mr. Scott, in Election Office Case No. P-1107-IBT, argues that John Morris, a successful candidate for International Union Vice President from the Eastern Conference, received campaign contributions from employers or employer representatives. In a decision dated December 27, 1991, the Election Officer, on the basis of the information garnered by him during his investigation of the protest—since again neither Durham nor Mr. Scott had any information about the individuals whose campaign contributions they claimed were improper—found that four individual contributions had to be considered to have been made at the behest of an employer, and thus constitute inappropriate campaign contributions under the *Rules*. The Election Officer ordered that the contributions so received, \$4,000.00 in total, be returned. The Election Officer's decision was, however, reversed on January 9, 1992 by the Independent Administrator, who determined that the contributions were not prohibited by the *Rules*. 91-Elec. App.- 248 (SA).

Evaluating, post-election, the violations found by the Election Officer in Election Office Case No. P-1108-IBT¹³ necessitates a determination of whether the violations affected the outcome of the election. *Rules*, Article XI, § 1(b)(2). Mr. Feinstein was

¹³ The Independent Administrator, in reversing the Election Officer's decision in P-1107-IBT, determined that Mr. Morris did not violate the *Rules* by his acceptance of the campaign contributions. There being no violation, there can be no election effect.

unsuccessful in his campaign for International Union Vice President. Accordingly, his receipt of improper campaign contributions did not affect the results of the election for the Union position he sought.

Mr. Morris was, however, a successful candidate for International Union Vice President from the Eastern Conference. Assuming that the contributions received by Mr. Feinstein may have impacted upon Mr. Morris' election since both candidates were members of the same slate⁴⁴, the Election Officer finds that their receipt by Mr. Feinstein did not affect the results of Mr. Morris' election.

The final election results for International Union Vice President from the Eastern Conference indicate that Mr. Morris received 43,503 votes, almost 12,000 more votes than the losing candidate on the R. V. Durham Unity Team with the highest number of votes, Frank Hackett, who received 31,646 votes. The amount of contributions received by Mr. Feinstein and found by the Election Officer to have been received in violation of the *Rules* constitutes but two percent of the total contributions received by Mr. Morris, and only by Mr. Morris, in the 1991 IBT International Union officer election

⁴⁴ This argument was not directly articulated by the Durham campaign or by Mr. Scott.

campaign.¹⁵ Two percent of the votes received by Mr. Morris is far fewer than the vote margin separating him and Mr. Hackett.

The 1991 IBT International Union officer election was a supervised election. Under such circumstances, the receipt of improper campaign contributions does not without more demonstrate that the outcome of the election was affected:

However, we do not agree with appellants that a violation of section 401 makes out a prima facie case of probable impact on the outcome of an election. That is the rule for violations, not susceptible of quantification, which are committed in the course of an unsupervised election. Wirtz v. Hotel Employees Local 6, 391 U.S. 492, 5-05-09, 68 LRRM 2305 (1968). 'Here, however, the Secretary's supervision of the [rerun election] establishes a presumption of fairness and regularity that is not upset by appellant[s]' showing.' Brennan v. Int'l Union of Dist. 50, 163 U.S.App. D.C. at 54, 499 F.2d at 1059, 86 LRRM at 2773.

Usery v. Local Union 639, International Brotherhood of Teamsters, 543 F.2d 369, 93 LRRM 2113, 2119 (D.C. Cir., 1976), cert. denied 429 U.S. 1123 (1977). See also Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F.2d 438 (2nd Cir. 1966) and Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D.C. Alabama 1989).

¹⁵ If one were to compare the amount of improper Feinstein campaign contributions to the total campaign contributions received by the Shea-Ligurotis Action Team, the result demonstrates that less than 1/2 of one percent of such slate-wide campaign contributions were improper.

Finally, the Election Officer has ordered that the monies he found to have been improperly received by Mr. Feinstein be returned by him to the individuals making such contributions; the contributions have been so returned. As the Election Officer has previously held, such remedy is sufficient to eradicate the impact of the impermissible contribution on the election campaign. See In R. L. Communications, *supra*.

B. Campaign Contributions from the Union

1. Use of the IBT Postal Permit

Durham claims that Carey and the other members of his slate benefitted from use of Union resources--monetary resources, as well as Union goods and facilities--to support their successful campaigns for International Union officer positions. Durham's first allegation in this regard concerns a mailing done by Carey utilizing the IBT's non-profit organizational bulk-rate mail permit ("permit"). On April 10, 1991, the Independent Administrator overruled objections voiced by the IBT and directed the IBT to allow utilization of its permit for mailings by candidates for International Union officer positions. 91-Misc. Elec Dec.-1. Pursuant to that decision--and in accordance with procedures put into effect by the IBT and the Election Officer to assure appropriate implementation of that decision--candidates for International Union office, including both

the Durham and Carey slates, utilized the IBT's permit for campaign mailings and paid the reduced non-profit bulk-rate postage for such mailings.

In mid-November, 1991, the IBT notified the Election Officer that the United States Postal Service was attempting to collect from it \$28,159.64 as an insufficiency in postage for mailings undertaken through utilization of the IBT's permit. The IBT investigation, reviewed and confirmed by the Election Officer, determined that the deficiency being claimed resulted from a Carey mailing done on or about November 5, 1991 for which the postal service was assessing the regular bulk-rate, not the lesser non-profit amount. By letter dated November 27, 1991, sent by overnight mail, and delivered on November 29, 1991 due to the intervening Thanksgiving Day holiday, the Election Officer notified Carey of the deficiency being assessed and, in accordance with the agreement signed by Carey, directed that the IBT be reimbursed in the amount the Postal Service was claiming as a deficiency. The Election Officer's letter directed that the amount be tendered within five days or by December 5, 1991.

On December 2, 1991, Susan Davis, Esq., on behalf of Carey, requested that the matter be heard by the Independent Administrator Ms. Davis also argued that the order of the Election Officer requiring payment be stayed pending the decision of the Independent Administrator, citing in part the monetary problems being encountered by Carey. Despite the arguments of the Election Officer to the contrary, the Independent

Administrator extended the deadline for payment to December 9, 1991. The deficiency amounts were properly tendered prior to the close of business on December 9, 1991.¹⁶

On November 29, 1991, the same date that the Election Officer's letter of November 27, 1991 regarding the postal deficiency was delivered,¹⁷ Carey effectuated a small-by campaign standards in a one and one-half million member Union-mailing to selected IBT subordinate body officers and officials. The mailing, to less than 2000 IBT officers, was sent by first-class mail without utilization of any IBT permit.

Durham maintains that utilization by Carey of campaign funds for the mailing of November 29, 1991 at a time it knew or should have known that it owed the U.S. Postal Service and/or IBT over \$28,000.00 for a previous mailing, and at a time it was claiming inability to pay such deficiency, constitutes utilization of Union funds by Mr. Carey's campaign in violation of the *Rules*. The simple answer to Mr. Durham's allegation is that Carey appropriately paid the assessed postal deficiency in accordance with the directions to it by the Independent Administrator. Further, the limited mailing

¹⁶ The checks so tendered, made payable to the United States Postal Service, were not accepted by the Postal Service. The Postal Service took the position that it would only accept checks written by the IBT, necessitating the return to the Carey campaign of the previously issued checks and their exchange for checks made payable to the IBT. This delay in effectuating payment was caused by the United States Postal Service, not by the Carey campaign.

¹⁷ Ms. Davis, on behalf of Ron Carey, claims that the letter was not received until November 30, 1991.

allegation is that Carey appropriately paid the assessed postal deficiency in accordance with the directions to it by the Independent Administrator. Further, the limited mailing of November 29, 1991 was in process either prior to or at the same time that Mr. Carey's campaign was first notified by the Election Officer of its obligation to pay the \$28,159.64 in question.

Moreover, Carey, by reason of paying the assessed \$28,169.54 deficiency, was --as Ms. Davis claimed during the December 3, 1991 hearing before the Independent Administrator and in a December 4, 1991 letter to the Election Officer--required to pay more to mail campaign literature to IBT members than had been paid by Durham for its mailings. The R. V. Durham Unity Team was permitted to mail and did mail whatever campaign literature it wished to distribute to IBT members utilizing the lower postage provided through the IBT permit. Carey was required to pay at a higher rate per letter for one of the campaign literature distributions it made. While the Independent Administrator in 91-Misc Elec. Dec.-3, affirming the Election Officer's conclusion, found that this discrepancy was the result of Carey's own errors, Carey was nonetheless subject to a detriment, not a benefit, by reason of paying the \$28,169.54 deficiency. There was no violation of the *Rules*.

2. Campaigning on Union Paid Work Time

Durham claims that Carey violated Article VIII, § 10(b) of the *Rules* by campaigning on work time paid by IBT Local 804. Durham's reasoning is as follows: Mr. Carey is President of Local Union 804; reports filed by Local 804 with the United States Department of Labor demonstrate that Mr. Carey received his regular salary--without reduction--in 1990; since Mr. Carey engaged in campaign activities during calendar year 1990, he must have campaigned on work time for which he was paid by Local 804. Durham argues that the same pattern must have continued during 1991.

The Election Officer has examined Mr. Carey's campaign schedule for 1990 and 1991, as well as the records of Local Union 804 in connection with his investigation of this portion of Durham's protest. As is to be expected for a labor organization, all officers and employees of Local 804 receive paid vacation. Officers receive three weeks or 15 days plus 15 hours of vacation each calendar year.¹⁸

¹⁸ The additional 15 hours provides parity between Local 804's officers and the Local members employed by United Parcel Service ("UPS"). Pursuant to Article 12 of the collective bargaining agreement covering Local 804 members employed by UPS, those members receive vacation pay at the rate of 45 hours per week of vacation. Local 804's regular work week for its officers is 40 hours per week. Accordingly, the additional 15 hours of vacation per year provided by Local 804 to its officers--who would otherwise receive a straight weekly salary for each week of vacation--provides those officers with additional vacation time comparable to the "extra" vacation pay received by the members employed by UPS.

The Election Office investigation found that officers and employees of Local 804 may cumulate earned, but unused vacation time from year to year. The officers and employees may either use their vacation time, receive pay in lieu of vacation—provided that they do not receive more than 52 weeks of pay in any calendar year, cumulate their earned vacation for use in a later calendar year, or receive an amount of money equivalent to their accrued unused vacation at the time their employment is terminated.

For each week day, Monday through Friday, during calendar years 1990 and 1991 when Mr. Carey engaged in campaign activities, he utilized previously accrued, but unused and unpaid, vacation time. "[C]ampaigning during paid vacation...is also not violative of [the Rules]." *Rules*, Article VIII, § 10(b). While Mr. Carey did not utilize accrued vacation for campaigning on holidays, campaigning on Union paid time off such as holidays does not violate the *Rules*. *Ibid*. Similarly, the *Rules* permit a candidate for International office to campaign on his/her free time. Saturdays and Sundays are normally considered free time for an employee, including one employed as an officer of the IBT or a subordinate body of the IBT. That Local 804 considers Saturdays and Sundays to be non-work days is confirmed by its vacation policy, which assumes that a regular work week for its employees—including its officers—is 40 hours. See p. 40, footnote 18, *supra*. The Election Officer has also previously concluded that, absent extraordinary circumstances, campaigning by a Union officer on Saturday or Sunday

does not involve campaigning on work-time that is paid for by the Union. See In Re Parker, Election Office Case No. P-1007-LU385-SEC, affirmed 91-Elec. App.-223.

Mr. Carey did not campaign during Union-paid work time in violation of the *Rules*. His campaigning was confined to holidays, Saturdays, Sundays or occurred while he was on vacation or off work. His salary for calendar years 1990 and 1991 from Local 804 was not reduced, nor need it have been, since he had previously accumulated a sufficient number of vacation days to permit him to utilize paid vacation for all work time during which he campaigned. The *Rules* were not violated.

3. Using Union Resources for Campaigning

The protest alleges that Mario Perrucci, a successful candidate for International Vice President At-Large on the Carey Slate, utilized a Union credit card for campaign purposes. The investigation of this allegation revealed the following. Perrucci is the Secretary-Treasurer and principal officer of IBT Local Union 177. As such, he and other officers and agents of the Local have Corporate American Express cards issued to them by the Local. These American Express cards are for business expenses connected with their employment by the Local. However, it has been the policy of the Local to allow personal charges to be placed upon these cards with the expectation that the Local

would be reimbursed either before or at the time the bill for such expenditures becomes due for payment to American Express.

The American Express Corporate card account is not a credit account; rather, it is a charge account system where the obligated party, here the Local Union, is required to pay all charges incurred on the statement within a 30-day period. In the event charges are not paid within a 30-day period, an additional 30-day grace period is given by American Express. At the end of the 60-day period, interest is charged by American Express at the rate of 2.5 percent per month on any unpaid balance.

Mr. Perrucci agrees that he used his Local 177 American Express card for campaign expenses which clearly are not expenses incurred by him in connection with his duties as a Local Union officer. Mr. Perrucci stated that he repaid the Local for these expenses with funds from his campaign account. The Election Officer's investigation revealed, however, that the repayment from the campaign account was not always accomplished within the 30 days in which the Local was required to pay, and did pay, the American Express statement which included the campaign expenses incurred by Mr. Perrucci. In some instances, Mr. Perrucci's campaign fund issued a check to the Local within the 30-day period. However, such checks were usually not deposited by the Local Union until a much later date. In some cases, no check was issued within the 30 day period. Accordingly, Mr. Perrucci's campaign was effectively advanced funds

by the Local through his use of a Union credit card for a period longer than Local Union policy permitted.¹⁹

The Election Officer finds that the *Rules* have been violated by Mr. Perrucci's failure to promptly reimburse the Local for any campaign expenditure charges which appeared on his Local 177 Corporate American Express card. Accordingly, Mr. Perrucci is required to pay the Local interest for the use of the money. The Election Officer determines that the interest should be calculated on the basis of the rate charged by American Express, since that interest rate would have been the charge Mr. Perrucci would have incurred had he used a personal American Express card. Further, since Local 177 paid its American Express bills promptly—to maintain its credit rating—Mr. Perrucci will be required to pay interest from the conclusion of the 30 day period when the bill was initially due, rather than from the conclusion of the grace period provided by American Express. The interest shall further be calculated from this date until the date the check was actually negotiated, i.e., cashed by the Local Union. The amount so calculated totals \$135.66 through December 31, 1991. The investigation also revealed that there are checks issued by Mr. Perrucci to Local 177 for campaign expenditures incurred by him, but not yet negotiated by Local 177. Interest will

¹⁹ In one instance, for example, a check timely tendered by Mr. Perrucci to Local 177 was apparently lost. However, a replacement check for this amount was not issued by the campaign fund until December 31, 1991, subsequent to the time this protest was acknowledged.

continue to accrue, and Mr. Perrucci shall be required to pay such interest, until such time as Local 177 actually cashes Mr. Perrucci's campaign checks.

Payment of this amount shall be made to Local 177 by Mr. Perrucci no later than January 15, 1992. Local 177 shall submit to the Election Officer, no later than January 16, 1992, evidence that this check has been negotiated, as well as evidence that all prior outstanding checks issued to it by Mr. Perrucci have also been negotiated.

Additionally, during his investigation of this portion of the protest, the Election Officer discovered a further outstanding balance due from Mr. Perrucci to Local 177 covering campaign costs paid by the Local on his behalf. During the 1991 IBT International Union Convention, Mr. Perrucci obtained a hotel suite at the Convention site (Swan Hotel) for utilization as a hospitality center. The costs of that room and the costs for food and beverages billed to that room were paid directly by Local 177.

In his first campaign contribution and expenditure report, filed with the Election Officer, Mr. Perrucci noted a \$3000 00 outstanding debt for the cost of the hospitality suite. The Election Officer investigation revealed that none of the \$3000 00 has been paid. Moreover, loans by IBT entities to candidates for campaign purposes itself constitutes a prohibited campaign contribution under the *Rules*. See *Rules*, Definitions (6)(d) at p. A-2.

Further, the Election Officer's investigation revealed that the bill to Local 177 for the costs associated with the hospitality suite was \$7,378.45, not the \$3000.00 debt reported by Mr. Perrucci in his disclosure report. Of that amount, \$1280.21 represents costs incurred by Local 177 for dinner at the Palio Restaurant in the Swan Hotel for all its eight (8) delegates, six (6) alternate delegates and spouses attending the Convention, which dinner was held on the last day of the Convention. The Election Officer has previously determined that IBT subordinate bodies may utilize their funds to purchase a dinner and beverages, including alcoholic beverages, for such subordinate bodies' Convention delegates and alternate delegates. Accordingly, the expense for dinner at the Palio is not a campaign expense, but one that is properly chargeable to and may be paid by Local Union 177 in accordance with the *Rules*.

However, there remains the charge of \$6098.24 for the room and the other food and beverage costs charged to that room. Mr. Perrucci argues that the costs of the room and the food and beverage charges were not campaign costs. He claims that the room was utilized not for campaign purposes, but by the Local's delegates and alternate delegates as a meeting site. However, Mr. Perrucci had previously determined and reported that at least a portion of this expense as a campaign expense on the first reporting and disclosure report he filed with the Election Officer, noting on that report that the expense incurred was for a hospitality suite for the Carey campaign. Moreover,

Local 177 has never previously obtained a hospitality room at the situs of an IBT International Union Convention. Furthermore, neither Mr. Perrucci nor Local 177 can explain the food and beverage costs nor the identity of the individuals who consumed such items.

For all these reason, the Election Officer determines that the cost of the hospitality room and the food and beverage expenses charged to that room—with the exception of the Palio Restaurant bill discussed above—are campaign expenses and must be personally paid by Mr. Perrucci or his campaign. In addition, since Mr. Perrucci's campaign was, in effect, advanced funds by Local 177 by its payment of the total charges for the hospitality room and attendant food and beverages, Mr. Perrucci shall pay interest on the monies so advanced. The hotel charges 1½ percent per month interest on all unpaid bills. For the same reasons that he determines that Mr. Perrucci should pay interest on the American Express billing at the rate charged by that company, the Election Officer concludes that Mr. Perrucci is liable for interest on the unpaid hotel bill at the rate of 1½ percent per month. Applying this interest rate to the principal amount due of \$6,098.24, the Election Officer calculates that the total amount owed by Mr. Perrucci through December 31, 1991 is \$6,668 08 plus an additional \$3.33 per day from January 1, 1992 until the date the bill is paid. Mr. Perrucci is directed to pay such amount to Local 177 no later than January 15, 1992. Local 177 shall

submit to the Election Officer no later than January 16, 1992 evidence that it has negotiated the check received from Mr. Perrucci or his campaign.

Since the protest contesting Mr. Perrucci's utilization of Union resources to engage in campaign activities was presented and is being considered post-election, the impact of the violation found to have occurred on the results of the election must be determined. *Rules*, Article XI, § 1(b)(2). Mr. Perrucci garnered 57,535 votes in the recently concluded 1991 IBT International Union officer election. The losing candidate for International Union Vice President at-large with the highest vote total was Edward "Doc" James, who obtained 30,976 votes, a margin of victory for Mr. Perrucci in excess of 16,500 votes.

The dollar amount of the Union resources used by Mr. Perrucci does not equate to his receipt of over 16,500 votes. Further, a review of the election results demonstrates that the overwhelming majority of IBT members who voted cast slate votes. Mr. Perrucci won because every one of the 16 members of the Ron Carey Slate won, not because Mr. Perrucci improperly utilized resources of Local 177.

Further and as indicated above, see *supra* at p. 35, the results of a supervised election will not be set aside and the election rerun because of the receipt by candidates in that election of improper campaign contributions. Finally, the Election Officer is

requiring Mr. Perrucci to repay--promptly--the Local, with interest, to make the Local whole, for Mr. Perrucci's improper utilization of its resources for campaign purposes. The Election Officer's remedy is sufficient to eradicate the impact of the impermissible utilization of Local Union resources on Mr. Perrucci's election campaign. See In Re R. L. Communications, *supra*.

IV. Conclusion

In accordance with the foregoing, the post-election protest filed by R. V. Durham on his own behalf and on behalf of the R. V. Durham Unity Team is DENIED. The election will not be rerun and the election results will stand. Assuming a timely appeal, the certification of the results of the 1991 IBT International Union officer election election will be stayed pending the Independent Administrator's decision. *Rules*, Article X, § 1(b)(6). Upon receipt of the Independent Administrator's decision--should he affirm this decision or not stay its effectiveness--the Election Officer will promptly certify the election results. *Rules*, Article II, § 1(b)(8). In this, and in all other possible situations, the Election Officer will, as always, abide by the directives of the Independent Administrator. However, as indicated above, Mario Perrucci is required to reimburse Local Union 177 in the amount of \$6803.74 with full interest to be paid

by him to the date such reimbursement is made and the payment is negotiated by Local 177.²⁰

Other than as set forth above, with respect to this protest, the Election Officer has found that there have been no violations of the *Rules* with respect to the 1991 IBT International Union officer election. With respect to the violations determined to have been committed in this decision by Mario Perrucci, and in Election Office Case No. P-1108-IBT by Mr. Feinstein, respectively, the remedies imposed are sufficient to eradicate the impact of those violations on the 1991 IBT International Union officer election. See In Re R. L. Communications, *supra*.

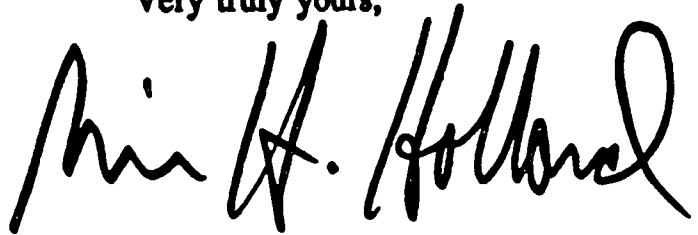
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within seventy-two (72) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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,

²⁰ Barry Feinstein has already complied with the decision of the Election Officer issued this date in Election Office Case No. P-1108-IBT.

R. V. Durham
January 10, 1992
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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 written in a cursive style with a large, looping initial "M".

Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator (*Via Facsimile*)

Amy Gladstein, Regional Coordinator

Richard Gilberg, Esquire

Hugh J. Beins, Esquire (*By Hand*)

Robert Baptiste, Esquire (*By Hand*)

TDU/TRF

c/o Paul A. Levy, Esq (*By Hand*)

Association for Union Democracy
c/o Susan Jennik, Esq

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

T 112

Michael H Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8782

January 14, 1992

VIA UPS OVERNIGHT AND FACSIMILE OR BY HAND (AS NOTED)

R V Durham
R V Durham Unity Team
c/o IBT Local 391
3100 Sandy Ridge Road
Colfax, NC 27235
FAX 919-996-4431

Ron Carey
Ron Carey Slate
c/o Eddie Burke
Transition Office
International Brotherhood
of Teamsters
25 Louisiana Avenue, N W
Washington, D C 20001
(By Hand)

Walter Shea
Shea Ligurotis Action Team
c/o James Smith
IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149
FAX 215-333-4146

William J McCarthy
General President
International Brotherhood
of Teamsters
25 Louisiana Avenue, N W
Washington, D C 20001
(By Hand)

Barry Feinstein
c/o IBT Local Union 237
216 West 14th Street
New York, NY 10011
FAX 212-924-8772

Mario Perrucci
c/o IBT Local Union 177
282 Hillside Avenue
Hillside, NJ 07205
FAX 201-923-2631

John P Morris
c/o IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149
FAX 215-333-4146

**Re: Election Office Case No. Post75-IBT
(Clarification)**

Gentlemen

In his decision issued in the above-entitled matter on January 10, 1992, the Election Officer--at pp 32-36 of such decision--reviewed and discussed the allegations concerning the purported receipt of improper employer contributions by members of the Shea-Ligurotis Action Team, specifically Barry Feinstein and John Morris With respect

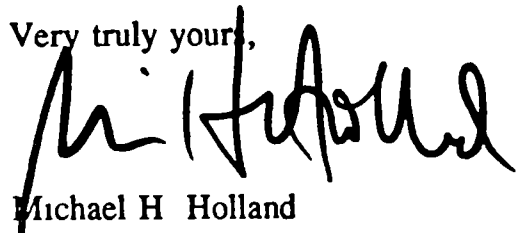
R V Durham
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to Mr Morris, the Election Officer noted that the Independent Administrator in 91-Elec App -248 (SA) reversed the Election Officer's decision in Election Office Case No P-1107-IBT, thus determining that no improper campaign contributions had been received by Mr Morris

With respect to Mr Feinstein, the Election Officer noted that the allegations against Mr Feinstein in Election Office Case No Post75-IBT were identical to the allegations previously raised in Election Office Case No P-1108-IBT, a decision in P-1108-IBT was also issued by the Election Officer on January 10, 1992 As he found in his decision in Election Office Case No P-1108-IBT, and described in his decision in Election Office Case No Post75-IBT, the Election Officer determined that the improper campaign contributions that Mr Feinstein had received had been voluntarily returned by Mr Feinstein to the contributors on December 3, 1991, prior to the date of the 1991 IBT International Union officer election and prior to the date of the Election Officer's decisions in either Election Office Case No P-1108-IBT or Election Office Case No Post75-IBT, though after the date of the filing of the protest in Election Office Case No P-1108-IBT

While the Election Officer utilized the word "ordered" in the final paragraph of this portion of the decision in Election Office case No Post75-IBT regarding the contributions to Mr Feinstein, the Election Officer did not intend to suggest and does not suggest that any order from him was necessary, or the basis for the return by Mr Feinstein of the campaign contributions at issue As the Election Officer found and stated in his decisions in both Election Office Case No P-1108-IBT and Election Office Case No Post75-IBT, the contributions had been voluntarily returned by Mr Feinstein prior to the issuance of any Election Officer decision The protests concerning the receipt by Mr Feinstein of improper campaign contributions, that is, contributions by employers or employer representatives, were resolved prior to the time of the Election Officer's decision on the campaign contributions

Very truly yours,



Michael H Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator (*Via Facsimile*)

Amy Gladstein, Regional Coordinator (*Via Facsimile*)