

***PRE-ELECTION
PROTEST
DECISIONS***

ELECTION OFFICE CASE NOS.

P-551-LU391-MID to P-600-LU705-CHI

VOLUME XII

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

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March 4, 1991

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Re: Election Officer Case No. P-551-LU391-MID

Gentlemen

A pre-election protest was filed pursuant to *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest was filed on behalf of the "Durham Slate" and complains that campaign literature from "TDU" improperly maligns Weldon Mathis, a candidate for International Secretary-Treasurer, on the protestor's referenced slate The Election Officer's investigated complainant's allegations and the investigation has disclosed the following

The protest has attached to it two exhibits representing the offending campaign literature One piece of literature is type-written in small print and can be fairly described as containing strongly disparaging commentary concerning Weldon Mathis The bottom of this document urges the reader to vote for the "Rank and File Teamsters

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for Reform" slate and lists various delegates and alternate delegates. This pamphlet contains a reference to Mr Mathis as a "convicted felon." The context of the statement is as follows

"Mathis is a real charmer as he is a convicted felon and was recently voted out of the Georgia Teamster Local 728 in a second election where the Government found Mathis and his son, Lamar, has rigged the first election. Obviously, Teamster workers got very little from Mathis' \$265,000 plus yearly salary "

The second pamphlet is entitled "Where Does Your Dues Money Go?" displays the picture of four pigs eating at a trough full of money. It contains text detailing various expenditures in the millions of dollars for the benefit of Union officers. This pamphlet also urges the reader to elect the "Rank and File Teamsters for Reform" slate. The text of these documents indicates no identification or reference to "TDU" or the Teamsters for a Democratic Union. Teamsters for a Democratic Union has also denied any involvement in the printing or distribution of these campaign materials. The Election Officer's investigation verified that the material was prepared, printed and distributed by Local 391 members exclusively.

As to the protest's complaint as to the content of the literature, the Election Office has consistently refrained from attempting to apply sanctions as to the content of campaign materials. The overarching purpose of the *Rules* is to provide a framework to assure a fair and free election of delegates, alternate delegates and International Officers. Contestants are generally allowed to make whatever assertions, allegations, statements of opinion, or even alleged fact without legal sanctions for their truth or falsity.

Further, a cardinal principle is that the best remedy for untruthful speech is more free speech with the voter being the final arbitrator. The *Rules* has been rigorously enforced to insure that all contestants will have equal and fair opportunity to disseminate their message and to answer any opposing materials any statements they believe to be incorrect. The policy of encouraging robust political debate in the election campaign is reflected in the *Rules'* prohibition against the censorship of campaign literature. See *Rules*, Article XII, §6(g).

Thus the fact that campaign literature allegedly contains false, irrelevant or even defamatory information does not remove it from the protection of the *Rules*. This *Rules* is fully consistent with the rulings of the United States Supreme Court, and of Courts of Appeals with respect to the regulation of speech generated during labor union elections. National Association of Letter Carriers vs Austin, 418 US 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements are permitted), Salzhalder vs Caputo, 316 F 2d 445, 2nd Cir 1963 (Statements critical of Local Union officials, even if incorrect, protected)

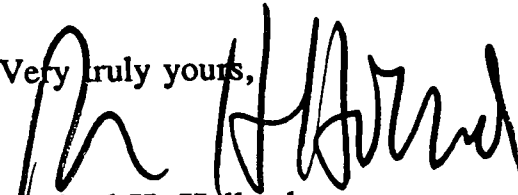
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The protest also alleges that the campaign material was distributed on work time. The Election Officer's investigation determined that the material was neither prepared nor distributed during work time. Mr. Belvins, the member identified in the protest as having information of the allegedly improper campaigning activities, stated that the only incident of which he had knowledge involved Tom Page. He further directed the Election Officer to another member for additional details. Mr. Key, this second member, stated that the posting was done prior to the start of Mr. Page's shift.

In accordance with the foregoing, complainant's 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) 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/mca

cc Frederick B. Lacey, Independent Administrator
Grant Crandall, Regional Coordinator