



(3

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue NW
Washington DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

October 2, 1990

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

VIA UPS OVERNIGHT

Mr Michael H Dickens
President
IBT Local Union 100
2100 Oak Road
Cincinnati, Ohio 45241

Mr James A. Beck
3548 Turkeyfoot Road
Erlanger, Kentucky 41018

Mr Mike Campanella
Post Office Box 185
West Chester, Ohio 45069

Mr Anthony Hooks
5449 Laura Lane
Norwood, Ohio 45219

Gentlemen

This will acknowledge the Election Officer's receipt of two substantially identical pre-election protests filed pursuant to Article XI, Section 1 of the Rules for the IBT International Union Delegate and Officer Election, Revised August 1, 1990 ("Election Rules"). In their protest, James A Beck and Anthony T Hood allege that they were libeled in leaflets distributed and posted by certain members of Local Union 100. Based upon the investigation of these protests, the Election Officer concludes that the Election Rules have not been violated. This determination is based on the following.

The protests do not allege that the distribution of the literature in question involved the use of union funds or goods in violation of Article X, Section 1(b)(3). The protest simply allege that the content of the leaflets was libelous and therefore violative of the Election Rules. The fact that campaign literature allegedly contains false, or even defamatory, information about a candidate does not remove it from the protection of the Election Rules. National Association of Letter Carriers v Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v Caputo, 316 F 2d 445 (2d Cir 1963) (statements critical of union officials, even if incorrect, protected)

If any interested party is not satisfied with this determination they may request a hearing before the Administrator within twenty-four (24) hours of their receipt of this letter. Such request shall be made in writing and shall be served on

Mr Michael H Dickens
Mr. James A Beck
Mr. Mike Campanella
Mr. Anthony Hooks
October 2, 1990
Page 2

Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae,
One Gateway Center, Newark, N J. 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, c/o IBT,
25 Louisiana Avenue, N W , Washington, D C 20001, Facsimile (202)
624-97922. A copy of the protest must accompany the request for
a hearing.

Very truly yours,



Michael H Holland

cc Peggy A Hillman, Election Office Regional Coordinator
Frederick B Lacey, Independent Administrator, IBT

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

October 23, 1990

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

VIA UPS OVERNIGHT

John Carter
494 Kime Avenue
West Islip, N.Y. 11795

Richard J. Volpe
Secretary-Treasurer
IBT Local Union 550
6 Tuxedo Avenue
New Hyde Park, N.Y. 11040

Re: Election Officer Case No. P-004-LU550-NYC

Gentlemen.

A pre-election protest was filed pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 (the "Rules"). In that protest the complainant alleges that certain incumbent union officers used union time and expenses to campaign against him in violation of the Rules. The complainant further alleges that an incumbent union officer "threatened" a member of the Bakery and Confectionery workers Union because of her alleged support of candidates for IBT delegate. For the reasons set forth below, the Election Officer concludes that the Rules have not been violated on the basis of the conduct alleged.

Based on the Election Officer's investigation, it appears that nomination meetings were held at a number of shops where members of Local Union 550 were employed. After the nominations were concluded, general union business was conducted, including discussions of upcoming contract negotiations. At one such meeting held on September 12, 1990, that the complainant did not attend, incumbent Local Union Officers made critical comments regarding the complainant as part of a discussion of union business. These statements serve as the basis of the complaint's allegation that union resources were used for campaign purposes.

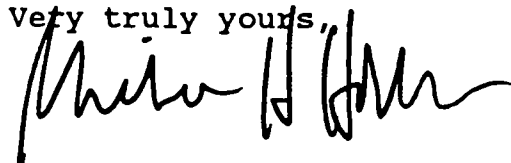
The complainant does not allege that he was denied an opportunity to attend the nomination meeting in question or to address the members on an equal basis with other candidates; nor do we so find. The campaign statement of incumbent local union officers at the September 12 meeting appear to have been incidental to regular union business and are therefore not violative of Article X, Section 1(b)(3) of the Rules.

John Carter
Richard J. Volpe
October 22, 1990
Page 2

To the extent that individuals who are nonmembers of the IBT have rights under the Consent Decree and the Election Rules, or to the extent that IBT members have a right to accept support from nonmembers, such rights were not violated by the conduct at issue in the instant protest. Ms. Lynn Bell, a member and delegate of Local 50 of the Bakery and Confectionery Workers and not a member of the IBT, stated to a representative of the Election Officer investigating this protest, that she resented the criticism from an official of her union and from the Secretary-Treasurer of Local Union 550; she did not state, however, that she was threatened or coerced by it.

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. Such request shall be made in writing and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 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

cc: Frederick B Lacey, Independent Administrator, IBT
William B. Kane, Regional Coordinator

IN RE: : 90 - Elec. App. - 6
: :
JOHN CARTER : : DECISION OF
and : : THE INDEPENDENT
IBT LOCAL UNION 550 : : ADMINISTRATOR
: :

I. Introduction

The issues before me on this Appeal from the Election Officer's determination are set forth as follows in the Election Officer's Summary ("Summary"), (p.1):

Nature of the Protest

This pre-election protest arises under Article VIII, Sections 4 and 10 and Article X, Section 1 of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Rules"). At issue in this protest are two alleged violations of the Rules. The first alleged violation of the Rules involves certain alleged "campaign" statements made by the Local Union 550 Secretary-Treasurer at a Local Union meeting. These statements were allegedly critical of the complainant who is a candidate for President of the Local Union as well as Delegate to the 1991 IBT Convention. The second alleged violation of the Rules concerns alleged threats made by the Local Union 550 Secretary-Treasurer to a member of Local 50 of the Bakery and Confectionery Workers Union regarding her alleged activity on behalf of candidates for offices in Local Union 550.

The positions of the parties as described by the Election Officer are also set forth as follows in his Summary, (p.2):

Contentions of the Parties

In his protest, the complainant, John Carter, challenged the propriety of the conduct of a single union meeting, i.e., the "Political statements, rhetoric, and pandering at a scheduled craft meetings (Sic) [Jamaica] Wed 9/12/90." The complainant further alleged that at that meeting "members of Local 550 Ex. Board gathered for

L . V

the purpose of soliciting dissent against a nominated and seconded member. . .John Carter." With respect to the second alleged violation of the Rules, the complainant alleged that the Local Union "Informed, threatened and coerced the Chairperson of B.C.T. (TasTee) Local 50 not to cooperate, discuss or cooperate with candidate John Carter. . .further. . .reported Chairperson to the Executive Officer at Local 50 causing further chilling of the rights of all concerned."

Local Union 550 denies the allegations contained in the protest and further denies that it violated the Rules.

The Election Officer conducted an investigation (Summary, pp.2-3) and made comprehensive and detailed Findings of Fact (Summary, pp.3-5). He then set forth the "Disputed facts" (Summary, p.6); and his Conclusions of Law (Summary, pp.6-8). Those conclusions are as hereinafter set forth:

Conclusions of LAW

1. Article VIII, Section 4(a) of the Rules provides that "no candidate may be denied access to any meeting of the Local Union to which he/she belongs as a member." The rule goes on to state that "the local need not grant such candidate the opportunity to address the meeting for the purpose of campaigning unless a similar opportunity is granted to other candidates."

2. Article VIII, Section 4(a) of the Rules also provides that a "Local Union need not allow time for campaigning during any of its meetings. However, if such time is granted, the Local Union shall notify all candidates who request such notice of the opportunity to speak at least five days prior to the meeting and shall divide the time equally between those candidates who request an opportunity to speak."

3. Article VIII, Section 10 of the Rules, states that "all Union Officers and employees, if members, retain the right to participate in campaign activities. . . ." However, such campaigning must not involve the use of Union funds. But the rule states that "campaigning incidental to regular Union business is not, however, violative of this section." See also, Article X, Section 1(b)(4) ("campaigning incidental to work or

regular Union business. . . is not violative of the campaign contribution rules").

4. Article VIII, Section 10(a) of the Rules, guarantees the right of any IBT member to "participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions."

5. The Election Officer found that the alleged campaign statements made by the Secretary-Treasurer of Local Union 550 did not violate the Rules for the following reasons:

a. The complainant was not denied a similar opportunity to attend and to speak at the Local Union meetings, including the meeting of September 12, 1990.

b. No member present at the September 12, 1990, meeting was prevented from responding to the comments allegedly made by the Local Union 550 officials, or from making similar comments supportive or critical of a different candidate(s).

c. The complainant did not allege that he had requested the Local Union to inform him of campaigning at a local meeting.

d. The campaigning by the Local Union 550 officials was incidental to the regular business of the Local Union meetings.

6. With respect to the statements made to Lynn Bell, the Election Officer found, that to the extent that Ms. Bell has rights under the Rules, such rights were not violated. Ms. Bell stated that she did not feel threatened or coerced by the statements of her Local Union president or Mr. Volpe, and there is no evidence that she modified her behavior in any way in response to those statements. There was no evidence presented that any Local Union 550 member was chilled or adversely affected by the statements made to Ms. Bell.

II. The Hearing

The Hearing on this Appeal was conducted before me on October 31, 1990. The following individuals appeared in person: John J. Sullivan (on behalf of the Election Officer), William B. Kane,

Arthur R. Wasserman and Richard C. Richardson (as witnesses for the Election Officer), Roy N. Watanabe (as attorney for IBT Local Union 550), and Richard Volpe (Appellant and Secretary-Treasurer of IBT Local Union 550).

The following individuals telephone conferenced into the hearing, were heard, and asked and answered questions: Lynn Bell (a member of the Bakery and Confectionery Local Union 50), Richard Kaleta (a member of IBT Local Union 550), Burton Hall (as attorney for John Carter), and John Carter (the Complainant and Appellee on this appeal).

At the conclusion of Hearing, all participants indicated that they had a full understanding of what was said during the Hearing.

III. Conclusion

Having considered the evidence and arguments advanced at the Hearing, I uphold the Election Officer's determination in all respects.

Initially, it is noted that, in what the Election Officer in his Summary labels "Disputed facts," Mr. Carter, the complainant, refers to criticism by Mr. Volpe, the Secretary Treasurer of Local 550, of certain pension proposals made by Mr. Carter at a certain nomination meeting.

The Election Officer stated that Mr. Carter made no such allegation in his protest to the Election Officer, nor did he make any such allegation when contacted by the Election Officer during his investigation of the protest. I assume the Election Officer has made it clear, as to any protest, that on any Appeal, I will

only consider and hear evidence (and protests) placed before the Election Officer. Nonetheless, I will address this contention raised by Mr. Carter. I find that any said "criticism" does not amount to a violation of the Rules or a violation of the IBT Constitution.

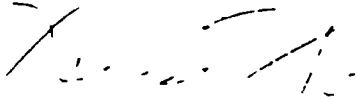
I further find, that as to the September 12, 1990, meeting, Mr. Volpe's references to Mr. Carter, Mr. Carey, and the Teamsters for a Democratic Union, were made incidental to Local Union business and in response to a question from the floor concerning a certain pamphlet. It is also noted that Mr. Carter's son-in-law, Richard Kaleta, was present at the September 12, 1990, meeting and could have responded to any comments made by Mr. Volpe. Cf., Rules, Art. VIII, §10; Art. X, §1(b)(4). And see Rules, Art. VIII, §10(a).

Therefore, I conclude, as did the Election Officer, as to the "campaign statements" attributed to Mr. Volpe, that they did not violate the Rules in that: (a) no one, and this includes Mr. Carter and Mr. Kaleta, was denied an opportunity to speak at the meetings referenced to in this appeal; and (b) the alleged campaigning by Local 550 officers was incidental to the Union's regular business.

As to the statements made by Mr. Volpe to Ms. Bell of Local 50 of the Bakery and Confectionery Workers Union, and the statements made by Mr. James Lair, president of her Local, to Ms. Bell, I find that there was nothing to indicate to a reasonable observer than she was being threatened or coerced and, as the Election Officer notes in his Summary, (Conclusion of Law, p.6),

there is no evidence that any Local Union member was chilled in his/her speech by statements made by Mr. Volpe or Mr. Lair to Ms. Bell.

Accordingly, the determinations of the Election Officer are affirmed.



Frederick B. Lacey
Independent Administrator

Dated: November 1, 1990