



OFFICE OF THE ELECTION OFFICER
/ INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

October 29 1990

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

VIA UPS OVERNIGHT

Joseph Konowe
Jerry Glassman
Ronald Belpanno
Phyllis Mc Auliffe
Norman Marrish
Ray Morales
Frank Betucelli
James Cineros
Jim McNeil
c/O IBT Local Union 732
15 East 26th Street Suite 1508
New York N Y 10010

Andy Pollack
601 W 176th Street #64
New York, N Y 10033
William F. Genoese
Secretary Treasurer
IBT Local Union 732
15 East 26th Street, Suite 1508
New York, N Y 10010

Re Election Office Case Nos P-008 LU732 NYC
and P-008 1 LU732 NYC

Gentlemen and Madam

Two pre-election protest were filed pursuant to the Rules for the IBT International Union Delegate and Officer Election revised August 1st 1990 (Election Rules) The first protest was filed by a member of Local Union 732 Andy Pollack, and was assigned the case number P 008 LU732 NYC (Pollack protest) The second protest was filed by seven officers representatives and stewards of Local Union 732 Joseph Konowe Jerry Glassman Ronald Belpanno Phyllis Mc Auliffe Norman Marsich Ray Morales and Frank Bertucelli and was assigned the case number P-008-1 LU732 NYC (Konowe protest) Because these protests arose out of the same occurrence they were consolidated into a single proceeding for investigation and determination

In the Konowe protest the complainants allege that their rights under the Election Rules were violated were they were ejected from a meeting sponsored by the Teamsters for a Democratic Union (TDU) The investigation of the Konowe protest

October 29, 1990
Page 3

after they left the TDU meeting, subjected IBT members attending the TDU meeting to surveillance and intimidation by their presence in an adjoining meeting room and the hallway and lobby outside the TDU meeting

The investigation of the Pollack protest reveals that after the Local 732 officials were asked to leave by the persons running the TDU meeting they refused and stayed in the meeting room until the intervention of the Port Authority Police. Approximately one to one and one half hours lapsed between the initial request was made to the Local 732 officials to leave, until they finally left under protest after the intervention of the Port Authority Police. During this period the meeting organizers were unable to conduct the meeting as planned.

After the Local 732 officials left the TDU meeting, they rented another meeting room in the hotel requesting a room close to the one being used by the TDU. The room was paid for with union funds. The room rented by the Local officials was right next to the TDU meeting room and IBT members who wished to attend the TDU meeting had to pass by the Local's room on their way to the TDU meeting. The Local 732 officials left the door of their room open, permitting them to view IBT members on the way to and from the TDU meeting. The open door also had the effect of making the presence of the Local 732 officials known to the IBT members attending the TDU meeting. The Local 732 officials also maintained a presence in the lobby on the floor where the meeting rooms were located and in the hallway leading to the TDU meeting. The local officials greeted the IBT members on their way to the TDU meeting. This conduct continued for several hours. Most of the local officials stayed in the vicinity of the TDU meeting until after the meeting was over.

I find that the local officials violated the Election Rules by disrupting the TDU meeting when they refused to leave when requested to do so by the individuals conducting the meeting. IBT members have the right to gather and discuss issues concerning the election of delegates and alternate delegates to the International Convention free from interference. Similarly, I find that the actions of the local officials in subjecting IBT members attending the TDU meeting to surveillance or creating the appearance of surveillance to be violative of the Election Rules. Such surveillance or the appearance of surveillance is destructive of the fundamental safeguards of a free and fair elections outlined in the Consent Decree and the Election Rules. Finally, I find that the use of union funds and resources to violate the rights of IBT members guaranteed by the Election Rules inconsistent with those rules and I will direct that such funds and resources to be reimbursed to the union.

In order to remedy these serious violations of the Election Rules I direct Joseph Konowe, Jerry Glassman, Ronald Belpanno, Phyllis Mc Auliffe, Norman Marsich, Ray Morales, Frank Bertucelli, James Cineros and Jim McNeil, to comply with the following

October 29, 1990
Page 4

1 Cease and desist from any further or similar surveillance or interference with the rights of IBT members under the Consent Order or the Election Rules with respect to supporting or engaging in any campaign related activity on behalf of any candidate for delegate, alternate delegate or International Officer of the IBT,

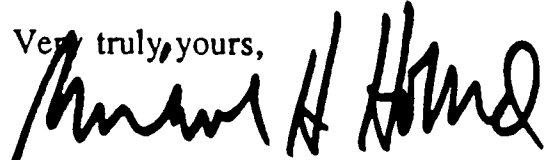
2 Reimburse Local Union 732 or any other union for all expenses incurred, including the cost of the room and any salary or expenses paid by Local Union 732 or any other union,

3. Within 4 days of their receipt of this decision, sign the enclosed notice and make sufficient copies of the signed notice, at their own expense, to permit posting on all Local Union 732 bulletin boards at Pan Am and US Air. Copies of the signed notices shall be given to the Secretary-Treasurer of Local Union 732 who shall post copies of the notice on all Local Union 732 bulletin boards at Pan Am and US Air,

4. Within 7 days of their receipt of this decision, each of the individuals named above shall such execute and file with the Election Officer an affidavit stating that they have complied with Order of the Election Officer and stating in detail the manner of such compliance Within 15 days of his receipt of this decision, the Secretary-Treasurer of Local Union 732 shall execute and file with the Election Officer an affidavit stating that copies of the signed notice have been posted on all Local Union 732 bulletin Boards at Pan Am and US Air

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
Election Officer

cc Frederick B Lacey, Independent Administrator, IBT
Amy Gladstein, Regional Coordinator

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

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Election Officer

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(312) 922 2800

NOTICE TO ALL MEMBERS OF IBT LOCAL UNION 732
FROM THE UNDERSIGNED
OFFICERS, REPRESENTATIVES AND STEWARDS OF IBT LOCAL UNION 732

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT Convention

You have the right to participate in campaign activities on behalf of candidates for International Office in the IBT

You have the right to attend and participate in meetings of the Teamsters for a Democratic Union ("TDU"), or any other campaign organization of member caucus, free from any interference, restraint or coercion

We will not interfere with your exercise of any of these rights or any other right of IBT members under the Consent Decree or Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990

Joseph Konowe

Jerry Glassman

Ronald Belpanno

Phyllis McAuliffe

Norman Marrish

Ray Morales

Frank Betucelli

James Cineros

Jim McNeil

This is an official notice and must remain posted for thirty consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material

Prepared and approved by Michael H Holland, Election Officer, IBT

IN RE:

ANDY POLLACK,

COMPLAINANT,

and

JOSEPH KONOWE, JERRY GLASSMAN,
RONALD BELPANNO, PHYLLIS McAULIFFE,
NORMAN MARSICH, RAY MORALES, FRANK
BETUCELLI, JAMES CINEROS and JIM
McNEIL,

RESPONDENTS.

JOSEPH KONOWE, JERRY GLASSMAN,
RONALD BELPANNO, PHYLLIS McAULIFFE,
NORMAN MARSICH, RAY MORALES and
FRANK BETUCELLI,

COMPLAINANTS,

and

ANDY POLLACK,

RESPONDENT.

90 - Elec. App. - 8

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

RECEIVED

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CORNFIELD & FELDMAN

This matter arises out of an appeal of a decision of the Election Officer dated October 29, 1990, (Election Office Case Nos. P-008-LU732-NYC and P-008-1-LU732-NYC). The Election Officer's decision addresses two separate protests each arising out of the same set of facts. A hearing was held at which the following individuals attended: Joseph Konowe, Frank Betucelli, Phyllis McAuliffe and Roland P. Wilder, Jr., Esq., on behalf of Local 732; and Barbara Hillman, John Sullivan, Jim Reif and Michael Sarbanes, on behalf of the Election Officer. In addition, Steve Kindred,

Esq., on behalf of Andy Pollack, was heard at the hearing via telephone conference call.

I find the following facts. Andy Pollack, a member of Local 732, and others distributed a leaflet among members of Local 732 employed by Pan American ("Pan Am"), advertising a "Meeting and Open House" sponsored by Teamsters for a Democratic Union ("TDU") to be held on Friday, October 5, 1990, at the JFK Travelodge near Kennedy Airport in New York. Mr. Pollack also extended an invitation to the meeting to certain Local 732 members employed by U.S. Air in Philadelphia. One of the purposes of this meeting was to discuss the upcoming nominations and election of delegates and alternate delegates to the 1991 IBT International Convention. The meeting notice indicated that it would be "Open to All IBT Local 732 Members." The meeting was paid for by voluntary contributions of IBT members.

Joseph Konowe, the President of Local 732, along with Jerry Glassman (Local 732 Trustee and Chief Steward), Norman Marsich (Local 732 Business Representatives and Chief Steward), Ronald Belpanno (Local 732 Trustee), Frank Betucelli (Local 732 Business Representative and Chief Steward), Phyllis McAuliffe (Local 732 Business Representative and Chief Steward), and Jim McNeil (Local 732 Assistant Chief Steward), (hereinafter collectively referred to as "Local 732 officials"), all attended the TDU meeting. Messrs. Konowe, Glassman, Marsich, Belpanno and Betucelli were present when the meeting began. Ms. McAuliffe and Mr. McNeil later entered the meeting. Following a presentation by Steven Kindred

regarding the rank and file elections, Mr. Konowe asked several questions of Mr. Kindred, such as: "who he was, where he came from, who paid his salary and how much it was, was he an agent provocateur, was he in the employ of the company, was he there to provoke violence." After Mr. Kindred answered the questions, the Local 732 officials were asked to leave by the TDU meeting organizers. ~~See~~ Mr. Konowe's statement, I.O.1. The Local 732 officials refused to leave, claiming they had a right to be present. After some time, approximately 45 minutes, Port Authority Police were summoned and the Local 732 officials left "under protest" after the intervention of the Police.

The Local 732 officials then obtained, at the expense of Local 732, their own meeting room, which was adjacent to the room in which the TDU meeting was being conducted. At the hearing, Mr. Konowe claimed that the Local 732 officials secured their own room to be "available to answer any questions members might wish to ask," given the status of critical bargaining negotiations between Pan Am and Local 732. Mr. Reif of the Election Office stated at the hearing before me that he interviewed Mr. Konowe for about one hour in his investigation of this matter, and during that interview, Mr. Konowe made no reference to such reason for having taken the room. IBT members wishing to attend the TDU meeting would have to pass by the room occupied by the Local 732 officials in order to get to the meeting. In addition, the Local 732 officials were able to see individuals passing in the hallway in front of the TDU meeting room and those individuals in the hallway

could see the officials in their room. Local 732 officials also were present in the lobby outside the TDU meeting room. The Local 732 officials maintained this presence until after the TDU meeting was over. No union business was conducted by the Local 732 officials during their attendance at the TDU meeting or during their presence in the vicinity of the TDU meeting.

Out of these events, the Local 732 officials filed a protest with the Election Officer, alleging that their rights under the Election Rules were violated when they were ejected from the TDU meeting. Mr. Pollack filed his own protest alleging that his rights under the Election Rules were violated by the Local 732 officials in two respects. First, the Election Rules were violated when the Local 732 officials disrupted the TDU meeting by refusing to leave when requested and by not leaving until the Port Authority Police were called. Second, it is also alleged by Mr. Pollack that the Election Rules were violated when the Local 732 officials obtained the adjoining room and, according to Mr. Pollack, subjected IBT members attending the TDU meeting to surveillance and intimidation by their presence in the adjoining room and the hallway and lobby outside the TDU meeting.

As for the protests of the Local 732 officials, in his October 29, 1990, decision the Election Officer denied that protest, stating:

The Election Rules do not govern the right of IBT members to attend or participate in the meetings of campaign organizations or member caucuses which are sponsored and funded by such groups. It is not a violation of the Election Rules for a campaign organization or member caucus to limit attendance or participation in their meetings to individuals who share their beliefs or objectives. The fact that the leaflet advertising the TDU meeting in question stated that the meeting was open to all Local 732 members, and that the Konowe protesters were members of Local 732, does not restrict the right of TDU to ask the Konowe protesters and the other Local 732 officials to leave.

I affirm the denial of the protest filed by the Local 732 officials for the reasons stated by the Election Officer.

Finding merit to the Pollack protest, the Election Officer stated, in his October 29 ruling:

I find that the local officials violated the Election Rules by disrupting the TDU meeting when they refused to leave when requested to do so by the individuals conducting the meeting. IBT members have the right to gather and discuss issues concerning the election of delegates and alternate delegates to the International Convention free from interference. Similarly, I find that the actions of the local officials in subjecting IBT members attending the TDU meeting to surveillance or creating the appearance of surveillance to be violative of the Election Rules. Such surveillance or the appearance of surveillance is destructive of the fundamental safeguards of . . . free and fair elections outlined in the Consent Decree and the Election Rules. Finally, I find that the use of union funds and resources to violate the rights of the IBT members guaranteed by the Election Rules inconsistent with those rules and I will direct that such funds and resources to be reimbursed to the Union.

As a remedy, the Election Officer provided as follows:

In order to remedy these serious violations of the Election Rules I direct Joseph Konowe, Jerry Glassman, Ronald Belpanno, Phyllis McAuliffe, Norman Marsich, Ray Morales, Frank Betucelli, James Cineros and Jim McNeil, to comply with the following:

1. Cease and desist from any further or similar surveillance or interference with the rights of IBT members under the Consent Order or the Election Rules with respect to supporting or engaging in any campaign related activity on behalf of any candidate for delegate, alternate delegate or International officer of the IBT;

2. Reimburse Local Union 732 or any other union for all expenses incurred, including the cost of the room and any salary or expenses paid by Local Union 732 or any other union;

3. Within 4 days of their receipt of this decision, sign the enclosed notice and make sufficient copies of the signed notice, at their own expense, to permit posting on all Local Union 732 bulletin boards at Pan Am and US Air. Copies of the signed notices shall be given to the Secretary-Treasurer of Local Union 732 who shall post copies of the notice on all Local Union 732 bulletin boards at Pan Am and US Air;

4. Within 7 days of their receipt of this decision, each of the individuals named above shall execute and file with the Election Officer an affidavit stating that they have complied with the Order of the Election Officer and stating in detail the manner of such compliance. Within 15 days of his receipt of this decision, the Secretary-Treasurer of Local Union 732 shall execute and file with the Election Officer an affidavit stating that copies of the signed notice have been posted on all Local Union 732 bulletin boards at Pan Am and US Air.

As for the Election Officer's treatment of the Pollack protest, the Local 732 officials argue that implementation of the remedy imposed would chill their free speech rights in violation of §101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §411(a)(2). As argued by the Local 732 officials, "[t]he sole reason why [they] were ousted from the TDU meeting was their

attempt by the Local 732 officials to chill the right of Mr. Pollack and the others who attended the October 3, 1990, TDU meeting to freely exchange ideas concerning the elections guaranteed by the Consent Order. See, e.g., NAYLOR V. GANNON, 385 F.2d 512 (2d Cir. 1967). First, the Local 732 officials attempted to disrupt the meeting. When that effort failed, they established what amounted to a sentry station to observe those who were attending the TDU meeting, and to insure that those who were attending knew they were being observed. See, e.g., Newport News Shipbuilding and Dry Dock Co. and Herman T. RUSSO, et al., 233 NLRB No. 1443 (1977) (On the facts, an employer unlawfully created an impression that the activities of union dissidents were under surveillance by warning an employee that 'it had come down from the office' that he was doing too much talking against the union.) The Local 732 officials argue that only employers can be found to have taken part in such a wrongful surveillance, and since the Local 732 officials are fellow employees, they cannot be said to have committed any wrongful conduct. Such an argument ignores the reality of the election process which the Consent Order ensures and which the Election Rules are designed to implement and protect. Any action which interferes with the right of the rank and file to participate in free, fair and open elections is subject to redress, so long as the Election Officer and I have jurisdiction over the transgressor.

-8-

As noted by the Election Officer in his "summary":

5. At the heart of the Election Rules and the Consent Decree is the right of all IST members to participate in campaign activities, run for office, support candidates, or make personal campaign contributions, free from coercion, interference or harrassment. See, generally, Article VIII, Section 10.

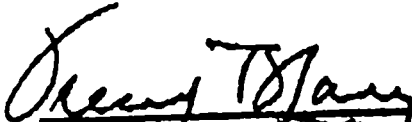
6. The fundamental guarantees of a free, fair and open election are undermined by the disruption of meetings, intimidation of IST members and the surveillance or appearance of surveillance of IST members engaging in campaign activities.

I agree with the Election Officer in these observations. I also agree that the Local 732 officials violated the Election Rules by their actions. Accordingly, the remedial action directed by the Election Officer is affirmed, except as modified below:

As to remedy #3, the notice shall, in the first instance only be posted on Local 732 bulletin boards at Pan Am. Given the pending representation of elections involving U.S. Air, all parties consent to staying the posting of the notice on U.S. Air bulletin boards until after December 12, 1990, the date of the U.S. Air vote. The agreement of the parties in this regard is so ordered.

In addition, Mr. Kindred, on behalf of Mr. Pollack, requests that Messrs. Cineros and McNeil be exempted from having to sign the notice. According to Mr. Kindred, neither Mr. Cineros nor Mr. McNeil participated in disrupting the meeting or stationing themselves in the adjoining room. Having heard no objection to this request, it is granted. I do note, however, that while Mr. Morales, a Local 732 official, is also named as a party in this matter, the role he played is unclear. He is not listed by the Election Officer as one of the officials who attended the TOU

meeting. As no one requested that Mr. Morales be exempted from signing the notice, I assume he played some role, although unspecified. Thus, no special disposition is granted Mr. Morales.



Frederick B. Lacey
Independent Administrator

Dated: November 7, 1990