



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
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Michael H Holland
Election Officer

November 1, 1990

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

VIA UPS OVERNIGHT

Mr Bill St Clair
2208 Waterloo Road
Stockton, California 95205

Pat Miraglio, Secretary-Treasurer
Bob Gamaza, President
IBT Local Union 439
1531 East Fremont Street
Stockton, California 95205

Re: Election Office Case No. P-027-LU439-CCV

Gentlemen

This will acknowledge the Election Officer's receipt of the above-referenced pre-election protest filed under Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, a copy of which protest is enclosed. In his protest, Mr St Clair alleges the *Rules* were violated by the last sentence of the October 26, 1990 Notice of Nominations and Elections of Officers. Based upon the investigation of this protest, the Election Officer concludes that the *Rules* have not been violated.

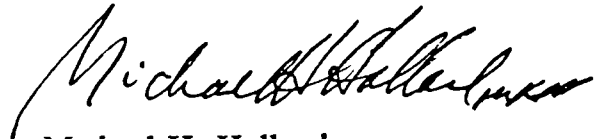
The protest alleges that the last sentence of the October 26, 1990 Notice misleads IBT members by creating the impression that only Local Union 439 Officers will be delegates to the 1991 IBT International Convention. The last sentence does state that Local Union 439 Officers will be delegates to "such conventions". To define the words "such conventions", however, reference must be made to the proceeding sentence of the paragraph.

Such conventions are therein defined as "any convention of any subordinate body". The International Union is not a subordinate body of either Local Union 439 or of the IBT. To the contrary, the International Union is the supreme body of the International Brotherhood of Teamsters. Thus, the October 26, 1990 Notice does not state that Local Union 439 Officers will, by virtue of their office, be delegates to the 1991 IBT International Convention, and the protest is denied.

November 1, 1990
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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, 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/kpm

cc Frederick B Lacey, Independent Administrator, IBT
Donald E Twohey, Election Office Regional Coordinator

BILL ST. CLAIR,
 COMPLAINANT,
 AND
 LOCAL 439 SECRETARY-TREASURER,
 PAT MIRAGLIO, and LOCAL 439
 PRESIDENT, BOB GAMAZA,
 RESPONDENTS.

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 : 90 - Elec. App. - 9
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 : DECISION OF THE
 : INDEPENDENT
 : ADMINISTRATOR
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This matter arises out of an appeal of a November 1, 1990, decision by the Election Officer (Election Officer Case No. P-027-LU439-(CCV)). A hearing was held on November 7, 1990, at which the following individuals were heard: Michael H. Holland, John Sullivan on behalf of the Election Officer; the Complainant, Bill St. Clair; Respondent Pat Miraglio; and Duane Beeson on behalf of Local 439.

The protest centers on an October 26, 1990, "Notice of Nominations and Elections of Officers" (the "Notice"), signed by Respondents Gamaza and Miraglio and circulated in Local 439. The last paragraph of that notice provides:

Elected officers of the Local Union shall, by virtue of such election, be delegates to any Joint Council with which the Local is affiliated as well as to any convention of any subordinate body which may take place during their term of office. Elected officers shall be delegates to such conventions in the order of priority set forth in the Article III, Section 5 (a) (1) of the International Constitution and the Local Union By Laws.

Mr. St. Clair alleges that this language creates the false impression that only Local Union 439 Officers will be delegates to the 1991 International Convention. The Election Officer rejected this contention, stating:

The last sentence does state that Local Union 439 Officers will be delegates to "such conventions." To define the words "such conventions," however, reference must be made to the preceding sentence of the paragraph.

Such conventions are therein defined as "any convention of any subordinate body". The International Union is not a subordinate body of either Local Union 439 or of the IBT. To the contrary, the International Union is the supreme body of the International Brotherhood of Teamsters. Thus, the October 26, 1990 Notice does not state that Local Union 439 Officers will, by virtue of their office, be delegates to the 1991 IBT International Convention, and the protest is denied.

I disagree with the Election Officer's construction and thus reverse his November 1, 1990, decision.

The Notice is confusing, and if not read closely (as is likely to be the case) can lead to a conclusion that none other than Local 439 Officers shall be delegates to the 1991 International Convention, as provided in Article III, Section 5(a)(1), of the IBT Constitution and as has always been the case prior to the entry of the Consent Order. The reference to Article III, Section 5(a)(1), of the IBT Constitution in the last paragraph adds to the confusion.

At the aforesaid November 7, 1990, hearing, Mr. St. Clair augmented his November 2, 1990, letter to me, in which he spoke of the past conduct of Local 439 officials in connection with the Consent Order. The Local 439 officials have, on several

occasions, expressed (sometimes subtly, sometimes overtly) their unwillingness to comply with the Consent Order. None of these allegations were refuted at the hearing. Needless to say, this conduct by union officers, if true, is unacceptable. However, at this time there is only before me a very narrow issue as reflected in the Election Officer's decision.

As the Consent Order establishes the unprecedented method of secret ballot rank-and-file elections of delegates, I in my role as Independent Administrator, must guarantee that the rank-and-file are secure in their knowledge that such elections shall take place. The Notice, as written, shrouds the election process contemplated under the Consent Order with an air of uncertainty. To remedy this effect I order the following:

1. Respondents Miraglio and Gamaza shall, within five business days, circulate a new notice to the members of Local 439, in the same manner as the Notice in question was distributed, which new notice shall provide as follows:

Elected Officers of the Local Union shall not, by virtue of such election, be delegates to the International Convention to take place in June of 1991. Secret ballot rank-and-file elections shall be conducted for such delegates and alternate delegates under the supervision of Election Officer Michael H. Holland.

2. Within seven business days Respondents Miraglio and Gamaza shall file an Affidavit with the Election Officer stating that they have complied with paragraph "1" above.

I am not unmindful of the praiseworthy efforts and care given by the Election Officer to the election process. However, I think

it most important that the IBT membership be made aware in no uncertain terms of the fact that any election notice, if not absolutely clear in and of itself to the men and women in the workplace, will be struck down.

Having found that Respondents did not act intentionally in their drafting of the Notice, I rule that Local 439's funds may be used to pay the costs associated with complying with this Order.

Frederick B Lacey
Independent Administrator / a 6w
 Frederick B. Lacey

Dated: November 8, 1990

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% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
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Michael H Holland
Election Officer

November 26, 1990

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

Bill St. Clair
2208 Waterloo Road
Stockton, California 95205

Pat Miraglio
Secretary-Treasurer
IBT Local Union 439
1531 East Fremont Street
Stockton, California 95205

Re: Election Officer Case No. P-027-LU439-CCV

Gentlemen:

It has come to the attention of the Election Officer that the respondent, Local Union 439, has failed to comply with the order of Independent Administrator Lacey set forth in his November 8, 1990 Decision in the above referenced pre-election protest, 90 - Elec. App. - 9. The Election Officer has conducted an investigation to determine the cause and extent of the respondent's noncompliance with the order of the Independent Administrator. Based upon that investigation, the Election Officer submits the following report and recommendations.

This preelection protest was filed by Bill St. Clair pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). Mr. St. Clair alleges that Local Union 439 violated the Election Rules by distributing a Notice of Nominations and Elections of Local Union Officers, dated October 26, 1990, which misstated the status of Local Union Officers as delegates and alternate delegates to the 1991 IBT International Convention. On appeal, the Independent Administrator held that the Local Union notice was "confusing, and if not read closely (as is likely to be the case) can lead to a conclusion that none other than Local 439 Officers shall be delegates to the 1991 International Convention", slip op. p. 2.

To remedy this violation of the Election Rules, the Independent Administrator directed the respondents to circulate a new notice to the members of Local Union 439, within five days of the date of the order in the same manner as the notice in question was distributed, stating:

Elected Officers of the Local Union shall not, by virtue of such election, be delegates to the International Convention to take place in June of 1991. Secret ballot

Bill St. Clair
Pat Miraglio

rank-and-file elections shall be conducted for such delegates and alternate delegates under the supervision of Election Officer Michael H. Holland.

By letter dated November 9, 1990, Duane B. Beeson Esq., counsel for the Local Union, confirmed that a new notice would be sent by the Local Union on a post card to all members of the union at their residential addresses. Attached to the November 9, 1990 letter was the text of the post card. A copy of the letter, with the attachment, was sent to Pat Miraglio, the Secretary-Treasurer of Local Union 439.

On November 16, 1990, Pat Miraglio and Bob Gamaza, the President of Local Union 439, executed affidavits detailing their compliance with the order of the Independent Administrator. The affidavits stated, inter alia, that the post cards were mailed out on November 16, 1990 and attached a copy of the post card. However, the post card omitted six words from the notice ordered by the Independent Administrator and the sample notice attached to Mr. Beeson's letter of November 9, 1990. The notice actually mailed by the Local Union states, in pertinent part, as follows:

Elected Officers of the Local Union shall not, by virtue of such election, be delegates to the International Convention to take place in June of 1991. Secret ballot rank-and-file elections shall be conducted under the supervision of Election Officer Michael H. Holland.

The Election Officer's Protest and Compliance Coordinator contacted Mr. St. Clair by phone to determine if Mr. St. Clair had any information regarding the Local Union's violation of the Independent Administrator's order. Mr. St. Clair, who was aware of the defect in the Local Union's notice and had sent a copy of the notice to the Independent Administrator, stated that he did not know how the defective notice was prepared. Mr. St. Clair went on to state, however, that, because of the simple wording of the notice, he did not think that the defect could have been unintentional.

Mr. Miraglio submitted a detailed affidavit describing his preparation of the notice. A copy of the affidavit is attached hereto. Mr. Miraglio stated in his affidavit that he received a copy of Mr. Beeson's letter of November 9, 1990 with the attached notice. Because of a shortage of clerical staff in his office, he typed an exemplar notice on a post card for use by the Local Union's printer. Miraglio concedes that he omitted six words from the second sentence of the required text of the notice, i.e., "for such delegates and alternate delegates". However, he alleges that the omission was not intentional.

Bill St. Clair
Pat Miraglio

There is no dispute that the order of the Independent Administrator was not complied with by the Local Union. While the omission of the text from the required notice does not render the notice unintelligible, it reduces its corrective impact. Because of this violation of the order of the Independent Administrator additional remedial action by the Local Union is required.

In recommending a further remedy in this case, the Election Officer is mindful that the membership of Local Union 439 may be confused by receiving yet another notice from the Local Union. We have attempted to minimize such confusion by explaining the previous error in the new notice, posting a copy of the original decision of the Independent Administrator on all Local Union 439 bulletin boards and by informing members of the Local Union that they may contact the Election Officer and the Election Office Regional Coordinator if they have any questions about the procedures for the nomination and election of delegates and alternate delegates.

The Election Officer is also mindful that intentional violations or failures to comply with orders of the Election Officer or the Independent Administrator may require additional remedies. The Election Officer has not recommended such additional remedies in this case because he found no basis for concluding that the failure to comply with the order of the Independent Administrator was intentional. Moreover, once the Local Union was aware of the defect in the notice it accepted responsibility for the error and evidenced a willingness to take prompt corrective action. At the suggestion of the Protest and Compliance Coordinator, the Local Union agreed to read the required notice to the membership of Local Union 439 at a membership meeting before the start of nominations for Local Union Officers on November 21, 1990.

Based upon the investigation of this matter, the Election Officer recommends that Local Union 439 take the following additional steps to remedy its violation of the Election Rules and its failure to comply with the order of the Independent Administrator:

1. Local Union 439 shall cause to be mailed, at Local Union expense, copies of the attached corrected notice to all members of the union at their residential address;

2. The Local Union shall post on all Local Union bulletin boards copies of the Independent Administrator's November 8, 1990 decision in this case. The decision shall remain posted through the completion of nominations for delegates and alternate delegates

Bill St. Clair
Pat Miraglio

to the 1991 IBT International Convention.

If any interested party is not satisfied with these recommendations, 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.

Very truly yours,

Michael H. Holland / JJS

Michael H. Holland
Election Officer

cc: Frederick B. Lacey, Independent Administrator, IBT
Donald E. Twohey, Regional Coordinator
Duane Beeson, Esq.

TO ALL LOCAL 439 MEMBERS

You have recently received a post card notice from Local Union 439 concerning the upcoming nominations and election of Local Union officers. That notice was issued pursuant to an order of IBT Independent Administrator Frederick B. Lacey in response to a protest filed under the Rules for the IBT International Union Delegate and Officer Election. A copy of the Independent Administrator's decision will be posted on all Local Union bulletin boards. This notice is being sent to Local 439 members because certain language was omitted from the original notice. The original notice should have read as follows, the omitted language is in **bold**:

Elected Officers of the Local Union shall not, by virtue of such election, be delegates to the International Convention to take place in June of 1991. Secret ballot rank-and-file elections shall be conducted **for such delegates and alternate delegates** under the supervision of Election Officer Michael H. Holland.

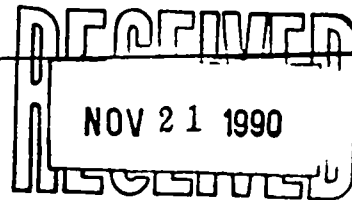
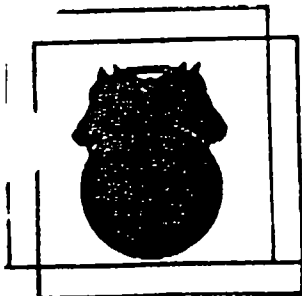
If you have any questions concerning the procedures for the nomination and election of delegates and alternate delegates to the 1991 IBT International Convention please contact Donald E. Twohey, the Election Office Regional Coordinator, at 415-283-1637 or Election Officer Michael H. Holland at 1-800-828-6496.

GENERAL TEAMSTERS LOCAL No. 439 /CCV

Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Bob Gamaza
President

Pat Miraglio
Secretary-Treasurer



DECLARATION

PAT MIRAGLIO declares as follows under penalty of perjury.

I am Secretary-Treasurer and Principal Officer of General Teamsters Local No. 439. I am submitting this Declaration pursuant to the request of John Sullivan, who is on the staff of Michael Holland, the Election Officer appointed pursuant to the Consent Order to which the International Brotherhood of Teamsters is party. I am aware of Mr. Sullivan's request through Duane B. Beeson, attorney for Local 439, who in turn has been in telephone communication with Mr. Sullivan. I have previously executed an Affidavit concerning the steps taken by myself and Bob Gamaza, President of Local 439, to clarify the Notice of Nominations and Elections of officers of Local 439 previously mailed by Local 439 to its members. Reference is made to that Affidavit, which should be considered part of the statement of facts submitted herewith.

As stated in my earlier Affidavit, I received a FAX copy of a draft clarification notice from Mr. Beeson in the afternoon of November 9, 1990. I was also informed by Mr. Beeson that the draft which he sent me had been approved by Stuart Alderoty, a member of the staff of Administrator Frederick B. Lacey. Attached hereto is a copy of the draft clarification notice which I received from Mr. Beeson. I then prepared an exemplar notice on a postcard for the purpose of submitting it to the printer who was to prepare the

postcards for mailing to the members of Local 439. The Union was short staffed in its clerical employees and I typed the exemplar postcard myself. I have compared the postcard which I typed with the draft notice which I received from Mr. Beeson and it omits the following words from the second sentence in the clarification language contained in Judge Lacey's decision: "for such delegates and alternate delegates". In reconstructing how this omission occurred, it appears to me that I took my eyes off the draft proposal after the word "conducted" as I was typing the exemplar, and when my eyes went back to the draft notice to continue to type they fastened on the word "under" which is in the line below the one I should have been copying at approximately the same place in the middle of the page. The exemplar postcard was then taken by myself to the printer and the postcards were prepared for mailing.

The omission of the six (6) words from the notice language in Judge Lacey's decision was entirely inadvertent and unintentional on my part. This has been an extremely busy time for myself, and during the last week or so I have been working long hours under stressful conditions. As I have stated, the omission was completely unintentional. My purpose has been to comply completely with Judge Lacey's decision in order to avoid any further difficulties and to put this entire problem behind the Local Union and myself. At no time have I harbored any intent other than to cooperate with the Election Officer and the Administrator in their supervision of the election rules for delegates to the International Convention in 1991.

I also want to state that the allegations made by Bill St.

Clair during the telephone hearing on the pre-election protest that Bob Gamaza and myself have made statements suggesting that we would not cooperate with the provisions of the Consent Order and the election rule, are completely false. I did not respond to Mr. St. Clair's allegations in this respect during the telephone hearing because I regarded them as completely irrelevant to the issue before Judge Lacey. At this time, however, I offer to respond in detail to those allegations if such a response would be of assistance to Election Officer Holland or Administrator Lacey.

Further, since our nominations of officers will take place this evening, I will read the clarification notice from Administrator Lacey to the membership and give an explanation as well as answer any questions that may arise.

Executed this 21st day of November, 1990, at Stockton,
California



PAT MIRAGLIO
Secretary-Treasurer
General Teamsters Local 439