



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

Michael H. Holland
Election Officer

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November 25, 1991

VIA UPS OVERNIGHT

Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
Suite 300
Washington, D.C. 20006-1002

James Howe
Secretary-Treasurer
IBT Local Union 1149
7272 Van Buren Road
Baldwinsville, NY 13027

Robert Henry
2 Braeside Road
Baldwinsville, NY 13027

Steve Richmond
2026 County Line Road
Phoenix, NY 13135

Re: Election Office Case No. P-1035-LU1149-PGH

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Hugh J. Beins on behalf of Steve Richmond, a member of IBT Local Union 1149. The protest alleges that an earlier protest filed by Mr. Beins on behalf of Mr. Richmond (Election Office Case No. P-992-LU1149-PGH) was posted on Mr. Richmond's locker after comments derogatory to Mr. Richmond and the candidate whom Mr. Richmond supports for IBT General President, R. V. Durham, were added to the protest letter. It is alleged that this posting constitutes harassment of Mr. Richmond because of his exercise of his rights protected by the *Rules*. In addition, the protest alleges that Mr. Henry, a member of IBT Local Union 1149 and a supporter of Ron Carey for IBT General President, filed internal Union charges against Mr. Richmond in violation of the *Rules*. The protest was investigated by Regional Coordinator William Kane.

This protest arose in connection with a prior protest filed by Mr. Beins on behalf of Mr. Richmond (Election Office Case No. P-992-LU1149-PGH). The protest in that case claimed that Mr. Richmond had been threatened and harassed by other IBT members in his Local due to his support of the R. V. Durham Unity Team and in retaliation for his filing an earlier protest with the Election Officer (Election Office Case No. P-967-LU1149-PGH). By letter dated October 18, 1991, the Election Officer issued a decision in Election Office Case No. P-967-LU1149-PGH finding that Robert Henry, a member of Local Union 1149 employed by Anheuser Busch at its Baldwinsville, New

Hugh J. Beins, Esquire
November 12, 1991
Page 2

York facility, had removed Durham campaign literature from the bulletin board at that facility. Having found that Mr. Henry had violated the *Rules*, the Election Officer directed Mr. Henry to sign a notice and Local 1149 to post the notice on all bulletin boards at the Baldwinsville facility at Anheuser Busch.

After that decision had been issued in Election Office Case No. P-967-LU1149-PGH, the protest in Election Office Case No. P-992-LU1149-PGH was filed. The threats and harassment alleged in that second protest consisted of a crude and derogatory remark, written on a stall in the men's room in black magic marker, regarding Mr. Richmond and the defacement of Mr. Richmond's locker and Durham material he had taped to the locker. By letter dated October 28, 1991 the Election Officer determined that the removal or defacement of campaign literature, properly posted, constitutes a violation of the *Rules*, but found that there was no evidence either presented or uncovered in the investigation of that protest to identify who was responsible for the defacing of the campaign literature or the bathroom graffiti.

During the investigation of Election Officer Case No. P-992-LU1149-PGH, Richard Gilberg, counsel for the Committee to Elect Ron Carey, on behalf of Mr. Henry, complained that the forwarding by Mr. Beins of the protest letter in that case to Messrs. Richmond's and Henry's employer, Anheuser Busch in Baldwinsville, New York, violated the *Rules*.¹ The Election Officer addressed this complaint by noting that he views with disfavor attempts to use employers to discipline IBT members employed by such employers for alleged violations of the *Rules*, but found that there was no evidence to find that Mr. Beins was seeking to have retaliatory discipline imposed. The Election Officer noted that the protest letter did not mention any names of members who engaged in the alleged conduct of defacement. Accordingly, he found no violation of the *Rules*. In response to the instant protest, Mr. Gilberg complains that Mr. Beins has once again forwarded a copy of the protest letter -- which clearly identifies Mr. Henry as the alleged wrong-doer -- to Anheuser Busch in an attempt to have discipline imposed on Mr. Henry in violation of the *Rules* and contrary to the October 28, 1991 Election Officer decision.

The investigation of the instant protest revealed that Mr. Henry made copies of the protest letter filed by Mr. Beins in Election Office Case No. P-992-LU1149-PGH after comments had been added to the protest letter by Mr. Henry. Mr. Henry posted one copy of that letter as altered on a bulletin board at the Baldwinsville facility of Anheuser Busch and left some copies in a break room along with other campaign

¹ The protest, as noted above, did not allege any misconduct on the part of Anheuser-Busch.

Hugh J. Beins, Esquire
November 12, 1991
Page 3

literature that was laid out in stacks in that room. Mr. Henry denies placing a copy of the letter on Mr. Richmond's locker and there is no evidence that he did so.²

The protest letter, after Mr. Henry's additions, became a piece of campaign propaganda. Mr. Henry comments that Mr. Beins is the attorney for the R. V. Durham Unity Team, notes that the protest was sent to Anheuser Busch and strongly suggests that these actions demonstrate the unsuitability of the R. V. Durham Unity Team candidates for International office.

The *Rules* do not prohibit Mr. Henry from making comments upon the protest letter, copying it, posting it and distributing it as campaign literature. See Election Office Case No. P-1092-LU245-SOU. Accordingly, to the extent that the instant protest alleges that Mr. Henry violated the *Rules* by doing so, the protest is DENIED. Having found no evidence identifying the individual who placed this piece of literature on Mr. Richmond's locker, that portion of the protest is also DENIED.

The remaining issues raised by this protest are (1) the filing of Union charges against Mr. Richmond by Mr. Henry based on the forwarding of two of the protests to Anheuser Busch and (2) the propriety of those protests being so forwarded. For the reasons set forth below, the Election Officer determines that both the filing of internal Union charges and the notification to Anheuser Busch are violative of the *Rules*.

The Election Officer considers conduct that interferes with the orderly resolution of protests, and the access of IBT members to the dispute resolution process set up by the Election Officer, to be most serious. IBT members or their counsel who seek decisions from the Election Officer must be free to do so without fear that their use of the election process will ultimately result in disciplinary actions being taken against them by either their employer or the Union. In his decision dated October 28, 1991, in Election Office Case No. P-992-LU1149-PGH involving this Local and these members, the Election Officer stated that attempts to utilize employers to discipline IBT members employed by such employers for alleged violations of the *Rules* were viewed with extreme disfavor and violated the *Rules*, citing Election Office Case No. P-167-LU783-SCE, affirmed 91-Elec. App.-36.

In his decision in Election Office Case No. P-992-LU1149-PGH, the Election Officer found that there was no evidence that Mr. Beins was seeking to have retaliatory

² Mr. Henry suggests that Mr. Richmond himself posted the letter on his locker. Without accepting this theory, the Election Officer notes that there were many copies of the altered protest letter circulating in the facility. Given the heated nature of the political debate at the Baldwinsville plant and the clearly differing views of the members employed there, the possibilities are almost limitless.

Hugh J. Beins, Esquire
November 12, 1991
Page 4

discipline imposed on any individual since no names were mentioned other than that of the member on whose behalf the protest was filed. Richard Gilberg, as counsel for the Committee to Elect Ron Carey, contends in the instant protest that the conduct of Mr. Beins in once again forwarding the new protest to the employer is a violation of the *Rules* and a direct disregard of the comments of the Election Officer as set forth in the October 28, 1991 determination in Election Office Case No. P-992-LU1149-PGH.

The letter which initiated the instant protest and which was sent to Anheuser Busch clearly leaves no doubt that the person against whom the allegations of misconduct are being made in both this and the prior protest is Mr. Henry. The appropriate forum for determining whether or not Mr. Henry violated the *Rules* by harassing or intimidating Mr. Richmond or by placing or defacing campaign materials on Mr. Richmond's locker is the Election Officer, not the employer. There is no valid reason for Mr. Beins to have sent a copy of this protest to Anheuser Busch, particularly after having had the benefit of the comments of the Election Officer in the October 28, 1991 determination letter.

Similarly, Mr. Henry through his counsel, Mr. Gilberg, has complained to the Election Officer through the protest process established by the *Rules* about the impropriety of Mr. Richmond, or Mr. Beins on his behalf, seeking to have Anheuser Busch discipline Mr. Henry by sending it copies of protest letters which accuse Mr. Henry of wrongdoing such as defacing company property. Whether that conduct of Mr. Richmond and Mr. Beins violate the *Rules* is a matter for the Election Officer. While internal Union charges which concern issues which do not affect or implicate the applications of the *Rules* are not normally within the Election Officer's jurisdiction, in this case internal Union charges are being used to resolve a dispute which directly implicates the *Rules* and the protest processes provided for in the *Rules*. Whether or not Mr. Richmond is seeking employer discipline against Mr. Henry in retaliation for Mr. Henry's partisan political views is precisely the issue which Mr. Henry intends to have resolved through internal Union charges rather than resolved by the Election Officer. Internal Union charges are not an appropriate forum for the resolution of this issue; and internal Union charges are not the appropriate procedural route to litigate these allegations.

Accordingly, and for the reasons set forth above, the Election Officer determines that Mr. Richmond, his counsel Mr. Beins, and Mr. Henry have violated the *Rules*. To remedy these violations the Election Officer directs as follows:

(1) Mr. Beins and Mr. Richmond shall cease and desist from intimidating, threatening, or otherwise seeking to cause Anheuser Busch to discipline Mr. Henry because of matters which impact or implicate any issue subject to the Election Officer's jurisdiction under the *Rules*.

Hugh J. Beins, Esquire
November 12, 1991
Page 5

(2) Mr. Henry shall cease and desist from intimidating, threatening, or otherwise seeking to cause the Union to discipline Mr. Richmond because of matters which impact upon or implicate any issue subject to the Election Officer's jurisdiction under the *Rules*.

(3) Mr. Beins shall send a letter to Anheuser Busch at its Baldwinsville facility enclosing a copy of this decision and a copy of the decision in Election Office Case No. P-992-LU1149-PGH and stating as follows:

With reference to the letters dated October 17, 1991 and November 1, 1991, addressed to Michael Holland, Election Officer, copies of which were forwarded to you by the undersigned, enclosed please find the decisions of the Election Officer issued after investigation of the allegations contained in both of those letters. Please be advised that the Election Officer has found no evidence that Robert Henry or any other employee certain of Anheuser Busch defaced property of Anheuser Busch.

That letter shall be sent to Anheuser Busch at its Baldwinsville facility under the signature of Mr. Beins within two (2) business days after the date of this determination letter. Mr. Beins shall simultaneously file an affidavit with the Election Officer with a copy of the letter sent to Anheuser Busch attached, confirming that he has prepared and sent the letter as directed.

(4) Mr. Henry shall within two (2) business days of the date of this determination withdraw with prejudice any internal Union charges filed by him against Mr. Richmond. Mr. Henry shall simultaneously file an affidavit with the Election Officer, with a copy of his withdrawal attached, confirming that he has withdrawn the internal charge.

(5) Within two (2) business days of the date of this decision, Mr. Henry and Mr. Richmond shall go to the Local Union 1149 hall and sign the attached notice. Within one (1) day thereafter Mr. Henry and Mr. Richmond shall each file an affidavit with the Election Officer demonstrating that the notice has been signed. Within three (3) days after the notice has been signed by both Messrs. Henry and Richmond, Local Union 1149 shall post the notice on all Union bulletin boards located at the Baldwinsville facility of Anheuser Busch. The Local shall simultaneously file an affidavit with the Election Officer demonstrating that posting has been accomplished.

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

Hugh J. Beins, Esquire
November 12, 1991
Page 6

& 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

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with a large initial "M" and "H".

Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

William B. Kane, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esquire
Cohen, Weiss & Simon
330 West 42nd Street
New York, NY 10036-6901
TEL: 212-563-4100
FAX: 212-695-5436

**NOTICE TO MEMBERS OF IBT LOCAL UNION 1149
EMPLOYED BY ANHEUSER BUSCH, BALDWINVILLE, NEW YORK**

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

You have the right to file a protest with the Election Officer in the event you believe your campaign rights have been violated.

It is a violation of the Election Rules for any IBT member to threaten, intimidate, coerce or harass you because of your campaign activities or because you file a protest with the Election Officer. We shall not interfere with your exercise of any of these rights including your right to support or refrain from supporting any International Union officer candidate or your right to file protests with the Election Officer.

Robert Henry

Steve Richmond

This is an official notice and must remain posted through December 10, 1991, and must not be altered, defaced, or covered with any other material.

IN RE:

STEVE RICHMOND
HUGH J. BEINS, ESQ.

and

ROBERT HENRY

and

IBT LOCAL UNION NO. 1149

91 - Elec. App. - 241 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's Decision in Case No. P-1035-LU1149-PGH. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan for the Election Officer; Hugh J. Beins for the Complainant, Steve Richmond; and Richard Gilberg for Robert Henry. The Election Officer submitted a written Summary in accordance with Article XI Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). In addition, Mr. Beins provided a written submission on behalf of his client.

This protest is the latest episode in an ongoing conflict between Mr. Richmond, a supporter of the R.V. Durham Unity Team slate of candidates for the IBT International Union officer positions, and Mr. Henry who supports the Ron Carey slate. Both Mr. Richmond and Mr. Henry are members of IBT Local 1149 and are

both employed at the Baldwinsville, New York facility of Anheuser Busch.

The rivalry between Mr. Richmond and Mr. Henry has generated several prior protests. On October 18, 1991, the Election Officer found that Mr. Henry had improperly removed Durham campaign literature from the bulletin board at Anheuser Busch. In Re: Scott and Henry, Election Office Case No. P-967-LU1149-PGH. Subsequently, on October 28, 1991, the Election Officer denied a protest involving the defacement of Mr. Richmond's locker and the writing of crude graffiti concerning Mr. Richmond in the men's room at work. The Election Officer concluded that there was insufficient evidence to identify the culprit behind these acts. In Re: Richmond and Henry, Election Officer Case No. P-992-LU1149-PGH ("P-992").

During the Election Officer's investigation into the allegations concerning the locker and the graffiti in P-992, Mr. Beins forwarded a copy of Mr. Richmond's protest letter to Anheuser Busch. As stated by the Election Officer in his Summary:

Although the protest did not mention the names of the employees charged with defacing company property, the Election Officer found that transmission of the protest to the employer, which was not implicated in the protest in any way, served no legitimate purpose. The Election Officer noted that because no names were named, it was not evident that Mr. Beins was seeking disciplinary action against the offenders by the employer. However, although the Election Officer declined to find a violation of the Rules under the circumstances, he noted his disfavor of attempts to utilize employers to discipline IBT members employed by them for alleged infractions of the Rules.
[Emphasis added]

graffiti On October 29, 1991, Mr. Beins appealed the Election Officer's decision in P-992 to the Independent Administrator and sent a copy of his appeal letter to Anheuser Busch.¹ This appeal letter clearly suggested that Mr. Henry was harassing Mr. Richmond. Also on October 29, 1991, Mr. Henry brought internal Local Union charges against Mr. Richmond on the grounds that he had reported Mr. Henry to the employer for acts complained of in the Election Rules protest process.

In the instant protest Mr. Richmond first complains that Mr. Henry took Mr. Richmond's earlier protest letter (the one including the locker and the graffiti), made some additions to it and then distributed it and printed it on Mr. Richmond's locker. It is claimed that this constituted further harassment that violated the Election Rules. The Election Officer established that Mr. Henry had indeed altered and distributed copies of an earlier protest letter that Mr. Richmond had sent to the Election Officer. The Election Officer concluded, however, that the alteration and distribution of the letter was valid campaign activity which did not violate the Election Rules. While the posting of the altered protest letter on Mr. Richmond's locker may constitute prohibited harassment, the Election Officer was unable to ascertain the identity of the individual(s) who put the letter on the locker.

¹ The Independent Administrator affirmed the Election Officer's denial of Mr. Richmond's protest in a November 5, 1991, decision. See In Re: Richmond, 91 - Elec. App. - 218 (SA).

Accordingly, no violation of the Election Rules was found as to this portion of the protest.

The Election Officer did find, however, that Mr. Beins' forwarding of the appeal letter to Anheuser Busch, unfortunately, could have the effect of embroiling Anheuser Busch in the Election Rules protest procedures, of having Anheuser Busch bring disciplinary action against Mr. Henry, and ultimately of chilling the rights of the IBT members to file Election Rules protests. This, the Election Officer concluded, was a violation of the Election Rules. See, e.g., In Re: Lally, 91 - Elec. App. - 36 (January 14, 1991) (finding that such conduct has the potential of chilling political rights). The forwarding of the appeal letter to Anheuser Busch was particularly unwarranted given that it occurred after the Election Officer had already made clear "his disfavor of attempts to utilize employers to discipline IBT members employed by them for alleged infractions of the Rules."

Following the same rationale, the Election Officer also found that Mr. Henry had violated the Election Rules by initiating internal Local Union charges against Mr. Richmond.

As a remedy, the Election Officer ordered Mr. Richmond and Mr. Beins to cease and desist in their attempt to bring retaliatory disciplinary action against Mr. Henry by reporting his election related conduct to Anheuser Busch. Mr. Henry was also ordered to cease and desist his attempt to harass or bring retaliatory disciplinary action against Mr. Henry by reporting election related

conduct to the Local Union. In addition, concerned with the possible chilling effect on political rights, Mr. Beins was directed to send a clarifying letter to Anheuser Busch while Mr. Henry was directed to withdraw his internal Local Union charges against Mr. Richmond. The two antagonists, Mr. Richmond and Mr. Henry, were directed to sign a notice affirming the right of all IBT members to participate in the International Union officer election freely and without harassment.

Mr. Richmond and Mr. Beins challenged the Election Officer's decision arguing that they have every right to seek the employer's protection by reporting the election related conduct of Mr. Henry. The Election Officer, they argued, does not have exclusive jurisdiction over issues of defamation, harassment and other forms of threatening behavior.

To resolve this case it is not necessary to determine the outer limits of the Election Officer's jurisdiction over matters that might be reported to an employer. In this case, Mr. Beins has forwarded copies of protest documents to an employer in an obvious effort to involve the employer in the Election Rules protest procedures. Under these circumstances it is clear that Mr. Beins' efforts in this regard were improper and violative of the Election Rules. As the Election Officer noted in his Summary, the complaints at issue stem entirely from the Court-supervised election process and the protests filed under the Election Rules which govern that process. The resolution of these protests is the

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**Michael H. Holland
Election Officer**

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February 6, 1992

VIA UPS OVERNIGHT

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2 Braeside Road
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**Steve Richmond
2026 County Line Road
Phoenix, NY 13135**

**Re: Election Office Case No. P-1035-LU1149-PGH,
affirmed 91-Elec. App.-241 (Compliance)**

Gentlemen:

By decision dated November 25, 1991, affirmed in all respects by the Independent Administrator in 91-Elec. App.-241, the Election Officer issued certain cease and desist orders as well as requiring the parties to take certain affirmative action as follows:

Mr. Beins shall send a letter to Anheuser Busch at its Baldwinsville facility enclosing a copy of this decision and a copy of the decision in Election Office Case No. P-992-LU1149-PGH and stating as follows:

With reference to the letters dated October 17, 1991 and November 1, 1991, addressed to Michael Holland, Election Officer, copies of which were forwarded to you by the undersigned, enclosed please find the decisions of the Election Officer issued after investigation of the allegations contained in both of those letters. Please be advised that the Election Officer has found no evidence that Robert Henry or any other employee certain of Anheuser Busch defaced property of Anheuser Busch.